

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
IN LEGISLATIVE SESSION

Friday, November 17, 1978 Rockville, Maryland

The County Council for Montgomery County, Maryland, convened in the Council Hearing Room, County Office Building, Rockville, Maryland, at 1:45 P.M. on Friday, November 17, 1978.

PRESENT

Elizabeth L. Scull, President	Esther P. Gelman
Neal Potter, Vice President	William G. Colman
Jane Ann Moore	John L. Menke

ABSENT

Dickran Y. Hovsepian, President Pro Tem

The President in the Chair.

INTRODUCTION OF BILLS:

There were no bills for introduction.

MEMORIALS AND PETITIONS:

There were no memorials or petitions to be presented.

CALL OF BILLS FOR FINAL READING:

Re: Enactment of Bill No. 59-78, Bond
Authorization for General County Facilities

Bill No. 59-78, \$10,940,000 Bond Authorization for General County Facilities, was called for final reading.

Upon motion of Councilman Menke, duly seconded and without objection, the Council voted to waive the reading of the title and proceed to enactment. By a ye and nay vote, Councilmembers Gelman, Colman, Potter, Moore, Menke and Scull voting in the affirmative and Councilman Hovsepian being absent, Bill No. 59-78, Bond Authorization for General County Facilities, was enacted.

Re: Enactment of Bill No. 60-78, Bond
Authorization for Roads & Storm Drains

Bill No. 60-78, \$5,622,000 Bond Authorization for Roads and Storm Drainage Facilities, was called for final reading.

Upon motion of Councilman Menke, duly seconded and without objection, the Council voted to waive the reading of the title and proceed to enactment. By a ye

Upon motion of Councilman Menke, duly seconded and without objection, the Council voted to waive the reading of the title and proceed to enactment. By a yea and nay vote, Councilmembers Gelman, Colman, Potter, Moore, Menke and Scull voting in the affirmative and Councilman Hovsepian being absent, Bill No. 64-78 was enacted.

Re: Enactment of Bill No. 65-78, Bond Authorization for Community College Facilities

Bill No. 65-78, \$5,015,000 Bond Authorization for Community College Facilities, was called for final reading.

Upon motion of Councilman Menke, duly seconded and without objection, the Council voted to waive the reading of the title and proceed to enactment. By a yea and nay vote, Councilmembers Gelman, Colman, Potter, Moore, Menke and Scull voting in the affirmative and Councilman Hovsepian being absent, Bill No. 65-78 was enacted.

Re: Enactment of Bill No. 66-78, Bond Authorization for Consolidated Fire District Projects

Bill No. 66-78, \$1,124,500 Bond Authorization for Consolidated Fire District Projects, was called for final reading.

Upon motion of Councilman Menke, duly seconded and without objection, the Council voted to waive the reading of the title and proceed to enactment. By a yea and nay vote, Councilmembers Gelman, Colman, Potter, Moore, Menke and Scull voting in the affirmative and Councilman Hovsepian being absent, Bill No. 66-78 was enacted.

Re: Reconsideration and Reenactment of Bill No. 37-78, Cost-of-Living Adjustment

President Scull stated that on November 15, 1978 the County Council received a memorandum from County Executive Gleason asking that the Council reconsider its enactment of Bill No. 37-78, Cost-of-Living Adjustment for County Employees. The Council met the evening of November 15, 1978, and made a motion to reconsider the bill and all amendments thereto. The votes on the two motions will be called today. She stated that, prior to the vote, she would like to give Mr. Jardeleza the opportunity, at his request, to explain why so many County employees are present today.

Mr. Jardeleza, President, Montgomery County Government Employees Organization, made the following statement:

With your permission, I would like to address the County Council to clarify what our presence here is intended to convey.

I am not here to make pretty speeches nor am I here to take up much of your time. I merely point out that there are no less than 500 people here and they are here on their own time. For each hour that they are here, it represents \$2,500 at the average hourly wage of \$5. an hour. As our Budget Director would say, "These are conservative ball park estimates."

To be brief:

We do not understand why certain members of the County Council are failing to live up to their commitment of last May. Mr. Gleason has clearly stated the quid pro quo package deal in his memorandum dated November 15 and I refer you to it. We thought we were dealing with honorable people.

Mr. Menke has thoroughly confused us. He predicts a depression next year, and therefore he feels justified in renegeing on his commitment. Don't you think this is a rather poor excuse? We think that this is entirely beside the point! This matter was thoroughly discussed at the pay plan hearings. If you will recall, all of the County employees stated their position against the new pay plan and yet, Mr. Menke, as did all the other members of the Council, voted for it and the 75% CPI, cost-of-living package.

Mr. Menke has repeatedly said that his amendment doesn't really change the law and actually makes no difference. If this is true, then why did he submit his amendment in the first place? Is it to play games?--to waste the Council's precious time?

Mr. Menke has repeatedly said that he considers this a bad law to pass. If this is so bad, why hasn't he done something to change the "bad laws" that have been on the books during his long term in office as member and President of the County Council? Is Mr. Menke saying that 75% CPI cost-of-living law for employees is bad, whereas the same laws already on the books for the County Executive and County Council are good laws? What's the difference?

Lastly, and most confounding of all questions is this one:

Why have Council persons Gelman and Potter followed in what appears to be the vindictive footsteps of Menke?

We admire the character and integrity demonstrated to us by Mr. Colman, Mrs. Scull and Mr. Gleason. (Dr. Moore has not been present and therefore we must exclude her from all remarks that we have made.)

