

**2008**  
*Report of the  
Charter Review Commission*

*May 2008*  
*Montgomery County, Maryland*



## CHARTER REVIEW COMMISSION

April 30, 2008

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's my pleasure to submit the 2008 Report 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 June 2007, the Commission has analyzed a variety of issues that could result in Charter amendments; however, the Commission is recommending only one proposed amendment. The first proposal would repeal Charter Sections 311A, Limitations on Expenditures for Landfills in Residential Zones; 311B, Limitations on Expenditures, Contracts, and Permits for Burying or Trenching Sewage Sludge in Residential Zones and 313A; Purchasing, Contracting for Goods, Services with C&P Telephone Company. The Commission is persuaded that these provisions are legally ineffective and believes that the Charter should only contain provisions that address the fundamental aspect of the form and structure of County government. Because the basis for repeal of all three sections is the same, Commissioners suggest that the ballot language combine the deletion of 311A, 311B, and 313A into a single question.

The Commission reviewed a proposed Charter amendment that will appear on the ballot in the November General Election as a result of a petition drive. This proposed Charter amendment would limit 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 unless all nine Councilmembers vote to exceed this cap. The Commission opposes this proposed amendment and recommends that County voters disapprove this proposal.

The Commission appreciates the comments it received from government officials and residents 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 groups, 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,

Nancy Soreng, Chair  
Charter Review Commission

**Montgomery County Council**

# CHARTER REVIEW COMMISSION

## Members

*Nancy Soreng, Chair*

*Alice Gresham Bullock, Vice-Chair*

*Michael Cogan*

*Karen Czapanskiy*

*Dianne Felton\**

*Wilbur Friedman*

*Mollie Habermeier*

*Robert Shoenberg*

*Judith Vandegriff*

*Anne Marie Vassallo*

*Charles Wolff*

*\*Resigned in March 2008*



# **2008 Report of the Charter Review Commission**

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

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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. By mid-August, the Council determines which Charter questions in addition to those raised by petition, will be placed on the ballot.

Since July 2007, the Commission has studied a variety of issues that could result in Charter amendments. The Commission issued a press release on June 19 seeking comments from residents, civic groups, organizations, County agencies, employees and other individuals on how County government operates and what Charter revisions could make government work more effectively. The press release was distributed to various news and civic organizations and

individuals and was posted on the Council's website. The Executive, each sitting Councilmember, and former Councilmembers and Executives were invited to meet with the Commission. Six sitting Councilmembers and the County Executive met with the Commission and discussed a range of County issues. Two former Councilmembers also met with the Commission. Information gathered from these discussions was 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. REPEAL LEGALLY INEFFECTIVE CHARTER PROVISIONS**

**Amend to repeal Sections 311A, Limitations on Expenditures for Landfills in Residential Zones, 311B, Limitations on Expenditures, Contracts, and Permits for Burying or Trenching Sewage Sludge in Residential Zones and 313A, Purchasing, Contracting for Goods, Services with C&P Telephone Company**

The Commission recommends 9-0 (2 Commission members absent) repealing Charter Sections 311A, 311B, and 313A. The Commission voted to recommend this Charter change so that the Charter only contains legally effective provisions that address the fundamental aspect of the form and structure of County Government. (Refer to the information beginning on page 4.)

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

#### **1. CHARTER AMENDMENTS PROPOSED BY PETITION**

**Section 305, Approval of the Budget; Tax Levies.**

In addition to the issues raised by Commission members, several Councilmembers supported the Commission's review of a proposed Charter amendment that will appear on the ballot in the November 2008 General Election as a result of a petition drive. This proposed Charter amendment would limit the Council's authority to override the existing tax cap in



Charter Section 305 and would limit property tax revenue increases to growth plus inflation except upon the vote of all nine Councilmembers vote to exceed this cap. The Commission 9-0 (2 Commission members absent) does not recommend making this change to the Charter. (Refer to the information beginning on page 6.)

**C. ISSUES IDENTIFIED FOR FURTHER STUDY**

**1. COUNCIL STRUCTURE  
Section 102, Composition and Election**

The Commission heard from some members of the County Council and the County Executive that the composition of the County Council should be changed. The Commission voted 5-4 (2 commissioners absent) that this issue is worthy of further consideration but that there was not sufficient time to research the various options nor to seek input from the general public on those options in time for this report. (Refer to the information beginning on page 8.)

**2. ELECTION OF THE COUNCIL PRESIDENT  
Section 108, Officers of the Council**

County Executive Leggett suggested that the Commission consider whether the Council President should be directly elected by the voters. The Commission voted 7-2 (2 commissioners absent) that this issue is worthy of further consideration but that there was not sufficient time to research the various options nor to seek input from the general public on those options in time for this report. (Refer to the information beginning on page 9.)

**3. APPOINTMENT OF THE INSPECTOR GENERAL**

County Executive Leggett suggested that the Charter be amended to allow for an Executive-nominated, Council-confirmed Inspector General. In order to adequately evaluate the appropriateness of a change from the current system, the Commission voted 8-1 (2 Commission

members absent) that more time is needed to study this issue and seek public input. (Refer to the information beginning on page 9.)

**4. SPECIAL TAXING DISTRICTS**  
**Section 305, Approval of the Budget; Tax Levies**

Council staff and some Councilmembers raised the issue of whether to exclude certain special taxing districts from the Charter's limit on the growth of the property tax revenue to the rate of inflation. In order to adequately evaluate this issue, the Commission voted 6-3 (2 Commission members absent) that more time is needed to study and seek public input on this proposal. (Refer to the information beginning on page 12.)

**III. ISSUE AREAS**

**A. RECOMMENDATIONS FOR CHARTER AMENDMENTS**

**1. REPEAL LEGALLY INEFFECTIVE CHARTER PROVISIONS**  
**Amend to repeal Sections 311A, Limitations on Expenditures for Landfills in Residential Zones, 311B, Limitations on Expenditures, Contracts, and Permits for Burying or Trenching Sewage Sludge in Residential Zones, and 313A, Purchasing, Contracting for Goods, Services with C&P Telephone Company**

**Background**

Council staff and some Councilmembers recommended repeal of three provisions in the County Charter: 311A, which prohibits County funds to be used to operate a landfill in a residential zone; 311B, which prohibits County funds to be used to construct or operate, contract for, or seek permits for, a system for burying or trenching sewage sludge on residentially-zoned land; and 313A, which prohibits the County from purchasing and contracting with the C&P Telephone Company unless the company meets certain conditions. These provisions currently have no legal force and are not appropriate Charter material. Because these amendments were

added to the Charter by action of the voters, the legal opinion of Council attorney is that they may only be removed by action of voters.

### **Discussion**

#### **311A, Limitations on Expenditures for Landfills in Residential Zones and 313A, Purchasing, Contracting for Goods, Services with C&P Telephone Company**

Maryland courts blocked operation of 311A and 313A because each directly conflicted with some aspect of state law. More fundamental, neither of these provisions are proper “Charter material” because they do not address a fundamental aspect of the form and structure of County government. In addition, they attempt to legislate through a Charter amendment, which the Maryland Constitution prohibits.

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

Although Maryland courts have not blocked the operation of 311B, a consistent line of Court of Appeals opinions makes clear that this provision, like the ones above, runs afoul of the Maryland Constitution’s prohibition on legislating through a Charter Amendment. (See memorandum and attachments to Members, Charter Review Commission from Michael Faden, page A-31.)

### **Recommendation**

The Commission recommends 9-0 (2 Commission members absent) the repeal of all three amendments described above. Because the basis for repeal of all three sections is the same, Commissioners suggest that the ballot language combine the deletion of Sections 311A, 311B, and 313A into a single question. There is precedent for this approach. In 1990 and 1998, various technical amendments and deletions were combined into single questions.

**B. RECOMMENDATIONS REQUIRING NO CHARTER CHANGES**

**1. CHARTER AMENDMENTS PROPOSED BY PETITION  
Section 305, Approval of the Budget; Tax Levies.**

**Background**

Under Charter Section 305, Approval of the Budget; Tax Levies, tax revenues from real property generally 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 yield to bring the overall revenue growth in line with inflation. Alternatively, a supermajority (seven votes) of the Council may override the Charter and approve a higher property tax yield.

Property tax revenues are driven by four components: (1) existing real property that is reassessed every three years, (2) new construction added to the base amount, (3) any credits which reduce the revenue yield and (4) 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. Since 2001, reassessments have consistently exceeded inflation. However, with the slow-down in the real estate market, this trend may not continue.

**Discussion**

The real property tax is the only major source of revenue over which the County 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 except upon the vote of nine

Councilmembers. A supermajority of the Council (seven members) would no longer be sufficient to override the cap, which could result in the reduction of County services.

Currently, the Charter allows a supermajority (seven votes) of the Council to vote to override the property tax limit (adopted in 1990) and raise property tax yields to bring tax revenues in line with needed government spending. This option was used three times since 1992. In Fiscal Year 2003, by a vote of 8 to 1, the Council maintained the previous tax rate but, due to increased property assessments, the revenue generated by the previous year's tax rate exceeded the Charter limit by \$4.3 million. In Fiscal Year 2004, the Council voted unanimously to maintain the previous tax rate, but again, due to increased property tax assessments, the revenue generated exceeded the Charter limit by \$29.2 million. In the following fiscal year, 2005, by unanimous vote, the Council voted to reduce the previous tax rate by one cent, but the revenue generated still exceeded the Charter limit by \$48 million. In the last three fiscal years, 2006, 2007, and 2008, the property tax yield has been reduced by increasing the income tax offset credit, and the revenue generated has been at the Charter limit. (See Chart on page A-42)

While exceeding the Charter limit was not necessary in fiscal years 2006, 2007, or 2008, a change in the County's ability to raise enough property tax revenue could result in the reduction of current County services. Over the past half century, the County has become less of a bedroom community and more of an urban area with an increasingly complex economy. As the County's population grows, so does the cost of providing services such as education for County children, medical expenses for County families, public transportation, and public safety. For example, data from the Montgomery County Public Schools shows that the percentage of children enrolled in the free and reduced meals program has increased dramatically in the last 30 years (see Chart on page A-43).

In addition, restricting the Council's fiscal options could jeopardize the County's AAA bond rating. Requiring nine votes could be problematic if one Council member was absent or there was a vacancy on the Council. In addition, it gives a veto power to a single member of the Council.

### **Recommendation**

The Commission opposes requiring the votes of nine members to override the existing tax cap as provided in Charter Section 305. The Commission voted 9-0 (2 Commission members absent) to oppose the proposed Charter amendment and recommends that County voters disapprove the unanimous vote proposal.

## **C. ISSUES IDENTIFIED FOR FURTHER STUDY**

### **1. COUNCIL STRUCTURE**

#### **Section 102, Composition and Election**

### **Background**

Charter Section 102, Composition and Election, provides that the Council is comprised of nine members. Four Councilmembers are elected by the voters of the entire County and five Councilmembers must each reside in a different Council district and be elected by the voters of that district. The Council structure has been discussed and considered at length in Commission reports released in 2002, 2004, and 2006.

### **Discussion**

The Commission heard from some members of the County Council and the County Executive that the time had come to change the composition of the County Council. Their recommendations included increasing the size of the Council and changing the ratio of district elected to at-large members. The Commission voted 5-4 (2 commissioners absent) that this issue

is worthy of further consideration but that there was not sufficient time to research the various options nor to seek input from the general public in time for this report.

**2. ELECTION OF THE COUNCIL PRESIDENT**  
**Section 108, Officers of the Council**

**Background**

Section 108 of the Charter, Officers of the Council, provides that the Council must elect a president of the Council from among its members. County Executive Leggett suggested that the Commission consider whether the Council President should be directly elected by the voters.

**Discussion**

The Commission voted 7-2 (2 commissioners absent) that this issue is worthy of further consideration but that there was not sufficient time to research the various options nor to seek input from the general public in time for this report.

**3. APPOINTMENT OF THE INSPECTOR GENERAL**

**Background**

In December of 2007, County Executive Isiah Leggett recommended to the Commission that the Charter be amended to include the Inspector General as an entity in the Executive Branch who would be nominated by the County Executive and confirmed by the Council. During that meeting, the County Executive explained the history of the current Inspector General law. He noted that the original legislation<sup>1</sup> was similar to his current proposal but then-County Executive Douglas Duncan vetoed Bill 38-96 based on an opinion from the Office of the County Attorney that the bill contained provisions contrary to three Charter provisions<sup>2</sup>. The Council

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<sup>1</sup> Bill 38-96, Inspector General – Establishment, sponsored by Councilmembers Isiah Leggett, William Hanna, Gail Ewing, Derick Berlage, and Michael Subin, was introduced in 1997.

<sup>2</sup> Specifically, attorney Marc Hansen argued that Bill 38-96 was contrary to the following Charter sections: (1) Charter Section 117, Limitations, which prohibits the Council from appointing, dismissing, or giving directions to

enacted Bill 38-96 over the Executive's veto and, as a compromise to override the veto, the Council enacted legislation<sup>3</sup> that called for an Inspector General to be appointed by the Council and established in the Legislative Branch. County Executive Leggett said that the Charter change may not modify the work of the Inspector General, but both branches of County government should be involved in the process of selecting an Inspector General.

In a 1997 memorandum to then-County Executive Douglas Duncan and then-Chief Administrative Officer Bruce Romer, attorney Marc Hansen, Chief of the Division of General Counsel in the Office of the County Attorney, said that there were two possibilities to avoid conflict with the Charter: (1) the Council could propose a Charter amendment to create an independent Office of Inspector General, or (2) the Council could place the Inspector General function in the Legislative Branch. (See memorandum from Office of the County Attorney on page A-44.)

### **Discussion**

In the interest of gaining a better perspective on County Executive Leggett's proposal to change the Charter to have the Inspector General appointed by the County Executive and confirmed by the Council, the Commission invited the current Inspector General, Thomas J. Dagley, to share his views on this proposal. (See statement from Mr. Dagley on page A-54.) Commission members also researched approaches used by other county and local (such as city) governments. While few seem to have Inspector General Offices, Commission members

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any individual employee of the Executive Branch, (2) Charter Section 211, Duties of the Chief Administrative Officer, which vests the authority to "supervise all departments, offices, and agencies of the Executive Branch" in the Chief Administrative Officer, subject to the direction of the County Executive, and (3) Charter Section 215, Appointments, which states that 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".

<sup>3</sup> Bill 24-97, Inspector General – Appointment and Removal, sponsored by Councilmembers Isiah Leggett and Betty Ann Krahnke, was introduced in 1997.



identified six local jurisdictions that have some form of an Inspector General.<sup>4</sup> Additionally, 20 states have an Inspector General, but may operate in different ways. How the Inspector General is appointed in these jurisdictions, and to whom the Inspector General reports, will be further researched.

To date, the Commission has not contacted any of these jurisdictions to gain insights as to what the benefits and drawbacks are about the way these Inspectors General have been structured, but some knowledge from them could be helpful in determining what issues there may be, such as (1) independence, (2) funding, (3) term limits, and (4) support for access to organizations, records and people. Such knowledge could be very useful if the Commission recommends a change to the appointment process or lines of authority for the Office of the Inspector General.

Before recommending a change to the Charter regarding the appointment process of the Inspector General and how the Office of Inspector General is structured, Commission members believe there are several issues that should be considered, including:

- (1) Independence: In the initial establishment of the Office of Inspector General, the independence of the Inspector General was considered to be critical. Would an Inspector General appointed by a County Executive, rather than by the Council, be as independent?
- (2) Funding: How would funding for the office be affected by a change in structure? Would the independence of the office be impacted by which branch allocates funding?

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<sup>4</sup> These are Miami-Dade County, Florida; Wayne County, Michigan; Sacramento County, California; Mercer County, New Jersey; Cook County, Illinois; and the District of Columbia. Inspectors General in Miami, Sacramento, and Cook counties report to Commissioners; Inspectors General in Wayne and Mercer counties report to the Executive Branch.

- (3) **Inspector General Access to documents:** Would an Inspector General appointed by the County Executive have the same access to departments and agencies, staff and records as under the current arrangement? Would subpoena power be needed or appropriate?
- (4) **Changing the Charter:** What Charter changes would be necessary to provide for an Executive-nominated, Council-confirmed Inspector General? Would the Charter, Section 213 be appropriate for adding the appointment of an Inspector General by the County Executive, or would a new section need to be created? Would the Executive or Council have the authority to remove the Inspector General? A Charter amendment would be necessary if the Council were to have authority to veto an Executive's decision to remove an Inspector General.

**Recommendation:**

In order to adequately evaluate the questions above, the Commission voted 8-1 (2 Commission members absent) that more time is needed to study County Executive Leggett's proposal before deciding whether to recommend this appointment process as a change to the Charter. Commission members also believe that research into other local Inspector General organizations may be helpful in addressing some of these issues.

**4. SPECIAL TAXING DISTRICTS**  
**Section 305, Approval of the Budget; Tax Levies**

**Background**

State and County law authorize the County to establish special taxing districts for limited purposes. In addition to some broader taxing districts that cover significant land area in the County, the County has established three urban districts (Bethesda, Silver Spring, and Wheaton), four parking districts, which are generally subsets of the urban districts (Bethesda, Montgomery

Hills, Silver Spring, and Wheaton), two development districts (Kingsview Village and West Germantown), and two noise abatement districts (Bradley and Cabin John).<sup>5</sup>

Section 305 of the Charter limits the growth of property tax revenue in any year to the rate of inflation, with some exceptions, unless seven Councilmembers (the supermajority) agree to exceed it. There are now many special districts that apply a further *ad valorem* property tax to limited geographic areas, including the parking districts, urban districts, and noise abatement districts mentioned above. Although this type of tax is charged only to the residents and/or businesses within the affected areas and has restricted application, these revenues are counted against the tax limitation. (See memorandum and attachments from Glenn Orlin on page A-59.)

Because of the tax limitation, special taxing district revenues reduce the amount that can be spent on county-wide programs, so the Council and Executive may be reluctant to create them even when the beneficiaries are willing to be taxed to create the benefits. Furthermore, in the case of the noise abatement districts and to some extent the parking lot districts, the County is ultimately repaid with interest for its expenditure. Thus it may contradict the purpose of the tax limitation to include the special districts within the restrictions it creates.

### **Discussion**

Removing the special taxing districts from the Charter-imposed tax limitation may be beneficial for a number of reasons, including:

1. The taxes are imposed on a defined set of payers, not on County residents as a whole.
2. In the case of the parking lot districts and the urban districts, the benefits often accrue to a wide range of residents (and non-residents) using the services of the district. To be sure, these non-residents pay in other ways (e.g., parking fees, increased prices for goods and

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<sup>5</sup> There are also three special taxing districts that were created by state legislation – Village of Drummond, Village of Friendship Heights, and Oakmont. These state-created districts do not fall under the proposal in this section.

services), but without the facilities created by the special taxing districts, the benefits would not be available at all.

3. The special taxes allow the benefits to be created much more quickly and efficiently than other means of financing these projects. In the case of the noise abatement districts, financing would otherwise be virtually impossible.
4. Noise abatement district expenditures are repaid completely and with interest. Thus they are not an expenditure at all in the usual sense. The same is true of that portion of the parking lot district taxes that is used for the repayment of principal and interest on construction bonds. (Some of the parking lot district taxes are used for other, non-repaid activities. Urban district taxes go for such purposes as landscaping and street-scaping that make the area more attractive to customers.)
5. Other kinds of limited-area projects or programs might be funded in this way.
6. Removing the special taxing districts from the Charter tax limitation would encourage the use of this valuable fiscal tool.

Although there may be a number of benefits, as outlined above, for excluding certain special taxing districts from the Charter tax limitation, Commission members believed that the Commission needed public input on this issue prior to recommending any changes to the Charter. The Commission was especially interested in receiving input from municipalities because of the implications for municipalities if the Council creates special taxing districts within their boundaries.

In the future, if the Commission recommends that special taxing districts should no longer be included in the Charter limitation, the amount of funding that could be used for this purpose should be limited. The limitation could be stated in terms of either the county-wide *ad*

*valorem* property tax collections or the total assessable land value of the County. Current special taxing district collections are approximately \$13 million out of a total of approximately \$1.2 billion collected in *ad valorem* real property taxes, slightly more than 1 percent. Assessable value of the three urban districts (which include three of the parking districts) plus the Montgomery Hills parking district and the two noise abatement districts is \$6.2 billion against a total assessable base of \$142.4 billion for the County, or 4.35 percent. (See Chart on page A-66 for the Montgomery County Real Property Tax Rate Schedule for Levy Year 2007, which identifies the tax rate in the municipalities and several special taxing districts.)

