

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

IN LEGISLATIVE SESSION

Tuesday, November 14, 1978 Rockville, Maryland

The County Council for Montgomery County, Maryland, convened in Legislative Session in the Council Hearing Room, County Office Building, Rockville, Maryland, at 10:20 A.M. on Tuesday, November 14, 1978.

PRESENT

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

ABSENT

Dickran Y. Hovsepian, President Pro Tem
Jane Ann Moore

The President in the Chair.

INTRODUCTION OF BILLS:

Re: Introduction of Bill No. 72-78,
Towing Legislation

The Council had before it for consideration Bill No. 72-78, Towing Legislation.

Councilman Menke stated that the bill before the Council for introduction provides for the registration of towers of motor vehicles operating in Montgomery County. He believes that this is a good approach to a regulatory problem, in contrast to proposed legislation from the County Executive to license and inspect single family homes that are for rent. He believes that the approach regarding single family homes is in the wrong direction when there is not a clear, overriding, demonstrated need for government control of the service rendered. When that bill is before the Council, he requested that the Council not introduce it or introduce an amendment to provide for registration only. It is desirable to know how many single-family homes are being rented, and where they are, but he believes it is totally unnecessary to go beyond that.

Upon motion of Councilman Menke, duly seconded and without objection, the Council waived the reading of the title and introduced Bill No. 72-78 by the Council President at the request of the County Executive; and Councilman Menke:

AN ACT to repeal and re-enact with amendments, Chapter 31A, title "Motor Vehicle Repair Registration", to be retitled "Motor Vehicle Repair and Towing Registration", to require persons engaging in the business of towing motor vehicles to register with the Montgomery County Department of Environmental Protection; to make such registration subject to the same general provisions applicable to motor vehicle repair registration; to exclude from the requirements of this Chapter towing which both begins and ends outside Montgomery County; to require lettering of tow trucks; to require that rate schedules for towing services be filed with the Montgomery County Department of Environmental Protection and that they be carried in each tow truck and made available to the owner upon request; to require that written estimates of towing charges be furnished upon request; and to require that a copy of the registration required by this Chapter be carried in each tow truck.

MEMORIALS AND PETITIONS:

There were no memorials or petitions to be presented.

CALL OF BILLS FOR FINAL READING:

Re: Enactment of Bill No. 36-78,
Comprehensive Merit System

Bill No. 36-78, Comprehensive Merit System, was called for final reading. The Council had before it for consideration Draft No. 6, dated November 9, 1978, of Bill No. 36-78.

Upon motion of Councilman Colman, duly seconded and without objection, the Council voted to waive the reading of the bill and proceed to consideration of amendments.

At the suggestion of Mr. Tierney and without objection, the Council deleted the word [damage] from line 11, page 4, and inserted in lieu thereof danger.

Legislative Counsel Tierney called the Council's attention to a memorandum from County Attorney McKernon, dated November 9, 1978, regarding language in the bill pertaining to appeals. Mr. Tierney stated that Draft No. 6 of Bill No. 36-78 has been modified to conform with the County Attorney's suggestions. He noted that the Council also has before it a paper from the Montgomery County Government Employees Organization (MCGEO) listing several amendments to the bill; and a memorandum from Anne Bledsoe, Maryland-Municipal Librarian, dated November 14, 1978, setting forth suggested amendments.

Councilman Colman noted that the Council has received a memorandum from Mr. Short, Director, Office of Budget and Research, dated November 13, 1978, setting forth the estimated fiscal impact of Bill No. 36-78. He referred to the Personnel Board's staff estimate that the "whistle blower" provision could require the addition of two or three staff positions, plus additional space. Councilman Colman stated that the Board's staff must imagine that the County has many employees who will be reporting wrong-doing and that their supervisors will be retaliating against them so that the Personnel Board and staff will be kept busy disciplining the retaliators. He expressed the strong belief that the impact of that section has been overestimated.

President Scull noted that additional expenses will be encountered with the use of hearing examiners by the Personnel Board; this was not taken into account in the fiscal impact statement.

Councilman Colman stated that the Personnel Board's workload may increase if the new Council and Executive find it necessary to reduce forces substantially and cases are appealed to the Board. However, a compensating factor was not mentioned. The Board's responsibility for the daily review of proposed changes in the classification allocations has been removed. This responsibility now rests entirely with the CAO.

Upon motion of Councilman Colman, duly seconded and without objection, the Council agreed that it would not amend Section 33-5, page 2, Statement of Legislative Intent, as suggested by Ms. Bledsoe.

With respect to the suggestion of Ms. Bledsoe that the words "appropriately qualified" on line 30, page 3, be clarified with respect to Merit System Review Commission membership, Councilman Colman stated that he would prefer to leave the specific qualifications to the determination of future Councils when each Commission is formed. The Council debated various forms of membership and decided in favor of a general citizens commission.

The Council agreed with Councilman Colman's suggestion that it not make a change in the qualifications, composition or method of appointment of the Merit System Review Commission.

Mr. Tierney called attention to a suggestion by MCGEO that the definition of "management" be deleted from page 4, and the word "supervisory" be substituted for "management" throughout the bill. He stated that, in most cases, "management" is the more appropriate word.

Councilman Colman suggested that the definition of "management" be kept in the bill, but that Mr. Tierney be authorized to make the substitution wherever he feels it is appropriate.

At the suggestion of Councilman Colman and without objection, the Council deleted the word [management] from line 32, and inserted in lieu thereof supervisory.

Upon motion of Councilman Colman, duly seconded and without objection, the Council authorized Mr. Tierney to change "management" to "supervisory" throughout the bill wherever he believes it is appropriate.

With respect to the suggestion by Ms. Bledsoe that a penalty provision be inserted in the whistle blower section, page 7, Councilman Colman stated that the Council discussed the possibility of a penalty provision, but was not able to reach a consensus with the Personnel Board, representatives of employees and the CAO. It was agreed that the Personnel Board would be required to develop a penalty provision through regulations, which will then come back to the new Council for approval.

Councilman Potter noted that the wording of lines 33 and 34, page 7, provides that employees are not protected if their charges of violation are found to be a mistake. He suggested that the word [or] be deleted from line 33, and the word and inserted in lieu thereof to clarify that the actions must have been "frivolous, unreasonable and without foundation, even though not brought in bad faith" before an employee loses the protection of the Merit System.

Upon motion of Councilman Potter, duly seconded and without objection, the Council deleted the word [or] from line 33, page 7, and inserted in lieu thereof and.

At the suggestion of Councilman Colman and without objection, the Council inserted a comma after the word "foundation" in line 34, page 7.

Councilman Menke referred to provisions in Section 33-10(e), page 7A, giving the Personnel Board's staff the power to determine whether probable cause exists and to dismiss complaints. He stated that he does not like the emphasis on staff power; the function of the staff is to carry out decisions of the Personnel Board. It should investigate complaints and bring its findings to the Personnel Board, which would then make a decision as to whether probable cause exists for the complaint.

Mr. Tierney stated that the Personnel Board should be kept insulated from any of the preparatory work before it conducts a hearing. When the Board conducts the hearing, it should be hearing the case for the first time. This is the procedure followed by the Human Relations Commission, Landlord-Tenant Commission, and the Consumer Affairs Advisory Committee.

President Scull pointed out that judges sometimes hold preliminary hearings prior to conducting a trial.

Mr. Tierney stated that the Board has the authority to review the staff's findings and send them back for further investigation; or, the Board can reverse the staff's decision. The provision in the bill is designed to protect the due process rights of the people being investigated.

President Scull expressed the view that language has been amended on lines 31 and 32 since the Council had its last worksession. At one time, the complainant was given the right to request reconsideration by the Personnel Board of the staff's decisions. Now, only the Board can request reconsideration.

Upon motion of Councilman Colman, duly seconded and without objection, the Council inserted the word Board prior to the word "reconsideration" on line 31, page 7A, and deleted the words [by the Board] from lines 31 and 32.

Councilman Menke expressed the view that the amendment just adopted is an improvement to Section 33-10(e), but does not address the whole problem.

Councilman Menke moved, duly seconded, that subsection (e), page 7A, be restructured to provide that the Personnel Board's staff shall investigate complaints and present the results to the Board. The Board will then determine whether to dismiss the complaint or follow it up with a full evaluation and hearing process.

Councilman Colman expressed the view that the amendment proposed by Councilman Menke would increase the workload of the Personnel Board by serious proportions. Under the amendment just adopted, employees would have access to the Board if they disagree with the staff's findings. There must be an effective complaint screening process so that the Personnel Board is not overwhelmed with paperwork and unfounded complaints. The system as proposed in the bill has worked satisfactorily with other bodies.

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

Upon motion of Councilman Colman, duly seconded and without objection, the Council approved Section 33-10 (whistle blower) as amended.

At the suggestion of Councilman Colman and without objection, the Council agreed that it would not delete subsection (2) of Section 33-11(a), page 8, as recommended by Ms. Bledsoe and Mr. Ofsthun, Director of the Department of Recreation.

At the suggestion of President Scull and without objection, the Council deleted the word [steps] from line 30, page 8.

The Council discussed a proposal by MCGEO that employees be given the choice of appealing their cases directly to the Circuit Court, Section 33-12, page 9A.