On behalf of the County employees you see here today, and for those who stayed behind to keep the County functions barely moving even though they would have preferred to have been here with us, I ask you for the following actions to be taken today before moving on to any other business on your agenda. We are prepared to stay here until you do so.

First--we ask you to pass the motion to reconsider Bill No. 37-78 and to pass the motion to reconsider amendments to the CAO's salary plan responsibility.

Second--we ask you for a motion to restore the language on line 5 of page 2 as it appeared in its unaltered form in Draft No. 2 of Bill No. 37-78 and further, to pass this motion.

Third--we ask you to enact the bill as it stands after you have accomplished the first and second requests as stated above.

We understand that this is not the only way to achieve the ultimate objective of enacting Bill No. 37-78 as it appeared in its unaltered form in Draft No. 2, and whatever way you choose to accomplish this would be fine with us.

We make no threats, we bear no anger, and we have come in the Lord's peace. We have hope that you will in some measure revive our faith in the integrity and honor of the entire Council. We thank you.

Councilman Colman stated that he regrets very much that employees and their representatives have attacked the integrity and character of individual Councilmembers.

Councilman Potter made the following statement:

Madam President, I think the problem we have before us is a misunderstanding with respect to the Council's position in May and now. It has been said that the Council agreed to a guarantee in May, and is now reversing that commitment. It has even been said that the Council agreed to an annual cost-of-living allowance of 75% of CPI and is taking away that increase. As I will show, the Council has never provided a guarantee, and it has not changed its commitment and it has not taken away anything whatever, and it is not proposing to take anything away.

With respect to the guarantee question, most of us realize that the thing to do with a guarantee is to look at the text of the document and see what it says. Therefore, let me read the relevant paragraphs in the Resolved section of Resolution 8-1935, adopted by the Council on May 9, 1978:

"BE IT FURTHER RESOLVED that it shall be the policy of the Montgomery County government, effective July 1, 1979, to adjust annually the uniform salary plan for all classified employees of the merit system of the Montgomery County government based on not less than seventy-five percent (75%) of the November Consumer Price Index for all urban consumers for the Washington, D. C. area; and

"BE IT FURTHER RESOLVED that the County Council requests the County Executive to submit legislation for its consideration to provide by local law for the implementation of the policy with regard to the annual uniform salary plan adjustment as aforementioned."

This text makes it clear that the Council committed to a policy, effective next July, that the salary plan for classified employees shall show an increase of at least 75% of the change in the Consumer Price Index each year. It also requests the County Executive to submit legislation for the Council's consideration to implement this policy.

Note that it does not say that the legislation should guarantee the 75%; it says that the legislation should provide for "implementation of the policy." That leaves the question of how it shall be implemented to the drafting, amendment, and adoption of the requested legislation.

However, it is argued that despite the clear language of the resolution that there was an understanding of some sort that there would be a guarantee. Perhaps someone has some document that there was a decision or agreement for a guarantee which was to be provided despite any fiscal situation, but I have not seen it. If anyone can produce such evidence, I would be truly grateful.

However, the County Executive has claimed that the Council's position is different in November from what it was in May. I have examined the minutes of the discussion which occurred on May 9, when the above Resolution was adopted. Let me read from those minutes, as follows:

"Mr. Colman noted that enactment of legislation sets a floor for the cost-of-living increases until some Council changes it; that is different from bargaining each year. Even if the question were dealt with in the Personnel Regulations, a future Council could, by making its strong views known, manage to get them changed. While there are some arguments against binding future Councils, a law with a 75% of CPI cost-of-living floor would be, from the point of view of the employees, a stronger protection for dealing with their needs.

"President Scull noted that, if run-away inflation occurs, County employees, along with everyone else, would have to bear the brunt of such inflation and could not continue to receive a 75% of CPI COL increase. Mr. Potter added that no one can guarantee employees future salary increases.

"Councilwoman Moore asked whether the legislative bill to be considered would not have within it some provision which in the last analysis leaves to the annual financial situation of the County the decision regarding cost-of-living increases so that there will not be a guarantee to the employee in this regard during the time that law is in effect. Mr. Potter said he thought that had to be there and was there, anyway.

"To Dr. Moore's point that the legislation will not change the 'iffy' situation regarding pay policies, Mr. Potter said the Council can establish policy and that is about all it can do realistically. He added that he thinks that Mr. Menke's concern about having the Council involved each year cannot be prevented since this is a fiscal matter. Matters might be smoothed out by requiring Council action each year at least a month before adoption of the budget. Ms. Gelman added that this would also help to eliminate the feeling that 'whatever is left over the employees get.'

"Mr. Hovsepian indicated that the cost-of-living matter must be dealt with in the context of the budget and the resolution should be written so that would be a separate action."

Madam President, you will note that the minutes reflect a position on the part of at least 4 Council members that the decision with respect to cost-of-living increases had to be made in the light of the fiscal situation at the time, and/or as a part of the budget process. The reference to Mr. Colman's statement might be interpreted as saying that the legislation should bind the Council regardless of the fiscal situation, or it might be interpreted as simply indicating that the legislation would be some sort of commitment for future Councils, not necessarily by-passing the budgetary decision process. The report on the remarks of Councilmembers Scull, Moore, Hovsepian, and myself seem very clear that the matter would have to be considered in conjunction with the budget and the fiscal situation at the time the budget is adopted. Four members make up a majority of the Council; and the four I have cited does not include Mr. Menke nor Mrs. Gelman.