It is important to note that removing the special taxing districts from the maximum property tax calculation would have a negligible effect on the amount that could be spent for other purposes. The benefit is almost entirely to the special taxing districts, encouraging their wider use. Thus a Charter amendment to achieve the purposes outlined above would not violate the spirit of the property tax limitation.

### **Recommendation**

In order to adequately evaluate this issue, the Commission voted 6-3 (2 Commission members absent) that more time is needed to study this proposal before deciding whether to recommend excluding certain revenues from special taxing districts from the property tax limitation as specified in Charter Section 305. Commission members also believe that input from the public and municipalities would be beneficial.



*APPENDIX*



**Charter of  
Montgomery County,  
Maryland**

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**Montgomery County  
Government**

**County Executive**

Isiah Leggett

**County Council**

Phil Andrews

Roger Berliner

Marc Elrich

Valerie Ervin

Nancy M. Floreen

Michael J. Knapp

George L. Leventhal

Marilyn Praisner

Duchy Trachtenberg

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MONTGOMERY COUNTY CODE

PART I.  
THE CHARTER.\*

**Article 1. Legislative Branch.**

- § 101. County Council.
- § 102. Composition and Election.
- § 103. Council Districts.
- § 104. Redistricting Procedure.
- § 105. Term of Office.
- § 106. Vacancies.
- § 107. Compensation.
- § 108. Officers of the Council.
- § 109. Sessions.
- § 110. Exercise of Zoning, Planning and Other Powers.
- § 111. Enactment of Legislation.
- § 112. Effective Date of Legislation.
- § 113. Publication of Legislation.
- § 114. Referendum.
- § 115. Referendum Procedure.
- § 116. Legislative Procedure.
- § 117. Limitations.
- § 118. Removal of Councilmembers.

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\*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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- § 201. Executive Power.
- § 202. Election and Term of Office.
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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).

See County Attorney Opinion dated 6/8/04-A describing the possible violation of separation of powers in a law authorizing the Council to set certain transportation fees without County Executive approval. See County Attorney Opinion dated 4/21/04 discussing the limited authority of the Commission on People With Disabilities and the role of the County Attorney as the legal advisor for the County. See County Attorney Opinion No. 97-1 dated 6/27/97 explaining that the law establishing the Office of the Inspector General as a principal office in the Executive Branch of County government conflicts with the Charter.

**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

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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.)

**Editor's note**—See County Attorney Opinion No. 90.003 dated 3/30/90-A explaining that the County Charter requires a candidate for Council to reside in the councilmanic district that the person seeks to represent.

**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.)

**Editor's note**—See County Attorney Opinion dated 3/20/91 explaining that the Redistricting Commission may consider and recognize natural and public municipal boundaries in creating new boundaries for councilmanic districts [updates 1981 analysis]. See County Attorney Opinion dated 3/20/91-A describing the impact of the Voting Rights Act on redistricting.

**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.)

**Editor's note**—See County Attorney Opinion No. 95.003 dated 12/6/95 explaining that the Council retains the authority to control whether the Commission on Redistricting plan becomes law, but the Council must take action within 90 days of receiving the plan. See County Attorney Opinion dated 1/9/92 explaining that not all meetings fall within the Open Meetings Act and, therefore, not all meetings need to be open to the public or included in public notice.

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**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.)

*Editor's note*—See County Attorney Opinion dated 2/19/99 discussing filling an interim Council vacancy by temporary appointment pending a special election.

**Sec. 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. (Election of 11-7-06.)

**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.)

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**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.

See County Attorney Opinion dated 7/14/00 discussing the need to modernize the Charter in relation to access to documents. See County Attorney Opinion dated 6/19/00 recommending an amendment to the Charter to conform with State law.

**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.)

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**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 Elections within ninety days after the date when the legislation becomes law, provided that fifty percent of the required signatures accompanying the petition are filed within seventy-five days after the date when the legislation becomes law. When a referendum petition that contains the required signatures 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 voting thereon. Expedited legislation shall remain in effect from the date it becomes law notwithstanding the filing of a petition for referendum, but shall be repealed thirty days after its rejection by a majority of the registered voters voting thereon. (Election of 11-7-78; election of 11-5-02.)

**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.



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**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.**

**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).

See County Attorney Opinion dated 6/8/04-A describing the possible violation of separation of powers in a law authorizing the Council to set certain transportation fees without County Executive approval. See County Attorney Opinion dated 4/21/04 discussing the limited authority of the Commission on People with Disabilities and the role of the County Attorney as the legal advisor for the County. See County Attorney Opinion dated 7/22/98 commenting on the means of requiring binding dispute resolution process. See County Attorney Opinion No. 97-1 dated 6/27/97 explaining that the law establishing the Office of the Inspector General as a principal office in the Executive Branch of County government conflicts with the Charter.

**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.)

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**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.

See County Attorney Opinion dated 11/26/01 explaining that the police department cannot void red-light citations issued based upon an automated traffic control signal, but the County Attorney may do so.

**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.)

*Editor's note*—See County Attorney Opinion dated 2/19/97 explaining that the County Executive has the authority to establish a separate salary schedule for non-merit heads of departments and principal offices within the Executive Branch. [attachment]

**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.)

*Editor's note*—See County Attorney Opinion dated 2/19/99 discussing filling an interim Council vacancy by temporary appointment pending a special election.

**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

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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, the Council President shall within three days deliver it to the County Executive, who within ten days after receiving it shall approve or disapprove it. If the Executive disapproves such legislation, the Executive shall return it to the Council within ten days after receiving it, with the reasons for the Executive's 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 Executive. Any legislation which the Executive has *neither approved nor disapproved* shall become law on the eleventh day after the Executive receives it. The Council may by law further specify how any period of time mentioned in this section is measured. (Election of 11-2-82; election of 11-4-86; election of 11-6-90; election of 11-7-06.)

*Editor's note*—See County Attorney Opinion dated 6/8/04-A describing the possible violation of separation of powers in a law authorizing the Council to set certain transportation fees without County Executive approval.

**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.)

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**Editor's note**—See County Attorney Opinion dated 7/8/02 describing the extent to which quasi-judicial officials may engage in political activities. See County Attorney Opinion No. 97-1 dated 6/27/97 explaining that the law establishing the Office of the Inspector General as a principal office in the Executive Branch of County government conflicts with the Charter. See County Attorney Opinion dated 2/19/97 explaining that the County Executive has the authority to establish a separate salary schedule for non-merit heads of departments and principal offices within the Executive Branch. [attachment]

**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.)

**Editor's note**—See County Attorney Opinion dated 7/8/02 describing the extent to which quasi-judicial officials may engage in political activities. See County Attorney Opinion dated 4/13/99 (4/15/99 on cover memo) analyzing the Chief Administrative Officer's authority to make a sole-source contract in excess of \$25,000 without obtaining consent of the director of procurement or the contract review committee. See County Attorney Opinion No. 97-1 dated 6/27/97 explaining that the law establishing the Office of the Inspector General as a principal office in the Executive Branch of County government conflicts with the Charter. See County Attorney Opinion dated 4/4/91 explaining that a special assistant to the County Executive may serve as the supervisor of the merit system employees assigned to work in the Office of Minority and Multicultural Affairs with no effect on the status and rights of the employees.

**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.

**Editor's note**—See County Attorney Opinion No. 97-1 dated 6/27/97 explaining that the law establishing the Office of the Inspector General as a principal office in the Executive Branch of County government conflicts with the Charter.

**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,

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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.)

**Editor's note**—See County Attorney Opinion dated 4/21/04 discussing the limited authority of the Commission on People with Disabilities and the role of the County Attorney as the legal advisor for the County. See County Attorney Opinion dated 4/26/99 explaining that a transfer of development rights easement continues to restrict development even when the underlying zoning of the property is changed. See County Attorney Opinion No. 97-1 dated 6/27/97 explaining that the law establishing the Office of the Inspector General as a principal office in the Executive Branch of County government conflicts with the Charter. See County Attorney Opinion dated 4/18/91 explaining that it is inappropriate for the County Attorney's Office to respond to requests for legal advice from a source outside of the County government.

**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.)

**Editor's note**—See County Attorney Opinion dated 1/27/03 explaining that the interagency coordinating board membership provision in the Code does not conflict with the Charter appointment provision or with the State enabling law. See County Attorney Opinion dated 2/19/99 discussing filling an interim Council vacancy by temporary appointment pending a special election. See County Attorney Opinion dated 5/22/98 explaining that a recreation area advisory board does not have the authority to elect representatives to the County Recreation Board; those representatives are appointed by the County Executive. See County Attorney Opinion No. 97-1 dated 6/27/97 explaining that the law establishing the Office of the Inspector General as a principal office in the Executive Branch of County government conflicts with the Charter. See County Attorney Opinion dated 4/4/91 explaining that a special assistant to the County Executive may serve as the supervisor of the merit system employees assigned to work in the Office of Minority and Multicultural Affairs with no effect on the status and rights of the employees.

**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.

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**Editor's note**—See County Attorney Opinion dated 11/12/97 indicating that the Charter permits the use of merit system employees for pilot programs and enterprise programs, but prohibits the use of contract employees for these programs. See County Attorney Opinion dated 4/4/91 explaining that a special assistant to the County Executive may serve as the supervisor of the merit system employees assigned to work in the Office of Minority and Multicultural Affairs with no effect on the status and rights of the employees.

**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.)

**Editor's note**—See County Attorney Opinion No. 97-1 dated 6/27/97 explaining that the law establishing the Office of the Inspector General as a principal office in the Executive Branch of County government conflicts with the Charter.

**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.**

**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.

**Editor's note**—See County Attorney Opinion dated 4/7/99 clarifying that the Council may place conditions on appropriations prior to June 1, with certain limitations.

**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.

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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.)

**Editor's note**—See County Attorney Opinion dated 4/7/99 clarifying that the Council may place conditions on appropriations prior to June 1, with certain limitations. See County Attorney Opinion dated 2/5/96 explaining that the budget must include recommended expenditures and revenue services for the Board of Education and including the legislative history of the section. See County Attorney Opinion No. 90.008 dated 11/20/90 discussing the use of consent calendars to consolidate capital improvement bills and proposed amendments to the County Code to permit more than one item on the consent calendar at a time. [attachment]

**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

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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.)

**Editor's note**—See County Attorney Opinion dated 4/7/99 clarifying that the Council may place conditions on appropriations prior to June 1, with certain limitations. See County Attorney Opinion dated 6/9/98 addressing the creation of Department of Liquor Control by State law and the department's funding and expenditures. See County Attorney Opinion dated 5/8/98 explaining that State law created the Department of Liquor Control and gives the Council oversight over the department, but does not give the Council budget or appropriation authority. See County Attorney Opinion dated 2/5/96 explaining that the budget must include recommended expenditures and revenue services for the Board of Education and including the legislative history of the section.

**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



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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.)

**Editor's note**—See County Attorney Opinion dated 5/10/99 recognizing that authorized reimbursement for college tuition, training and/or education costs made to County employees do not violate the Charter. See County Attorney Opinion dated 4/7/99 clarifying that the Council may place conditions on appropriations prior to June 1, with certain limitations. See County Attorney Opinion dated 6/9/98 addressing the creation of Department of Liquor Control by State law and the department's funding and expenditures. See County Attorney Opinion dated 5/8/98 explaining that State law created the Department of Liquor Control and gives the Council oversight over the department, but does not give the Council budget or appropriation authority. See County Attorney Opinion dated 1/26/98 analyzing a petition to amend charter to require any increase in taxes to be approved by referendum. See County Attorney Opinion dated 7/14/94 explaining that the Education Article allows Council to place restrictions on tuition and fees by the Board of Trustees of Montgomery College, and that a proposed amendment to Charter § 305 re approval of budget, appropriation of funds, and levying taxes does not appear to conflict with State law. See County Attorney Opinion dated 9/3/92 explaining flaws in § 305 based on a misleading petition and an amendment that conflicts with State law. See County Attorney Opinion dated 10/30/91 describing the additions to Charter § 305 by Question F as not conflicting with the TRIM amendment.

**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.)

**Editor's note**—See County Attorney Opinion dated 4/7/99 clarifying that the Council may place conditions on appropriations prior to June 1, with certain limitations.

**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

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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.)

**Editor's note**—See County Attorney Opinion dated 4/7/99-A clarifying that the Council may place conditions on appropriations prior to June 1, with certain limitations.

**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.)

**Editor's note**—See County Attorney Opinion dated 4/7/99 clarifying that the Council may place conditions on appropriations prior to June 1, with certain limitations.

**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.)

**Editor's note**—See County Attorney Opinion dated 4/7/99 clarifying that the Council may place conditions on appropriations prior to June 1, with certain limitations.

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

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

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**Editor's note**—See County Attorney Opinion dated 5/3/00 clarifying that the County cannot enter into agreements until funds have been appropriated.

**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.)

**Editor's note**—See County Attorney Opinion dated 10/23/91 explaining that a loan guarantee to a non-profit corporation is comparable to that of the County making a loan under Ch. 23B. A loan guarantee would not constitute either an operating expense or a capital expense, and could not exceed 1 year.

**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.

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**Editor's note**—See County Attorney Opinion dated 4/13/99 (4/15/99 on cover memo) analyzing the Chief Administrative Officer's authority to make a sole-source contract in excess of \$25,000 without obtaining consent of the director of procurement or the contract review committee. See County Attorney Opinion dated 9/23/91 explaining that State law does not prohibit the Department of Liquor Control from entering into contracts with private entities to operate the liquor stores.

**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.)

**Editor's note**—See County Attorney Opinion dated 11/12/97 indicating that the Charter permits the use of merit system employees for pilot programs and enterprise programs, but prohibits the use of contract employees for these programs. See County Attorney Opinion dated 9/23/91 explaining that State law does not prohibit the Department of Liquor Control from entering into contracts with private entities to operate the liquor stores.

**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.

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**ARTICLE 4. MERIT SYSTEM AND CONFLICTS OF INTEREST.**

**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 cited in Montgomery County, Maryland v. Jamsa, 153 Md. App. 346, 836 A. 2d 745 (2003) and interpreted in Anastasi v. Montgomery County, 123 Md. App. 472, 719 A.2d 980 (1998).

See County Attorney Opinion dated 11/26/01-A explaining that police sergeants are considered FLSA exempt, even though certain duty assignments may render them eligible for overtime pay. See County Attorney Opinion dated 5/10/99 recognizing that authorized reimbursement for college tuition, training and/or education costs made to County employees do not violate the Charter. See County Attorney Opinion dated 2/19/97 explaining that the County Executive has the authority to establish a separate salary schedule for non-merit

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heads of departments and principal offices within the Executive Branch. [attachment] See County Attorney Opinion dated 11/12/97 indicating that the Charter permits the use of merit system employees for pilot programs and enterprise programs, but prohibits the use of contract employees for these programs. See County Attorney Opinion No. 95.002 dated 5/17/95 explaining that a member of retirement plan who retires under the retirement incentive plan may participate in a County contract awarded under the procurement process. See County Attorney Opinion No. 90.007 dated 7/24/90 explaining that the County Council may amend the uniform salary plan only through legislation and not by resolution.

**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.)

**Editor's note**—See County Attorney Opinion dated 5/10/99 recognizing that authorized reimbursement for college tuition, training and/or education costs made to County employees do not violate the Charter. See County Attorney Opinion dated 4/13/99 (4/15/99 on cover memo) analyzing the Chief Administrative Officer's authority to make a sole-source contract in excess of \$25,000 without obtaining consent of the director of procurement or the contract review committee. See County Attorney Opinion dated 11/12/97 indicating that the Charter permits the use of merit system employees for pilot programs and enterprise programs, but prohibits the use of contract employees for these programs. See County Attorney Opinion No. 90.007 dated 7/24/90 explaining that the County Council may amend the uniform salary plan only through legislation and not by resolution.

**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.)

**Editor's note**—Section 403 of the Montgomery County Charter was cited in Montgomery County, Maryland v. Jansa, 153 Md. App. 346, 836 A. 2d 745 (2003)

See County Attorney Opinion dated 7/8/02 describing the extent to which quasi-judicial officials may engage in political activities. See County Attorney Opinion dated 5/10/99 recognizing that authorized reimbursement for college tuition, training and/or education costs made to County employees do not violate the Charter.

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**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.)

**Editor's note**—Section 404 of the Montgomery County Charter was cited in Montgomery County, Maryland v. Jamsa, 153 Md. App. 346, 836 A. 2d 745 (2003)

See County Attorney Opinion dated 5/10/99 recognizing that authorized reimbursement for college tuition, training and/or education costs made to County employees do not violate the Charter.

**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.)

**Editor's note**—See County Attorney Opinion dated 7/8/02 describing the extent to which quasi-judicial officials may engage in political activities. See Attorney General Opinion No. 98-003 (unpublished) dated 1/27/98 explaining that the State election laws preempt the County from regulating the solicitation of political contributions. See County Attorney Opinion dated 12/10/97 explaining that the County may prohibit members of its quasi-judicial boards and commissions from soliciting funds for partisan political campaigns or restricting other political activities that conflict with a compelling County interest.

**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.)

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**Editor's note**—See County Attorney Opinion dated 8/11/00 indicating that an elected official running for office must devote "official" time to official duties.

**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.)

**Editor's note**—See County Attorney Opinion dated 5/10/99 recognizing that authorized reimbursement for college tuition, training and/or education costs made to County employees do not violate the Charter. See County Attorney Opinion No. 90.002 dated 3/30/90 explaining that a County employee may receive two paychecks (one as a full-time County employee and one as a paid member of a committee) within certain parameters.

**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.

**Editor's note**—See County Attorney Opinion dated 8/11/00 indicating that an elected official running for office must devote "official" time to 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.



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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.)

**Editor's note**—See County Attorney Opinion dated 8/23/02 describing the elements required for a complaint to the Ethics Commission to initiate an investigation. See County Attorney Opinion dated 9/8/98 explaining that County law limiting contractors from seeking or obtaining an economic benefit in addition to payment does not extend to sub-contractors unless the Office of Procurement requires its contractors to extend the prohibition to sub-contractors.

**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.**

**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.

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**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.

See County Attorney Opinion dated 7/14/00 discussing the need to modernize the Charter in relation to access to documents. See County Attorney Opinion dated 6/19/00 recommending an amendment to the Charter to conform with State law.

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**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.)

*Editor's note*—Charter Sec. 510 is cited in Mayor and City Council for Ocean City v. Bunting 168 Md. App. 134, 895 A.2d 1068 (2006).

See County Attorney Opinion dated 7/22/98 commenting on the means of requiring binding dispute resolution process.

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**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.)

**Editor's note**—See County Attorney Opinion dated 7/22/98 commenting on the means of requiring binding dispute resolution process.

**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.)

**Editor's note**—See County Attorney Opinion dated 7/22/98 commenting on the means of requiring binding dispute resolution process.

**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).

## MEMORANDUM

February 5, 2008

TO: Members, Charter Review Commission

FROM:  Michael Faden, Senior Legislative Attorney

SUBJECT: Legally ineffective Charter provisions

The late Councilmember Praisner and others questioned whether it is time to remove 3 legally ineffective Charter provisions from the County Charter. We believe that, since these Charter amendments were added by action of the voters, they can only be repealed by a similar action – i.e. a Charter amendment.<sup>1</sup>

The 3 Charter provisions at issue are:

- §311A, prohibiting spending of County funds for a landfill on residentially-zoned land;
- §311B, prohibiting spending of County funds, and prohibiting the County from applying for federal or state permits, for sludge disposal on residentially-zoned land; and
- §313A, prohibiting the County from buying goods and services from the former C&P Telephone Company unless C&P offers certain rates to certain customers.

As noted in footnotes in the Charter (shown on pages 13-14), the Maryland courts quickly blocked the operation of §§311A and 313A because each directly conflicted with some aspect of state law. More fundamentally, none of these 3 provisions are proper “Charter material” because they all run afoul of the Maryland Constitution’s prohibition against legislating through a Charter amendment. This prohibition has been reinforced in a number of Maryland cases since those Charter amendments were approved.

A consistent line of Court of Appeals opinions, starting with *Cheeks v. Cedlair*, 287 Md 595 (1980), and culminating in *Save Our Streets v. Mitchell*, 357 Md 237 (2000), make clear that amendments to a County home-rule Charter must address “a fundamental aspect of the form and structure” of County government and must not attempt to legislate in the guise of a Charter

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<sup>1</sup>Perhaps not coincidentally, all 3 Charter amendments were placed on the ballot by petitions circulated by the same person, longtime amendment proponent Robin Ficker.

amendment. The Courts reached this result because, while the state Constitution give voters the right to vote on County Charters and Charter amendments, it does not allow voters to initiate ordinary legislation. The *Mitchell* opinion (attached to this memo) provides an excellent review of the law on this issue.