Mr. Tierney stated that the subject amendment would pose legal problems with respect to the administrative process. There is a tradition in Maryland law which provides that when one is involved in an administrative process one must exhaust that process before going to court. Bill No. 36-78 has an elaborate process that is designed to reduce legal costs for the employees. If appealed directly to the court, the employee would be appealing a matter on which there is no established record. He is not sure how a court would handle such a case.

Councilman Colman requested Assistant County Attorney Hall to review the Charter to determine whether the MCGEO amendment would conform to Charter provisions. He indicated that the Council should proceed with its review and give Mr. Hall a few minutes to review the situation.

Upon motion of Councilman Colman, duly seconded and without objection, the Council inserted the words except for due process violations after the word "allocations" on line 6, page 10.

Without objection, the Council deleted the word [and] from line 11, page 10.

Upon motion of Councilman Menke, duly seconded and without objection, the Council inserted the following words after the word "notice" on line 9, page 11: special evidentiary proceedings in cases where the remedy of employee reinstatement was a contested and unresolved issue in an ordinary appeal hearing.

In response to the earlier inquiry, Mr. Hall stated that Section 404 of the Charter provides that the Personnel Board shall conduct a hearing for any adverse personnel action and then that decision can be reviewed by the court if requested. The Charter provides that the court does not have jurisdiction over the matter until the Personnel Board has rendered its decision.

Mr. Tierney stated that if the Council is desirous of giving employees direct access to the courts, it should draft a provision creating a private right of action for court review, rather than the amendment suggested by MCGEO. In response to an inquiry as to whether such an amendment would be within the scope of advertising for the bill, Mr. Tierney stated that he hesitates to answer that question without reviewing the advertising. However, he did attempt to make the advertisement fairly broad.

Councilman Colman recommended against direct appeal to the courts, stating that the Council has been careful, throughout the process, to assure that employees are not disadvantaged in the general management-employee relationship. To allow the entire process to be avoided, with direct access to the court system, would not be good personnel administration. Such an appeal procedure would put a burden on judges who are not equipped to deal with these matters unless there are true constitutional or legal questions involved.

Mr. Overton stated that the employees had hoped to change the attitude of Personnel Board members during the worksessions on this bill. He expressed the view that a person's livelihood is too important to entrust to three part-time, non-professional Board members. He stated that the Board decided a dismissal case last Friday after three years and seven months. The cost of going to the Personnel Board is just as much as the cost of going to court.

Ms. Scull requested Mr. Overton not to discuss a specific case.

Mr. Potter indicated that he has some editorial amendments to the bill that he will give to the staff to incorporate into the final version of the bill.

At the suggestion of Councilman Potter and without objection, the Council deleted the word [while] from line 21, page 3, and inserted in lieu thereof and that it be.

At the suggestion of Councilman Potter, upon motion of Councilman Colman, duly seconded and without objection, the Council deleted the word [maintenance] from line 3; and inserted the words fringe and prior to the word "other" in the same line.

At the suggestion of Councilman Potter and without objection, the Council deleted the word [representative] from line 25, page 12, and inserted in lieu thereof representational.

Upon motion of Councilman Colman, duly seconded and without objection, the Council approved the following amendments to Bill No. 36-78 as reflected in

33 (5) ~~4~~ MERIT SYSTEM EMPLOYEES ARE ENCOURAGED TO EXCEL IN THEIR
34 WORK PERFORMANCE ; THEY SHALL BE RETAINED IF THEY MEET STANDARDS OF SATIS-
35 FACTORY OVERALL PERFORMANCE AND SHALL BE SEPARATED FROM MERIT SYSTEM SERVICE
36 IF THEY DO NOT; BOTH MANAGEMENT AND EMPLOYEES HAVE AN EQUAL RESPONSIBILITY
37 TO FACILITATE WORK PERFORMANCE CORRECTION AND IMPROVEMENT;

2 A

1 (6) ~~5~~ ALL APPLICANTS AND EMPLOYEES OF THE COUNTY MERIT
2 SYSTEM SHALL BE ASSURED FAIR TREATMENT IN ALL ASPECTS OF PERSONNEL
3 ADMINISTRATION IN ACCORDANCE WITH THE FAIR EMPLOYMENT PRACTICES REQUIRED
4 UNDER CHAPTER 27 OF THIS CODE;

- 3 -

1
2 (7) ~~6~~ MERIT SYSTEM EMPLOYEES SHALL BE PROTECTED AGAINST ANY
3 COERCION TO ENGAGE IN ILLEGAL OR IMPROPER ACTIONS OR
4 PARTISAN POLITICAL ACTIVITIES AND SHALL BE PROHIBITED FROM USING THEIR
5 OFFICIAL AUTHORITY FOR THE PURPOSE OF INTERFERING WITH OR AFFECTING THE
6 RESULT OF AN ELECTION OR NOMINATION FOR OFFICE;

7
8
9 (8) THE MERIT SYSTEM ESTABLISHED UNDER THIS CHAPTER SHALL BE
10 INTERPRETED IN ACCORDANCE WITH THESE PRINCIPLES.

11 (c) STATEMENT OF PURPOSE. THE BASIC PURPOSE OF THIS ARTICLE IS TO ~~DELINEATE~~
12 THE RESPECTIVE RESPONSIBILITIES OF THE CHIEF ADMINISTRATIVE OFFICER AND THE
13 PERSONNEL BOARD FOR PERSONNEL MANAGEMENT IN COUNTY GOVERNMENT. IT IS THE
14 FURTHER the purpose of this Article to implement by law the County Charter
15 responsibilities of the County Council with respect to a merit system generally,
16 including provisions for salaries and wages of all classified employees of the
17 merit system under a uniform salary plan, delineation of the administrative
18 responsibilities of the Chief Administrative Officer under the merit system,
19 the Personnel Board's authority to exercise its regulatory and ~~hearing~~ APPELLATE
20 functions, and promotion of the overall objectives that the integrity of the
21 County Merit System be preserved while administered fairly and efficiently
22 in the best interests of the County and its employees.

23 IN ADDITION TO THE COUNTY COUNCIL'S LEGISLATIVE RESPONSIBILITIES AUTHORIZED UNDER
24 (d)/ THERE SHALL BE CONVENED NO LATER THAN JULY 1, 1980, AND, IF DETERMINED
NECESSARY/ BY COUNTY COUNCIL RESOLUTION, SUBSEQUENTLY AT INTERVALS OF 4 YEARS, A MERIT

STRENGTHEN THE

25 SYSTEM REVIEW COMMISSION, THE FUNCTIONS OF WHICH ARE TO ~~PROVIDE FOR A~~ SYSTEM OF CHECKS AND
26 BALANCES AMONG THOSE OFFICIALS AND AGENCIES OF COUNTY GOVERNMENT ~~WITH~~ MERIT SYSTEM
27 RESPONSIBILITIES AND TO EXAMINE AND RECOMMEND LEGISLATIVE OR ADMINISTRATIVE REVISION TO
28 THE MERIT SYSTEM IN KEEPING WITH THE INTENT OF THE COUNTY CHARTER AND THIS ARTICLE AND WITH
29 NEW DEVELOPMENTS IN THE FIELD OF PUBLIC ADMINISTRATION AND PERSONNEL MANAGEMENT. THE
30 COMMISSION SHALL BE AN 11-MEMBER BODY COMPOSED OF APPROPRIATELY QUALIFIED MONTGOMERY COUNTY
31 CITIZENS AND ESTABLISHED BY A RESOLUTION OF THE COUNTY COUNCIL. THE COUNTY EXECUTIVE SHALL
32 APPOINT 5 OF THE MEMBERS OF THIS COMMISSION AND THE COUNTY COUNCIL SHALL APPOINT THE
33 REMAINING MEMBERS. EACH COMMISSION SHALL TERMINATE AFTER IT RENDERS TO THE COUNTY
34 (e) With This Article shall apply to all merit system employees defined herein.
35 Not included under this Article unless specifically stated to the contrary are
36 those positions excluded by Section 401 of the County Charter as amended and
37 any other positions so excluded from the merit system under other provisions
38 of County Law.

1
2 33-6. Definitions.
3 The following words and phrases shall have the meaning respectively
4 ascribed to them by this section:
5
6
7
8 County Employees - means all persons employed by the County regardless of
9 merit system status.
10
11 ILLEGAL OR IMPROPER ACTIONS - MEANS ANY ACTIONS WHICH VIOLATE ANY LAW
12 OR REGULATION, OR WHICH CONSTITUTE A GROSS WASTE OF FUNDS, AN ABUSE OF
13 AUTHORITY OR A SUBSTANTIAL AND SPECIFIC DAMAGE TO PUBLIC HEALTH OR SAFETY.
14
15 MANAGEMENT MEANS COLLECTIVELY THE CHIEF ADMINISTRATIVE OFFICER
16 AND ALL SUBORDINATE PERSONNEL EXERCISING SUPERVISORY FUNCTIONS
17 IN THE CAPACITY OF A PUBLIC EMPLOYER.
18 Merit System Employees - means all persons who are ~~applicants for employment~~
19 ~~or employed by the County in full-time or part-time year-round/positions~~ ^{PERMANENT CAREER}
20 in any department/office/agency of the executive and legislative
21 branches of the county government or ^{IN ANY} other position specifically
so designated by law.