The statement that the Council has changed its position with respect to a guarantee is totally contradicted by the record of the discussion at the time. The Council has not reversed its position, but has maintained a constant course, insisting that the legislative body must make the decisions in the budgetary process, in the light of all of the facts at the time the decision is made.

It might be well to note that the Council's decision on May 9 preceded any significant attention, at least on the East Coast, to Proposition 13 and the "Taxpayers Revolt". That event occurred a month later, and the TRIM amendment and Question E came into discussion some weeks after that. The Council's position was, and is, based on the proposition that decisions should not be made until all the facts are in. It also adheres to the principle that the legislative body should make budgetary decisions, and not leave them up to the Executive, by failure to decide priorities of needs, or which needs shall be met and to what extent.

So much for the question whether the Council has changed its position with respect to a guarantee. Now let us turn to the question of the Council's position as to a policy on cost-of-living increases.

As all discussions on this matter, last May and last week, have indicated, the Council is unanimously in support of the position that the cost-of-living must be taken into account annually in setting the pay scale, and that a minimum of

75% of the consumer price index adjustment is a fair policy to set, with the strong expectation that it can and will be met. The wording of the Resolution in May I have already read to you. That policy statement is almost identical to that set forth in the bill before us. To make the wording correspond still more closely, I will propose a change in language so that there can be no doubt whatever that the policy is the same now as then, and that the commitment of this legislation will be adhered to by the incumbents who carry over to the next Council; and I trust the four new members of the Council will support that same policy without hesitation.

Thus, the policy and the commitment is the same in November as it was in May. The only argument we have at all is over the machinery and process for implementing that policy.

There has been expressed a fear that the cost-of-living allowance will be provided only if there is some money left over at the end of the decision-making process with respect to the various programs requiring expenditures. I am afraid that there is some justification for this fear, since the Executive has in most years proposed a cost-of-living adjustment much less than the rate of inflation, and in two years of severe inflation, proposed a zero (0%) provision for cost-of-living adjustment. While the Council has in each of those years provided a more adequate cost-of-living allowance, the difficulties of the budget adoption for fiscal 1978 left the Council providing only a little more than the Executive had recommended, and less than the School Board contract provided, and less than the cost-of-living index would have called for.

The bill before us tries to insure against this kind of record: First, by providing that the Executive must provide in his budget, for at least a 75% cost-of-living adjustment. Therefore, future recommendations for no allowance or an inadequate allowance on the part of the Executive are prevented.

Second, the bill provides that the Chief Administrative Officer shall adjust the salary scale by 75% of the change in the Consumer Price Index.

The question that remains before us is what procedures should the Council follow in the sequence of events. Should it write such provision for cost-of-living adjustment into law now, or deal with the situation as it arises each year?

There are many reasons why the situation may differ markedly from year to year and make legislation which tends to provide a guarantee a serious obstacle to rational and fair decision-making. The reference has been made to the possibility of a severe depression. I would add that the rate of inflation should also be looked at. An inflation which is increasing its speed over time should be dealt with by making an allowance larger than 75% of the past year's change in the CPI, simply because the appropriations are for next year's salaries, not last year's. On the other hand, if the inflation is slowing down, there may be less need to provide the full 75%, because the prospect is that the inflation will be easing its burdens instead of increasing them.

In addition, the acts of the Legislature, usually in the month of April when we are approaching our final budget decisions, sometimes change our fiscal situation drastically, by changing our property tax base, limiting changes in assessments which have already been made during the past year, changing the size of grants for aid to education or other public services -- and other matters and actions which can seriously affect the fiscal situation.

In addition, we sometimes receive very late in the budget season a notice of change in the cost of fringe benefits, whether for health benefits, unemployment, or retirement. The increase in the cost of fringe benefits over the past five years appears to have been about 6% of the payroll. Most of that increase occurred in one year. When such changes come about, they amount to a change in compensation so far as the employee and the taxpayers are concerned, and the pay scale itself should not be required to change without regard to the change in other compensation. There are also other considerations to take into account, such as the Nation's policies for fighting inflation.

There are, therefore, sound and equitable reasons for not deciding the issue before the facts are available to the Council.

I do think however, that there has been a least one experience in which the Council left the cost-of-living allowance to the end of the budget decisions, resulting in an inadequate allowance. Therefore, I will suggest wording that puts the Council on a schedule and process of decision-making which puts the cost-of-living adjustment up front among the priorities, and provides that it shall not be left to the end.

I hope that these changes will insure that the Executive and Council in the future will give the cost-of-living adjustment the attention it deserves, and will be as fair and equitable as possible. We must maintain an attractive salary scale for the retention of an excellent work force.

I hope it will also make it abundantly clear that this bill provides procedures and standards which are far more definite and demanding than those set forth in the Resolution and discussion of last May. Far from taking away a guarantee, this bill would provide for the first time in the history of the County, procedural requirements to insure that the cost-of-living adjustment is in no way neglected. This is a principle for which this Council has fought for four years, and for which I trust the next Executive and Council will stand firm.

Certainly there has been no taking away of a salary increase on the part of the Council, because that issue is not before the Council at the present time.

It can only come up in the budget season, and this bill sets a framework for that period of decision-making which will highlight the need to make fair adjustments to the ravages of inflation, and protect as far as humanly possible both the public servants and the taxpayers.