§§311A, 311B, and 313A did not focus on the "form and structure" of County government. Rather, they attempted to adopt certain highly specific environmental and consumer regulatory policies by direct action of the voters and render those policies immune from further legislative amendment. In that way they are similar to, although much briefer than, the detailed rent control amendment excluded from the ballot in *Cheeks* and quite similar to the speed bump amendment excluded in *Mitchell*. As the *Mitchell* court made clear, casting these "essentially legislative" policies in the form of limits on government action cannot make them constitutionally acceptable. For this reason, even if the state laws regarding solid waste disposal and utility regulation were ever amended to remove the direct conflicts which the courts based their earlier decisions on, these 3 provisions would still be fatally flawed and, in our view, could never be lawfully implemented.

Because all 3 provisions have no legal force and mislead the unaware reader, **Council staff recommends** that the Commission propose a Charter amendment to repeal §§311A, 311B, and 313A.

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1 of 3 DOCUMENTS

**SAVE OUR STREETS, et al. v. DOUGLAS D. MITCHELL, et al.; GRACE HITER  
v. THE HARFORD COUNTY CHAMBER OF COMMERCE, INC., et al.**

No. 102, September Term, 1998, No. 104, September Term, 1998

**COURT OF APPEALS OF MARYLAND**

*357 Md. 237; 743 A.2d 748; 2000 Md. LEXIS 2*

January 10, 2000, Filed

**PRIOR HISTORY:** [\*\*\*1] 102. Appeal from the Circuit Court for Montgomery County pursuant to certiorari to the Court of Special Appeals. James C. Chapin, JUDGE.

104. Appeal from the Circuit Court for Harford County pursuant to certiorari to the Court of Special Appeals. William O. Carr, JUDGE.

**HEADNOTES**

[Involve The Validity Of Charter Amendments Proposed, Pursuant To *Article XI-A, § 5, Of The Maryland Constitution*, By Petitions Of The Voters Of Montgomery And Harford Counties Respectively]

**COUNSEL:** ARGUED BY Alan Fischler.

ARGUED BY: David L. Scull (Both of Bethesda, MD (102), FOR APPELLANTS.

ARGUED BY Gerald I. Holtz of Chevy Chase, MD (102), FOR APPELLEES.

ARGUED BY J. Carroll Holzer of Towson, MD (104), FOR APPELLANT.

ARGUED BY Stephen Winter (Miles & Stockbridge) of Towson, MD.

ARGUED BY: Stephen Elmendorf/(John Delaney, Linowes & Blocher) of Silver Spring, MD (104), FOR APPELLEES.

**JUDGES:** ARGUED BEFORE Bell, C.J.; Eldridge, Raker, Wilner, Cathell, Karwacki, Robert L. (retired, specially assigned) and Thieme, Raymond G., Jr., (specially assigned), JJ. Opinion by Eldridge, J.

**OPINION BY:** ELDRIDGE

**OPINION**

[\*239] [\*\*749] Opinion by Eldridge, J.

These cases involve the validity of charter amendments proposed, pursuant to *Article XI-A, § 5, of the Maryland Constitution*, by petitions of the voters of Montgomery and Harford Counties respectively. <sup>1</sup> This opinion sets forth the [\*\*750] [\*240] reasons underlying this Court's orders of September 29, 1998, affirming injunctions issued by the Circuit Courts for Montgomery and Harford Counties which enjoined the Counties' Boards of Election Supervisors from placing the proposed charter amendments on the ballots for the 1998 general election.

<sup>1</sup> Article XI-A, § 5, provides in relevant part as follows:

**"Section 5. Amendments to charters.**

Amendments to any charter adopted . . . by any County of this State under the provisions of this Article may be proposed by a resolution of . . . the Council of the County, or by a petition signed by not less than 20% of the registered voters of the . . . County, provided, however, that in any case 10,000 signatures shall be sufficient to complete a petition. \* \* \* "

[\*\*\*2] I.

As this opinion encompasses two distinct appeals, the facts and procedural history of each case are set forth separately.

A.

In the summer of 1998, an organization called Save Our Streets submitted to the Board of Supervisors of Elections for Montgomery County a petition to place a

357 Md. 237, \*, 743 A.2d 748, \*\*;  
2000 Md. LEXIS 2, \*\*\*

proposed amendment to the Montgomery County Charter on the ballot for the general election to be held on November 3, 1998. <sup>2</sup> The Board of Election Supervisors reviewed the petition and found that it contained the requisite number of signatures. <sup>3</sup> The proposed amendment would have amended § 311 of the Montgomery [\*241] County Charter by prohibiting the expenditure of county funds to install or maintain speed bumps on county roads and streets. In addition, the proposed amendment would have required the removal of any previously installed speed bump within one year of the amendment's effective date, unless seven of the nine county council members approved the retention of the bump subsequent to a public hearing on the issue.

2 The proposed amendment, which was to be added as subsection "C" to § 311 of the Montgomery County Charter, provided as follows:

"Section 311 C. Limitations on Expenditures for Speed Bumps

County funds shall not be spent to install or maintain on any road or street any permanent physical obstacle to vehicular movement, which for purposes of this section means any speed bump or hump. Any such device previously installed shall be removed within twelve months after this section takes effect, unless the Council by an affirmative vote of seven members approves its continued use at that location, after a public hearing for which notice was posted at or near the location of the device."

[\*\*\*3]

3 The requisite number of signatures is the lesser of 10,000 or 20% of the registered voters of the County. *See* note 1, *supra*.

On September 9, 1998, Douglas Mitchell and several other individuals filed in the Circuit Court for Montgomery County a complaint seeking a declaratory judgment and injunctive relief. The plaintiffs alleged that the charter amendment proposed by Save Our Streets was unconstitutional and that, therefore, the Board of Election Supervisors should be enjoined from placing the amendment on the general election ballot. The case was tried before the Circuit Court on September 22, 1998. At the conclusion of the trial, the Circuit Court declared that the "proposed Speed Bump Amendment" was "contrary to Article XI-A of the Maryland Constitution" and enjoined the Board of Election Supervisors from placing the proposed amendment on the general election ballot. Save Our Streets and the Board of Election Supervisors immediately noted appeals to the Court of Special Appeals. On September 23, 1998, prior to any proceedings in the Court of Special Appeals, this Court issued a

[\*\*\*4] writ of certiorari. *Save Our Streets v. Mitchell*, 351 Md. 284, 718 A.2d 233 (1998).

B.

On August 10, 1998, an organization named Friends of Harford County, Inc., submitted to the Board of Supervisors of Elections of Harford County a petition to [\*\*751] place a proposed amendment to the Harford County Charter on the 1998 general election ballot. <sup>4</sup> The Board of Election [\*\*752] Supervisors [\*243] reviewed the petition and found that it contained the requisite number of signatures. The proposed amendment would have added new sections pertaining to land-use planning and zoning, to be numbered §§ 710 and 711 of Article VII of the county charter.

4 The proposed amendment, which was to be added as §§ 710 and 711 of Article VII of the Harford County Charter, provided as follows:

"Section 710 Adequate Public Facilities

"In order to implement the adequacy standards established herein, the County Executive, any County agency, and/or the County Council may not approve any increased or more intensive use or development of public and/or private property, through zoning, the approval of subdivision plans, the approval of site plans, the issuance of grading permits, the issuance of building permits for new residential or commercial units, or any activity in furtherance of any of the above for a period of one year after the enactment of this section.

"The County Executive, any County agency, and/or the County Council may not approve any increased or more intensive use or development of public and/or private property through zoning, the approval of subdivision plans, the approval of site plans, the issuance of grading permits, the issuance of building permits for new residential or commercial units, or any activity in furtherance of any of the above, in the County where adequacy standards as defined in this section are not met.

"Adequacy standards for the use or development of public and/or private property for residential purposes are not met where the enrollment of any school which serves the site or property sought to have a more intensive use is greater than ninety-five (95) percent of the rated capacity of the school. Rated capacity of the school shall be determined by the Harford County Board of Education, exclusive of relocatable, portable or non-permanent classrooms.



"Adequacy standards for the use or the development of public and/or private property for residential or commercial purposes are *not met* where:

"(1) the existing County, State and Federal roads, including road segments and intersections, in all directions from each point of entrance of the property through the intersection with the first arterial roadway to the next intersecting collector or higher functional classification road as defined by the Harford County Transportation Plan are accommodating vehicular traffic at a level of service of 'D' or below as defined by the Highway Capacity Manual or other equivalent standard in use by the County, or

"(2) the existing County, State and Federal roads, or any road segment within three miles of the property, are accommodating vehicular traffic at a level of service of 'D' or below as defined by the Highway Capacity Manual or other equivalent standard in use by the County, or

"(3) the existing State and Federal roads, or any road segment, outside of the County are accommodating vehicular traffic at a level of service of 'D' or below as defined by the Highway Capacity manual or other equivalent standard, and the low level of service is directly or proximately caused by vehicular traffic originating from within the County, or

"(4) the police, fire, or emergency medical response services providing service to the property, are not sufficient to meet the needs of the existing residential and business population according to applicable standards established for each type of service, or

"(5) the recreational facilities and public open space are not sufficient to meet the needs of the existing residential population according to applicable standards established for recreational facilities and public open space.

"Public and/or private property, proposed for increased or more intensive use or development may be exempted from the provisions of this Section if the proponent for the more intensive use can prove, by clear and convincing evidence, that the proposed use for the site will not impact or affect the adequacy standards defined in this section.

"If any of the paragraphs of this section are ruled unenforceable by a competent Court, such ruling does not affect the enforceability of the remaining paragraphs of this section. **Section 711**

#### **Standing in Land Use Proceedings and Attorney's Fees**

"(a) With respect to any administrative, judicial or other proceeding in the County concerning zoning, land use, development or construction (a "Proceeding") the following entities shall have the right to intervene as a party and shall have standing and all the rights of a party in interest or an aggrieved party, including the rights of judicial review and appeal:

"(I) Any community association representing property owners who own property located within two (2) miles of the property which is the subject of such a Proceeding; or

"(II) Any not for profit corporation operating in the County which was formed to represent the interests of citizens on matters relating to zoning, land use or development.

"(b) Any entity which exercises its right to become a party to a Proceeding as defined in Section (a) above and prevails shall be entitled to reimbursement from the County for all reasonable attorneys and expert fees incurred in connection with the Proceeding, notwithstanding any provision under Article V.

"(c) The County Executive and the Council shall levy a fee on the issuance of concept plans, preliminary subdivision plans, grading permits, and/or building permits in such amount as to provide income to the County in balance with the expenditures for any attorneys fees that may be paid pursuant to this Section.

"If any of the paragraphs of this section are ruled unenforceable by a competent Court, such ruling does not affect the enforceability of the remaining paragraphs of this section."

[\*\*\*5] The proposed new § 710, entitled "Adequate Public Facilities," would have established various adequacy standards for "increased or more intensive use or development of public and/or private property" in the County. To implement these standards, § 710 would have imposed a one-year moratorium on approval by the County of any development proposal. The moratorium would have been comprehensive, including, *inter* [\*244] *alia*, prohibitions on the issuance of building permits and grading permits as well as approval of subdivision plats and site plans. After the one-year moratorium would have expired, § 710 would have prohibited any development that did not meet the adequacy standards. These standards concerned school capacity for residential development and capacity regarding roads, police, fire, and emergency medical response services, and recreational

facilities and public open space for both residential and commercial development. Section 710 would have permitted exemptions to its limitations if a proponent of development could prove, by clear and convincing evidence, that the proposed development would "not impact or affect the adequacy standards."

The proposed new § 711 would have [\*\*\*6] granted standing, in any proceeding involving zoning, land use, development or construction, to any community association representing property owners who own property within two miles of any property involved in a proceeding and to any non-profit corporation in the County formed to represent the interests of citizens relating to zoning, land use, or development. In addition, proposed § 711 would have entitled any such community association or non-profit corporation which prevailed in a proceeding to be reimbursed by the County for attorneys' and experts' fees. To provide funds for such reimbursement, § 711 would have required the County Executive and Council to levy fees on the issuance of concept plans, preliminary subdivision plans, and grading and building permits.

The proposed charter amendment was forwarded to the Harford County Council for the Council to decide on the language of the ballot question which would describe both sections of the amendment. On August 17, 1998, the Council voted for the specific wording to be used on the ballot. The approved language for the ballot question differed in several [\*245] respects from the original draft prepared for the Council by an assistant [\*\*\*7] county attorney.

Two actions were filed in the Circuit Court for Harford County on September 18, 1998, challenging the propriety of placing the proposed charter amendment on the general election ballot. The first was a petition for a writ of mandamus filed by the Friends of Harford County, which alleged that the ballot description of the proposed amendment was misleading to the public and that the Council should be compelled to reinstate the original language prepared by an assistant county attorney. The second was an action for a declaratory judgment and injunctive relief [\*\*753] filed by the Harford County Chamber of Commerce and several other plaintiffs against the Board of Election Supervisors, the County Council, and the County. The Chamber of Commerce alleged that the proposed charter amendment was invalid under Article XI-A of the Maryland Constitution and should not be placed on the general election ballot.

The trial of both cases was held in the Circuit Court on September 22, 1998, at which time the court granted appellant Grace Hiter's motion to intervene as a party defendant in the action filed by the Chamber of Commerce. Ms. Hiter was coordinator of the petition drive for

the [\*\*\*8] Friends of Harford County and chairman of the Ballot Issue Committee organized to support the placement of the proposed amendment on the general election ballot.

The Circuit Court on September 23, 1998, issued an extensive declaratory judgment, declaring that proposed §§ 710 and 711 were "legislative in nature" and therefore could not validly be included in the Harford County Charter. This declaration rendered moot the action filed by the Friends of Harford County to reinstate the ballot language as originally drafted. The Circuit Court's declaratory judgment, however, went on to discuss and rule upon the question of whether the Friends of Harford County would have had standing to maintain its action if the action were not moot. In addition to the declaratory judgment, the Circuit Court issued two orders. First, it [\*246] enjoined the Board of Election Supervisors from placing the proposed charter amendment on the ballot. Second, it dismissed as moot the action filed by the Friends of Harford County. On September 24, 1998, Ms. Hiter timely noted an appeal to the Court of Special Appeals, and, on the same day, this Court issued a writ of certiorari. *Hiter v. Harford County Chamber of Commerce*, 351 Md. 284, 718 A.2d 233 (1998). [\*\*\*9]

### C.

The oral arguments in both the Montgomery County and the Harford County appeals were heard by this Court on September 29, 1998. At the conclusion of oral arguments, we issued an order affirming the judgment of the Circuit Court for Montgomery County. We also issued an order affirming that portion of the judgment of the Circuit Court for Harford County which enjoined the Board of Election Supervisors of Harford County from placing on the ballot the proposed §§ 710 and 711 charter amendment. We now shall set forth the reasons for these orders, and we shall dispose of the remainder of the appeal in the Harford County cases.

### II.

The plaintiffs attacked the proposed charter amendments in Montgomery and Harford Counties on essentially the same grounds. The plaintiffs argued that the proposed amendments contained legislative schemes and thus were not proper charter material under Article XI-A of the Maryland Constitution. <sup>5</sup> Relying on [\*\*754] *Board v. Smallwood*, 327 Md. 220, [\*247] 608 A.2d 1222 (1990), *Griffith v. Wakefield*, 298 Md. 381, 470 A.2d 345 (1984), and *Cheeks v. Cedlair Corp.*, 287 Md. 595, 415 A.2d 255 (1980), the plaintiffs asserted [\*\*\*10] that a charter amendment must address the "form and structure" of county government. They argued that a proposed charter amendment which is essentially local legislation in disguise exceeds the power of the voters to

amend their county charter because the Maryland Constitution does not permit voters to initiate local legislation.<sup>6</sup>

5 Article XI-A, commonly known as the Home Rule Amendment, was ratified by the voters in 1915. The "underlying purpose of the Article is to share with the counties and Baltimore City, within well-defined limits, powers formerly reserved to the General Assembly so as to afford the subdivisions certain powers of self-government." *Cheeks v. Cedlair Corp.*, 287 Md. 595, 597, 415 A.2d 255, 256 (1980). The Article provides, *inter alia*, that the voters of counties can adopt home rule charters for county governments, that the General Assembly shall delegate express powers to the county governments created by the charters, and that the voters of the counties can amend the charters. *See Cheeks*; 287 Md. at 598-599, 415 A.2d at 256-257. Section 3 of Article XI-A provides in relevant part as follows:

"Section 3. Legislative bodies; chief executive officers; enactment, publication and interpretation of local laws.

"Every charter so formed shall provide for an elective legislative body in which shall be vested the law-making power of said . . . County. Such legislative body . . . in any county shall be known as the County Council of the County. \* \* \* From and after the adoption of a charter by . . . any County of this State, . . . the County Council of said County, subject to the Constitution and Public General Laws of this State, shall have full power to enact local laws of said . . . County including the power to repeal or amend local laws of said . . . County enacted by the General Assembly, upon all matters covered by the express powers granted as above provided \* \* \* ."

[\*\*\*11]

6 In *Bd. of Election Laws v. Talbot County*, 316 Md. 332, 347-349, 558 A.2d 724, 731-732 (1989), and in *Board v. Smallwood*, 327 Md. 220, 234-236, 608 A.2d 1222, 1229-1230 (1992), we held that the voters of a county, whether by original charter provision or amendment, cannot expressly reserve to themselves the power to initiate legislation, even though they can submit to referendum legislation which has been duly enacted by a county council. Although the processes of initiative and referendum may both require a petition to submit legislation to the electorate, they are distinct with respect to the role they assign to elected government: "Initiative refers to the process by which the electorate petitions for and votes

on a proposed law. Referendum is the process by which legislation passed by the governing body is submitted to the electorate for approval or disapproval." *Smallwood*, 327 Md. at 232, n. 6, 608 A.2d at 1228, n.6, and authorities there cited.

The power to initiate local legislation is repugnant to Art. XI-A, § 3, of the Maryland Constitution, which vests a charter county's "full" law-making power in the county council. Under the Maryland Constitution, however, county voters do have a right to reserve to themselves the power to petition for a referendum on legislation previously enacted by a county council. *See Ritchmount Partnership v. Board*, 283 Md. 48, 388 A.2d 523 (1978) (holding that Art. XI-A conferred on the citizens of Anne Arundel County the right to reserve to themselves by express charter, provision the power to refer legislation enacted by their County Council). In *Smallwood*, we reiterated the distinction between the powers of referendum and initiative (327 Md. at 235, 608 A.2d at 1229, quoting *Cheeks*, 287 Md. at 613, 415 A.2d at 264):

"The powers of referendum and initiative, though each may affect the form or structure of local government, are otherwise distinctly different. Under the referendum power, the elective legislative body, consistent with § 3, continues to be the primary legislative organ, for it has formulated and approved the legislative enactment referred to the people. The exercise of the legislative initiative power, however, completely circumvents the legislative body, thereby totally undermining its status as the primary legislative organ."

[\*\*\*12] [\*248] The defendants, relying upon *Smallwood*, argue that charter amendments placing limits on governmental powers address the form and structure of county government and are valid under Article XI-A of the Constitution. They contend that the proposed amendments here involved place limitations upon governmental powers and, therefore, constitute proper charter material under our opinion in the *Smallwood* case.

This Court has "repeatedly explained that a county charter is equivalent to a constitution." *Smallwood*, 327 Md. at 237, 608 A.2d at 1230. *See Haub v. Montgomery County*, 353 Md. 448, 450, 727 A.2d 369, 370 (1999); *Bd. of Election Laws v. Talbot County*, 316 Md. 332, 341, 558 A.2d 724, 728 (1989); *Griffith v. Wakefield*, *supra*, 298 Md. at 385, 470 A.2d at 347-348; *County Exec., Prince Geo's Co. v. Doe*, 291 Md. 676, 680, 436 A.2d 459, 461 (1981); *Cheeks v. Cedlair Corp.*, *supra*, 287 Md. at 606, 415 A.2d at 261; *Ritchmount Partner-*

357 Md. 237, \*, 743 A.2d 748, \*\*;  
2000 Md. LEXIS 2, \*\*\*

*ship v. Board*, 283 Md. 48, 58, 388 A.2d 523, 530 (1978), and cases there cited. Therefore, the "basic function" of a charter is "to distribute [\*\*\*13] power among the various agencies of government, and between the government and the people who have delegated that power to their government." *Smallwood*, 327 Md. at 237, 608 A.2d at 1230. As Chief Judge Murphy stated for the Court in *Cheeks*, 287 Md. at 607, 415 A.2d at 261:

[\*\*755] "A charter is thus a permanent document intended to provide a broad organizational framework establishing the form and structure of government in pursuance of which the [\*249] political subdivision is to be governed and local laws enacted. It is the organic, the fundamental law . . ."