22 ~~Experiences - means those complaints made in writing by a merit system~~
23 ~~employee claiming to be aggrieved by action of management in the~~
24 ~~promotion, compensation, classification, leave policies, or~~
25 ~~other areas, connected with the merit system.~~

26 Removal - means the involuntary separation of a merit system employee

27 through dismissal, ^{INVOLUNTARY} resignation, under duress, or abolishment of
28 his or her position, ^{FOR REASONS OR CIRCUMSTANCES DETERMINED BY THE BOARD AS} BEING OTHER THAN A BONA FIDE REDUCTION OF FUNDS OR WORK.

29 33-7. Personnel Board Responsibilities.

30 (a) GENERAL. IN PERFORMING ITS FUNCTIONS, THE BOARD IS EXPECTED TO
31 ~~DEFEND~~ ^{PROTECT} EMPLOYEE RIGHTS AS GUARANTEED UNDER THE MERIT SYSTEM AGAINST ARBITRARY
32 AND CAPRICIOUS MANAGEMENT ACTIONS, UPHOLD MANAGEMENT ~~DISCIPLINARY~~ ACTIONS
33 DEMONSTRATED BY THE FACTS TO BE PROPER, AND APPROACH THESE MATTERS WITHOUT
34 ANY BIAS OR PREDILECTION TO EITHER MANAGEMENT OR EMPLOYEE. THE REMEDIAL AND
35 ENFORCEMENT POWERS OF THE BOARD GRANTED HEREIN SHALL BE FULLY EXERCISED BY THE
36 BOARD AS NEEDED TO RECTIFY PERSONNEL ACTIONS FOUND TO BE IMPROPER. EXCEPT

4A

1 FOR EMERGENCY ACTIONS, ANY REGULATION OR RECOMMENDATION SUBMITTED BY THE BOARD
2 TO THE COUNTY COUNCIL FOR ACTION SHOULD PERMIT THE PUBLIC AT LEAST A 30-DAY
3 PERIOD FOR COMMENT BEFORE ENACTMENT. THE BOARD, SUBJECT TO THE APPROPRIATION
4 PROCESS, SHALL BE RESPONSIBLE FOR ESTABLISHING ITS STAFFING REQUIREMENTS
5 NECESSARY TO PROPERLY IMPLEMENT ITS DUTIES AND TO DEFINE THE DUTIES OF SUCH
6 STAFF.

7 (b) ~~(a)~~ PERSONNEL REGULATIONS. THE BOARD SHALL adopt, subject
8 to Council approval, ^{THE FOREGOING} AND/ ^{REQUIREMENT,} WITH AN OPPORTUNITY FOR PUBLIC COMMENT/ ^{Personnel}
9 Regulations in the following areas which shall be codified with other
10 County regulations in the Appendices to the Montgomery County Code
11 TO PROVIDE THE FRAMEWORK FOR:

MERIT SYSTEM

- 12 1. the classification of all positions in the Executive and
13 Legislative branches under the merit system;
- 14 2. minimum qualifications for merit system positions, methods
15 of determining qualifications, and methods of selection for
16 any positions;
- 17 3. probationary periods, promotions, transfers;
- 18 4. causes for removal from any merit system position and methods

of removal, including demotions, furloughs and reduction of

staff;

5. annual, sick and other leave;

6. prohibitions against political activity;

7. maintenance of personnel records; and

8. similar personnel matters as may be provided by law.

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CLASSIFICATION STANDARDS. THE BOARD SHALL
(c) / WITH RESPECT TO CLASSIFICATION MATTERS, / PROVIDE BY PERSONNEL REGULATION

STANDARDS FOR ESTABLISHING AND MAINTAINING A CLASSIFICATION PLAN. THESE STANDARDS MAY
INCLUDE BUT ARE NOT LIMITED TO THE FOLLOWING: (1) THE NECESSARY COMPONENTS OF CLASS
SPECIFICATIONS; (2) CRITERIA FOR THE ESTABLISHMENT OF NEW CLASSES, MODIFICATION OR ELIMI-
NATION OF EXISTING CLASSES; (3) CRITERIA FOR THE ASSIGNMENT OF POSITIONS TO CLASSES;
(4) KINDS OF DATA REQUIRED TO SUBSTANTIATE ALLOCATION OF POSITIONS; (5) GUIDELINES
FOR COMPARING LEVELS OF JOB DIFFICULTY AND COMPLEXITY; AND (6) CRITERIA FOR THE
ESTABLISHMENT OR ABOLISHMENT OF POSITIONS. THE BOARD SHALL CONDUCT OR AUTHORIZE
PERIODIC AUDITS OF CLASSIFICATION ASSIGNMENTS MADE BY THE CHIEF ADMINISTRATIVE OFFICER
AND OF THE ^{GENERAL} STRUCTURE AND INTERNAL CONSISTENCY OF THE CLASSIFICA-
TION PLAN, AND SHALL SUBMIT AUDIT FINDINGS AND RECOMMENDATIONS TO THE COUNTY EXECUTIVE
AND COUNTY COUNCIL.

(d) PERSONNEL REGULATION AMENDMENTS: SUBSEQUENT TO PUBLIC HEARING, THE BOARD SHALL

~~(d)~~ / Propose amendments to Personnel Regulations ^{AND} ~~providing that prior~~
~~to such proposal being forwarded to the County Council for approval, the~~
Board shall meet and confer with the Chief Administrative Officer / ^{AND EMPLOYEES AND THEIR} ~~from time~~ ORGANIZATIONS
~~to time to review the need to amend these regulations.~~

~~(e)~~ (e) ADJUDICATION. THE BOARD SHALL hear and decide DISCIPLINARY APPEALS
OR grievances upon the request of a merit system employee who has been removed, denoted
or suspended and in such other cases as required herein.

~~(f)~~ (f) RETIREMENT. THE BOARD SHALL
~~(f)~~ prepare and recommend to the Council a system of retirement pay
and may from time to time prepare and recommend modifications thereto.

(g). PERSONNEL MANAGEMENT OVERSIGHT. THE BOARD SHALL
~~(f)~~ Review and study the administration of the County
CLASSIFICATION AND RETIREMENT PLANS AND OTHER ASPECTS OF ^{the} ~~Merit System~~
and transmit to the Chief Administrative Officer, ^{COUNTY EXECUTIVE} ~~and the County Council~~
its findings and recommendations. All County agencies, departments
and offices ^{COUNTY EMPLOYEES AND} ~~AND ORGANIZATIONS OF COUNTY EMPLOYEES~~ ^{THEREOF} shall cooperate with
adequate notice and
the Board and have an opportunity to participate in any such review

2 ~~or study~~ initiated under this Section.

(h) PUBLICATION. CONSISTENT WITH THE REQUIREMENTS OF THE FREEDOM OF INFORMATION ACT,
CONFIDEN- THE BOARD SHALL
TIALITY, AND OTHER PROVISIONS OF LAW, Publish, at least annually, ABSTRACTS OF ITS
DECISIONS, RULINGS, OPINIONS AND INTERPRETATIONS, and maintain a codification
PERMANENT RECORD of its decisions, rulings, opinion and interpretations.

32 (i) PUBLIC FORUM. THE BOARD SHALL CONVENE AT LEAST ANNUALLY A PUBLIC
33 FORUM ON PERSONNEL MANAGEMENT IN THE COUNTY GOVERNMENT TO EXAMINE THE
34 IMPLEMENTATION OF CHARTER REQUIREMENTS AND THE MERIT SYSTEM LAW.

35 33-8. Administrative Responsibilities of Chief Administrative Officer.

36 (a) The Chief Administrative Officer shall be responsible for the
37 administration and enforcement of the Merit System, including any retirement
38 laws, labor relations laws, and the Personnel Regulations. The Chief
Administrative Officer may designate a representative to implement any or

1 all of the provisions of law or the Personnel Regulations. The Chief
2 Administrative Officer and all department heads are responsible for implementing
3 all final decisions of the Personnel Board made after grievance appeals, although
4 the Chief Administrative shall have the right to appeal any such decision
5 in accordance with procedures recited elsewhere in this Article.

6 THE CHIEF ADMINISTRATIVE OFFICER SHALL INSURE THAT ALL SUPERVISORS RECEIVE
7 CONTINUAL ORIENTATION AND TRAINING ABOUT THE INTENT, PURPOSE AND PRINCIPLES OF
8 THE MERIT SYSTEM AND SHALL INSURE BY REGULATION THAT ALL SUPERVISORS IMPLEMENT THE
OBJECTIVES OF THIS ARTICLE.

9 (b) The Chief Administrative Officer shall formulate administrative
10 procedures to implement ~~standards and~~ requirements of the Personnel
11 Regulations AFTER PROVIDING REASONABLE PUBLIC NOTICE AND OPPORTUNITY FOR
12 ~~EMPLOYEE~~ COMMENT. These administrative procedures shall be
13 distributed ~~to all department heads who shall~~ make them accessible to
14 all employees.

15 33-9. Equal Employment Opportunity and Affirmative Action.

16 (a) Policy. ~~There is hereby established an equal employment opportunity~~
17 ~~and affirmative action program which will emulate the County's policy to~~ T EMPLOYMENT SHALL BE
18 recruit, employ, train and promote qualified persons in all job classifications

PERMANENT RECORD OF ITS DECISIONS, ~~rulings, opinions and interpretations.~~ ^{DECISIONS AND INTERPRETATIONS, and maintain a codification}

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2 Administrative Officer and all department heads are responsible for implementing
3 all final decisions of the Personnel Board made after grievance appeals, although
4 the Chief Administrative shall have the right to appeal any such decision
5 in accordance with procedures recited elsewhere in this Article.