Councilman Menke made the following statement:

One of the recent newspaper stories -- a fairly accurate one -- stated that my reaction to the outburst over this bill was that I was "visibly upset". That is entirely accurate; however, I am not upset over persons disagreeing with my particular judgement on any issue. That may arise from different values or mistaken information, and it is something we can deal with as reasonable people. I am, however, upset and depressed with the willingness shown by so many who ought to know better, on the basis of hearsay and inflammatory rhetoric, immediately to assume the most nefarious motives on the part of the Council.

Every county employee, and every Council member, is familiar with the surprisingly large number of citizens of Montgomery County (again, ones who ought to know better) who approach county employees as stupid, ignorant, on the take, or all three. The Council has seen such cases where, in spite of a long history of careful and sensitive decision-making on, for example, zoning or planning issues, citizens allow themselves to be misled and used by others and convinced easily that the Council has suddenly philosophically "sold-out". In summary, there is too little willingness even to withhold judgements, until investigation of what is involved, and too much willingness to assume the worst motives. This is a sad and depressing commentary on our whole community.

In this case, county employees, at least those who represent themselves as the employee representatives, have been quick to the mark with angry rhetoric designed to inflame and not to encourage communication: "We'll sue the _____"; "They're stabbing us in the back" are examples. There is an immediate willingness to assume the worst motives, while forgetting that in the past two years of four, this Council, in spite of terrific tax and political pressures, added on a COL increase (not just approved, but added on) to a County Executive recommended budget which provided for no cost-of-living increase for county employees. The Council has taken plenty of heat for this, with no public thanks from these same employee representatives. Only two short years ago, I led several Council members in a bitter debate on the Council, trying to protect county employee benefits from being reduced, a debate in which my neck was very much on the line. And they forget a Council which only this year, in the face of strong pressures, agreed to expand the expensive Police Take-Home-Car program in order to keep the commitment made to it in the meet-and-confer negotiation process between police and the County Executive.

It is upsetting and depressing that, in spite of all this, there is no willingness to trust the motives, much less the judgement, of this Council. I am afraid it foretells a long period of bitterness and deepening division in which the demand is "what have you done for me lately?" -- a situation which will in the long run harm the employee as well as the public interest.

Turning to the issue at hand, my amendment has been characterized as removing the guaranteed cost-of-living salary increase and renegeing our "commitment". My amendment, states "to the extent funds are available in the approved budget" the Chief Administrative Officer will grant the 75% COL. What does it mean and what would it do?

There is no way to guarantee against a depression, or other fiscal disaster (for example, State legislation reducing assessments, thereby reducing property tax revenues). If funds are insufficient, if the amendment is not present, the Chief Administrative Officer must, by law, still give the 75% no matter what the impact on the public, no matter how many employees need to be fired, no matter what! If this is the "commitment" that was made, I never saw it, and I will not be a party to such a policy. This legislation must work in bad times as well as good, and in the crisis of bad times, we cannot simply rely on emergency legislation to cure the problems we can already foresee may happen. The burden of deciding such questions belongs with the Council, not an administrative person, and my amendment is intended to place such burden where it should be, on the Council.

Except for this effect, which only deals with the mechanics and responsibilities involved in a fiscal crisis, the amendment does not reduce the commitment or the likelihood of a proper cost-of-living increase. The cost-of-living policy is reasonable and fair and necessary, especially in view of the changes already made in the County pay system. I am convinced that the cost-of-living increase is affordable, and will be funded by future Councils. I would note that the bill provides that the County Executive must provide for the cost-of-living in his budget (he has not done so in past years as noted above), and that the Chief Administrative Officer must spend the budget funds for the proper purpose.

In view of what seems to be a desire that this legislation be passed now, I am certainly willing to consider other amendments which deal with the issue I have here identified: I have no resistance to changing the amendment. I hope and believe that we can find wording acceptable to employees and to other Council members, while producing legislation which is in fact workable in all reasonable circumstances. Failing that, I believe the bill should be held over for more careful discussion by the employees, the next Council and Executive.

Councilwoman Gelman expressed regret that the words chosen for the amendment to Bill No. 37-78 did not convey properly the intent of the Council. It was her understanding that the amendment meant that the Council would approve a 75% of CPI cost-of-living adjustment for County employees and that the Council would be forced to focus on making the funds available. The Council, which sets the tax rate, cannot tell a future Chief Administrative Officer that he or she must find the money in the budget to amend the salary schedule to reflect a 75% of CPI increase. Therefore, the Council must be party to the decision. Unfortunately, she has heard over and over that the Council did not negotiate the school employees contract and therefore has no obligation to fund it. Councilwoman Gelman stated that she disagrees with that

philosophy. The Council has an obligation to fund a contract that was negotiated legally. She expressed the view that the issue with respect to the cost-of-living adjustment has been blown out of proportion, and expressed the hope that clear words can be found which clearly convey the Council's intent.

Without objection, the Council adopted Councilman Menke's motion (made at the meeting of November 15, 1978) that the Council reconsider Bill No. 37-78, Cost-of-Living Adjustment.

Without objection, the Council adopted Councilman Menke's motion (made at the meeting of November 15, 1978) that the Council reconsider all amendments to Bill No. 37-78.

The Council had before it for consideration Draft No. 1 of Bill No. 37-78.

Councilman Potter moved, duly seconded, that the phrase [those individuals and to equalize their wages due to] be deleted from lines 5 and 6, page 1, and the following inserted in lieu thereof: them for; and that the Council insert the following phrase after the word "increases" in line 8: shall be at least 75% of the increase in the November Consumer Price Index for all Urban Consumers for the Washington, D.C. Area; and such increases.