Although § 6 of Art. XI-A of the Maryland Constitution reserves to the people of a charter county the power to amend the charter, this power is limited by §§ 2 and 3. See *Cheeks*, 287 Md. at 608-610, 415 A.2d at 262. Section 2 specifies that the General Assembly shall, "by public general law," grant "express powers" to the governments of charter counties and that such powers "shall not be enlarged or extended by any charter formed under the provisions" of Article XI-A. <sup>7</sup> Section 3 provides that each charter county shall have a county council, which is "an elective legislative body in [\*\*\*14] which shall be vested the law-making power" of the county. Section 3 of Article XI-A goes on to state that the county council shall have "full power to enact local laws . . . upon all matters covered by the express powers granted" pursuant to § 2. Therefore, in *Cheeks*, and again in *Griffith*, we "contrasted" the ability to adopt or amend a charter, which is the "power to organize a local government, reserved to the people of a charter county . . . under Article XI-A," with the power to enact legislation. *Griffith*, 298 Md. at 385, 470 A.2d at 348. In *Cheeks*, we explained in detail that the county council alone, and not the voters of the county, has the power to initiate local legislation. 287 Md. at 612-614, 415 A.2d at 264-265. Furthermore, we held that such legislative power cannot be exercised by means of an amendment to the charter (287 Md. at 607, 415 A.2d at 261):

<sup>7</sup> Most of these express powers are enumerated in *Maryland Code (1957, 1998 Repl. Vol., 1999 Supp.)*, Art. 25A, § 5, commonly known as the Express Powers Act. Of particular relevance to the case at bar are the powers to regulate the condition and use of roads (See §§ 5 (K) & (T)) and to enact local laws pertaining to land-use planning and zoning ( §§ 5 (U),(X), (BB), and (EE)).

[\*\*\*15] "[A] charter amendment within the context of Art. XI-A is necessarily limited in substance to

amending the form or structure of government initially established by adoption of the charter. A charter amendment, therefore, differs in its fundamental character from a simple legislative enactment. [\*250] Its content cannot transcend its limited office and be made to serve or function as a vehicle through which to adopt local legislation."

Accordingly, in both *Cheeks* and *Griffith*, we invalidated "attempts by the voters to initiate detailed legislation through the guise of charter amendments." *Smallwood*, 327 Md. at 239, 608 A.2d at 1231. In *Smallwood*, however, we upheld those portions of proposed charter amendments that were sufficiently fundamental in nature to be included in a charter. A brief review of the facts of each case illustrates the distinction between proposed charter amendments which delineate the basic form and structure of the local government and are, therefore, proper charter material, and those proposed charter amendments which are legislative in nature.

*Cheeks* involved a proposed amendment to the Baltimore City Charter that would have established [\*\*\*16] a tenant-landlord commission to implement a comprehensive system of rent control. <sup>8</sup> The proposed charter amendment prescribed "in lengthy detail, the powers and duties of the Commission in administering the system of rent control." *Cheeks*, 287 Md. at 602, 415 A.2d at 258. The Court held that the amendment was "essentially legislative in character" as it constituted an exercise of governmental power "in all respects similar to the enactment [\*\*756] of a local law." *Cheeks*, 287 Md. at 608, 415 A.2d at 262. Thus, we held that the proposed amendment was not proper charter material; rather, it was an attempt to "divest" the City Council of "its acknowledged . . . power to legislate on the subject of rent control." *Cheeks*, 287 Md. at 609, 415 A.2d at 262.

<sup>8</sup> Baltimore City, like the charter counties, is an Article XI-A jurisdiction rather than a municipal corporation governed by Article XI-E of the Maryland Constitution. See *Griffith*, 298 Md. at 385, 470 A.2d at 348; *Cheeks*, 287 Md. at 597-601, 415 A.2d at 256-258.

[\*\*\*17] In *Griffith*, we invalidated a proposed charter amendment to create a comprehensive system of collective bargaining and binding arbitration for Baltimore County and a single group of county employees, firefighters. The proposed amendment set [\*251] forth a "complete and specifically detailed legislative scheme" that left "nothing for the determination of the . . . County Council." 298 Md. at 386, 388, 470 A.2d at 348, 349. The "binding arbitration feature of the amendment" would have "divested the elected officials of Baltimore County of any discretion in reaching an agreement on the

wages, benefits, hours and working conditions' of the fire fighters." 298 Md. at 388, 470 A.2d at 349 (quoting the proposed amendment). The Court held that the amendment was invalid because, like the proposed amendment in *Cheeks*, it was "essentially legislative in character." 298 Md. at 388, 470 A.2d at 349, quoting *Cheeks*, 287 Md. at 608, 415 A.2d at 262.

In *Smallwood*, however, this Court upheld the facial validity of proposed charter amendments that would have placed a percentage cap on the amount by which the Anne Arundel and Baltimore [\*\*\*18] County Councils could raise the local property taxes in their respective counties. In explaining that such amendments were not essentially legislative in nature, we relied on a distinction that we had made previously in *Griffith* between proposed charter amendments that "authorize, or preclude, specified types of enactments by legislative bodies," and thus are ordinarily valid, and those that constitute specific legislative schemes, and thus are ordinarily invalid. 327 Md. at 239, 608 A.2d 1231, quoting 298 Md. at 389, 470 A.2d at 350. Unlike the proposed amendments in *Cheeks* and *Griffith*, the proposed amendments in *Smallwood* were "not back-door attempts by the voters" to "enact detailed legislation." 327 Md. at 240, 608 A.2d at 1232. The Court noted that they did not "divest the county councils of the ability to set the property tax rates." *Ibid.* Instead, the proposed amendments "would have merely precluded a particular type of enactment by the legislative body." *Ibid.* The *Smallwood* opinion also pointed out that "limitations imposed by the people on their government are fundamental elements of a constitution." 327 Md. at 237-238, 608 A.2d at 1230-1231, [\*\*\*19] and authorities there cited. The proposed amendments in *Smallwood* were fundamental in nature because they "directly involved the relationship between the people and the government [\*252] by limiting the power of the government to tax." 327 Md. at 237, 608 A.2d at 1230. Accordingly, we held "that a provision in a county charter placing restrictions upon the county council's revenue raising authority is a fundamental aspect of the form and structure of government and thus is proper charter material." 327 Md. at 241, 608 A.2d at 1232.

It is important to stress that our holding in *Smallwood* was precisely phrased. We did not state that any proposed charter amendment which is articulated as a limitation on governmental power is valid under Article XI-A. Nor did we state that the proposed amendments addressed in *Smallwood* were constitutional merely because they were expressed as limitations on governmental power.<sup>9</sup> Rather, they [\*\*757] were constitutional limitations because they pertained to "a fundamental aspect of the form and structure of government." 327 Md. at 241, 608 A.2d at 1232. The distinction between the fundamental, general nature of a charter

[\*\*\*20] and the specificity characteristic of county council legislative enactments authorized by a charter framework, is essential to the system of representative democracy provided for in Article XI-A of the Maryland Constitution. County charters are, in effect, constitutions for county governments, and Article XI-A contemplates that they should reflect the broad outlines of governmental powers and limitations. Under Article XI-A, the enactment of specific legislation is left to the elected legislative bodies.<sup>10</sup>

9 Virtually any legislative scheme could be phrased as a limitation on governmental power. For example, the proposed charter amendment which this Court invalidated in *Griffith* could have stated that Baltimore County would be prohibited from resolving contract disputes between the county government and the firefighters union by any means other than by the binding arbitration scheme set forth in the amendment. Merely expressing the binding arbitration scheme as a limitation on the County Council's power would not save it from being essentially legislative in nature.

10 As Chief Justice John Marshall emphasized early in our nation's history, a constitution necessarily provides a broad framework which both empowers and limits a legislature in its enactment of specific laws ( *McCulloch v. Maryland*, 17 U.S. 316, 4 *Wheat.* 316, 407, 4 L. Ed. 579, 601 (1819)):

"A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. It would, probably, never be understood by the public. Its nature, therefore, requires, that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects, be deduced from the nature of the objects themselves."

[\*\*\*21] [\*253] The proposed charter amendments in the case at bar are not analogous to the percentage tax caps upheld in *Smallwood* because they do not impose general and fundamental limitations on a governmental power such as the power to tax. Instead, they are analogous to the proposed charter amendments invalidated in *Cheeks* and *Griffith* because they amount to specific legislative schemes. The appellants Save Our Streets and Hiter seem to suggest that the *Smallwood* decision created an exception to the principles set forth in *Cheeks* and *Griffith*. To the contrary, the percentage tax cap pro-

visions upheld in *Smallwood* exemplify the distinction emphasized in *Griffith* between a legislative scheme, which may only be enacted by the county council, and an authorization or preclusion of a county council's power to enact a type of legislation, which is proper charter material.

Although both *Cheeks* and *Griffith* involved legislative schemes that were lengthy and detailed, thereby furnishing some indication of ordinary legislation under the guise of charter amendments, nevertheless the length and detail of a proposed charter amendment are not dispositive as to whether [\*\*\*22] the proposed amendment constitutes legislation or proper charter material. An important consideration is the degree to which the county council retains discretion and control regarding an area under its authority pursuant to Article XI-A of the Maryland Constitution. The charter amendments proposed by Save Our Streets and Hiter would as completely remove any meaningful exercise of discretion from the County Councils as would have the amendments in *Cheeks* and *Griffith*.

[\*254] What this Court said about the proposed charter amendment in *Griffith* is fully applicable to the proposed amendments in the cases at bar. We there explained (298 Md. at 389-390, 470 A.2d at 350):

"The flaw in [the defendant's] argument is the failure to distinguish between 'authorization' on the one hand and a detailed local enactment on the other hand. It is common for constitutions or charters to authorize, or preclude, specified types of enactments by legislative bodies. This is quite different from a charter itself containing all of the . . . provisions concerning the subject.

"If the proposed Baltimore County charter amendment had merely *authorized* the Baltimore County Council to [\*\*\*23] [\*\*758] enact a system of binding arbitration with regard to the compensation of Baltimore County employees, and if, pursuant to that authorization, the Baltimore County Council had exercised its discretion to enact *an ordinance* containing provisions similar to those in the proposed charter amendment now before us, the present case would be distinguishable from *Cheeks*. . . . In the present case, however, the proposed charter amendment did not authorize the County Council to enact binding arbitration legislation for county employees. It did not authorize any decisions by the constitutional legislative body. Instead, under the proposal, the charter itself would contain all of the law on the subject, and the Baltimore County Council would be deprived of all decision-making authority concerning the subject."

As pointed out in the above-quoted language, an authorization or preclusion of a type of legislative enactment allows for the council's exercise of discretion and, thus, is ordinarily proper charter material. In *Smallwood*,

the percentage cap provisions imposed a broad limit on the County Councils' power to levy property taxes. As explained previously, the provisions did not set [\*\*\*24] specific tax rates but merely imposed a ceiling under which the county councils could exercise their discretion. Moreover, the provisions did not direct to what particular purposes property tax revenues would be expended. Similarly, if the proposed charter amendment in *Griffith* had [\*255] simply authorized the Baltimore County Council to enact specific legislation regarding collective bargaining and binding arbitration between the County and the firefighters' union, the proposed amendment would not have been invalid under Article XI-A of the Maryland Constitution.

The proposed charter amendments in the present cases are neither broad authorizations nor similar to general limits on a county's taxing power. The proposed Speed Bump amendment would narrowly mandate that the County Council could not authorize new speed bumps and must remove existing speed bumps. Although Hiter argues that § 710 of the proposed amendment to the Harford County Charter "implicitly" authorizes the County Council to enact legislation to establish adequate facilities standards, we fail to understand where or how such authorization is made. Section 710 repeatedly refers to the "adequacy standards" explicitly "established" [\*\*\*25] and "defined" by its own paragraphs 3 and 4. For example, the purpose of the moratorium on development described in paragraph 1 is to "implement the adequacy standards established" by paragraphs 3 and 4. Thus, the amendment proposed by Hiter, like that proposed by Save Our Streets, leaves virtually no room for an exercise of discretion by the County Council. As the Circuit Court for Harford County correctly concluded, "in reality, the provisions of Section 710 are an attenuated form of an adequate public facilities ordinance that, by its terms, is intended to impose various limitations on prospective developments. As such, it is legislative in nature."

### III.

As stated previously, our order of September 29, 1998, affirmed the declaratory judgment issued and the injunctive relief granted by the Circuit Court for Montgomery County in the case involving the proposed "Speed Bump" amendment. On the same day, however, we affirmed only that part of the judgment of the Circuit Court for Harford County which enjoined the Board of Election Supervisors of Harford County [\*256] from placing on the ballot the proposed amendments regarding adequate facilities standards and standing in zoning cases. Consequently, [\*\*\*26] we dispose of the remaining portion of that judgment as follows:

357 Md. 237, \*; 743 A.2d 748, \*\*;  
2000 Md. LEXIS 2, \*\*\*

IN NO. 104, THE ORDER OF THE CIRCUIT COURT FOR HARFORD COUNTY DISMISSING AS MOOT THE [\*\*759] ACTION FILED BY THE FRIENDS OF HARFORD COUNTY IS AFFIRMED; SO MUCH OF THE DECLARATORY JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY

THAT RELATES TO THE ISSUE OF WHAT IS PROPER CHARTER MATERIAL IS AFFIRMED; THAT PORTION OF THE DECLARATORY JUDGMENT THAT ADDRESSES THE STANDING OF THE FRIENDS OF HARFORD COUNTY IS VACATED.

PROPERTY TAXES SINCE SAG PROCESS STARTED

Tax in \$million, Base in \$billion, rate as % of Base

FY	Tax Budgeted	Base	Rate	Property Tax		Needed 7 votes?	Curr Rates - Charter Lim	Council set rates at
				Current Rates	Charter Limit			
92	\$683.9	\$25.845	2.646%	\$700.0	\$684.0	No	\$16.0	CL
93	705.5	28.125	2.508%	744.2	705.6	No	38.6	CL
94	730.0	29.075	2.511%	729.3	730.1	No	(0.7)	CL
95	747.6	29.220	2.558%	733.7	751.2	No	(17.5)	< CL
96	756.2	29.550	2.559%	756.0	764.5	No	(8.5)	CR, but <CL
97	770.7	30.075	2.563%	770.7	775.7	No	(5.0)	CR, but <CL
98	785.7	30.785	2.552%	785.7	806.6	No	(20.9)	CR, but <CL
99	788.2	31.832	2.476%	811.6	811.2	No	0.4	< CL
00	804.4	32.042	2.510%	807.0	804.6	No	2.4	CL
01	819.5	33.077	2.478%	819.5	825.1	No	(5.6)	CR, but <CL
02	870.7	81.244	1.072%	870.7	875.7	No	(5.0)	CR, but <CL
03	911.9	85.741	1.064%	911.9	907.6	Yes <sup>1</sup>	4.3	CR
04	977.6	92.704	1.055%	977.6	948.4	Yes <sup>2</sup>	29.2	CR
05	1,069.0	102.397	1.044%	1,079.7	1,031.7	Yes <sup>2</sup>	48.0	1¢ < CR
06	1,105.2	114.374	0.966%	1,191.0	1,105.2	No	85.8	CL
07	1,154.0	129.310	0.892%	1,276.6	1,154.0	No	122.5	CL
08	1,207.5	146.349	0.825%	1,356.6	1,207.5	No	149.1	CL

# years exceeded Charter limit      yes      3  
 # years did not exceed Charter limit      no      14

Seven affirmative votes are required to set rates if the amount of tax exceeds the so-called Charter limit

Starting in FY06, Councilmember Floreen realized that the amount of property tax at the Charter limit varies, depending on how the limit is achieved: by reducing the rate, or by giving a credit, or some combination.

<sup>1</sup> Council vote was 8-1, Councilmember Ewing opposed.

<sup>2</sup> Council vote was 9-0.



**MONTGOMERY COUNTY PUBLIC SCHOOLS:  
Percentage of Students Receiving  
Free and Reduced Cost Meals**

<b>Year</b>	<b>Month</b>	<b>Percentage</b>
1972	NOV.	3.8%
1977	NOV.	9.1%
1982	NOV.	12.9%
1987	NOV.	11.9%
1992	OCT.	18.7%
1997	OCT.	23.9%
2002	OCT.	22.4%
2007	OCT.	25.8%

Office of the County Attorney  
Montgomery County, Maryland

MEMORANDUM

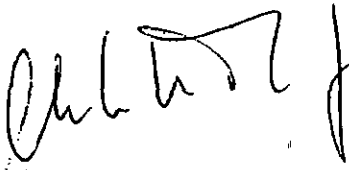
Opinion No. 97-1  
Date: June 27, 1997

TO: Douglas M. Duncan  
County Executive

Bruce Romer  
Chief Administrative Officer

VIA: Charles W. Thompson, Jr.  
County Attorney

FROM: Marc P. Hansen, Chief  
Division of General Counsel



*Marc Hansen*

RE: Bill 38-96, Inspector General — Establishment; Legal Review

**QUESTION PRESENTED**

You have asked the Office of the County Attorney to conduct a legal review of Bill 38-96, Inspector General — Establishment. Bill 38-96 establishes an Office of Inspector General as a principal office in the Executive Branch of the County government. The purpose of the Inspector General is to review the effectiveness and efficiency of operations of the County government and certain independent County agencies. The Inspector General is also charged with the responsibility of preventing and detecting fraud, waste and abuse of government activities. In order to accomplish these purposes, the Inspector General is granted an extraordinary level of independence not given other department heads in the Executive Branch. This independence raises the question of whether Bill 38-96 is consistent with the Montgomery County Charter.

**SHORT ANSWER**

Although providing the Inspector General with independence is important in advancing the purpose for which the Inspector General is created, Bill 38-96 offends the County Charter because the Charter does not permit the Council to assume executive functions or make

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the head of a principal office in the Executive Branch of government independent from the supervision of the County Executive and Chief Administrative Officer.

## ANALYSIS

### I. THE INSPECTOR GENERAL LEGISLATION.

Bill 38-96 makes the Inspector General a principal office in the Executive Branch of County government. As already noted, the purpose of the Inspector General is to review the effectiveness and efficiency of the programs and operations of the County government and certain independent County agencies.<sup>1</sup> The Inspector General is also charged with the responsibility of identifying fraud, waste and abuse in government activities and proposing ways to increase accountability of County departments.

Bill 38-96 provides that the Inspector General serves for a four-year term.<sup>2</sup> In the event the position of Inspector General is vacant, the senior professional staff member in the Office serves as the Acting Inspector General until the new Inspector General is appointed by the County Executive and confirmed by the County Council.

The Executive may only remove the Inspector General for good cause and then only with the concurrence of the Council. The Inspector General directs the activities of the office

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<sup>1</sup>The independent County agencies are the Board of Education, the Planning Commission, WSSC, Montgomery College, the Housing Opportunities Commission, and the Revenue Authority. Section 2-64A(1) requires these independent County agencies to provide documents and information to the Inspector General. Subject to certain narrow exceptions, we question the authority of the County government to require agencies created by State law to provide the Inspector General with information absent State law authorizing the County to make these demands.

<sup>2</sup>Section 2-64A(c) provides that the term of the Inspector General begins "on July 1 of the second year after an Executive and Council are elected." Applied literally, this means that an Inspector General may not begin his or her term until July 1, 2000. At the same time, Bill 38-96 provides for a sunset date of June 30, 2000. Moreover, Bill 38-96 does not contemplate appointment of an Inspector General outside of the four-year cycle except when "the Inspector General resigns, dies, or is removed from office."

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through adoption of a four-year work plan. The Inspector General must consider recommendations for the work plan from the Executive, Council and others, but has final authority regarding the contents of the work plan.

The legislative history of Bill 38-96 demonstrates a clear Council intent to grant the Inspector General independence from the Executive so that the Inspector General will be able to conduct investigations and make recommendations without fear of dismissal and free from political control. By way of contrast, Council retains considerable control over the Inspector General's work program through the Council's control of the Office of Legislative Oversight's work program--Bill 38-96 provides that the Inspector General ensure that the Inspector General's work plan does not duplicate the work plan of the Office of Legislative Oversight-- and through Council's budget approval authority over the Office of the Inspector General.