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7 CONTINUAL ORIENTATION AND TRAINING ABOUT THE INTENT, PURPOSE AND PRINCIPLES OF
8 THE MERIT SYSTEM AND SHALL INSURE BY REGULATION THAT ALL SUPERVISORS IMPLEMENT THE
OBJECTIVES OF THIS ARTICLE.

9 (b) The Chief Administrative Officer shall formulate administrative
10 procedures to implement ~~standards and requirements of the~~ ^{MERIT SYSTEM LAW AND} Personnel
11 Regulations AFTER PROVIDING REASONABLE PUBLIC NOTICE AND OPPORTUNITY FOR
12 ~~EMPLOYEE~~ ^{COMMENT.} These administrative procedures shall be
13 distributed ~~to all department heads who shall~~ ^{IN A MANNER TO} make them accessible to
14 all employees.

15 33-9. Equal Employment Opportunity and Affirmative Action.

16 (a) Policy. ~~There is hereby established an equal employment opportunity~~
17 ~~and affirmative action program which will emulate~~ ^T ~~the County's policy to~~ ^{EMPLOYMENT SHALL BE}
18 recruit, employ, train and promote qualified persons in all job classifications
19 on the basis of merit and without regard to sex, marital status, race, religion,
20 national origin, political affiliation, ~~specific~~ ^{HANDICAP} other factors, as ^{MAY BE} provided for
21 in Chapter 27, "Human Relations and Civil Liberties", of the Montgomery County
22 Code, 1972, as amended.

23 ~~(b) Administration.~~ ^{No 4} The Chief Administrative Officer shall be responsible
24 for initiating, developing and maintaining such an equal employment opportunity
25 and affirmative action program as necessary to insure all persons an equal
26 opportunity to enter and progress in the County's service on the basis of open
27 competition and demonstrated ability. The Chief Administrative Officer is
28 authorized to issue such rules or regulations as necessary to implement this
29 policy ~~AS LONG AS PROVIDING AN OPPORTUNITY FOR EMPLOYMENT AND RELATED GOVERNMENT.~~
30 ~~(c) Complaints.~~ Any person ~~REPORTING~~ ~~REPORTS~~ a complaint ~~relating to~~
31 violation of the equal employment opportunity or affirmative action policy
32 with the Chief Administrative Officer or his or her designee which shall
33 also constitute a filing with the Human Relations Commission under the provision
34 of Chapter 27 of this Code. The Chief Administrative Officer shall immediately
35 notify the Human Relations Commission of any such filing. / ^(b) CONCILIATION.
36 Administrative Officer is authorized to engage in consultation / AND CONCILIATION EFFORTS
37 employment opportunity laws with the objective of resolving complaints and TO execute
38 binding agreements with these agencies; provided however, that these conciliation effort
39 shall not be deemed to abate the procedures or requirements as recited in Chapter 27.

1 Should the complaint be determined to be a matter not properly within the jurisdiction
2 of an equal employment opportunity enforcement agency, the complaint, as
3 filed, shall be treated as a grievance and processed under the appropriate
4 procedures established for grievances.

6 33-10. / DISCLOSURE OF ILLEGAL OR IMPROPER ACTIONS IN COUNTY GOVERNMENT;
7 PROTECTION FOR MERIT SYSTEM EMPLOYEES AGAINST RETALIATION OR
8 COERCION FOR DISCLOSING ILLEGAL OR IMPROPER ACTIONS IN COUNTY
9 GOVERNMENT; PROHIBITED PRACTICES; COMPLAINT PROCEDURES; INVESTIGATION.

- 10 (a) DISCLOSURE OF ILLEGAL OR IMPROPER ACTIONS.
- 11 (1) EMPLOYEES ARE AUTHORIZED AND EXPECTED TO REPORT
12 INSTANCES OF ILLEGAL OR IMPROPER ACTIONS IN COUNTY GOVERNMENT.
- 13 (2) EMPLOYEES SHOULD FIRST REPORT SUCH MATTERS TO THE
14 INDIVIDUAL RESPONSIBLE FOR CORRECTIVE ACTION. SUCH PERSON MAY BE ANYONE
15 FROM THE EMPLOYEE'S IMMEDIATE SUPERVISOR UP TO AND INCLUDING THE COUNTY
16 EXECUTIVE, OR IN THE CASE OF LEGISLATIVE BRANCH EMPLOYEES, THE COUNTY COUNCIL.
- 17 (3) IN UNUSUAL CIRCUMSTANCES, OR IF A RETALIATORY ACTION OR
18 COERCION HAS TAKEN PLACE, THE EMPLOYEE MAY FILE A REPORT DIRECTLY WITH
19 EITHER THE PERSONNEL BOARD OR THE ETHICS COMMISSION. THE IDENTITY OF

20 BOTH THE EMPLOYEE FILING A REPORT AND THE COUNTY EMPLOYEE OR OFFICIAL WHO IS
 21 THE SUBJECT OF THIS REPORT SHALL BE KEPT CONFIDENTIAL UNLESS WAIVED IN
 22 WRITING BY THE PARTIES. THE PERSONNEL BOARD OR ETHICS COMMISSION SHALL
 23 CAUSE AN INQUIRY TO BE CONDUCTED OR REFER THE REPORT TO THE APPROPRIATE
 24 GOVERNMENT OFFICIAL OR AGENCY.

25 (b) PROTECTION FOR EMPLOYEE

26 ANY MERIT SYSTEM EMPLOYEE WHO REFUSES TO OBEY AN INSTRUCTION
 27 INVOLVING AN ILLEGAL OR IMPROPER ACTION OR WHO DISCLOSES INFORMATION
 28 CONCERNING ILLEGAL OR IMPROPER ACTION IN COUNTY GOVERNMENT WITH A REASONABLE
 29 GOOD-FAITH BELIEF THAT SUCH DISCLOSURES ARE TRUE AND ACCURATE SHALL BE
 30 PROTECTED UNDER PROCEDURES AUTHORIZED HEREIN FROM ANY RETALIATORY OR COERCIVE
 31 PERSONNEL ACTION. THIS PROVISION DOES NOT EXTEND PROTECTION TO A MERIT
 32 SYSTEM EMPLOYEE UPON A DETERMINATION THAT:

33 (1) THE EMPLOYEE'S ACTIONS WERE FRIVOLOUS, UNREASONABLE OR
 34 WITHOUT FOUNDATION EVEN THOUGH NOT BROUGHT IN BAD FAITH;

35 (2) THE EMPLOYEE WITHOUT GOOD CAUSE FAILED TO COMPLY WITH
 36 ADMINISTRATIVE REGULATIONS CONCERNING THE MAKING OF SUCH DISCLOSURES; OR

37 (3) THE EMPLOYEE WAS THE SUBJECT OF OTHERWISE PROPER PERSONNEL
 38 ACTIONS TAKEN FOR DISCIPLINARY REASONS AND NOT FOR RETALIATORY PURPOSES

7A

1 PROHIBITED BY THIS SECTION.

2 A PERSONNEL ACTION SHALL MEAN ANY ADMINISTRATIVE ACT
 3 OR OMISSION WHICH HAS A SIGNIFICANT ADVERSE IMPACT UPON THE EMPLOYEE, OR
 4 A CHANGE IN THE EMPLOYEE'S DUTIES OR RESPONSIBILITIES INCONSISTENT WITH
 5 THE EMPLOYEE'S GRADE AND SALARY.

6 (c) PROHIBITED PRACTICES

7 IT SHALL BE UNLAWFUL FOR ANY PERSON TO COERCE ANY MERIT
 8 SYSTEM EMPLOYEE INTO TAKING AN ILLEGAL OR IMPROPER ACTION OR TAKE ANY
 9 RETALIATORY ACTION AGAINST ANY MERIT SYSTEM EMPLOYEES BECAUSE OF THAT
 10 EMPLOYEE'S DISCLOSURE OF INFORMATION RELATING TO ILLEGAL AND IMPROPER
 11 ACTION IN COUNTY GOVERNMENT.

25

(b) PROTECTION FOR EMPLOYEE

26

ANY MERIT SYSTEM EMPLOYEE WHO REFUSES TO OBEY AN INSTRUCTION
27 INVOLVING AN ILLEGAL OR IMPROPER ACTION OR WHO DISCLOSES INFORMATION
28 CONCERNING ILLEGAL OR IMPROPER ACTION IN COUNTY GOVERNMENT WITH A REASONABLE
29 GOOD-FAITH BELIEF THAT SUCH DISCLOSURES ARE TRUE AND ACCURATE SHALL BE
30 PROTECTED UNDER PROCEDURES AUTHORIZED HEREIN FROM ANY RETALIATORY OR COERCIVE
31 PERSONNEL ACTION. THIS PROVISION DOES NOT EXTEND PROTECTION TO A MERIT
32 SYSTEM EMPLOYEE UPON A DETERMINATION THAT:

33

(1) THE EMPLOYEE'S ACTIONS WERE FRIVOLOUS, UNREASONABLE OR
34 WITHOUT FOUNDATION EVEN THOUGH NOT BROUGHT IN BAD FAITH;

35

(2) THE EMPLOYEE WITHOUT GOOD CAUSE FAILED TO COMPLY WITH
36 ADMINISTRATIVE REGULATIONS CONCERNING THE MAKING OF SUCH DISCLOSURES; OR

37

(3) THE EMPLOYEE WAS THE SUBJECT OF OTHERWISE PROPER PERSONNEL
38 ACTIONS TAKEN FOR DISCIPLINARY REASONS AND NOT FOR RETALIATORY PURPOSES

7A

1 PROHIBITED BY THIS SECTION.

2

A PERSONNEL ACTION SHALL MEAN ANY ADMINISTRATIVE ACT
3 OR OMISSION WHICH HAS A SIGNIFICANT ADVERSE IMPACT UPON THE EMPLOYEE, OR
4 A CHANGE IN THE EMPLOYEE'S DUTIES OR RESPONSIBILITIES INCONSISTENT WITH
5 THE EMPLOYEE'S GRADE AND SALARY.

