

MEMORANDUM

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Public Hearing:** Bill 36-09, Elected Officials – Compensation

Bill 36-09, Elected Officials – Compensation, sponsored by the Council President at the request of the Committee to Study Compensation of the County Executive, County Council, Sheriff and State's Attorney, was introduced on November 3. Action is tentatively scheduled for December 1.

The Council established the Committee to Study the Compensation of the County Executive, County Council, Sheriff, and State's Attorney (Committee), by Resolution No. 16-877, on March 17, 2009. The Council is authorized to establish the compensation for the Councilmembers and the Executive by Charter Sections 107 and 204. State law authorizes the Council to establish the compensation for the Sheriff and the State's Attorney. Article III, Section 35 of the Maryland Constitution prohibits an increase or decrease in the salary of these elected officials during their term of office.

The Committee, consisting of 5 volunteer citizens appointed by the Council, studied this matter for 6 months and issued a final report in September 2009.¹ Bill 36-09 would modify the compensation of the County Executive, County Council, Sheriff and State's Attorney as recommended by the Committee. The Bill, based upon the Committee's recommendations, would make the following changes:

- County Executive:** Increase salary to \$180,250 beginning on December 3, 2012 and, on December 2, 2013, by the lower of:
- (A) the annual average percentage increase, if any, in the Consumer Price Index for All Urban Consumers for the Washington-Baltimore Metropolitan Area, or any successor index, for the 12 months preceding September 1 of that year; or
 - (B) the amount of the general wage adjustment for members of the Service, Labor, and Trades and the Office, Professional, and Technical bargaining units established in Section 33-105 for fiscal year 2014.

¹ A copy of the report is available at:
http://www.montgomerycountymd.gov/content/council/pdf/agenda/col/2009/091013/20091013_3.pdf

Dec. 2008	Dec. 2009	Dec. 2010	Dec. 2011	Dec. 2012	Dec. 2013
\$171,000	\$175,000	\$175,000	\$175,000	\$180,250	\$180,250 plus CPIU or MCGEO GWU

Councilmembers: Increase salary to \$99,069 on December 5, 2011 and \$104,022 on December 3, 2012. Increase salary on December 2, 2013 by the lower of:

- (A) the annual average percentage increase, if any, in the Consumer Price Index for All Urban Consumers for the Washington-Baltimore Metropolitan Area, or any successor index, for the 12 months preceding September 1 of that year; or
- (B) the amount of the general wage adjustment for members of the Service, Labor, and Trades and the Office, Professional, and Technical bargaining units established in Section 33-105 for fiscal year 2014.

	Dec. 2008	Dec. 2009 ²	Dec. 2010	Dec. 2011	Dec. 2012	Dec. 2013
Councilmembers	\$94,040	\$94,351	\$94,351	\$99,069	\$104,022	\$104,022 plus CPIU or MCGEO GWA
Council President ³	\$103,444	\$103,786	\$103,786	\$108,976	\$114,424	\$114,424 plus CPIU or MCGEO GWA

Sheriff: Increase salary to \$154,000 on December 6, 2010 and on December 2, 2013 by the lower of:

- (A) the annual average percentage increase, if any, in the Consumer Price Index for All Urban Consumers for the Washington-Baltimore Metropolitan Area, or any successor index, for the 12 months preceding September 1 of that year; or
- (B) the amount of the general wage adjustment for members of the Police bargaining unit established in Section 33-76 for fiscal year 2014.

Dec. 2008	Dec. 2009	Dec. 2010	Dec. 2011	Dec. 2012	Dec. 2013
\$135,298	\$136,096	\$154,000	\$154,000	\$154,000	\$154,000 plus CPIU or Police GWA

² Councilmember salaries will be increased by .33% in December 2009 under current law based upon the annual average percentage increase in the CPIU.

³ The Council President currently receives 10% more than the other Councilmembers. The Committee recommended no change to this supplement.