## II. THE MONTGOMERY COUNTY CHARTER.

Charter §101 (County Council) vests all legislative powers of the County government in the County Council. Charter §201 (Executive Powers), however, vests all executive power of the County government in the County Executive. Consistent with this separation of powers, Charter §117 (Limitations) prohibits the Council from appointing, dismissing or giving directions to an employee of the Executive Branch of the County government. Charter §211 (Duties of the Chief Administrative Officer) provides that the Chief Administrative Officer "subject to the direction of the County Executive, [shall] supervise all departments, offices, and agencies of the Executive Branch." Charter §215 (Appointments) provides, "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."

The 1968 Commentary on the County Charter notes, "Consistent with §201 of the proposed charter under which all executive authority is given to the County Executive, this section [Charter §117] specifically prohibits the Council or any individual members of the Council from exercising executive authority." Thus, §117 prohibits Council involvement in the dismissal process of a member of the Executive Branch unless that power is given elsewhere in the Charter.<sup>3</sup> The Commentary goes on to note with respect to Charter §201 that "It is intended .

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<sup>3</sup>Charter §§210, 213, and 215 limit the Council's role in the hiring and dismissal of members of the Executive Branch to the confirmation of non-merit, Executive appointments.

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... to confer all executive power of the County government upon the Executive and it is contemplated that the County Executive's authority at the County level would be comparable to the executive power of the President at the Federal level and the Governor at the State level." With respect to Charter §215, the Commentary states, "The purpose of this provision is to insure that the County Executive will head the entire Executive Branch of the government and to prevent a division of executive authority between the Council and the County Executive."

As early as 1971, the Court of Appeals agreed with an opinion of the then County Attorney that §§101 and 201 of the Montgomery County Charter separates legislative and executive powers within the County government. *Eggert v. Gleason*, 263 Md. 243, 282 A.2d 474 (1971) (Decision to implement construction project is an executive function). In *Eggert*, the Court of Appeals reaffirmed its test for determining whether an action is executive or legislative as follows:

A recognized test for determining whether . . . it is executive or administrative . . . is whether the ordinance is one making a new law — an enactment of general application prescribing a new plan or policy — or is one which merely looks to *or facilitates the administration, execution or implementation of a law already in force and effect.* (Emphasis in original.)  
*Id.* at 259.

In 1972, the County Attorney construed Charter §215 as preventing the Council from restricting the power of the County Executive to appoint individuals to positions covered under Charter §215.<sup>4</sup> In 1976, Mr. McKernon issued Opinion No. 76.056, reviewing Bill No. 43-76. That legislation proposed to give the Human Relations Commission exclusive authority over the Office of the Human Relations Commission. The legislation also proposed to make the Human Relations Commission a principal office under Charter §212. After noting that the Charter requires that a *single* officer head a principal office, Mr. McKernon noted that the heads of principal offices are exempt from the Merit System under Charter §401 and concluded, "Thus, the head of a department would serve *at the pleasure of the County Executive.* To allow the Commission, in effect, to function as a principal department head would usurp the effective appointive authority vested in the County Executive." (Emphasis supplied.) In 1985, the Office

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<sup>4</sup>Memorandum from Richard S. McKernon, County Attorney, to Nan Furioso, Interim Executive Director, Montgomery County Commission for Women, dated November 8, 1972.

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of the County Attorney issued Opinion No. 85.011 concluding that Bill No. 59-85 violated the separation of powers doctrine by requiring County Council approval of all Fire and Rescue Commission's actions except administrative and ministerial acts. These County Attorney opinions are important because a court will normally give great deference to a contemporaneous interpretation of a law by an agency charged with its administration-- the county Attorney is the chief legal officer of the County under Charter §213-- especially when the interpretation has been applied consistently over a long period of time. *Baltimore Gas & Electric Company v. Public Service Commission of Maryland*, 305 Md. 145, 501 A.2d 1307 (1986).

### III. COURT DECISIONS.

Article II, Section 10 of the Maryland Constitution expressly grants significant control over the appointment process to the General Assembly. *See, Commission on Medical Discipline of the State of Maryland v. Stillman*, 291 Md. 390, 435 A.2d 747 (1981). Accordingly, cases construing the Governor's appointment authority provide little guidance in interpreting the County Charter.

The Court of Appeals has discussed the separation of legislative and executive powers at the local level. *See, Eggert v. Gleason*, 263 Md. 243. Of the many cases upholding the separation of powers in counties governed by a charter like Montgomery County's, the only case that, on first blush, appears to provide some support for Bill 38-96 is *County Executive of Prince George's County v. Doe*, 291 Md. 676, 436 A.2d 459 (1981). In *Doe*, the Court of Appeals invalidated an order of County Executive Larry Hogan banning abortions in Prince George's County hospitals unless necessary to save the life of the mother. The Court of Appeals noted that while the Prince George's County Charter required the Executive to direct, supervise and control the implementation of County law, the Charter gave the Council the authority to define the duties and functions of executive agencies. The court concluded that the Charter did not give the Executive "unbridled authority permitting him to usurp, nullify or supersede, at his pleasure, functions and duties committed by law to other executive branch offices, or to refuse to observe existing laws enacted by the Council." The situation in *Doe*, however, is significantly different from that presented in Bill 38-96. In *Doe*, the County Executive, without consulting with other bodies created by law to address the issue, instituted a significant new policy -- banning abortions. Bill 38-96 presents the opposite extreme by placing the head of an executive department outside the supervisory control of the Executive.

Although there are no Maryland cases directly on point, the U.S. Supreme Court has addressed the issue of legislative control over executive appointment powers under the U.S.

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Constitution, which in this regard is more similar to the County Charter than the Maryland Constitution.

In *Myers v. United States*, 272 U.S. 52 (1926), the Supreme Court, in an opinion covering some 250 pages, discussed the interplay between the doctrine of separation of powers and the President's authority to "with the advice and consent of the Senate . . . appoint officers of the United States."<sup>5</sup> In *Myers*, the Supreme Court struck down a Congressional act which required the President to obtain the consent of the Senate before removing a postmaster. The Court concluded:

The power to remove inferior executive officers, like that to remove superior executive officers, in [sic] an incident of the power to appoint them, and is in its nature an executive power. The authority of Congress given by the excepting clause to vest the appointment of such inferior officers in the heads of departments carries with it authority incidentally to invest the heads of departments with power to remove. It has been the practice of Congress to do so and this court has recognized that power. The court also has recognized in the Perkins Case that Congress, in committing the appointment of such inferior officers to the heads of departments, may prescribe incidental regulations controlling and restricting the latter in the exercise of the power of removal. But the court never has held, nor reasonably could hold, although it is argued to the contrary on behalf of the appellant, that the excepting clause enables Congress to draw to itself, or to either branch of it, the power to remove **or the right to participate in the exercise of that power**. To do this would be to go beyond the words and implications of that clause, and to infringe the constitutional principle of the separation of governmental powers. *Id.* at 161. (Emphasis supplied.)

Nine years later, the Supreme Court clarified that *Myers* applied only to officers exercising executive functions. *Humphreys Ex'r v. United States*, 295 U.S. 602 (1935). In

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<sup>5</sup>Article II, Section 2, U.S. Constitution.

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*Humphreys*, the Court concluded that Congress could involve itself in the removal of Federal Trade Commissioners because they exercised quasi-legislative powers (requirement to make investigations and reports to Congress) and quasi-judicial powers (authority to act as a master in chancery). Of course, it may be argued that the Inspector General primarily performs the quasi-legislative function of issuing investigative reports. To the extent this argument is adopted, however, it leads to the conclusion that the Inspector General should be a part of the Legislative Branch of government, not the head of a principal office in the Executive Branch.

In *Bowsher v. Synar*, 478 U.S. 714 (1986), the Supreme Court invalidated the Gramm-Rudman Balanced Budget and Emergency Deficit Control Act of 1985. The Gramm-Rudman Act mandated budget cuts to reach targeted deficit reduction levels. Under the Gramm-Rudman Act, the Comptroller General of the United States was authorized to specify budget cuts in a report to the President, and the President was required to follow those cuts. The constitutional defect, according to the Supreme Court, was that the Comptroller General was removable only by Congress. The Supreme Court reasoned that this amounted to a congressional intrusion into the functions of the President. The Court held that "[t]o permit an officer controlled by Congress to execute the laws would be, in essence, to permit a congressional veto . . . . This kind of congressional control over the execution of the laws . . . is constitutionally impermissible." *Id.* at 726-727. The Court went on to state that "once Congress makes its choice in enacting legislation, its participation ends. Congress can thereafter control the execution of the enactment only indirectly — by passing new legislation." *Id.* at 733-734.

#### IV. APPLICATION OF THE LAW TO BILL 38-96.

Bill 38-96 invests an Executive Branch department head with an extraordinary level of independence. The Inspector General may adopt a work plan free from the direction of either the Chief Administrative Officer or the County Executive. Coupled with this authority Bill 38-96 prevents the Executive from removing the Inspector General except for cause and then only with the consent of the Council. In our view, these provisions run afoul of several Charter provisions. Bill 38-96 violates Charter §117 because it involves the Council in the dismissal of an employee of the Executive Branch of the County government. Charter §211 is violated because the Chief Administrative Officer is deprived of the responsibility of supervising an office of the Executive Branch of government.<sup>6</sup> Finally, Bill 38-96 violates Charter §215 which

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<sup>6</sup>Webster's New World Dictionary of the American Language, College Edition (1962) defines supervise as "to oversee or direct" the work of others.



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authorizes the Executive, after receiving the advice of the Chief Administrative Officer, to appoint a single officer to head each principal office of the Executive Branch. As already discussed, Chapter §215 has historically been seen as empowering the Executive to replace an incumbent department head with a new appointee without having to meet a burden of showing good cause for the Executive's decision.

The provision in the Inspector General legislation providing that the senior professional staff member in the Office of the Inspector General serves as the Acting Inspector General until a new Inspector General is appointed and confirmed further exacerbates the legislation's conflict with Charter §215. This provision, in effect, requires the County Executive to accept as a department head a specific individual for an indeterminate period of time should Council refuse to confirm the Executive's appointment.<sup>7</sup>

#### V. ARGUMENTS IN FAVOR OF BILL 38-98.

Legislative counsel defends the Inspector General legislation as being consistent with the Charter. Legislative counsel points to Charter §210, which provides that the Chief Administrative Officer must be a professionally qualified administrator who serves "at the pleasure of the County Executive." Likewise, legislative counsel points to Charter §213, which provides that the County Attorney serves "at the pleasure of the County Executive" but, upon request, is entitled to a public hearing before the Council prior to dismissal from office. Legislative counsel argues that since Charter §215, which provides for Executive appointment of all department heads, does not contain the phrase "at the pleasure of", the Charter intended to allow the Council, by law, to regulate the removal of department heads.

This argument is flawed for two reasons:

1. To prevent the Executive from removing department heads effectively shifts control over the Executive Branch to department heads who are answerable to the Council. In the case of requiring Council approval of a removal, this

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<sup>7</sup>Additionally, the legislation provides that the Inspector General ensure that the Inspector General's work not duplicate the work of the Office of Legislative Oversight. In doing so, Bill 38-96 undermines the independence of the Inspector General from the Council. Through this provision, the Inspector General is left only those topics to study that the Council does not assign to the Office of Legislative Oversight.

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inserts the Council into the supervisory responsibilities given the Chief Administrative Officer and the County Executive over the Executive Branch. This result is contrary to the intent of Charter §§117 and 211.

2. The function of the phrase "at the pleasure of" in Charter §§210 and 213 is to clarify that the Executive may remove these officers at will, not to limit the Executive's appointment authority under Charter §215. Charter §210 provides that the Chief Administrative Officer should be a "professionally qualified administrator." This is the type of language one normally associates with a Merit System position. For example, Charter §401 provides that the Merit System "shall provide the means to . . . select . . . and maintain an effective . . . work force with personnel actions based on demonstrated merit and fitness." Adding the phrase "at the pleasure of" to Charter §210 was done to clarify that the Chief Administrative Officer was not to be given merit system protection--i.e. removal only upon a showing of cause. Similarly, in Charter §213 the County Attorney is entitled to a public hearing before the Council prior to dismissal from office. The right to a hearing is normally associated with a situation in which an officer may only be removed for cause. Adding the phrase "at the pleasure of" to Charter §213 makes it clear that the County Attorney may be removed by the Executive without cause.

Legislative counsel also argues that many members of boards and commissions may be removed only for cause. Specifically, legislative counsel points to the Ethics law which requires Council concurrence in the removal of an Ethics Commissioner for cause. This argument is significant because Charter §215, which provides that the Executive appoint department heads, also provides that the Executive appoint, subject to Council confirmation, members of boards and commissions.

We believe this argument is also flawed. Boards and commissions are not principal departments in the Executive Branch of government. Without deciding whether the removal provision in the Ethics law violates the Charter, we point out that the Ethics Commission, unlike the Inspector General, carries out significant quasi-judicial functions. We believe deciding specific cases in a trial-type proceeding is a significantly different function than administering a principal department in the Executive Branch of government. See, *Humphrey's Ex'r v. United States*, 295 U.S. 602.

## VI. CONCLUSION.

Douglas M. Duncan  
Bruce Romer  
Re: Bill 38-96  
June 27, 1997  
Page 10

There is not a "bright line" test which can be applied in determining whether legislation violates the separation of powers doctrine established in the County Charter. In the case of Bill 38-96, we believe the combination of the provisions providing for removal for cause, requiring Council approval of removal, authorizing the Inspector General to establish his or her own work plan, and designating a senior professional staff member to act as Acting Inspector General until a new Inspector General is approved and confirmed, crosses over the line separating the Council's functions from the Executive's functions. Accordingly, we conclude that the County Charter conflicts with Bill 38-96.

We readily acknowledge the legitimacy of the functions of an Inspector General as envisioned in Bill 38-96 and the importance independence of the Inspector General plays in accomplishing those purposes. We conclude, nevertheless, that the means by which the Council has chosen to achieve the purposes laid out in Bill 38-96 violate the Charter. Other means, however, to achieve those ends are available to the Council. Certainly, the Council could propose an amendment to the County Charter to create an independent Office of the Inspector General. In the alternative, the Council could place the Inspector General's function in the Legislative Branch of government.

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Statement of Thomas J. Dagley  
Inspector General  
Montgomery County Council

To The

Charter Review Commission  
February 13, 2008

**Introduction**

I appreciate the opportunity to meet with you. Through Council staff, you asked me to address the following:

- How has the OIG contributed to the welfare of the County?
- What are the advantages/disadvantages of the current selection process?
- What are the advantages/disadvantages of an Executive-nominated, Council-confirmed Inspector General?

I think it is important to share with you that I am not clear as to the underlying reason(s) regarding a possible change in the County's inspector general selection process. Recognizing that the Council, Executive, and taxpayers want an OIG that serves as an independent force for promoting integrity and efficiency while combating fraud, waste, abuse, and mismanagement in all Council-funded programs and activities, my experience over the past three years and the OIG's performance results suggest the current model is the best option to address these challenges and move forward. As other options are considered, I want to learn more about the expectations of County leaders for the OIG and contribute to a framework that strengthens the County's system of management and controls used to ensure: accountability for leadership actions; fiscal accountability; independence in internal and external audits; and transparency of operations.

As an ambassador and member of the Board of Examiners for the Baldrige National Quality Program for the past several years, I have relied on a systems perspective to establish a Montgomery County OIG capable of effectively assessing risk and overseeing audits and investigations needed for County programs that in fiscal year 2008 exceeded \$4 billion in operating expenses and generated a multi-billion dollar capital improvements program budget.

County leadership's recent decision to begin use of the Baldrige Criteria for Performance Excellence to improve results is an opportunity for the Executive, Council, and Inspector General to rely on the independence of the IG to foster new initiatives to improve integrity, accountability, and excellence in all County programs as a means to reduce or eliminate problems. Three years ago, when I competed for the inspector general position before a Council panel co-chaired by two federal inspectors general (both Montgomery County residents), it was the independence of the inspector general and a focus on new initiatives to move the OIG forward that received priority attention. Not surprisingly, these are the key factors that have helped the OIG make significant contributions to the

welfare of County over the past three years. The performance results I discuss briefly with you this morning cut across the Executive Branch, Council, and independent Council-funded agencies, including Montgomery County Public Schools, Montgomery College, the Planning Board, and the Washington Suburban Sanitary Commission.

With this background information in place, I will use a prepared statement to address your specific questions. A copy has been provided to you and will be available to other interested parties at the OIG's website (<http://www.montgomerycountymd.gov/ig>).

**How has the Office of Inspector General contributed to the welfare of the County?**  
Let's look at some examples of recent OIG accomplishments that have been highlighted in a recent OIG Bulletin and annual reports.

**Funds recovered or put to different use - \$17.1 million**

Seven Locks Elementary School - \$14.1 million in capital funding allocated by the Council in May 2004 for a new school was withdrawn by the Council in May 2006 and put to a different use (February 2006 audit report).

MCG Overtime Compensation – the FRS FY 2008 overtime budget recommended by the Executive in March 2007 was reduced by \$3 million by the Council in May 2007 (April 2007 audit report).

**Questioned Costs or Potential Savings - \$11.3 million**

Worker's Compensation - \$182,000 in potential savings attributable to the lack of a "light duty" return-to-work program for Montgomery County Public Schools employees (July 2006 audit report).

Procurement Fraud – a \$500,000+ contract awarded for athletic field lighting upgrades was reversed by a MNCPPC hearing officer after a bid protest appeal that triggered a joint OIG/State criminal investigation (April 2007 decision).

Development District Funding - \$9.5 million recommended in the Executive's FY 2007 capital budget for road construction reimbursement to Clarksburg developer may be terminated or modified by the Council (September 2007 audit report).

Overtime Compensation - \$1.1 million in questioned overtime payments to FRS employees based on unapproved or improperly approved timesheets (April and December 2006 audit reports). An OIG follow-up audit was started in January 2008.

**Fraud, waste, and abuse matters issued to management – 27**

Recovery agent scheme - \$65,000 in checks issued by the Department of Finance triggered a 2007 joint OIG/prosecutor criminal investigation, resulting in a guilty plea by a North Carolina man and sentencing that required court-ordered restitution (investigative report to prosecutor).

OIG validated a complaint that alleged an employee unsafely transported three children in a County-owned vehicle. The investigation disclosed management was not aware the employee drove his children to/from private day care daily.

OIG validated complaints that a police department civilian improperly used a law enforcement equipped vehicle to commute on a daily basis.

A joint OIG/management investigation disclosed that an employee's timesheets improperly claimed time spent attending college courses as official work hours.

The OIG is currently investigating allegations that a County department authorized full payment to a company doing County business as a result of a contract or a non-competitive Council-approved grant, even though it appears all products and services were not delivered in a timely manner, if at all. I encourage the Commission to consider how a change in the inspector general selection process might impact the authority or ability of the OIG to conduct this type of investigation.

#### **Joint investigations with prosecutors – 6**

Pyramid scheme – a joint OIG/State investigation led to a felony indictment of an employee who used the County's email system to help carry out a pyramid scheme whose victims included co-workers.

OIG and State investigations are in progress regarding the integrity of information presented to the Montgomery County Planning Board by certain developers or their representatives. Allegations include, for example, that an unlicensed engineer repeatedly included inaccurate, false, or misleading information on land development applications.

#### **Percentage of audit recommendations accepted by management – 67**

Most audits undertaken by the OIG over the past three years focused on higher risk programs or expenditure categories – areas that had not been independently audited for at least the past 10 years. Some of the audit findings and recommendations not accepted by management were ultimately addressed by the Council.

#### **Results Summary**

While the annual costs for OIG audits and investigations over the past three years averaged about \$600,000 (using five full-time positions), the findings and recommendations reported to the Executive and Council resulted in recoveries, funds put to better use, questioned costs, and potential savings that totaled more than \$28 million in taxpayer funds.

#### **What are the advantages and disadvantages of the current selection process?**

My inspector general experience at the federal and state levels, combined with the OIG's accomplishments here in Rockville over the past three years, lead me to conclude that the advantages of the current Council selection and reporting relationship are many, while the disadvantages, if any, are inherent in the inspector general community.

With regard to the Executive–Council appointment factors the Commission is considering, it is important to incorporate independence requirements in the analysis, and remember that the overarching goal of the inspector general community is to improve, using quantifiable results, the performance and accountability of government programs and operations.