6

(c) PROHIBITED PRACTICES

7

IT SHALL BE UNLAWFUL FOR ANY PERSON TO COERCE ANY MERIT
8 SYSTEM EMPLOYEE INTO TAKING AN ILLEGAL OR IMPROPER ACTION OR TAKE ANY
9 RETALIATORY ACTION AGAINST ANY MERIT SYSTEM EMPLOYEES BECAUSE OF THAT
10 EMPLOYEE'S DISCLOSURE OF INFORMATION RELATING TO ILLEGAL AND IMPROPER
11 ACTION IN COUNTY GOVERNMENT.

12

(d) COMPLAINT PROCEDURE.

13

THE BOARD IS HEREBY AUTHORIZED AND DIRECTED TO ESTABLISH
14 PROCEDURES IN THE PERSONNEL REGULATIONS TO PROCESS COMPLAINTS CLAIMING
15 A VIOLATION OF SECTION 33-10(c) AND TO DEVELOP APPROPRIATE SANCTIONS AND
16 PENALTIES TO BE ASSESSED UPON A PERSON FOUND TO HAVE VIOLATED THE PRO-

17 VISIONS OF SECTION 33-10(c). ANY PERSON MAY FILE A COMPLAINT WITH THE
18 BOARD CHARGING A VIOLATION OF SECTION 33-10(c). THE BOARD SHALL ALSO
19 HAVE AUTHORITY, WITH OR WITHOUT A COMPLAINT, TO INITIATE AN INQUIRY OF
20 ANY PERSON SUSPECTED OF TAKING RETALIATORY OR COERCIVE PERSONNEL ACTION
21 AGAINST AN EMPLOYEE AS PROHIBITED BY SECTION 33-10(c).

22 (e) INVESTIGATIONS

23 ALL COMPLAINTS CHARGING A VIOLATION OF SECTION 33-10(c)
24 SHALL BE PROMPTLY INVESTIGATED BY THE BOARD'S STAFF WHO SHALL DETERMINE
25 WHETHER PROBABLE CAUSE EXISTS TO BELIEVE A VIOLATION OF THAT SECTION HAS
26 OCCURRED. SHOULD THE BOARD'S STAFF DETERMINE THAT THE SUBJECT MATTER
27 OF THE COMPLAINT INVOLVED ALLEGATIONS MORE PROPERLY THE SUBJECT OF AN
28 EMPLOYEE GRIEVANCE OR COMPLAINT TO BE FILED UNDER THE PROVISIONS OF THE
29 PERSONNEL REGULATIONS OR OTHER LAWS OR REGULATIONS, THE COMPLAINANT SHALL
30 BE SO ADVISED AND THE COMPLAINT DISMISSED. SHOULD THE BOARD'S STAFF
31 DETERMINE THAT NO PROBABLE CAUSE EXISTS, THAT DETERMINATION SHALL BE
32 FINAL AND THE COMPLAINT DISMISSED UNLESS RECONSIDERATION IS REQUESTED BY
33 THE BOARD. SHOULD THE BOARD'S STAFF DETERMINE THAT PROBABLE CAUSE DOES
34 EXIST, THE STAFF SHALL PREPARE AND CAUSE TO BE SERVED ON THE PERSON BELIEVED
35 TO HAVE VIOLATED SECTION 33-10(c) A STATEMENT OF CHARGES FAIRLY DESCRIBING
36 THE ALLEGED VIOLATION AND THE SANCTIONS SOUGHT TO BE IMPOSED FOR SUCH
37 VIOLATION. THE CHARGES SHALL THEN BE CERTIFIED TO THE BOARD TO SCHEDULE
38 AND CONDUCT HEARINGS IN ACCORDANCE WITH THE PROVISIONS OF THIS CHAPTER.
THE CASE IN SUPPORT OF CHARGES SHALL BE PRESENTED BY THE BOARD'S STAFF.

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33-11 Classification, Salary and Wage Plans.

2 (a) Classification Plan

3 Subject to any classification standards set forth in the Personnel
4 Regulations, the Chief Administrative Officer shall establish a plan
5 for classes of all positions in the merit system and classify such
6 positions therein and from time to time as may be necessary, amend said
7 plan by providing for additional classes to which new positions are
8 classified or combine or abolish all existing positions. The Chief
9 Administrative Officer, subject to the direction of the County Executive,
10 or the County Council in the case of the legislative branch employees,
11 shall have exclusive authority to administer the classification plan
12 so established.

13 (1) SUBJECT TO THE CLASSIFICATION STANDARDS/CONTAINED IN THE PERSONNEL
14 REGULATIONS, THE CHIEF ADMINISTRATIVE OFFICER SHALL BE RESPONSIBLE FOR :
15 ESTABLISHMENT AND ABOLITION OF POSITIONS AS NECESSARY FOR EFFECTIVE AND ECONOMICAL
16 OPERATION OF THE COUNTY GOVERNMENT; ASSIGNMENT OF ALL POSITIONS IN THE
17 MERIT SYSTEM TO PROPER CLASSES AND ASSIGNMENT OF PAY GRADES TO CLASSES
18 INCLUDING THE ESTABLISHMENT OF AN ADMINISTRATIVE REVIEW PROCEDURE FOR
19 HANDLING OBJECTIONS BY AFFECTED EMPLOYEES TO SUCH ASSIGNMENT ACTIONS;
AND CREATION OF ADDITIONAL CLASSES PROVIDED THAT THE BOARD SHALL BE GIVEN
REASONABLE OPPORTUNITY TO REVIEW AND COMMENT ON ANY SUCH PROPOSED NEW
CLASSES.

20
21 (2) IN NO EVENT SHALL AN UPWARD RECLASSIFICATION BE PERMITTED BETWEEN
22 JULY 1 AND DECEMBER 31 OF ANY YEAR IN WHICH THE COUNTY EXECUTIVE IS ELECTED
23 UNLESS THE CHIEF ADMINISTRATIVE OFFICER DETERMINES BY WRITTEN FINDING THAT
24 SUCH RECLASSIFICATION IS NECESSARY FOR THE EFFICIENT AND EFFECTIVE OPERATION
25 OF COUNTY GOVERNMENT.

26
27 (b) Uniform Salary Plan.
28 There is hereby established for all classes of positions in the
29 merit system a uniform salary plan entitled the "General Salary Schedule"
30 which shall contain grades, salary rates and ^{RANGES} salary steps for each grade.
31 All classes of positions shall be assigned an appropriate grade
32 under the general salary schedule by the Chief Administrative Officer.
33 All positions involving comparable duties, experience, responsibilities,
34 and authority shall be paid comparable salaries in accordance with the
35 relative value of the services performed. In establishing salary rates,

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1 consideration shall be given to experience, prevailing salary rates
2 for comparable services in both the public and private sector, living
3 costs, maintenance and other benefits received by the employee under
4 the merit system. The Chief Administrative Officer shall, subject
5 to the approval of the County Council, promulgate and from time to
6 time amend the "General Salary Schedule". The Chief Administrative
7 Officer shall also provide compensation procedures for overtime,
8 ^{PAY} ^{SALARY AND}
and ^{job} differential and other appropriate ^{wage} benefits.

9 (c) Salary Policies.

10 ~~(1) THE COUNTY EXECUTIVE SHALL PROVIDE AS A PART OF THE ANNUAL~~
11 ~~RECOMMENDED OPERATING BUDGET FOR THE COUNTY GOVERNMENT SUFFICIENT FUNDS~~
12 ~~TO IMPLEMENT THE COST-OF-LIVING ADJUSTMENT REQUIRED BY THIS SECTION.~~
13 ~~AFTER THE BUDGET IS APPROVED, THE CHIEF ADMINISTRATIVE OFFICER SHALL~~

14 ADJUST THE UNIFORM SALARY PLAN FOR ALL CLASSIFIED EMPLOYEES OF
 15 MONTGOMERY COUNTY GOVERNMENT BEGINNING ON THE FIRST PAY PERIOD ON OR AFTER
 16 JULY 1 OF EACH YEAR BY AN AMOUNT NOT LESS THAN SEVENTY-FIVE PERCENT
 17 (75%) OF THE CHANGE IN THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS
 18 IN THE WASHINGTON, D.C. AREA ALTHOUGH PAY GRADES 1 THROUGH 4 OF THE
 19 UNIFORM SALARY PLAN TO WHICH MINIMUM WAGE AND CERTAIN SEASONAL EMPLOYEES
 20 ARE ASSIGNED WILL BE ADJUSTED BY CHANGES IN MINIMUM WAGE RATES AND
 21 SALARY SURVEYS TO DETERMINE THE COMPETITIVENESS OF SUCH SALARIES. THE
 22 PERCENTAGE CHANGE SHALL BE BASED ON THE LATEST PUBLISHED INDEX FOR
 23 THE CALENDAR YEAR PRECEDING THE FISCAL YEAR IN WHICH THE ADJUSTMENT
 24 IS TO BE PAID. THE CHIEF ADMINISTRATIVE OFFICER MAY ADJUST THE UNIFORM
 25 SALARY PLAN IN EXCESS OF THE BASE PERCENTAGE OF SEVENTY-FIVE PERCENT
 26 (75%), PROVIDED FUNDS ARE AVAILABLE AND APPROVED BY THE COUNTY COUNCIL
 27 FOR SUCH PURPOSE.