Councilman Potter expressed the view that his motion will clarify the intent of the Declaration of Policy and Intent section of the bill.

Councilman Colman requested that Councilman Potter's motion be reduced to writing as this is a delicate situation before the Council and he does not want to vote for an amendment without seeing it in writing. He expressed the view that the original wording of the bill is quite satisfactory. The bill provides for a certain procedure; any Council at any time can enact an amendment to the law in order to deal with a budgetary crisis if it occurs. It has been said that it may be difficult to get four or five Councilmembers to vote to change the law, but he pointed out that this is the normal situation for a legislative body. The Council would have to undertake a very overt and highly visible act in order to avoid giving County employees a 75% of CPI cost-of-living adjustment. Councilman Colman expressed the view that the bill should be reenacted as it was prior to the amendment offered by Councilman Menke.

President Scull stated that the conversation of last May that was quoted by Councilman Potter this morning was to the issue of how to provide an

"escape clause" for emergency situations. She believes, however, that the amendment to Bill No. 37-78 that was adopted on November 14 had that kind of emergency provision in mind, but it made an escape clause possible every year. The purpose of the bill was to take the issue of the amount of the cost-of-living increase out of the realm of public debate during budget deliberations and to make it an obligation to provide at least 75% of the CPI just as the Council has an obligation to fund the salaries of County employees. If an escape clause is needed for emergency situations, there should be a separate sentence describing the anticipated emergencies and how and when the escape clause should be used. President Scull stated that the Council has received a memorandum from Deputy Director Hansman, Department of Community and Economic Development, dated November 16, 1978, suggesting that a proper amendment to Bill No. 37-78 would clearly provide that the Executive shall include in his recommended budget funds for a cost-of-living increase of at least three-fourths of the CPI; that the Council shall approve and fund a cost-of-living increase of at least three-fourths of the CPI; and that the CAO shall include the approved amount in the pay plan. She stated that she agrees with this approach, and would add a separate sentence permitting an escape clause during times of real fiscal crisis.

Councilwoman Moore added her objections to Councilman Potter's interpretation of the May minutes to the objections stated by Mrs. Scull. She pointed out that Councilman Potter's quotes of her were in the form of questions and that she was requesting legal opinion from an attorney, but the only answer she received was a lay opinion from her fellow Councilman. She hopes he will correct his printed statement with its inferred misrepresentation. Dr. Moore stated that the bargain made with employees last spring with respect to the 75% of CPI cost-of-living increase was a result of the reduction of annual increments from 5% to 2%; therefore, the employees' request, and the Council's promise, for at least 75% of the CPI is fair and fundable in most foreseeable circumstances. Salary increases for County employees always compete with various levels of services; different people would pick different services to cut. She noted that WMATA's budget will add \$6 million to County expenses next year. While this budget is approved by the WMATA Board of Directors, it is paid for by County citizens. She noted that last spring the County Executive pointed out \$500,000 worth of services at the Germantown Campus of Montgomery College which duplicate unnecessarily those at Rockville and Takoma Park. She expressed the view that it will be extremely difficult for the Council to adopt a budget next year. The Council has made commitments to Metro, a third campus, to employees, and it will be difficult to fund them all. However, Councilwoman Moore stated that the supporters of the TRIM proposal are quoted in the Journal today as saying that they did not mean to take budget cuts out of the

salaries of employees. Citizens of the County want frugality, but not at the expense of breaking a commitment to County employees.

Legislative Counsel Tierney recommended that the word "November" be taken out of Councilman Potter's motion, and the phrase "latest published index for the calendar year preceding the fiscal year in which the adjustment is to be made" inserted therefor.

In order that the Council can work from Draft No. 2 of Bill No. 37-78, the draft before the Council on November 14 when Councilman Menke offered his amendment, Councilman Potter withdrew his motion to allow a motion to bring Draft No. 2 before the Council.

Upon motion of Councilman Menke, duly seconded and without objection, the Council adopted the following amendments to Bill No. 37-78, as reflected in Draft No. 2, dated November 8, 1978, with underlining indicating additions to current law, capital letters indicating additions to the bill as introduced, and strike-throughs indicating deletions from the bill as introduced:

Be It Enacted by the County Council for Montgomery County, Maryland, that -

1 Sec. 1. Declaration of Policy and Legislative Intent.

2 It is hereby declared to be the policy of Montgomery County, Maryland,
3 to provide for and ensure in an orderly, uniform manner as part of its budgetary
4 process, guaranteed annual wage adjustments to merit system employees of the
5 County Government to compensate those individuals and to equalize their wages
6 due to increases in area-wide consumer prices and other cost-of-living factors.

7 It is further declared to be the public policy of Montgomery County,
8 Maryland, that such wage increases are recognized as necessary to recruit and
9 retain a high quality work force and prevent inflation and other invidious
10 economic factors from undermining the compensation paid to members of its work
11 force.

12 Sec. 2. Chapter 33, title "Personnel," Article IV, title "Employer-
13 Employee Relations Act," of the Montgomery County Code 1972, as amended, is
14 hereby amended by adding a new Section 33-74 thereto, title "Cost-of-Living
15 Adjustment" to read as follows:

1 33-74. Cost-of-Living Adjustment.