**What are the advantages and disadvantages of an Executive-nominated, Council-approved Inspector General?**

Although initial legislation proposed by County leaders in 1997 placed the IG under the Executive Branch, the performance results shared with you this morning suggest that the OIG, as an office of the Council, is in the right place. An OIG without independence or clear authority to audit and investigate matters related to all Council-funded programs cannot achieve its intended purposes.

In addition, the current OIG structure is conducive to expanding on one of the more important OIG initiatives – a successful fraud hotline pilot program capable of being used by all employees and contractors funded by Council appropriations. The hotline relies on a dedicated, toll-free number managed by an OIG contractor 24 hours a day, seven days a week. The terms and conditions of the hotline contract recognize that many hotline reports received by the OIG contain confidential information that requires an appropriate level of protection.

**Other Jurisdiction Selection Processes**

During your deliberations, I encourage you to obtain a diverse set of perspectives from County leaders, taxpayers, and the inspector general community regarding criteria to use to establish and maintain an environment conducive to an effective OIG in County government. Two valuable resources are the President’s Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE). The Inspector Generals shared website can be found at [www.ignet.gov](http://www.ignet.gov). In addition, many local government IGs, including Montgomery County, are members of the Association of Inspectors General. Other sources for OIG standards included Government Auditing Standards (revised July 2007), the Association of Certified Fraud Examiners, and the Government Finance Officers Association.

Regarding the IG selection process, I also want to share a personal experience and two examples:

- In 1996, while I was working at the Postal Service OIG, Congress became concerned about the independence of the office because the IG reported directly to the Postmaster General – the chief executive of the Postal Service. Congress took the bold step of changing the long-standing authority of the Postmaster General to appoint the IG by passing legislation that required the IG be appointed by and report to the nine-member Board of Governors – a Board that in many ways is Montgomery County’s equivalent of the Council. Congress believed this change was necessary to maintain the independence and objectivity of the OIG.

This change was, in my opinion, necessary for the OIG to properly serve all Postal Service stakeholders.

- Another example close to Montgomery County is the Washington Metropolitan Area Transit Authority (“Metro”) – in April 2006, the Metro Board of Directors replaced the Office of Auditor General who reported to the General Manager with an Office of Inspector General that reports directly to the Board. In approving the resolution that created the new OIG, the Board stated “The OIG shall have the greatest possible independence and freedom from interference ...”. With Metro’s annual operating budget about \$1 billion, the new OIG has an authorized complement of between 25 and 30.
- The New Orleans City Council recently approved a \$3.4 million budget for a newly created office of New Orleans Inspector General. The new OIG, appointed by the City’s Ethics Review Board, will have a staff of about 30 to provide audit, investigative, and related services for the City of New Orleans that has an annual budget of approximately \$460 million.

Finally, 30 years after the inspector general model was first introduced at the federal level, and as the PCIE and ECIE have helped make improvements, the value of OIGs appears to be gaining credibility throughout state and local jurisdictions. For example, within the past three months, I have received calls from two other Maryland counties and another in Virginia seeking insight into Montgomery County’s use of an OIG to help strengthen checks and balances as public officials look to improve their decisions regarding the best possible use of federal, state, and county tax dollars to address the needs of all stakeholders.

Thank you for the opportunity to make this presentation to the Commission today.



Charter Amendment to Exempt Small Geographic Tax Districts from Section 305 Calculation

Section 305 of the Charter limits the growth of property tax revenue in any year to the rate of inflation, with some exceptions, unless a supermajority of 7 Councilmembers agree to exceed it. The exceptions are properties that are newly constructed, rezoned, or have a changed use, property that is assessed differently than the previous year due to a change in State law, and any development district tax used to fund CIP projects.

This Charter amendment, adopted in 1990, was crafted in reaction to the steep rise of the *countywide* ad valorem property taxes of the late 1980s. However, when the amendment was debated, little if any thought was given to several *limited area* ad valorem taxes to which most residents were not subject. The Parking District property taxes in Bethesda, Silver Spring, Wheaton, and Montgomery Hills are optional property taxes: they are paid only by those developments wanting the County build and maintain their Code-required parking. Noise abatement district property taxes, similarly, are optional ad valorem taxes paid by residents to fund the debt service for noise walls that protect and enhance their properties. Urban District property taxes are not optional, but they are used for specific purposes in limited areas. In the future there may be other small-area property taxes proposed to fund local projects or programs.

An ad valorem tax is sometimes the most equitable means to fund geographically-specific projects or programs, since it is a wealth-based levy. But the current definition for the Section 305 calculation militates against using it. Exempting small-area ad valorem taxes from the calculation takes nothing away from the spirit of Section 305, and frees up the Urban District taxes and similar levies to provide more funding for local projects and programs. Former Councilmember Betty Ann Krahnke raised this same issue with respect to Urban Districts to the Charter Review Commission 11 years ago (see attached memo of February 4, 1997).

Together these three sets of property taxes are levied on less than 5% of the County's assessable base. The Urban Districts in Bethesda, Silver Spring, and Wheaton largely overlap the Parking Districts in these respective areas. There are currently only two Noise Abatement Districts—Bradley and Cabin John—although more may be created in the future. Special taxing districts could also be set up to fund other types of discretely local capital improvements.

One anticipated concern is that the County could establish a multitude of limited area ad valorem taxes to circumvent the countywide property tax limitation. Therefore, the Charter language should limit the aggregate assessable base to be exempted for limited areas to a certain percentage of the County's total assessable base: 10% would be a reasonable threshold.

*Therefore, the Charter Review Commission should consider a proposal to amend the last sentence in Section 305 to read as follows:*

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 special taxing district that covers a limited geographic area, such as an urban district, parking lot district, or noise abatement district, if the aggregate assessable base of all exempted special taxing districts does not exceed ten percent of the total County assessable base, and (6) any development district tax used to fund capital improvement projects.

## MEMORANDUM

February 4, 1997

TO: Charter Review Commission

FROM: Betty Ann Krahnke

SUBJECT: The Relationship between Section 305 of the Charter and the Urban Districts

### I. OVERVIEW OF THE SPENDING AFFORDABILITY AND PROPERTY TAX LIMITATIONS IN THE CHARTER

Section 305 of the Montgomery County Charter, Approval of Budget; Tax Levies, sets forth the guidelines for the Council's approval of the budget and the limitations on property tax levies. Section 305 restricts both growth of the overall aggregate operating budget as well as the use of property taxes to fund the aggregate operating budget. Section 305 also requires the Council to establish a process and criteria for adopting spending affordability guidelines and to annually adopt spending affordability guidelines for the capital and operating budgets.

**Section 305 requires the affirmative vote of 6 Councilmembers to approve an aggregate operating budget that grows by more than the rate of inflation.**

The definition of the aggregate operating budget is the total appropriation from current operating revenues for the next fiscal year. Under Section 305, the calculation of the aggregate operating budget ceiling explicitly includes some budget expenditures and excludes others.

- The included budgets are typically those funded through revenues raised through property and income taxes, transfer taxes, recordation taxes, fees and fines, plus current revenue funding for capital projects.

- The excluded items are appropriations for specific grants, enterprise funds, tuition and tuition related charges at Montgomery College, and the Washington Suburban Sanitary Commission. Excluded items generally are enterprise funds or charges related to the use of a particular service or commodity such as water and sewer charges or intergovernmental revenues such as state or federal aid programs.

**Section 305 requires the affirmative vote of 7 Councilmembers if the amount raised from tax on existing real property exceeds the amount raised the previous year by more than the rate of inflation.**

The charter requires the Council, by June 30 each year, to make tax levies necessary to finance the budgets. Each year the Council sets more than a dozen different property tax rates. Section 305 limits the increase in total revenue raised from the property taxes used to fund budgets included in the calculation of the aggregate operating budget.

The property revenues restricted under Section 305 of the charter include revenues raised through the levy of the general countywide property tax, the transit tax, the fire tax, the M-NCPPC property taxes (the metropolitan, regional and ALARF taxes), the recreation tax, the storm drainage tax, the urban district taxes for the Silver Spring, Bethesda and Wheaton urban districts, the taxes for two noise abatement districts and the parking district taxes for Silver Spring, Bethesda, Wheaton and Montgomery Hills.

Section 305 explicitly excludes revenue from newly constructed or rezoned property, property that has undergone a change in assessment or use and any development district tax used to fund capital improvement projects.

**Section 305 requires the affirmative vote of 7 Councilmembers to approve any aggregate operating budget that exceeds the spending affordability guidelines then in effect.**

Under the spending affordability process adopted by the Council, by October 31 of each year, the Council must set three guidelines for the aggregate operating budget:

- a ceiling on property tax revenues,
- a ceiling on the aggregate operating budget, and,
- the allocation of the aggregate operating budget among six categories: the current revenue funding for the capital budget, debt service, and operating expenses for MCPS, Montgomery College, the County government and M-NCPPC.

## **II. THE ESTABLISHMENT OF THE URBAN DISTRICTS**

In 1986 and 1987 (prior to the adoption of amendments to Section 305 of the Charter), the County adopted Bill 9-86 to establish special taxing districts in Silver Spring, Bethesda and Wheaton. In proposing the legislation, the Executive stated that the services provided by the Suburban District at that time were inadequate to meet the needs of the central business districts. Also, the County needed enhanced services to protect the millions of dollars expended for streetscape amenities by the County and private developers.

The purpose of the urban districts was to provide an administrative and financial framework for enhanced services in these central business districts. The law established the boundaries of each district to be coterminous (for the most part) with the boundaries of the existing parking districts in each area. (The parking districts had been established in the 1940's to provide parking services using revenues from a parking district tax, plus parking fines and fees.)

The law provided three major sources of funding: an urban district tax, a parking fee surcharge transferred from the existing parking district for each area and a maintenance assessment for certain projects developed under the optional method development procedures. The administration of the urban districts was placed in the County government in the Department of Transportation which already had responsibility for many of the services to be provided by the districts.

Since their establishment, the urban districts have funded a collection of maintenance, promotion and security activities in each of the central business districts. The establishment significantly increased spending from less than \$500,000 in FY 85 to over \$2.5 million in FY 88.

## **III. THE IMPLEMENTATION OF SECTION 305**

The urban district budgets are included in the calculation of the aggregate operating budget and are funded out of the County government agency allocation for the aggregate operating budget. The urban district tax revenues are included in the total property tax revenues subject to the charter restrictions on property taxes. Since the implementation of spending affordability, the Council has limited the growth of total property tax revenues to the rate of inflation or less.

#### IV. THE EFFECT OF SECTION 305 ON URBAN DISTRICT BUDGETS AND FUNDING

The restrictions imposed under Section 305 of the charter have had the following effects on urban district budgets and funding:

**First, since the urban district budgets are funded out of the County government's agency allocation of the aggregate operating budget, the effect of Section 305, has been to subject urban district budgets to some of the same constraints imposed on other County government budgets.**

The growth in County government budgets has been especially constrained in the last three years. In the urban districts, the budgets for Silver Spring and Wheaton peaked in FY 94. The adopted budgets for FY 97 are still below the FY 94 budget levels. Since increases in fixed and non-controlled costs (such as supplies, gasoline, rent, and insurance) are absorbed to determine the revenues available for programs, budget reductions typically have a magnified impact on the level of funding that is actually available for direct services.

To meet these budget restrictions, the urban districts have cut back funding for specific maintenance or promotional services. In Bethesda, for example, where the Bethesda Urban Partnership has planted an additional 300 trees since 1994, BUP has decreased the number of trees pruned each year to accommodate the extra maintenance required by the new trees.

**Second, since the urban district tax is included in calculation of the total property tax revenues restricted by Section 305, the urban districts have not been able to increase the property tax rate to maintain the same level of service or provide for a higher level of service in the district.**

Under the restrictions of Section 305 which limits the increase in total revenues from property taxes, any increase in property tax revenues above the Council guideline in one district or area must be offset by a compensating decrease some place else. This represents an important departure from the Council's historical use of special taxing districts which maintained an relationship between district taxes and services that could function independently of other district taxes and services.

**Finally, the restrictions in Section 305 have led to a greater reliance on the use of parking district revenues to fund urban district services.**

The overlap in the boundaries of the urban and parking districts in the CBDs, namely the urban district and the parking district, and the exclusion of parking district revenues from the restrictions in Section 305 have resulted in an sustained or growing reliance on parking district revenues. The limit in the original law restricting the amount transferred from the parking district to 80 percent of the combined revenues from both districts was increased to 90 percent in Bethesda in 1994 and would be increased to 90 percent in Wheaton under legislation proposed by the Executive and recently introduced by the Council.

The most striking example of the increasing reliance on parking district transfers and the relationship between the urban district tax and parking transfers is in Bethesda. Between 1989 and 1995 the parking district revenue share has increased from 40 percent to 50 percent while the urban district revenue share has dropped from 42% to 18%.

#### **V. SUMMARY OF CHARTER AMENDMENT ISSUES**

The County's use of urban districts was modeled, in part, on the concept of business improvement districts. While there were few districts in place when the County established its urban districts in the late 1980's, today more than 1,000 commercial areas in 49 states currently have business improvement districts. Business improvement districts are special taxing districts created by local governments, frequently at the request of major property owners in a commercial area. The districts enable local property owners in downtown commercial areas to tax themselves to pay for physical improvements and management services.

While districts vary in the size of their budgets and the services they fund, for the most part districts rely substantially on district assessments or taxes to pay for services. In some cases, business improvement districts have been established to give business and commercial property owners an opportunity to address the tax limitations imposed on governments which have resulted service cutbacks.

The restrictions in Section 305 have limited the operations of the urban districts in Montgomery County to provide and fund enhanced services. Of more immediate concern, in Bethesda and Silver Spring, the projections for the parking districts indicate that the parking districts will not be able to continue the level of support for urban districts they have provided in the past. This raises

the issue of where future funding for district services will come from, particularly in light of the constraints imposed under Section 305.

## **VI. RECOMMENDATION**

I recommend that the Commission look at this issue. At the same time the Commission is exploring this issue, the County Council will be considering a report from the Office of Legislative Oversight. In its review of this report, the County Council may considered other options this issue such as replacing the urban district tax with an new assessment structure or the use of an enterprise fund. If the County Council decides to use one of these approaches, a charter amendment would no longer be necessary.





**CHARTER REVIEW COMMISSION**  
**Wednesday, June 13, 2007 – 8:00 a.m.**  
**3rd Floor Conference Room**  
**Council Office Building**

**Approved Minutes**

**Commission Members Present:**

Nancy Soreng, Chair  
Alice Gresham Bullock, Vice-Chair  
Michael Cogan  
Karen Czapanskiy  
Dianne Felton  
Wilbur Friedman  
Mollie Habermeier  
Robert Shoenberg  
Judith Vandegriff  
Anne Marie Vassallo  
Charles Wolff

**Staff:**

Justina Ferber, County Council  
Marc Hansen, Office of the County Attorney  
Marie Jean-Paul, County Council  
Amanda Mihill, County Council

**Guests:**

Dale Tibbitts, Office of Councilmember Elrich

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Commission Chair Nancy Soreng called the meeting to order at 8:10 a.m.

**I. Opening Remarks**

Ms. Soreng opened the meeting by welcoming the Commission Members and staff and asked everyone to give a brief introduction.

**II. Mission of the Charter Review Commission**

Amanda Mihill described staff's role to the Commission, which is to facilitate decision-making, provide background information on issues that come up, and conduct research. Justina Ferber briefed the new Commission members on the history of previous Charter Review Commissions. Ms. Ferber noted that the Commission does not receive instructions from the Council; however, past Commissions have met with elected officials to obtain their ideas and recommendations. Ms. Ferber noted that previous Commission have solicited public comments on potential charter review issues by holding public forums and issuing a press release requesting input on potential Charter changes.

Commission members discussed ways to generate ideas for the Commission to study. The Commission decided to solicit input from current and former Councilmembers and County Executives. To this end, the Commission acted on the following items:

- Invite current Councilmembers and the current County Executive to present any charter issues to the Commission. Motion made by Judith Vandegriff and seconded by Alice Bullock. Motion passed unanimously.
- Invite Doug Duncan, the immediate past County Executive, to speak to the Commission first. Motion made by Wilbur Friedman and seconded by Charles Wolff. Motion failed 2-9.  
 Yes: Wilbur Friedman, Charles Wolff  
 No: Alice Gresham Bullock, Michael Cogan, Karen Czapanskiy, Dianne Felton, Mollie Habermeier, Robert Shoenberg, Nancy Soreng, Judith Vandegriff, Anne Marie Vassallo
- Invite former members of the immediate past Council to speak to the Commission. Motion made by Anne Marie Vassallo, duly seconded. Motion passed unanimously.
- Michael Cogan suggested that letters should be sent to all past Councilmembers and County Executives to solicit their input for charter issues.

Dale Tibbitts asked about what public outreach the Commission would undertake. Commission members agreed to issue a press release seeking public comment and to mail copies of the press release to County civic organizations. Motion made by Ms. Vandegriff and seconded by Dianne Felton. Motion passed unanimously.

### **III. Administrative Items**

Commission members agreed to meet on the second Wednesday of every month between 8:00 a.m. and 9:30 a.m. Commission members agreed not to meet during August. Commission members asked Council staff to distribute a list of future meeting dates.

Commission members discussed the agenda for the July meeting and agreed to ask Marc Hansen to provide a presentation on what is charter material and to receive presentations from available current and former elected officials.

Council staff discussed the County's parking arrangements and badges, attendance policies at Commission meetings, and reimbursement for travel and child care expenses for members of County boards, committees, and commissions.

Meeting adjourned at 9:05 a.m.

**CHARTER REVIEW COMMISSION**  
**Wednesday, July 11, 2007 – 8:00 a.m.**  
**6th Floor Conference Room**  
**Council Office Building.**

**Commission Members Present:**

Nancy Soreng, Chair  
Alice Gresham Bullock, Vice-Chair  
Michael Cogan  
Karen Czapanskiy  
Dianne Felton  
Wilbur Friedman  
Mollie Habermeier  
Judith Vandegriff  
Charles Wolff

**Staff:**

Marc Hansen, Office of the County Attorney  
Marie Jean-Paul, County Council  
Amanda Mihill, County Council

**Guests:**

Dale Tibbitts, Office of Councilmember Elrich  
Mike Faden, County Council

**Commission Members Absent:**

Anne Marie Vassallo  
Robert Shoenberg

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Commission Chair Nancy Soreng called the meeting to order at 8:00 a.m.

**I. What Qualifies as Charter Material?**

Marc Hansen, Deputy County Attorney, briefed the Commission on the history of local government in Maryland and the relationship between the state and local governments. Mr. Hansen explained that the Express Powers Act gives home rule counties the power to legislate in areas that the State and Federal government has not preempted. Mr. Hansen further explained that the County and the State have concurrent authority, but under the doctrine of preemption by conflict, the County cannot permit something the State has expressly prohibited nor can the County prohibit something the State has expressly permitted.

The Charter is basically the County's constitution. The Court of Appeals has held that a Charter should deal with the organization of local government and the allocation of the powers granted to the County by the State among the entities or agencies created in the Charter. Legislative material should not be found in the Charter. Legislative power must primarily reside in an elective Council, but this power can be shared. For example, legislative power may be shared with the County Executive, who has the power to veto legislation. In addition, the Council's legislative power can be shared with the people through the power of referendum. The County Charter provides that the people of Montgomery County can share the legislative power by petitioning laws passed by the County Council to referendum.

Mr. Hansen explained that a proposed Charter Amendment must be approved by the registered voters of the County. A Charter Amendment is placed on the ballot in one of two ways:

1. The County Council may place a proposed Charter Amendment on the ballot. The Charter Review Commission may advise the Council about existing Charter proposals or make independent suggestions for Charter amendments.
2. Citizens may petition a Charter Amendment, as long as the petition contains the requisite signatures of not less than 20 percent of registered voters or 10,000 whichever is less.

## **II. Discussion of Potential Charter Review Issues**

The Commission heard a presentation by former Councilmember Esther Gelman. Ms. Gelman noted that past Commissions have looked at the make-up of the County Council as one of its topics (i.e., how many members should the Council have, how many members should be district members, how many members should be at large members). If the Commission studies this issue, Ms. Gelman urged that the Commission not recommend increasing the number of district Councilmembers to outweigh the number of at large members. Ms. Gelman urged that additional district Councilmembers will be problematic because district representation can strangle government, it can cost more, and will be less efficient. Ms. Gelman also suggested that the Commission study whether to amend the Charter to preclude an individual from collecting paychecks from multiple County agencies.