28 ~~(c)~~ Employees are to be paid on a bi-weekly pay period basis. Except
 29 as specifically provided by federal, state or county law, the Chief
 30 Administrative Officer shall have the responsibility for determining
 31 payroll deductions and charges for such deductions, if any. Upon
 32 termination, if an employee is indebted to the County, the amount
 33 due may be set off and deducted from any unpaid salary, accrued annual
 34 or compensatory leave, or retirement contributions.

35 (d) Other Compensation Policies.

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1 The Chief Administrative Officer may establish other compensation
 2 policies to recognize employees who perform in an extraordinary manner
 3 either on a sustained performance basis or in recognition of a
 4 specific act or service. These compensation policies may include
 5 monetary awards to employees making suggestions which result in
 6 better public service, cost savings or more efficient operations.
 7 Compensation policies may be in the form of cash awards or be part
 8 of the uniform salary plan.

9
 10 33-12. APPEALS OF DISCIPLINARY ACTIONS, ~~Types of~~ Grievances AND PROCEDURES.

11 (a) APPEALS OF CERTAIN DISCIPLINARY ACTIONS: ~~States~~ Any merit system employee,
 12 including those in probationary status, who has been notified of impending removal,
 13 and whose removal is the result of possible removal, demotion, or suspension shall be

14 ~~entitled to file an direct appeal to the Personnel Board which shall promptly schedule and~~
 15 ~~conduct a hearing WITHOUT UNDUE DELAY UNLESS THE APPEAL HAS BEEN SETTLED DURING ADMINISTRA-~~
 16 ~~TIVE REVIEW OF THE APPEAL BY THE CHIEF ADMINISTRATIVE OFFICER OR A DESIGNEE. ANY MERIT~~
 17 ~~SYSTEM EMPLOYEE WHO IS THE SUBJECT OF OTHER DISCIPLINARY ACTION NOT SPECIFIED ABOVE MAY~~
 18 ~~FILE AN APPEAL WITH THE PERSONNEL BOARD, BUT SUCH APPEAL MAY OR MAY NOT REQUIRE A HEARING AS~~
 . ~~THE BOARD MAY DETERMINE.~~

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A GRIEVANCE IS A

(b) GRIEVANCES. ~~Non-Charter. Not inconsistent with other provisions of law, the~~
 1 ~~Personnel Board shall prescribe in its Personnel Regulations those classes of non-Charter~~
 2 ~~employees which require hearings. Once a class is so designated, any merit system~~
 3 ~~employee filing a grievance concerning that class shall be entitled to a hearing and~~
 4 ~~determination by the Board after compliance with any administrative procedures required~~
 5 FORMAL COMPLAINT ARISING OUT OF A MISUNDERSTANDING OR DISAGREEMENT BETWEEN
 6 A MERIT SYSTEM EMPLOYEE AND MANAGEMENT WITH REFERENCE TO A TERM OR
 7 CONDITION OF EMPLOYMENT. THE DETERMINATION OF THE BOARD AS TO WHAT
 8 CONSTITUTES A TERM OR CONDITION OF EMPLOYMENT SHALL BE FINAL. GRIEVANCES DO NOT INCLUDE THE
 9 FOLLOWING: CLASSIFICATION ALLOCATIONS, FAILURE TO RE-EMPLOY A PROBATIONARY EMPLOYEE
 10 OR OTHER EMPLOYMENT MATTERS FOR WHICH ANOTHER FORUM IS AVAILABLE TO PROVIDE RELIEF OR THE
 11 BOARD DETERMINES BY REGULATION ARE NOT SUITABLE MATTERS FOR THE GRIEVANCE RESOLUTION
 12 PROCESS. A GRIEVANCE SHALL INCLUDE TERMINATION BY RESIGNATION WHICH
 13 IS FOUND BY THE BOARD TO HAVE BEEN SUBMITTED UNDER CIRCUMSTANCES
 14 WHICH CAUSE THE RESIGNATION TO BE INVOLUNTARY; AND, IN THE EVENT OF SUCH
 15 A FINDING, THE BOARD SHALL REQUIRE THE APPOINTING AUTHORITY TO SUBSTANTIATE
 16 THE TERMINATION AS IN THE CASE OF A REMOVAL. THE BOARD SHALL PRESCRIBE
 17 IN THE PERSONNEL REGULATIONS PROCEDURES WHICH SEEK TO
 18 SECURE AT THE LOWEST POSSIBLE LEVEL A FAIR, PROMPT AND MUTUALLY
 19 SATISFACTORY RESOLUTION TO A GRIEVANCE. IN PROVIDING THESE
 20 PROCEDURES, THE BOARD SHALL INSURE THAT ANY GRIEVANCE BASED UPON
 21 AN ALLEGED IMPROPER APPLICATION OF A MERIT SYSTEM LAW OR REGULATION
 22 CONCERNING A DISPUTED ISSUE OF FACT IS ENTITLED TO RESOLUTION AFTER A
 23 FACT-FINDING INQUIRY AUTHORIZED BY THE BOARD. GRIEVANCES BASED UPON AN
 24 ALLEGED IMPROPER INTERPRETATION OF MERIT SYSTEM LAWS, OR REGULATIONS
 25 DO NOT REQUIRE A HEARING DURING THE GRIEVANCE RESOLUTION PROCESS.

~~by the Board. The Board may utilize hearing officers to conduct non-Charter~~
 23 INVESTIGATIONS AND
 24 grievance hearings who shall make findings and recommendations subject to
 25 objection by the parties and final Board approval under such procedures as
 26 established by the Board.

~~33-12. Administrative Procedures and Remedies.~~

(a) ~~The Chief Administrative Officer shall prescribe administrative~~
 28 ~~procedures and remedies for all classes of non-Charter grievances.~~

29 ~~(b) These administrative remedies must be exhausted prior to any~~
30 ~~appeal to the Board.~~

31 ~~(c) Except in cases of removal, demotion or suspension, the Personnel~~
32 ~~Board shall prescribe in the Personnel Regulations the procedure for grievance~~
33 ~~appeals to the board.~~

34 11-11. Appeal PROCEDURES.

35 ~~(a) Appeals of all grievances properly before the Personnel Board must~~
36 ~~be filed therewith in writing within thirty days after the grievance begins~~
37 ~~and a copy of the appeal shall be provided to the Chief Administrative~~
38

1 ~~Officer. The appeal must be filed in a form and manner prescribed by the Board.~~
2 ~~In cases of removal, demotion or suspension, the grievance occurs immediately~~
3 ~~upon initial notification to the employee of such action. In all other cases,~~
4 ~~the grievance occurs upon completion of the required administrative procedure~~
5 ~~whenever.~~

6 THE PERSONNEL BOARD SHALL PRESCRIBE BY PERSONNEL REGULATIONS
7 PROCEDURES COVERING GRIEVANCES WHICH SHALL INCLUDE APPEALS INCLUDING/THE TIME LIMIT FOR FILING
8 SUCH APPEAL, THE GRANTING OF ADMINISTRATIVE LEAVE PENDING APPEAL, FILING AND
9 COST OF THE ADMINISTRATIVE RECORD, CONDUCT OF HEARINGS, REQUIREMENTS FOR WRITTEN NOTICE, AND
10 PROVISIONS FOR SUMMARY ACTIONS BY THE PERSONNEL BOARD.

11 ~~(b) Administrative Leave Pending Appeal.~~

12 ~~In cases of removal, the Personnel Board, hereby, by Personnel~~
13 ~~Regulation those situations where administrative leave may be granted pending~~
14 ~~appeal for those cases determined to be of a non-disciplinary nature.~~

15 ~~(c) Administrative Record System and Summary Action.~~

16 ~~(1) After the filing of a notice of appeal with the Personnel~~
17 ~~Board, but not later than 15 days thereafter, the County~~
18 ~~Department involved shall forward to the Board the complete~~
19 ~~administrative record of the civil service employee grievance~~
20 ~~which contains all relevant reports, papers and documents.~~
21 ~~The Department, except for good cause shown, shall be~~
22 ~~prohibited from participating in hearing any written evidence~~
23 ~~not contained in said records. The record so filed with the~~
24 ~~Board shall be available for inspection by all parties to~~
25 ~~the proceedings or their legal representatives at all~~
26 ~~reasonable times prior to hearing.~~

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~~(2) In cases of removal, demotion or suspension the Board shall examine the record so far as it reflects that the merit system employee received fair and reasonable notice of the charges against him or her.~~

~~(3) The Board may, without a hearing, successfully dismiss, or remove an officer or appeal when for violation of the merit system employee's duty, or when the merit system employee on appeal has not timely filed adequate recordings or when extenuating or other circumstances were not satisfied.~~

11A

1 13-14. Hearing Authority of the Personnel Board.
 HEARING REQUIREMENTS.