2 THE COUNTY EXECUTIVE SHALL PROVIDE AS A PART OF THE ANNUAL
 3 RECOMMENDED OPERATING BUDGET FOR THE COUNTY GOVERNMENT SUFFICIENT
 4 FUNDS TO IMPLEMENT THE COST-OF-LIVING ADJUSTMENT REQUIRED BY THIS SECTION.
 5 AFTER THE BUDGET IS APPROVED, The Chief Administrative Officer shall
 6 adjust the uniform salary (schedule) plan for all classified employees
 7 of the Montgomery County Government beginning the first pay period
 8 on or after July 1, of each year by an amount not less than seventy-
 9 five percent (75%) of the change in the Consumer Price Index for All
 10 Urban Consumers in the Washington, D.C. area ALTHOUGH PAY GRADES 1
 11 THROUGH 4 OF THE UNIFORM SALARY PLAN TO WHICH MINIMUM WAGE AND CERTAIN
 12 SEASONAL EMPLOYEES ARE ASSIGNED WILL BE ADJUSTED BY CHANGES IN THE
 13 MINIMUM WAGE RATES AND SALARY SURVEYS TO DETERMINE THE COMPETITIVENESS
 14 OF SUCH SALARIES. Such THE percentage change shall be based on the
 15 DIFFERENCE BETWEEN THE SEPTEMBER latest-published index for the calendar
 16 year IMMEDIATELY preceding the fiscal year in which the adjustment is
 17 to be paid AND THE SEPTEMBER INDEX FOR THE NEXT PRECEDING CALENDAR YEAR.

18 ~~Notwithstanding the above, Pay Grades 1 through 4 of the uniform salary~~
 19 ~~plan~~
 20 ~~(schedule) to which minimum wage and certain seasonal employees are assigned will be~~
 21 ~~adjusted by changes in minimum wage rates and salary surveys to determine the~~
 22 ~~competitiveness of such salaries.~~

23 ~~No provision of this law shall prohibit~~ ^T The Chief Administrative
 24 Officer ~~may adjust~~ ^{plan} the uniform salary (schedule) in excess of the base
 25 percentage of seventy-five percent (75%), provided funds are available for
 26 such purpose.

27 ~~The County Executive shall submit to the County Council each year~~
 28 ~~as part of the recommended Operating Budget for the County Government such~~
 29 ~~sums as are necessary to fund the Cost of Living Adjustment set forth in~~
 30 ~~Section 33-74 of this Chapter.~~

31 Sec. 3. Severability.

32 The provisions of this Act are severable and if any provision, clause,
 33 sentence, section, work or part thereof is held illegal, invalid, or unconsti-
 34 tutional, or inapplicable to any person or circumstances, such illegality,
 35 invalidity or unconstitutionality, or inapplicability shall not affect or impair
 36 any of the remaining provisions, clauses, sentences, sections, words, or parts
 37 of the Act or their application to other persons or circumstances. It is here-

1 by declared to be the legislative intent that this Act would have been adopted
2 if such illegal, invalid, or unconstitutional provision, clause, sentence, sec-
3 tion, work or part had not been included therein, and if the person or circum-
4 stances to which the Act or part thereof is inapplicable had been specifically
5 exempted therefrom.

6
7 Sec. 4. Effective date.

8 The Council hereby declares that an emergency exists and that this
9 legislation is necessary for the immediate protection of public health and
10 safety. Therefore, this Act shall become effective on the date on which it
11 becomes law.

Councilman Potter moved, duly seconded, that the Council delete the
phrase [those individuals and to equalize their wages due to] from lines 5 and
6, page 1, and insert in lieu thereof them for; and that the following phrase
be inserted after the word "increases" in line 8: shall be at least 75% of the
increase in the Consumer Price Index for All Urban Consumers for the Washington,
D.C. Area as reflected in the latest published index for the calendar year preceding
the fiscal year in which the adjustment is to be paid; and such increases.

It was pointed out that the declaration of policy and intent section
of the bill does not need to be specific with respect to which Consumer Price
Index shall be used. There is language on page 2 of the bill that sets forth
that information.

Councilman Potter amended his motion by deleting the amendment to
line 8, page 1.

Without objection, Councilman Potter's motion was adopted, as
amended.

The Council agreed that all suggested amendments to Section 33-74,
page 2, should be offered before any are voted upon so that Councilmembers will
be able to make informed decisions.

Councilman Potter suggested that the words [After the budget is approved,]
be deleted from line 5, page 2, Section 33-74, and the following inserted therefor:
The County Council shall consider the cost-of-living provisions in the recommended
budget as one of the highest priorities, and shall take express action thereon, not
later than May 1 of each year.

Councilman Menke suggested that the Council delete the words [After the budget is approved] from line 5, Section 33-74, page 2, and insert in lieu thereof: The Council shall accord a very high priority to the full funding of the cost-of-living adjustment, shall fund fully the 75% of CPI cost-of-living adjustment except as otherwise provided in law, and shall make a finding in the budget resolution as to the sufficiency of the funding being provided. Unless otherwise provided by terms of the budget resolution approved by the Council supported by a finding that implementation of the full amount of the adjustment would necessitate substantial lay-offs of personnel or result in other widespread hardship to County government employees.

Mr. Tierney stated that there are legal problems with the wording of Mr. Hansman's suggested amendment in that it provides that "the Council shall fund" the 75% of CPI cost-of-living increase. He believes that the amendment offered by Councilman Potter to Section 33-74 is as restrictive as the Council can get without interfering with its legislative discretion. The amendment to Section 33-74 offered by Councilman Menke also provides that the Council "shall" fund fully the 75% of CPI cost-of-living increase. This is probably unconstitutional. Bill No. 37-78, as enacted on November 14, 1978, did not impose any restrictions on the appropriation process. He suggested use of the phrase "Unless otherwise provided by legislative act, the Council shall fund" After further discussion, Mr. Tierney stated that the wording of Councilman Menke's amendment is probably legally defensible after all because it contains the provision that the Council can make a finding that sufficient monies are not available to fund the full 75% of CPI cost-of-living increase.