The Commission also heard a presentation by former Councilmember Gail Ewing who supported the current composition of the Council (i.e., five district Councilmembers and four at large Councilmembers). Ms. Ewing suggested the Commission study whether the Charter should be amended to prohibit a County Executive from serving more than two terms.

## **III. Administrative Items**

The Commission approved the minutes from the June 13, 2007 meeting with the following change:

- Correct the vote count for the motion to invite Doug Duncan, the immediate past County Executive, to speak to the Commission first. The minutes should accurately reflect that Wilbur Friedman and Charles Wolff voted for the motion and not against the motion.

Motion made by Alice Gresham Bullock and seconded by Judith Vandegriff. Motion passed unanimously.

Ms. Soreng adjourned the meeting at 9:30 a.m.

**CHARTER REVIEW COMMISSION**  
**Wednesday, September 12, 2007 – 8:00 a.m.**  
**6th Floor Conference Room**  
**Council Office Building**

**Commission Members Present:**

Nancy Soreng, Chair  
Alice Gresham Bullock, Vice-Chair  
Michael Cogan  
Karen Czapanskiy  
Wilbur Friedman  
Mollie Habermeier  
Robert Shoenberg  
Judith Vandegriff  
Anne Marie Vassallo  
Charles Wolff

**Staff:**

Justina Ferber, County Council  
Marc Hansen, Office of the County Attorney  
Marie Jean-Paul, County Council  
Amanda Mihill, County Council

**Guests:**

Councilmember Phil Andrews  
Councilmember Duchy Trachtenberg  
Dale Tibbitts, Office of Councilmember Elrich

**Commission Members Absent:**

Dianne Felton

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Commission Chair Nancy Soreng called the meeting to order at 8:20 a.m.

**I. Administrative Items**

Approved the minutes from the July 11, 2007 meeting. Robert Shoenberg abstained from voting because he was not present at the July 11 meeting. Motion made by Judith Vandegriff and seconded by Karen Czapanskiy.

Received an update from Amanda Mihill regarding the schedule of upcoming meetings with Councilmembers.

Wilbur Friedman noted that the Charter prohibits the Council from enacting legislation on more than 45 days and questioned whether this limitation is related to “sunshine laws”. Marc Hansen, Deputy County Attorney, explained that the limit on the number of legislative days derives from the Maryland Constitution and is repeated in the County Charter. Mr. Hansen noted that the Maryland General Assembly is also limited in its number of legislative days and stated that the Council has never run out of legislative days. Mr. Hansen stated his opinion that he did not believe that the legislative limit related to the sunshine laws, but rather, it related to a general distrust of government interference with private rights.

## **II. Meeting with Councilmember Phil Andrews**

Councilmember Andrews commented on the benefits of district representation and argued that the cost of running for office in an at-large district in a County the size of Montgomery is a substantial barrier to entry for many potential candidates. Councilmember Andrews also noted that the County continues to grow, but the number of Councilmembers has not increased since 1990. Councilmember Andrews disagreed with the last Commission's statement in the 2006 Report that it is "debatable whether smaller districts would reduce the cost of running for a Council seat . . ." In Councilmember Andrew's view, the key is not the amount of money that is actually spent on an at-large campaign or in a district race, but that the minimum amount of money required to run a competitive campaign at-large is much higher.

Councilmember Andrews disagreed further with the last Commission's statement in the 2006 Report that since district Councilmembers would still be representing 135,000 constituents, that it would be difficult for Councilmembers to interact with all constituents. Councilmember Andrews noted that the key number is the number of households, not the number of total constituents, and stated that the closeness to constituents after being elected is important and that the current ratio of a district to an at-large seat in Montgomery is comparable to the ratio of Montgomery County to the state of Maryland.

Councilmember Andrews also noted that the Council's Office of Legislative Oversight is scheduled to conduct a review of the County's hiring and procurement practices relating to people with disabilities and put the Commission on notice that a potential outcome from that review could be a recommended Charter amendment. Councilmember Andrews noted that it is expected that OLO's report will be completed in January or February 2008.

Commission members discussed whether an increased number of districts would result in greater parochialism. Commission members also discussed the potential increased cost associated with an increased number of Councilmembers, the additional burden on central staff and County departments to serve those Councilmembers, and whether the County could save money with additional Councilmembers because of an increase in oversight of government programs. In response, Councilmember Andrews noted that the size of the Council could remain the same while changing the composition of at large and district Councilmembers. Councilmember Andrews also noted that funding necessary to support an increased number of Councilmembers is small compared to the size of the County's budget.

In discussing the potential barriers to entry, Commission members commented that the issue of public help to finance elections has been a topic considered in the Maryland General Assembly and that other factors, including personality, may be barriers to entry into local politics.

## **III. Meeting with Councilmember Duchy Trachtenberg**

Councilmember Trachtenberg introduced herself and her role on the Council, which includes Chair of the Management and Fiscal Policy Committee and a member of the Health and Human Services Committee.

Councilmember Trachtenberg noted that a statewide program to publicly fund political campaigns may level the playing field and commented that candidates that lose an election typically do not try a second time.

Councilmember Trachtenberg commented that the current balance of district and at-large representation was good and suggested that if an increase in district representation was necessary, it would be proper to also increase the at large districts. Commission members discussed that if the number of districts were increased, redistricting would likely be done out of cycle.

Responding to questions from Commission members, Councilmember Trachtenberg stated that constituents contact a particular Councilmember for a variety of reasons, including if the Councilmember is the constituent's district representative, what the Councilmember's particular expertise is, and what committee the Councilmember chairs or serves on. In lieu of increasing the number of Councilmembers, some Commission members suggested increasing staff to allow increased productivity and responsiveness and Commission members discussed with Councilmember Trachtenberg the logistics of increasing the number of Councilmembers or staff.

Ms. Soreng adjourned the meeting at 9:30 a.m.

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**CHARTER REVIEW COMMISSION**  
**Wednesday, October 10, 2007 – 8:00 a.m.**  
**6th Floor Conference Room**  
**Council Office Building**

**Commission Members Present:**

Nancy Soreng, Chair  
Michael Cogan  
Karen Czapanskiy  
Dianne Felton  
Wilbur Friedman  
Mollie Habermeier  
Robert Shoenberg  
Judith Vandegriff – via phone  
Anne Marie Vassallo  
Charles Wolff

**Staff:**

Justina Ferber, County Council  
Marie Jean-Paul, County Council  
Amanda Mihill, County Council

**Guests:**

Councilmember Marc Elrich  
Councilmember Michael Knapp  
Councilmember Marilyn Praisner  
Michael Faden, County Council  
Glenn Orlin, County Council  
Dale Tibbitts, Office of Councilmember Elrich

**Commission Members Absent:**

Alice Gresham Bullock, Vice-Chair

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Commission Chair Nancy Soreng called the meeting to order at 8:05 a.m.

**I. Administrative Items**

Approved the minutes from the September 12 Commission meeting. Motion made by Wilbur Friedman and seconded by Mollie Habermeier. Those in favor: Dianne Felton, Wilbur Friedman, Mollie Habermeier, Robert Shoenberg, Nancy Soreng, Judith Vandegriff, and Anne Marie Vassallo.

Commission members discussed the petition Robin Ficker has been circulating to place a charter amendment on the November 2008 ballot to require all 9 Councilmember to approve any property tax increase. On questioning by Ms. Soreng, Justina Ferber stated that the Commission is not limited from commenting on petitions that are circulating. Ms. Ferber indicated that among its options, the Commission could take a position, not take a position, or hold a hearing on the petition proposal.

**II. Meeting with Councilmember Marilyn Praisner**

Councilmember Praisner recommended that several provisions in the Charter (e.g., 311A, 313A) have been the subject of court cases, are no longer relevant and should be removed from



the Charter. Councilmember Praisner also mentioned that a Council staff member has proposed excluding special taxing districts that cover a limited geographic area from Charter Section 305's limitation on property tax revenue growth to the rate of inflation. Councilmember Praisner expressed concerns regarding this proposal because of the potential that special taxing districts could be manipulated to pay for services that they were not created for and could lead to those taxing district residents not supporting general taxes because they could pay for their needs through a special fund.

Councilmember Praisner stated her belief that the structure of the Council is adequate and cautioned that if the number of Councilmembers increased, the Council may become inefficient. Councilmember Praisner argued that the number of constituents is generally manageable and suggested that although it was not a Charter issue, an increase in staff resources for Councilmembers (especially district Councilmembers) may be helpful. Councilmember Praisner emphasized that the answer is a service/workload issue, not a representation issue. She is friends with County elected officials in other jurisdictions nationally who serve the same or even more population.

Commission members discussed the balance of power between the Council and the County Executive and the suggestion that decisions can be made more quickly in the Executive branch. A Commission member cited Park and Planning as an example. Councilmember Praisner noted that Park and Planning was a bad example because Park and Planning is a state law issue, not a Charter issue. Councilmember Praisner also noted that even within the Executive branch, some believe that Executive departments do not necessarily work well with similar and other functions.

Commission members discussed the increase in the number of non-merit positions and other budgetary issues, including performance-based pay. Councilmember Praisner suggested that the Commission speak to the Merit System Protection Board regarding comments on these types of Charter issues. Regarding non-merit positions, Councilmember Praisner noted that this relates to "at-will" status and noted that government restructuring proposals may result in some additional non-merit positions.

One Commission member questioned why certain community association members pay the same taxes as the general public, but in their community, some of the roads and water systems are maintained by the association. Councilmember Praisner responded that those associations are eligible to receive a payment from the County for maintaining eligible roads and noted that associations maintain certain facilities only if they meet certain criteria.

In response to a Commission member question, Councilmember Praisner noted that during the last election, County residents supported a Charter amendment that would consider Councilmembers as being full-time positions, but the issue of compensation is a separate issue that would be dealt with by a Compensation Commission and no Commission has been created since the last election. Even if compensation were to change it would apply to the next Council, not this one.

### **III. Meeting with Councilmember Marc Elrich**

Councilmember Elrich stated his position that Council districts have gotten too big and that the Charter should be amended to change the district/at-large composition to all district or a hybrid with more districts and fewer at large districts (e.g., 8 district Councilmembers and 3 at-large members) as has been proposed by Ike Leggett. Councilmember Elrich stated that smaller districts are a form of campaign reform because candidates do not need as much money to run for office. For example, Councilmember Elrich noted that market research suggests candidates should send out 5-7 mailings during their candidacy, resulting in a cost of \$13,000 for district candidates and \$20,000 per mailing for at large candidates. He suggested a bulk mailing scheme with all candidate's literature to cut down mailing costs and mailbox overload. Councilmember Elrich argued that district Councilmembers are not parochial because it is not in anybody interest to be parochial.

Councilmember Elrich discussed potential campaign finance reform enabling legislation and questioned whether there is a role in the Charter for campaign finance reform if the County receives enabling legislation from the state. Examples of campaign finance reform could include contribution guidelines (donations received from residents outside a particular districts and donations received from those who that have business before the Council, or multiple LLCs controlled by the same individuals who can essentially give multiple times ) and public funding of campaigns to level the playing field. Commission members also discussed with Councilmember Elrich the benefits of "preference voting" and instant run-off voting.

Some Commission members questioned whether an increase to 8 district representatives would make a difference in constituent relations. Councilmember Elrich responded that additional district representatives may be needed. He noted that it was his observation that district councilmembers receive many more constituent services requests than at-large members.

Commission members discussed with Councilmember Elrich how the internet has affected the distribution of information in election campaigns, including the associated privacy issues. It was discussed that a website can provide a lot of information about a candidate, but only if a voter is aware of the website.

### **III. Meeting with Councilmember Mike Knapp**

Councilmember Knapp noted his observation that some departments and agencies have suggested that the budget cycle be extended from every year to every 2 years and noted that once a budget is approved, departments are already looking at the following year's budget. Responding to questions from the Commission, Councilmember Knapp noted that although there is a 5-year public services budget, the 5-year plan does not dictate expenditures on a year to year basis.

Councilmember Knapp discussed the composition of the Council and stated that he supported the mix between district and at-large representation and did not take a position on whether there should be more district representatives. Councilmember Knapp noted that at large

members can have a more broad view of issues before the Council and district members are more constituent service-oriented. Councilmember Knapp discussed the competing interest on the Council and noted that with the current composition of the Council, a district representative has to gain the support of the 4 at large members to have a majority on the Council. Councilmember Knapp suggested that the size of the Council could be marginally increased, but suggested that it be the same split.

Councilmember Knapp also discussed the spending affordability guidelines process and suggested that while the process was a good concept, but suggested that there could be a great difference between what is affordable and what you need to spend.

Responding to questions from Commission members, Councilmember Knapp stated that although his district is large and he often has to drive from one side of the County to the other, this will always be the case because of land use policies and that areas of the County can be very different when compared to other areas. Councilmember Knapp also suggested that an increase in staff resources could help, especially district Councilmembers because of the number of constituent-driven issues district representatives face.

Ms. Soreng adjourned the meeting at 9:40 a.m.

**CHARTER REVIEW COMMISSION**  
**Wednesday, November 14, 2007 – 8:00 a.m.**  
**6th Floor Conference Room**  
**Council Office Building**

**Commission Members Present:**

Nancy Soreng, Chair  
Alice Gresham Bullock, Vice-Chair  
Michael Cogan  
Karen Czapanskiy  
Dianne Felton  
Wilbur Friedman  
Mollie Habermeier  
Robert Shoenberg  
Judith Vandegriff  
Anne Marie Vassallo  
Charles Wolff

**Staff:**

Justina Ferber, County Council  
Marc Hansen, Office of the County Attorney  
Marie Jean-Paul, County Council  
Amanda Mihill, County Council

**Guests:**

Councilmember Nancy Floreen  
Dale Tibbitts, Office of Councilmember Elrich

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Commission Chair Nancy Soreng called the meeting to order at 8:05 a.m.

**I. Meeting with Councilmember Nancy Floreen**

Councilmember Floreen discussed with Commission members the Infrastructure Working Group Report and the recommendations contained in that report. Councilmember Floreen expressed support for a potential Charter amendment that a Council staff member proposed that would exclude special taxing districts that cover a limited geographic area from Charter Section 305's limitation on property tax revenue growth to the rate of inflation. Councilmember Floreen noted that Section 305 currently exempts development district taxes that are used to fund capital improvement projects. Councilmember Floreen stated that there are a variety of infrastructure needs and stated her belief that ad valorem taxes (taxes based on property value) are the future of financing area-specific projects.

Commission members expressed concern that special taxing districts are a legislative and executive convenience that could change the sense of the County and may pit one part of the County against another. Other Commission members expressed concern about potential balkanization and worried that lower income parts of the County will not be able to get funding from the general County resources and may not be able to afford special taxing district taxes. Councilmember Floreen responded that the County has strayed away from providing core services. For example, spending funds on health care and employees limits the ability for the County to fund what is more boring, but fundamental (e.g., roads). To prevent balkanization, one Commission member suggested that exemptions from the Charter Section 305 limit should be limited to a fraction of the County budget. Councilmember Floreen noted that while she

would prefer to have more flexibility, the proposal would cap the exemptions at ten percent of the budget.

One Commission member stated their belief that the current infrastructure situation in the County is a result of a flawed budgeting system and suggested that an additional layer of process should not be added; instead of fixing the fallout from a problem the problem itself should be fixed.

Responding to a question from the Commission, Councilmember Floreen noted that the exemption from Charter Section 305 would not include items that serve a larger region (e.g., schools, fire stations), but would include localized items (e.g., locally serving roads, special improvements).

Responding to questions from the Commission, Councilmember Floreen stated that the spending affordability guideline process is essentially a decision regarding how to fund things. Councilmember Floreen stated that she did not believe the composition of the Council should be changed. Councilmember Floreen stated that the current composition has a good balance between district and at-large Councilmembers and expressed concern that an all district Council may have problems dealing with Countywide issues. Regarding the possibility of an increased number of Councilmembers, Councilmember Floreen stated that the more members of the Council means greater power in the Executive.

## **II. Open Discussion of Potential Issues**

The Commission had before it a list of issues that have been raised to the Commission and individual Commission members. The Commission did not make a final decision on which issues to study, but discussed the issues on the list to ensure that members understood the proposal and identify any questions that need to be answered.

The Commission discussed the proposal by Robin Ficker to amend Charter Section 305 to require an affirmative vote of 9 Councilmembers to approve any property tax increase. One Commission member requested that Council staff poll Councilmembers to see if there is a consensus among Councilmembers whether or not the Commission should study this issue. Commission members discussed whether all supermajority requirements should be repealed, or reduced from 7 Councilmembers to 6 Councilmembers, and requested Council staff e-mail Commission members the voting requirements for different types of Council votes.

The Commission discussed the proposal by Esther Gelman to prohibit a County employee from receiving paychecks from multiple government entities. Some Commission members expressed support for studying this proposal, while others noted that the Ethics law already covers this issue and suggested that a strengthened Ethics law would be preferable to a charter amendment. Karen Czapanskiy noted that this situation applied to a person in her family and offered to recuse herself should the Commission decide to address this issue.

Ms. Soreng adjourned the meeting at 9:25 a.m.

**CHARTER REVIEW COMMISSION**  
**Wednesday, December 12, 2007 – 8:00 a.m.**  
**6th Floor Conference Room**  
**Council Office Building**

**Commission Members Present:**

Nancy Soreng, Chair  
Michael Cogan  
Karen Czapanskiy  
Dianne Felton  
Wilbur Friedman  
Mollie Habermeier  
Judith Vandegriff  
Anne Marie Vassallo  
Charles Wolff

**Staff:**

Justina Ferber, County Council  
Marc Hansen, Office of the County Attorney  
Marie Jean-Paul, County Council  
Amanda Mihill, County Council

**Guests:**

County Executive Isiah Leggett  
Mike Faden, County Council

**Commission Members Absent**

Alice Gresham Bullock, Vice-Chair  
Robert Shoenberg

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Commission Chair Nancy Soreng called the meeting to order at 8:03 a.m.

**I. Administrative Items**

Approved the minutes from the October 10 Commission meeting. Motion made by Dianne Felton and seconded by Judith Vandegriff. Those in favor: Karen Czapanskiy, Dianne Felton, Wilbur Friedman, Mollie Habermeier, Nancy Soreng, Judith Vandegriff, Anne Marie Vassallo, and Charles Wolff.

Approved the minutes from the November 14 Commission meeting. Motion made by Karen Czapanskiy and seconded by Wilbur Friedman. Those in favor: Karen Czapanskiy, Dianne Felton, Wilbur Friedman, Mollie Habermeier, Nancy Soreng, Judith Vandegriff, Anne Marie Vassallo, and Charles Wolff.

**II. Meet with County Executive Isiah Leggett**

County Executive Leggett recommended that the composition of the Council be changed. County Executive Leggett suggested that the number of Councilmembers should be increased from 9 to 11 and that of 11 Councilmembers, 4 members should remain at large, but the number of district representatives should be increased from 5 to 7. County Executive Leggett explained the reasoning for the 7/4 split was because if you increase the Council to 11 members, appropriate splits could be 8/3, 7/4, or 6/5 and that 7/4 was a middle-of-the-road option. County

Executive Leggett argued that the composition of the County has changed, but the composition of the Council has not and noted his belief that the size of the at-large districts and the cost of running an at-large campaign is a barrier to entry for potential candidates. Responding to questions from Commission members, County Executive Leggett argued that an increase in the number of district representatives would not increase parochialism and disagreed with the argument that an increased number of Councilmembers would enhance the power of the County Executive. County Executive Leggett stated his belief that people outside of government are generally supportive of this proposal and people in government prefer the status quo and therefore do not like this proposal. In response to a question by a Commission member, County Executive Leggett noted that the current space in the Council Office Building could be large enough to accommodate an increase in the number of Councilmembers, but noted that an increase in district representation is better governance and fiscal impacts should not stand in the way of better governance.

County Executive Leggett also recommended that the Council President be elected by County residents to a full 4-year term as one of the at large positions. County Executive Leggett argued that the current process of electing a Council President is not a public process, it does not allow citizens to participate in the Council President election, and is influenced by an ability to persuade 5 Councilmembers that a particular member would represent the Council well. County Executive Leggett further argued that a directly-elected Council President would enhance the power of the presidency and would provide increased accountability. One Commission member noted that making this change could change the career path of some district Councilmembers. In response, County Executive Leggett stated that being a Councilmember or the Executive should not be considered a job and elected officials should be focused on how best to serve County citizens.