State's Attorney: Increase salary to \$199,000 on January 3, 2011 and adjust it on January 6, 2014 by the lower of:

- (A) the annual average percentage increase, if any, in the Consumer Price Index for All Urban Consumers for the Washington-Baltimore Metropolitan Area, or any successor index, for the 12 months preceding September 1 of that year; or
- (B) the amount of the general wage adjustment for members of the Service, Labor, and Trades and the Office, Professional, and Technical bargaining units established in Section 33-105 for fiscal year 2014.

Jan. 2009	Jan. 2010	Jan. 2011	Jan. 2012	Jan. 2013	Jan. 2014
\$173,181	\$174,203	\$199,000	\$199,000	\$199,000	\$199,000 adjusted by CPIU or MCGEO GWA

The Elected Official's Plan (EOP) is a County retirement plan that covers the County Executive, Councilmembers, the Sheriff, and the State's Attorney.⁴ The EOP is a self-directed defined contribution plan similar to the Retirement Savings Plan for non-public safety employees hired after 1994. An elected official contributes 3% of salary and the County contributes 6% of salary. The Retirement Savings Plan was amended, effective July 1, 2009, to increase the employee's contribution to 4%⁵ and the County contribution to 8%. The Committee did not recommend any change to the EOP for the next term for these elected officials.

Issues

1. The average annual increase in the CPIU for the 12 months preceding October 2009.

Councilmembers salaries are scheduled to be increased by the average annual increase in the Consumer Price Index for All Urban Consumers in the Washington-Baltimore Metropolitan Area (CPIU) for the 12 months preceding October 1, 2009. The Committee recommended an increase of 5% in December 2011. The Bill, as introduced, assumed an average annual increase in the CPIU of .59%. However, after the Bill was introduced, the Office of Human Resources calculated the average annual increase in the CPIU as .33%. See ©7. Therefore, the salary of Councilmembers in December 2009 will increase to \$99,351 rather than \$99,325 as specified in the Bill as introduced. *Therefore, the salary of Councilmembers should be \$94,351 on line 15, \$99,069 on line 16, and \$104,022 on line 17 of the Bill.*

⁴ A person who is a member of a different County retirement plan immediately before being elected to one of these offices may continue to participate in the other retirement plan.

⁵ The employee's contribution increases to 8% for that portion of salary exceeding the maximum salary for social security contributions.

2. Does linking raises to the general wage increase negotiated with a union and approved by the Council violate Art. III, §35 of the Maryland Constitution?

Article III, §35 of the Maryland Constitution provides, in relevant part, that:

Extra compensation may not be granted or allowed by the General Assembly to any public Officer, Agent, Servant or Contractor, after the service has been rendered, or the contract entered into; nor may the salary or compensation of any public officer be increased or diminished during his term of office except those whose full term of office is fixed by law in excess of 4 years. (Emphasis added.)

The State's Attorney, the Sheriff, the Executive, and the Councilmembers are all public officers who serve a 4 year term subject to Art. III, §35. *Marshall v. Director of Finance for Prince George's County*, 294 Md. 435 (1982). The Court, in *Marshall*, described the purpose of this provision as follows:

[t]he second clause was intended to prevent a public officer from using his office for the purpose of putting pressure upon the General Assembly or other authorized agency to award him additional compensation and, on the other hand, to prevent the General Assembly or other agency from putting pressure on a public officer by offering him increased compensation or threatening a decrease thereof. 294 Md. at 438

The Committee recommended that the salary for the final year of the next term of office for each of these elected officials be adjusted by the lower of the average annual increase in the CPIU or the approved general wage adjustment (GWA) for a specific union representing County employees. Although the average annual increase in the CPIU is not under the direct control of any elected official, the GWA for the unions representing County employees is under the direct control of both the Executive and the Councilmembers. The Executive is responsible for negotiating the GWA with the unions and the Council is responsible for approving or rejecting the negotiated GWA. Although the CPIU would represent a maximum increase, Article III, §35 prohibits both an increase and a decrease in a public officer's salary during the term of office. Using the GWA to determine an in-term increase in salary would give the Executive and the Council the authority to control the increase for the last year of the term of office for all of the elected officials covered by the Bill. It is the opinion of Council staff that linking the GWA to the increase in the final year of the term would violate Art. III, §35 of the Maryland Constitution.