2 (a) Hearings before the Personnel Board are quasi judicial in nature and
 3 shall be conducted in formal session in accordance with THE PROVISIONS AND AUTHORITY CONTAINED
 4 THE COUNTY ADMINISTRATIVE PROCEDURES ACT. in the
 5 principles of Administrative Procedures. The Board, or designated hearing
 6 officers, shall have the following authority with respect to cases to be heard:

7 ~~(1) Admit or exclude and cause subpoena upon request of the parties~~
 8 ~~to be heard or produced in any hearing, evidence, documents or~~

9 BOARD MEMBERS SHALL BE PROVIDED ORIENTATION AND
 10 TRAINING AS REQUIRED TO PROPERLY IMPLEMENT THE REQUIREMENTS OF
 11 THE COUNTY ADMINISTRATIVE PROCEDURES ACT AND CONDUCT ADMINISTRATIVE
 12 EVIDENTIARY PROCEEDINGS. WITH RESPECT TO HEARINGS WHICH GO BEYOND
 13 ONE SESSION, THE BOARD SHALL ENDEAVOR TO SCHEDULE SUCH HEARINGS SO
 14 THAT A MINIMUM AMOUNT OF TIME ELAPSES BETWEEN SESSIONS. WHEN REQUIRED
 15 FOR CONTINUITY AND MINIMUM LOSS OF TIME IN CONCLUDING A CASE, THE
 16 BOARD SHALL ALSO ENDEAVOR TO SCHEDULE HEARINGS DURING DAYTIME, WEEKDAY
 HOURS.

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1 ~~any relevant thing, and cause subpoenas or to cause initiative call~~
 2 ~~to take into evidence or seek additional evidence to be made part of~~
 3 ~~the record as justice may require. All Board subpoenas shall be executed~~
 4 ~~by the Board Chairperson and may be served by the Sheriff of the County~~
 5 ~~or any person who could lawfully serve civil subpoenas in a civil case.~~
 6 ~~Upon noncompliance with any Board subpoena duly issued hereunder, the~~
 7 ~~Board may certify the matter to the County Attorney for enforcement.~~
 8 The County Attorney shall promptly institute appropriate civil proceedings
 9 in a court of competent jurisdiction as necessary to obtain compliance
 10 with the Board's subpoenas.

11 ~~(2) Rule on petitions to grant or quash subpoenas.~~
 12 ~~(3) Rule on motions, offers of proof and receive relevant and~~
 13 ~~probative evidence, and exclude incompetent, irrelevant, immaterial or~~
 14 ~~unduly repetitious evidence and give effect to the rules of privilege~~
 15 ~~recognized by law.~~

16 ~~(4) Dispose of procedural requests or similar matters including~~
 17 ~~motions for continuance, amend pre-hearing statements and order hearings~~
 18 ~~reopened, consolidated or grant rehearings.~~

19 ~~(5) Call, examine and cross-examine witnesses and obtain and~~
 20 ~~introduce into the record documentary or other evidence.~~

21 ~~(6) Accept evidence by stipulation of facts.~~

22 ~~(7) Require Hearings/~~ ^{H SHALL} ~~be open to the public WITH REASONABLE NOTICE,~~
 23 ~~if requested by the employee.~~

24 (b) BOARD COUNSEL. THE BOARD MAY REQUEST SPECIAL COUNSEL
 25 WHEN THE BOARD AND THE COUNTY ATTORNEY DETERMINE THAT A REPRESENTATIVE
 26 CONFLICT EXISTS WITHIN THE COUNTY ATTORNEY'S OFFICE. THE SPECIAL COUNSEL
 27 SHALL BE AN INDIVIDUAL ACCEPTABLE TO THE BOARD. THE COUNTY ATTORNEY MAY
 28 ASSIGN AN ATTORNEY TO THE BOARD AS ITS GENERAL COUNSEL WHO SHALL REPRESENT
 29 THE BOARD EXCLUSIVELY ON MATTERS CONCERNING THE MERIT SYSTEM.

30 ~~(A) Take any other action authorized by law or necessary to a~~
 31 ~~fair and impartial disposition of the case.~~

32 ~~(b) The Personnel Board shall include in its Personnel Regulations~~
 33 ~~procedures governing such administrative hearings.~~

34 (C) Decisions.

35 Final decisions by the Personnel Board shall be in writing, setting
 36 forth necessary findings of fact and conclusions of law, and shall be
 37 prepared in consultation with ^{HIS} ~~the County Attorney~~ in the event the
 38 ~~County Attorney does his or her representation would not be professionally~~
 39 ~~appropriate, appeal shall be heard by the appointed in accordance~~

1 with the provisions of the County Charter. A copy of such decision
 2 shall be furnished to ^{ALL} ~~the~~ parties by certified mail. The Board, upon a
 3 finding that the ^{APPEAL} ~~complaint~~ has no merit, shall dismiss the appeal.
 4 The Board upon finding that the ^{APPEAL} ~~complaint~~ is warranted, shall have authority
 5 to order appropriate relief to accomplish the remedial objectives of this
 6 Article including but not limited to the following:
 7 (1) order retroactive promotion or reclassification with or
 8 without back pay;

- 9 (2) order change in position status; grade, work schedule,
 10 work conditions and work benefits;
- 11 (3) order priority consideration be given to an employee found
 12 qualified before consideration is given to other candidates;
- 13 REINSTATEMENT
 13 (4) order/with or without back pay reinstatement, although the Chief
 14 Administrative Officer may reinstate either to a position previously
 15 held or to a comparable position of equal pay, status and responsibility.
- 16 (5) order cancellation of personnel actions found in violation of
 17 law or Personnel Regulation provided that such action may not
 18 without due process, adversely affect the employment rights
 19 of another employee;
- 20 (6) grant employee participation in an employee benefit previously
 21 denied (training, educational program or assistance, preferential
 22 or limited work assignments and schedules, overtime pay or
 23 compensatory leave).
- 24 (7) order removal from administrative or personnel records any
 25 reference or document pertaining to an unwarranted
 26 disciplinary or adverse personnel action;
- 27 (8) order corrective measures as to any management procedure
 28 adversely affecting employee pay, status, work conditions,
 29 leave, or morale;
- 30
- 31 (9) ORDER THE COUNTY TO REIMBURSE OR PAY ALL OR PART OF THE
 32 EMPLOYEES' REASONABLE ATTORNEY'S FEES. THE REASONABIENESS
 OF THE ATTORNEY FEES SHALL BE DETERMINED BY THE

- 13A -

1 FOLLOWING FACTORS:

- 2 a. TIME AND LABOR REQUIRED;
- 3 b. THE NOVELTY AND COMPLEXITY OF THE CASE;
- 4 c. THE SKILL REQUISITE TO PERFORM THE LEGAL SERVICE PROPERLY;
- 5 d. THE PRECLUSION OF OTHER EMPLOYMENT BY THE ATTORNEY DUE
 6 TO ACCEPTANCE OF THE CASE;
- 7 e. THE CUSTOMARY FEE;
- 8 f. WHETHER THE FEE IS FIXED OR CONTINGENT;
- 9 g. TIME LIMITATIONS IMPOSED BY THE CLIENT OR THE CIRCUMSTANCES;

- 9 h. THE EXPERIENCE, REPUTATION AND ABILITY OF THE ATTORNEYS; and
 10 i. AWARDS IN SIMILAR CASES ; AND
 11 (10) (9) order such other and further relief as may be deemed appropriate
 12 consistent with the Charter and laws of Montgomery County.

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1 33-15. Judicial Review AND ENFORCEMENT.

2 (a) ^{AGGRIEVED} ANY/MERIT SYSTEM EMPLOYEE OR THE CHIEF ADMINISTRATIVE OFFICER
 3 MAY OBTAIN JUDICIAL REVIEW OF A PERSONNEL BOARD ORDER OR DECISION FROM
 4 ~~(a) All final decisions of the Personnel Board may be appealed by the~~
 5 ~~Chief Administrative Officer on behalf of the County or by any other~~
 6 ~~party AGGRIEVED party to the proceedings to the Circuit Court~~
 7 FOR MONTGOMERY COUNTY in the manner prescribed under Chapter 1100,
 8 Subtitle B of the Maryland Rules of Procedure/, AND SHALL NOT BE DE
 9 NOVO IN NATURE.

10 (b) THE COURT, IN HEARING THE CASE, SHALL APPLY THE JUDICIAL REVIEW
 11 STANDARDS AS SET FORTH IN THE MARYLAND ADMINISTRATIVE PROCEDURES ACT, ART.
 12 41, MD. CODE ANN. S225. THE COURT REVIEW SHALL BE ON THE BASIS OF THE
 13 RECORD BEFORE THE BOARD. Judicial review of Board decisions issued hereunder
 14 also includes ~~all-appropriate~~ appellate review ~~including-BY~~ the Special
 15 Courts of Appeals of Maryland. ~~and-the-Court-of-Appeals-of-Maryland.~~

16 (c) WHEN THE CHIEF ADMINISTRATIVE OFFICER IS THE PARTY SEEKING
 17 JUDICIAL REVIEW OF A BOARD ORDER OR DECISION IN FAVOR OF A MERIT SYSTEM
 18 EMPLOYEE, THE COUNTY SHALL BE RESPONSIBLE FOR THE EMPLOYEE'S LEGAL EXPENSES,
 19 INCLUDING ATTORNEYS' FEES WHICH RESULT FROM THE JUDICIAL REVIEW AND ARE
 20 DETERMINED BY THE COUNTY TO BE REASONABLE UNDER THE CRITERIA SET FORTH IN
 21 SECTION 33-14 (c) (9).