County Executive Leggett also recommended amending the Charter to include the Inspector General as an entity in the Executive Branch that would be nominated by the Executive and confirmed by the Council. Under this proposal, an Inspector General would only be allowed to serve 2 consecutive terms and removal of an Inspector General in the middle of a term would only be allowed for good cause. County Executive Leggett explained the history of the current Inspector General law and noted that the original legislation was similar to this proposal, but then-County Executive Douglas Duncan believed the position to be against the Charter and vetoed the legislation. As a compromise to override the veto, the enacted legislation called for an Inspector General nominated and confirmed by the Council. Responding to questions from the Commission, County Executive Leggett stated that this charter change may not change the work of the Inspector General, but both sides of County government should be involved in the process of selecting an Inspector General. One Commission member questioned what would happen if the Executive did not appoint an Inspector General and County Executive Leggett responded that the Council could choose not to appoint one now and people have to assume that elected officials will do the jobs that they are supposed to do.

Responding to questions from Commission members, County Executive Leggett stated that he did not support exempting special taxing districts from the limitation on property tax revenue growth to the rate of inflation because it sends the wrong message and creates a greater capacity to increase taxes. County Executive Leggett also stated that he did not support

changing the redistricting process because the current process is open and transparent and politics cannot be removed from redistricting. As an example, County Executive Leggett noted that the panel of retired judges that may be involved in redistricting could be elected by political parties. Responding to a question regarding whether the budget should be biennial rather than annual, County Executive Leggett stated that he has not taken a position on the issue. One Commission member expressed general concerns about the school system, and County Executive Leggett noted that changes to the school system would require changes to state law. Another Commission member questioned whether the number of potential measures on the ballot should affect what the Commission recommends to the Council, but County Executive Leggett stated that he was not concerned about the number of measures. County Executive Leggett stated his belief that the signature requirement to place an initiative on the ballot was low, but noted that this, too, would require a change at the state level. Finally, County Executive Leggett recommended that the Commission study issues that could be in the charter now, not study issues that could be charter material at a later date (e.g., potential County campaign finance issues).

### **III. Discussion and Adoption of Issues for Study**

The Commission discussed that there will currently be at least 3 measures on ballot in November: a referendum on slot machines, the issue of early voting (and absentee and youth registration), and the proposal by Robin Ficker to require all 9 Councilmembers to override the Charter limit on property tax revenue growth to the rate of inflation.

In response to a request from the Commission to poll Councilmembers to see if they felt the Commission should study Mr. Ficker's proposal, Amanda Mihill reported that of the 9 Councilmembers, a bare majority responded to a request for input and of those that responded, a bare majority supported the Commission's study of the proposal.

Commission members discussed issues that they wanted to study further. To this end, the Commission took the following actions:

- Study the composition of the Council and whether to change the number of Councilmembers and the number of districts. Motion made by Dianne Felton and seconded by Charles Wolff.
  - In favor: Michael Cogan, Dianne Felton, Wilbur Friedman, Mollie Habermeier, Charles Wolff (5)
  - Against: Karen Czapanskiy, Nancy Soreng, Judith Vandegriff, Anne Marie Vassallo (4)
  
- Consider Charter Section 305. Motion made by Wilbur Friedman and seconded by Judith Vandegriff.
  - In favor: Karen Czapanskiy, Dianne Felton, Wilbur Friedman, Judith Vandegriff, Anne Marie Vassallo, Charles Wolff, (6)
  - Against: Michael Cogan, Mollie Habermeier (2)
  - Abstain: Nancy Soreng (1)



- Study whether the budget cycle should be biennial rather than annual. Motion made by Dianne Felton and seconded by Anne Marie Vassallo.
  - In favor: Dianne Felton, Wilbur Friedman, Anne Marie Vassallo (3)
  - Against: Michael Cogan, Karen Czapanskiy, Mollie Habermeier, Nancy Soreng, Judith Vandegriff, Charles Wolff (6)
  
- Study whether to amend the Charter to provide for an Executive nominated, Council confirmed Inspector General. Motion made by Karen Czapanskiy and seconded by Michael Cogan.
  - In favor: Michael Cogan, Karen Czapanskiy, Dianne Felton, Wilbur Friedman, Mollie Habermeier, Judith Vandegriff, Anne Marie Vassallo (7)
  - Against: Charles Wolff (1)
  - Abstain: Nancy Soreng (1)
  
- Study whether to comment on putting forward a Charter amendment to remove certain moot provisions from the Charter. Motion made by Anne Marie Vassallo and seconded by Wilbur Friedman.
  - In favor: Michael Cogan, Karen Czapanskiy, Dianne Felton, Wilbur Friedman, Mollie Habermeier, Judith Vandegriff, Anne Marie Vassallo, Charles Wolff
  - Against: (0)
  - Abstain: Nancy Soreng (1)
  
- Study modifying the redistricting process to limit political influence. Motion made by Charles Wolff and seconded by Wilbur Friedman.
  - In favor: Wilbur Friedman, Judith Vandegriff, Anne Marie Vassallo, Charles Wolff (4)
  - Against: Michael Cogan, Karen Czapanskiy, Dianne Felton, Mollie Habermeier, Nancy Soreng (5)
  
- Study the selection of the Council President. Motion made by Michael Cogan and seconded by Wilbur Friedman.
  - In favor: Michael Cogan, Karen Czapanskiy, Wilbur Friedman, Mollie Habermeier, Judith Vandegriff, Anne Marie Vassallo, Charles Wolff (7)
  - Against: Dianne Felton, Nancy Soreng (2)

Michael Cogan announced that in the future, he may want to amend the work plan to study the issue related to County employees holding multiple offices.

Ms. Soreng noted that at the January meeting, Commission members may refine these proposals, identify priorities, and discuss what procedure to follow during the Commission's study of the issues.

Mollie Habermeier requested Council staff send an e-mail listing the issues the Commission agreed to study and Karen Czapanskiy noted that the Charter Review Commission's website needs to be updated with current information.

Ms. Soreng adjourned the meeting at 9:37 a.m.

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**CHARTER REVIEW COMMISSION**  
**Wednesday, January 9, 2008 – 8:00 a.m.**  
**6th Floor Conference Room**  
**Council Office Building**

**Commission Members Present:**

Nancy Soreng, Chair  
Alice Gresham Bullock, Vice-Chair  
Michael Cogan  
Wilbur Friedman  
Mollie Habermeier  
Robert Shoenberg  
Judith Vandegriff  
Anne Marie Vassallo  
Charles Wolff

**Staff:**

Justina Ferber, County Council Staff  
Marie Jean-Paul, County Council Staff  
Marc Hansen, County Attorney's Office  
Amanda Mihill, County Council Staff

**Guests:**

Dale Tibbits, Councilmember Elrich's Office

**Commission Members Absent:**

Karen Czapanskiy  
Dianne Felton

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Commission Chair Nancy Soreng called the meeting to order at 8:03 a.m.

**I. Administrative Items**

Approved the minutes from the December 12 Commission meeting. Motion made by Charles Wolff and seconded by Wilbur Friedman. The motion was unanimous among those present.

**II. Discussion and potential refinement of issues adopted for study**

The Commission discussed potential issues to study and made the following decisions:

- Study, with the goal of putting forward a recommendation, whether moot provisions should be removed from the Charter: Motion made by Wilbur Friedman and seconded by Alice Gresham Bullock.
  - In favor: Alice Gresham Bullock, Michael Cogan, Wilbur Friedman, Mollie Habermeier, Robert Shoenberg, Nancy Soreng, Judith Vandegriff, Anne Marie Vassallo, Charles Wolff (9)

Commission members requested the following information to be used in their deliberations:

- Memorandum from Council staff on these issues.

- Study, with the goal of putting forward a recommendation, whether an affirmative vote of 9 Councilmembers should be required to approve a property tax increase that will produce total revenue that exceeds the Consumer Price Index. Motion made by Wilbur Friedman and seconded by Michael Cogan.
  - In favor: Alice Gresham Bullock, Michael Cogan, Wilbur Friedman, Mollie Habermeier, Robert Shoenberg, Judith Vandegriff, Anne Marie Vassallo, Charles Wolff (8)
  - Abstain: Nancy Soreng (1)

Commission members requested the following information to be used in their deliberations:

- History on number of times supermajority was required to enact property tax increases beyond the Consumer Price Index increase and number of votes at each event.
- History of proposed Charter amendments related to fiscal constraint that residents voted on, and the results of those elections.

- Study, with the possibility of making a recommendation for the May report, whether special taxing districts that cover a limited geographic area should be excluded from the limitation on property tax revenue growth. Motion made by Judith Vandegriff and seconded by Alice Gresham Bullock.
  - In favor: Alice Gresham Bullock, Wilbur Friedman, Mollie Habermeier, Robert Shoenberg, Judith Vandegriff, Anne Marie Vassallo, Charles Wolff (7)
  - Oppose: Michael Cogan (1)
  - Abstain: Nancy Soreng (1)

Commission members requested the following information to be used in their deliberations:

- Fiscal impact of this proposal.
- Ways to seek community input.

- Study, with the possibility of making a recommendation for the May report, whether the Charter be amended to provide for an Executive nominated, Council confirmed Inspector General. Motion made by Michael Cogan and seconded by Wilbur Friedman.
  - In favor: Alice Gresham Bullock, Michael Cogan, Wilbur Friedman, Mollie Habermeier, Robert Shoenberg, Nancy Soreng, Judith Vandegriff, Anne Marie Vassallo, Charles Wolff (9)

Commission members requested the following information to be used in their deliberations:

- Legislative history, testimony, legal opinions and other documents related to the original creation of the Inspector General office.
- Perspective from the current Inspector General, including how the Office of the Inspector General contributes to the welfare of the County.

- Inspector General appointment/retention process in other jurisdictions.
- Ways to seek community input.
  
- Defer discussion of whether the number of Councilmembers, the number of districts, and/or the ratio of at-large and district members should be changed, but note in the May 1 report that the Commission is studying this issue. Motion made by Charles Wolff and seconded by Alice Gresham Bullock.
  - In favor: Alice Gresham Bullock, Michael Cogan, Wilbur Friedman, Mollie Habermeier, Robert Shoenberg, Judith Vandegriff, Anne Marie Vassallo, Charles Wolff (8)
  - Abstain: Nancy Soreng (1)
  
- Defer discussion of whether the method for selecting the Council President should be changed, but note in the May 1 report that the Commission is studying this issue. Motion made by Charles Wolff and seconded by Alice Gresham Bullock.
  - In favor: Alice Gresham Bullock, Michael Cogan, Wilbur Friedman, Mollie Habermeier, Robert Shoenberg, Judith Vandegriff, Anne Marie Vassallo, Charles Wolff (8)
  - Abstain: Nancy Soreng (1)

The meeting adjourned at 9:30 a.m.

**CHARTER REVIEW COMMISSION**  
**Wednesday, February 13, 2008 – 8:10 a.m.**  
**6th Floor Conference Room**  
**Council Office Building**

**Commission Members Present:**

Nancy Soreng, Chair  
Michael Cogan  
Dianne Felton  
Wilbur Friedman  
Robert Shoenberg  
Judith Vandegriff  
Anne Marie Vassallo  
Charles Wolff

**Staff:**

Justina Ferber, County Council Staff  
Marie Jean-Paul, County Council Staff  
Marc Hansen, County Attorney's Office

**Guests:**

Michael Faden, County Council Staff  
Glenn Orlin, County Council Staff  
Robert Drummer, Council Staff  
Miranda Spivak, Washington Post

**Commission Members Absent:**

Alice Gresham Bullock, Vice-Chair  
Karen Czapanskiy  
Mollie Habermeier

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Commission Chair Nancy Soreng called the meeting to order at 8:15 a.m. She opened the meeting by expressing the Commission's sorrow for the loss of Councilmember Marilyn Praisner.

**I. Meet with Inspector General**

Inspector General Thomas Dagley read a statement to the Commission and discussed the following issues:

- How as the Office of the Inspector General (OIG) contributed to the welfare of the County?
- What are the advantages and disadvantages of the current selection process for the Inspector General position?
- What are the advantages and disadvantages of an Executive-nominated, Council-confirmed Inspector General?

A copy of the Mr. Dagley's statement will be made a part of the meeting minutes. He also distributed copies of the FY2007 OIG Annual Report and the current OIG newsletter which reports on the activities of the office. Commissioners asked additional questions about the function of the office and Mr. Dagley reiterated his position that the current structure was working effectively. He felt that the major advantage to the current structure was the authority of the IG to investigate all taxpayer funded programs. He stated that he works with the Office of Legislative Oversight to avoid duplication. After

further discussion, the Chair noted that there was enough interest on the Commission to study this issue further. The Commission will decide in March whether to make a recommendation on this issue in the May 2008 or May 2010 Commission report to the Council. Judy Vandegriff is researching the structure of IG positions in other counties.

## II. Draft Report and Subcommittee Assignments

Chair Soreng asked Council staff to provide an electronic version of the previous CRC report and submittal letter to the Chair for her use. Subcommittees will describe issues and provide options for each.

Chair Soreng suggested that the Commission include a recommendation on moot provisions in the 2008 report and that she was willing to draft wording for the report. Marc Hansen explained that some of the moot provisions were not invalid but “inoperative” and because they were “inoperative” they were not removed from the Charter.

Commission members agreed that they were not in favor of the Ficker amendment petitioned to the ballot but they did not agree on whether the Commission should take a position on the petitioned amendment.

The following writing and subcommittees assignments were made with the understanding that decisions will be made at the March meeting about specific recommendations to be included in the May 2008 report to Council:

- Should moot provisions from the Charter Sec. 311A Limitations on Expenditures for Landfills in Residential Zones, Purchasing, Contracting for Goods, Services with C&P Telephone Company be removed from the charter?  
*Nancy Soreng*
- Should an affirmative vote by all 9 Councilmembers be required to approve any property tax increase (the Ficker petition)?  
*Michael Cogan, Wilbur Friedman, Nancy Soreng*
- Should special taxing districts that cover a limited geographic area be excluded from the limitation on property tax revenue growth?  
*Bob Shoenberg, Anne Marie Vassallo, Charles Wolff*
- Should the Charter be amended to provide for an Executive nominated, Council confirmed Inspector General?  
*Diane Felton, Wilbur Friedman, Judy Vandegriff*

The goal will be for subcommittees to circulate their drafts to all Commission members by March 5<sup>th</sup>. The March meeting will be an extended meeting, probably to 10:30 a.m.

Mr. Cogan apologized for being late to the meeting.

The meeting adjourned at 9:45 A.M.

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**CHARTER REVIEW COMMISSION**  
**Wednesday, March 12, 2008 – 8:00 a.m.**  
**6th Floor Conference Room**  
**Council Office Building**

**Commission Members Present:**

Nancy Soreng, Chair  
Alice Gresham Bullock, Vice-Chair  
Michael Cogan  
Karen Czapanskiy  
Wilbur Friedman  
Mollie Habermeier  
Robert Shoenberg  
Judith Vandegriff  
Anne Marie Vassallo  
Charles Wolff

**Staff:**

Justina Ferber, County Council Staff  
Marie Jean-Paul, County Council Staff  
Marc Hansen, County Attorney's Office  
Amanda Mihill, County Council Staff

**Guests:**

Glenn Orlin, County Council Staff

**Commission Members Absent:**

Dianne Felton

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Commission Chair Nancy Soreng called the meeting to order at 8:09 a.m.

**I. Discussion of subcommittee reports**

Commission members discussed the draft subcommittee report and were given an opportunity to seek clarification of issues and statements, and request further information be included in the report. Commission members discussed the following issues:

- Should legally ineffective provisions from the Charter be removed?

Previously, the Commission received a memorandum from the Council's Senior Legislative Attorney detailing why certain Charter provisions were legally ineffective. Commission members discussed whether the Commission should receive a County Attorney's opinion on the subject. Marc Hansen, Deputy County Attorney, stated that the County Attorney's office would provide a written opinion if requested, but noted that he agreed with the Council attorney's analysis that the Charter provisions being discussed were not Charter material. One Commission member noted that the Council could request a County Attorney's opinion if necessary.

- Should special taxing districts cover a limited geographic area be excluded from the limitation on property tax revenue growth?

Commission members discussed the interrelationship between special taxing districts and incorporated areas. Responding to questions from Commission members, Mr. Hansen noted that while the Council would have to get public input before creating a special taxing district and, in theory, the Council could create a special taxing district within municipal boundaries without the consent of that municipality.

Commission members discussed the number and types of special taxing districts in the County, including 3 urban districts, 4 parking districts, 2 noise abatement districts, and 3 state-established special taxing districts. The Commission recommended adding language to the report to describe the types of districts in the County and highlight the difference between state- and county-established special taxing districts. The Commission further recommended that the Report Appendix include a chart detailing collections of the County's special taxing districts.

Commission members discussed different ways to assure that the potential Charter amendment language is crafted to correctly capture the intent of the amendment, including whether to draft the Charter amendment to require the Council adopt implementing legislation.

- Should an affirmative vote by all 9 Councilmembers be required to approve any property tax increase?

Commission members recommended removing the sentence stating that “The history of the Council suggests that their use of the ability to exceed the Charter Review limit has been judicious.” The Commission further recommended renaming the section “Charter amendments proposed by petition” and removing the word “sudden” when describing the down-turn of the housing market. The Commission also recommended that language be added to the report regarding the increase in social needs for County residents.

- Should the Charter be amended to provide for an Executive nominated, Council confirmed Inspector General?

Commission members recommended clarifying the report language regarding Inspector Generals in other jurisdictions and citing all provisions of Charter sections that may be affected, as referenced in the County Attorney's memorandum that accompanied the Executive's veto message for Bill 38-96.

## **II. Action on recommendations for Charter Amendments.**

The Commission voted on the subcommittee recommendations. Alice Gresham Bullock excused herself from the meeting early, but stated that she supported the subcommittee recommendations.

- Should legally ineffective provisions from the Charter be removed?

The subcommittee recommended repealing Charter Sections 311A, 311B, and 313A so that the Charter only contains legally effective provisions that address the fundamental aspect of the form and structure of County Government. The Commission supported this recommendation. Motion made by Wilbur Friedman and seconded by Charles Wolff.

In favor: Michael Cogan, Karen Czapanskiy, Wilbur Friedman, Mollie Habermeier, Robert Shoenberg, Nancy Soreng, Judith Vandegriff, Anne Marie Vassallo, and Charles Wolff (9)

- Should special taxing districts cover a limited geographic area be excluded from the limitation on property tax revenue growth?

The subcommittee recommended excluding revenues from special taxing districts up to an amount equivalent to 2-2.5% of real property tax collections from the property tax limitation as specified in Section 305 of the Charter. (If the total assessable real property of the County is used as the base, the subcommittee recommended a limitation of 10 percent.)

Commission members discussed whether to defer making a recommendation on this issue until the next report in order to obtain input from the public, particularly municipalities.

Robert Shoenberg made a motion to adopt the subcommittee recommendation to exclude revenues from special taxing districts up to 2% of real property tax collections from the property tax limitation in the Charter. The motion was seconded by Wilbur Friedman.

Michael Cogan made a substitute motion to defer making a recommendation on this issue until further research and outreach is done. The motion was seconded by Karen Czapanskiy.

In favor: Michael Cogan, Karen Czapanskiy, Mollie Habermeier, Nancy Soreng, Judith Vandegriff, and Anne Marie Vassallo (6)

Against: Wilbur Friedman, Robert Shoenberg, and Charles Wolff (3)

- Should an affirmative vote by all 9 Councilmembers be required to approve any property tax increase?

The proposed Charter amendment would require the vote of nine Councilmembers to override the “soft” property tax cap in Charter Section 305 and would limit property tax revenue increases to growth plus inflation unless all nine Councilmembers vote to exceed this cap. The subcommittee did not recommend making this change to the Charter. The Commission supported this recommendation. Motion made by Michael Cogan and seconded by Charles Wolff.

In favor: Michael Cogan, Karen Czapanskiy, Wilbur Friedman, Mollie Habermeier, Robert Shoenberg, Nancy Soreng, Judith Vandegriff, Anne Marie Vassallo, and Charles Wolff (9)

- Should the Charter be amended to provide for an Executive nominated, Council confirmed Inspector General?

The subcommittee determined that more time is needed to study this proposal before deciding whether to recommend this appointment process as a change to the Charter. The Commission supported this recommendation. Motion made by Wilbur Friedman and seconded by Karen Czapanskiy.

In favor: Karen Czapanskiy, Wilbur Friedman, Mollie Habermeier, Robert Shoenberg, Nancy Soreng, Judith Vandegriff, Anne Marie Vassallo, and Charles Wolff (8)

Against: Michael Cogan (1)

Mr. Cogan supported the Commission's immediate consideration of Mr. Leggett's proposal.

The meeting adjourned at 10:05 a.m.

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