This packet contains:

Bill 36-09
Legislative Request Report
Joseph Adler memorandum of November 9, 2009

Circle #

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Bill No. 36-09
 Concerning: Elected Officials -
Compensation
 Revised: October 27, 2009 Draft No. 2
 Introduced: November 3, 2009
 Expires: May 3, 2011
 Enacted: _____
 Executive: _____
 Effective: _____
 Sunset Date: None
 Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President on behalf of the Committee to Study the Compensation of the County
 Executive, County Council, Sheriff, and State's Attorney

AN ACT to:

- (1) modify the compensation of the County Executive, County Council, Sheriff, and State's Attorney; and
- (2) generally amend the law relating to compensation of elected officials.

By amending

Montgomery County Code
 Montgomery County Code
 Chapter 1A, Structure of County Government
 1A-106

Chapter 2, Administration
 Sections 2-7 and 2-123A

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 1A-106, 2-7, and 2-123A are amended as follows:

1A-106. Salaries of the County Executive and Councilmembers.

(a) *Salary of County Executive.* Except as provided in subsection (c), the County Executive must receive an annual salary of:

- (1) [\$163,000 beginning on December 4, 2006;
- (2) \$167,000 beginning on December 3, 2007;
- (3) \$171,000 beginning on December 1, 2008; and
- (4)] \$175,000 beginning on December 7, 2009; and
- (2) \$180,250 beginning on December 3, 2012.

(b) *Salary of Councilmembers.*

(1) Except as provided in paragraph (2) and subsection (c), a Councilmember must receive an annual salary of:

- (A) [\$84,721 beginning on December 4, 2006; and
- (B) \$89,721 beginning on December 3, 2007]
- \$94,595 beginning on December 6, 2009;
- (B) \$99,325 beginning on December 5, 2011; and
- (C) \$104,291 beginning on December 3, 2012.

(2) The Council President must receive an additional amount equal to 10% of the salary of other Councilmembers.

(c) *Annual adjustments.*

(1) Beginning on [~~December 1, 2008~~] December 2, 2013, the salaries of the Councilmembers must be increased [each year on the first Monday in December] by the lower of:

- (A) the annual average percentage increase, if any, in the Consumer Price Index for All Urban Consumers for the Washington-Baltimore Metropolitan Area, or any

27 successor index, for the 12 months preceding [October]
28 September 1 of that year; or

29 (B) the amount of the general wage adjustment for members
30 of the Service, Labor, and Trades and the Office,
31 Professional, and Technical bargaining units established
32 in Section 33-105 for fiscal year 2014.

33 (2) Beginning on [December 6, 2010] December 2, 2013, the salary
34 of the County Executive must be increased [each year on the
35 first Monday in December] by the lower of:

36 (A) the annual average percentage increase, if any, in the
37 Consumer Price Index for All Urban Consumers for the
38 Washington-Baltimore Metropolitan Area, or any
39 successor index, for the 12 months preceding [October]
40 September 1 of that year; or

41 (B) the amount of the general wage adjustment for members
42 of the Service, Labor, and Trades and the Office,
43 Professional, and Technical bargaining units established
44 in Section 33-105 for fiscal year 2014.

45 * * *

46 **2-7. Location of Sheriff's office; compensation of Sheriff; required use of**
47 **vehicle.**

48 * * *

49 (b) *Salary.*

50 (1) Except as provided in paragraph (2), beginning on [December
51 4, 2006] December 6, 2010, the Sheriff must receive an annual
52 salary of [\$125,000] \$154,000.