Councilman Colman stated that he would prefer to reenact Bill No. 37-78 as reflected in Draft No. 2 without any further change. If a majority of the Council does not agree, his next preference is Councilman Menke's amendment to Section 33-74 because it requires the Council to make a finding as to why it cannot fully fund the 75% of CPI cost-of-living increase.

Director of Personnel Lloyd stated that the Executive Branch also prefers the wording of Draft No. 2 without further change. It is felt that it goes without saying that if the Council does not fully fund the 75% of CPI cost-of-living increase that some further steps must be taken. The intent is to assure County employees that a 75% of CPI cost-of-living increase will be provided. He

stated that the services of the County government are provided by people. There may be circumstances when some employees will be laid off. In such a situation, the government should recognize the greater workload involved and make sure that those who are left to provide the essential services are compensated at a minimum level. He pointed out that the County's Retirement Law requires mandatory funding of the retirement system, and inquired as to what would happen if there were not sufficient resources for this account.

Mr. Tierney urged strongly that the Council allow time for full, careful legal examination of the language that is being proposed to amend Bill No. 37-78. He is not comfortable with the language as it comes very close to infringing on the Council's legislative discretion. He would not want to make a judgment on it without giving it careful attention. In addition, the County Attorney should have an opportunity to review it.

Upon motion of Councilman Menke, duly seconded and without objection, the Council restored the original language of lines 14 through 17, page 2, Section 33-74, such lines to read as follows: of such salaries. Such percentage change shall be based on the latest published index for the calendar year preceding the fiscal year in which the adjustment is to be paid.

Upon motion of Councilman Menke, duly seconded and without objection, the Council deleted the language in lines 8 through 11, page 3, and inserted in lieu thereof: This legislation shall take effect on the 76th day following the date on which it becomes law.

Councilman Colman moved, duly seconded, that the Council waive the reading of the title of Bill No. 37-78 and proceed to enactment.

At the request of Councilwoman Gelman and without objection, the Council agreed to recess the meeting so that the Council Secretary can prepare a clean copy of Bill No. 37-78 as amended for the Council's consideration.

(The Council recessed at 3:35 P.M., and reconvened at 4:15 P.M.)

The Council had before it for consideration copies of Bill No. 37-78 as amended to this point.

At the suggestion of Councilman Potter and without objection, the Council deleted the comma after "July 1" in the sixth line of Section 33-74, page 2.

Councilman Potter addressed the language of Section 33-74 that describes the Consumer Price Index that shall be used as the indicator for the cost-of-living increase, stating that it should refer to the November to November index.

Mr. Tierney stated that the language referred to by Councilman Potter is in conformance with language elsewhere in the Code referring to the CPI formula, and it can be interpreted consistently with Charter Amendment D that was on the November ballot.

Councilman Colman withdrew his motion that Bill No. 37-78 be enacted, for the purpose of making further amendments.

At the suggestion of Councilman Potter and without objection, the Council deleted the word [Such] from the eleventh line of Section 33-74, page 2, and inserted in lieu thereof The.

Councilman Colman moved, duly seconded, that the Council consider enactment of Bill No. 37-78 without any further amendments. His motion failed, Councilmembers Colman, Scull and Moore voting in the affirmative and Councilmembers Gelman, Menke and Potter voting in the negative.

Councilman Potter moved, duly seconded, that the Council delete [After the budget is approved] from the third and fourth lines of Section 33-74 and insert in lieu thereof: The County Council shall consider the cost-of-living provisions in the recommended budget as one of the highest priorities, and shall take express action thereon, not later than May 1 of each year.

Councilwoman Gelman expressed the view that Councilman Potter's motion clearly puts the burden on the Council to put money in the budget for the cost-of-living increase and not say to the CAO that he or she must find it.

President Scull stated that it is "nonsense" to imply that the Council would not provide sufficient funds for the cost-of-living increase that it had approved. The Council also has the option not to fund the full salaries of employees, but funds them. If it did not, the money would be taken out of other programs so that the salaries could be paid. She stated that the same reasoning applies to the 75% of CPI cost-of-living increase.

Councilman Colman stated that he would prefer the language offered by Councilman Menke earlier as an amendment to Section 33-74 over that offered by Councilman Potter. He pointed out that to have both amendments would be confusing.

Councilman Potter expressed the view that his amendment offers a clear procedure by which the Council must address the cost-of-living issue each year. The bill as it stands would permit the Council to ignore the issue. The bill should not be left so that no matter what the Council does the CAO must provide a 75% of CPI cost-of-living increase. The Council must determine the effect of a cost-of-living increase, and the CAO must implement it.

Councilwoman Moore expressed the view that Councilman Potter's amendment does not change the present practice of the Council with respect to the cost-of-living increase.

President Scull stated that she would prefer to add a separate sentence providing that during emergencies when the Council cannot fund the full 75% of CPI cost-of-living increase it shall remove the requirement on the CAO to amend the salary schedule to reflect a 75% of CPI increase. That is all that is needed at this point.

Councilman Menke stated that the Council cannot legislate now that in five years the Council will enact an emergency bill to repeal the requirement on the CAO. He suggested an escape clause which says that the CAO does not have to implement the 75% of CPI increase under certain conditions. This is what his suggested amendment to Section 33-74 would do.

President Scull expressed the view that the language offered by Councilmembers Potter and Menke will cause the cost-of-living increase to be an issue each year. The purpose of this bill was to take it out of the realm of a debatable issue. She stated that she will vote against the motion.

Councilman Colman stated that he will vote against the motion, preferring the language offered by Councilman Menke. That language clearly makes the Council face the situation and requires full funding of the cost-of-living increase unless there are compelling reasons to the contrary. He believes that it comes closer to the spirit of assuring, as far as possible, full funding of the cost-of-living increase.

Councilman Potter's motion failed, Councilmembers Potter, Gelman and Menke voting in the affirmative and Councilmembers Colman, Scull and Moore voting in the negative.

With respect to Councilman Menke's suggested amendment to Section 33-74, Mr. Tierney advised the Council against putting examples of hardship situations in the law, as this could infringe upon the Council's legislative discretion. The

language should simply require the Council to state its reasons for not funding the full 75% of CPI cost-of-living increase.

A discussion was held regarding the language suggested by Councilman Menke as an amendment to Section 33-74, and Mr. Tierney's interpretation thereof.

Mr. Lloyd expressed the view that the requirement on the Council to state its reasons in writing is "silly," stating that the budget public hearings and worksessions are open to the public and that if the Council does not fully fund the 75% of CPI cost-of-living increase, the employees will know it and know the reasons therefor. He stated that he does not want to see the Council limit its legislative authority. The Council has ample opportunity to examine priorities and state its reasons for not funding the cost-of-living increase or any other program.

Councilman Menke moved, duly seconded, that the Council delete the phrase [After the budget is approved,] from the third and fourth lines, page 2, and insert in lieu thereof: The Council shall accord one of the highest priorities to the full funding of the cost-of-living adjustment, shall fund fully the 75% of CPI cost-of-living adjustment unless reasons are given for not doing so, and shall make a finding in the budget resolution as to the extent to which full funding is achieved. Unless otherwise provided by terms of the budget resolution approved by the Council supported by a finding that implementation of the full amount of the adjustment would necessitate substantial lay-offs of personnel or result in other widespread hardship to County government employees.

President Scull stated that the language of Councilman Menke's motion seems to be the best the Council can do. It is a change in the thrust of the Council's decision last May. Although it is not legal to impose a requirement on the Council that it fund a 75% of CPI cost-of-living increase, by saying that the Executive must recommend such increase and the CAO must implement it, it was understood that the Council would also approve and fund the 75% of CPI cost-of-living increase. This is what she and the employees understood last May. Perhaps they were mistaken, but this was the understanding. She stated that the County Executive may veto the bill with this amendment in it.

Councilman Potter questioned the assumption that the Council would approve the budget as proposed by the County Executive, stating that it has never been

done before. Salaries are far greater as a result. During the past eight years, the Council has approved cost-of-living increases at a rate higher than that recommended by the Executive.

Councilman Menke's motion was adopted, Councilmembers Menke, Colman, Scull, Potter and Gelman voting in the affirmative and Councilwoman Moore voting in the negative.

Councilman Menke expressed the view that the bill is significantly more restrictive on the Council than the original proposal. He believes that the bill as amended is within the scope of advertising, and that it protects the employees because it forces the Council to face the issues. It provides a minimum, reasonable escape clause for the CAO. He stated that he is not entirely happy with the bill, but he will support it.

Councilman Potter indicated that he will vote in favor of the bill, stating that the Council must provide for the implementation of the policy.

Upon motion of Councilman Menke, duly seconded and without objection, the Council voted to waive the reading of the title and proceed to enactment of Bill No. 37-78. By a yea and nay vote, Councilmembers Gelman, Colman, Potter, Moore, Menke and Scull voting in the affirmative and Councilman Hovsepian being absent, Bill No. 37-78, Cost-of-Living Adjustment, was reenacted, as amended.

Councilwoman Moore stated that she would like to know how much of the legal problem with restricting the Council's discretion was explained to employees in the beginning when the trade-off was proposed. The employees gave away more than they realized (in terms of certainty) when the annual increments were reduced to 2%. She stated that voting for the bill would make it appear that she thinks the bill is good enough, providing sufficient certainty that the Council will stick to its commitment to employees, when in fact she does not think it is good enough. However, to vote against it would make it appear that she does not want to provide a 75% of CPI cost-of-living increase for the employees, when she does. Therefore, she will vote in favor of the bill and the certainty of commitment even though she believes it is too weakly stated.

President Scull stated that she agrees with Councilwoman Moore.

Councilman Potter expressed the view that a review of the history of the past few years will indicate that this bill will provide more for the employees than the Executive would propose. Therefore, it is a gain and not a loss.

Councilman Menke stated that he will vote for the bill only if most of the regulatory measures are taken out, allowing free enterprise to operate. He suggested that Bill No. 6-77 be held over for consideration of the next County Council.

Without objection, the Council agreed to take no further action on Bill No. 6-77, CATV.

There being no further official business to come before the County Council in Legislative Session, the meeting adjourned at 5:40 P.M., to reconvene at 1:30 P.M. on Tuesday, November 21, 1978, or at the call of the President.

ATTEST:


Anna P. Spates, Secretary
of the County Council for
Montgomery County, Maryland