53 (2) Beginning on [December 1, 2007] December 2, 2013, the
 54 Sheriff's salary must be increased [each year on the annual
 55 anniversary of the first day of the term of office] by the lower
 56 of:

57 (A) the annual average percentage increase, if any, in the
 58 Consumer Price Index for All Urban Consumers for the
 59 Washington-Baltimore Metropolitan Area, or any
 60 successor index, for the 12 months preceding [October]
 61 September 1 of that year; or

62 (B) the amount of the general wage adjustment for members
 63 of the Police bargaining unit as defined in Section 33-76
 64 for fiscal year 2014.

65 * * *

66 **2-123A. Compensation of the State's Attorney.**

67 (a) Except as provided in subsection (b), beginning on [January 1, 2007]
 68 January 3, 2011, the State's Attorney must receive an annual salary of
 69 [\$160,000] \$199,000.

70 (b) Beginning on [January 7, 2008] January 6, 2014, the salary of the
 71 State's Attorney must be adjusted annually [on the first Monday in
 72 January] by the lower of:

73 (1) the annual average percentage increase, if any, in the Consumer
 74 Price Index for All Urban Consumers for the Washington-
 75 Baltimore Metropolitan Area, or any successor index, for the 12
 76 months preceding [October] September 1 of that year; or

77 (2) the amount of the general wage adjustment for members of the
 78 Service, Labor, and Trades and the Office, Professional, and

LEGISLATIVE REQUEST REPORT

Bill 36-09

Elected Officials - Compensation

DESCRIPTION: To modify the compensation of the County Executive, County Council, Sheriff and State's Attorney

PROBLEM: The Council is authorized to establish the compensation for the Councilmembers and the Executive by Charter Sections 107 and 204. State law authorizes the Council to establish the compensation for the Sheriff and the State's Attorney. Article III, Section 35 of the Maryland Constitution prohibits changes in the salary of these elected officials during their term of office.

GOALS AND OBJECTIVES: The Council established the Committee to Study the Compensation of the County Executive, County Council, Sheriff, and State's Attorney (Committee), by Resolution No. 16-877, on March 17, 2009. This Bill would implement the recommendations of the Committee.

COORDINATION: Committee to Study the Compensation of the County Executive, County Council, Sheriff, and State's Attorney

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: See the September 2009 Committee Report.

SOURCE OF INFORMATION: Robert H. Drummer, Legislative Attorney

APPLICATION WITHIN MUNICIPALITIES: Not applicable.

PENALTIES: None.



OFFICE OF HUMAN RESOURCES

Isiah Leggett
County Executive

Joseph Adler
Director

TO: Stephen Farber, Director of Council Staff

FROM: Joseph Adler, Director
Office of Human Resources 

SUBJECT: Salary Increase- Council Members and Council President

DATE: November 9, 2009

In accordance with Montgomery County Code, Section 1A-106 (c)(1), beginning on December 1, 2008, the salaries of the Councilmembers must be increased each year on the first Monday in December by the annual average percentage increase (if any) in the Consumer Price Index for All Urban consumers for the Washington-Baltimore Metropolitan Area, or any successor index for the 12 months preceding October 1 of that year.

The average change of the Consumer Price Index for All Urban consumers in the Washington-Baltimore MSA for the period November 2008 to September 2009 was .33%. Accordingly, the Councilmembers salaries are to be increased .33% from \$94,040 to \$94,351 effective December 7, 2009.

The Council President must receive an additional amount equal to 10% of the salary of the other Councilmembers. The annual salary of the Council President is to be increased from \$103,444 to \$103,786 effective December 7, 2009.

By way of this memorandum, I have copied Mary Jane Berry, Administrative Services Coordinator so that she can initiate an Electronic Personnel Action Form (E-PAF) for the Council President and each Council Member to effect this action. If you have any questions concerning this action, please contact Lisa Craft at 240-777-5075.

cc: Mary Jane Berry, Administrative Services Coordinator
County Council

JA/lc