22 ~~33-16. Penalties and Enforcement.~~

23 ~~(a) In addition to any penalties provided by State law, or elsewhere in~~
 24 ~~this Code, any person who violates any provision of this Article including~~
 25 ~~decisions of the Personnel Board or who under oath intentionally falsifies~~
 26 ~~material facts or willfully and falsely testifies before the Board or who~~
 27 ~~suborns, intimidates, bribes, or in any way coerces or influences a witness~~
 28 ~~to attend proceedings shall upon conviction be subject to a fine of \$1,000~~
 29 ~~or six months imprisonment or both...Any such person who is a County employee~~
 30 ~~shall, upon conviction, be subject to immediate dismissal from County~~

22 Board shall then render a final decision on the referred complaint, which
 23 decision shall be expeditiously transmitted in writing to the complainant,
 24 the Human Relations Commission and the Chief Administrative Officer of the
 25 County. In the event that the Personnel Board fails to take any action on
 26 a referral from the Commission within thirty days from the date of such
 27 referral, the Commission may proceed as provided hereunder.]

28 (b) The complaint shall be processed in accordance with the procedures
 29 contained in Section 27-7. In addition to other remedies authorized by law,
 30 the Commission shall have authority upon completion of its process to
 31 forward to the Chief Administrative Officer an order requiring the County
 32 to grant to the employee such relief as the Commission deems appropriate and
 33 within its authority to order against private employers. The Chief
 34 Administrative Officer shall implement the order.

35 Sec. 4. The individual section numbers of Article III, title "Employees'
 36 Retirement System" and Article IV, title "Employer-Employee Relations" of
 37 Chapter 33, title "Personnel" are hereby sequentially renumbered as appropriate
 38 without any change in text to conform with the provisions of this act.

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1 Sec. 5. Section 33-3, title "Continuation and Administration of Merit System"
 2 of Article I, title "General" of Chapter 33, title "Personnel" of the Montgomery
 3 County Code, 1972, as amended, is repealed and reenacted with amendments to read
 4 as follows:

5 Sec. 33-3. Continuation and Administration of Merit System.

6 (a) The merit system for officers and employees of the county
 7 government established pursuant to the Charter for Montgomery County,
 8 Maryland, 1948, is hereby continued. All officers and employees of the
 9 county government, ~~except members of the Council, the County Executive,~~
 10 ~~the Chief Administrative Officer, the County Attorney, the heads of the~~
 11 ~~various departments, special legal counsel employed pursuant to the~~
 12 ~~Charter for Montgomery County, 1968, and members of boards and commissions~~
 13 ~~and other officers authorized by law to be appointed to serve in a quasi-~~
 14 ~~judicial capacity,~~ shall be classified as merit system employees.

15 (b) The merit system shall be administered by the Chief Administrative
 16 Officer, under the direction of the County Executive, and shall be governed
 17 by and subject to the provisions of the Charter for Montgomery County, 1968,
 18 provisions of this Chapter, and the regulations adopted by the Personnel
 19 Board and approved by the County Council.

20 SEC. 6. REVISIONS TO PERSONNEL REGULATIONS.
 21 THE PERSONNEL BOARD SHALL CONFORM THE PERSONNEL REGULATIONS
 22 TO THE REQUIREMENTS OF THIS ACT AS SOON AS THE AMENDMENT TO CHARTER
 23 SECTION 404 GOES INTO EFFECT, BUT IN NO EVENT TO INITIATE REVISIONS
 24 TO THE PERSONNEL REGULATIONS TO THE PERSONNEL REGULATIONS LATER THAN
 25 NINETY (90) DAYS FOLLOWING THE ENACTMENT OF THIS LAW

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1 Sec. 7. Severability.

2 The provisions of this Act are severable and if any provision, sentence,
 3 clause, section or part thereof is held illegal, invalid or unconstitutional
 4 or inapplicable to any person or circumstances, such illegality, invalidity
 5 or unconstitutionality, or inapplicability shall not affect or impair any
 6 of the remaining provisions, sentences, clauses, sections or parts of the act
 7 or their application to other persons or circumstances. It is hereby declared
 8 to be the legislative intent that this act would have been adopted if such
 9 illegal, invalid or unconstitutional provision, sentence, clause, section or
 10 part had not been included therein, and if the person or circumstances to
 11 which the act or any part thereof is inapplicable had been specifically
 12 exempted therefrom.

13 Sec. 8. Effective date.

14 This Act shall take effect on the 76th day following the date on which
 15 it becomes law.

Upon motion of Councilman Colman, duly seconded and without objection,
 the Council amended the title of Bill No. 36-78 to read as follows:

AN ACT to amend Chapter 33, title "Personnel" of the Montgomery County Code, 1972,
 as amended, to transfer Sections 33-5 through 33-33, collectively designated
 as Article II, title "Personnel Regulations" to an Appendix of this Chapter
 and its component sections to be renumbered accordingly; to add a new Article
 II, title "Merit System" to Chapter 33 to provide for legislative intent,
 Merit System principles, statement of purpose, Merit System Review
 Commission and applicability; to define certain terms; to assign certain
 responsibilities to the Personnel Board; to assign certain responsibilities
 to the Chief Administrative Officer; to establish an Equal Employment Opportunity
 and Affirmative Action Program; to provide for protection for employees against

retaliation or coercion for refusal to obey illegal or improper instructions or for disclosure of illegal or improper actions in County government; to provide procedures for such disclosures; to prescribe complaint and investigation procedures and to prohibit certain conduct; to provide for classification, salary and wage plans; to provide for appeals of disciplinary actions, grievances and procedures; to require regulations concerning certain appeal procedures; to provide for the hearing authority of the Personnel Board concerning appeals; to provide for judicial review of Personnel Board decisions and judicial enforcement of Board decisions under certain circumstances; to provide for an interpretation in the event of conflict between the Article and any regulation; to repeal and reenact with amendments Section 27-21, title "Procedures for Complaint Against the County" of subtitle "Discrimination in Employment" of Article I, title "Commission on Human Relations" of Chapter 27, title "Human Relations and Civil Liberties" of the Montgomery County Code 1972, as amended, to establish revised procedures and remedies for employment discrimination and to provide for a waiver of Merit System rights upon election of the employment discrimination complaint procedure; to sequentially renumber the individual section numbers of Article III, title "Employees Retirement System" and Article IV, title "Employer-Employee Relations" of Chapter 33 as appropriate without any change in text; to make technical modifications to Section 33-3 of Chapter 33; to require the Personnel Board to conform its regulations to law within a certain time; and to make certain other technical changes consistent with other amendments of this Act.

Upon motion of Councilman Colman, duly seconded and without objection, the Council voted to waive the reading of the title and proceed to enactment of Bill No. 36-78. By a yea and nay vote, Councilmembers Gelman, Colman, Potter, Menke and Scull voting in the affirmative and Councilmembers Hovsepian and Moore being absent, Bill No. 36-78, Comprehensive Merit System, was enacted, as amended.

Councilman Colman stated that the main purpose of Bill No. 36-78 is to delineate the responsibilities of the Executive Branch and Personnel Board with respect to personnel management in County government. This bill, coupled with Ballot Question A, clarifies a legal question that has surrounded the personnel management field in the County government for several years, i.e., the authority of the Council

to amend Personnel Regulations promulgated by the Personnel Board. During deliberations on the bill, it became apparent that it would be appropriate to enunciate certain policies and principles for the County government and its employees. Included in those is a clarification of the classification responsibilities, the requirement for conformity by the Personnel Board to the Administrative Procedures Act, and a section designed to prevent retaliation or coercion by management against employees who may identify improper or illegal activities in the County government. Councilman Colman stated that the bill has been improved very much since its introduction. It clarifies a great many problems with regard to personnel management. He expressed the hope that the County Executive will approve the bill.

On behalf of the Council, President Scull thanked all those Executive Branch personnel, Personnel Board staff, employee representatives and Council staff who worked on Bill No. 36-78. She stated that it was a fine job.

Re: Enactment of Bill No. 37-78,
Cost-of-Living Adjustment

Bill No. 37-78, Cost-of-Living Adjustment, was called for final reading. The Council had before it for consideration Draft No. 2, dated November 8, 1978, of Bill No. 37-78.

Upon motion of Councilman Menke, duly seconded and without objection, the Council voted to waive the reading of the bill & proceed to consideration of amendments.

President Scull inquired as to whether this bill really needs to be emergency legislation. She noted that if it is not emergency legislation, it will only require 4 affirmative votes, instead of 5.

Mr. Tierney stated that he has checked this matter with the Executive Branch, and has found that an effective date 76 days after the bill becomes law will allow ample time for the preparation of the FY 1980 budget.

Councilman Menke stated that the wording of Section 33-74 on page 2 of the bill provides that the CAO shall increase the salary of County employees by at least 75% of the Consumer Price Index (CPI). He must do so or be in violation of the law. If the Council does not approve sufficient funds to provide the cost-of-living adjustment, the CAO will be forced to cut programs and services and to lay off some employees in order to give a cost-of-living increase to others. He

stated that the Council had not made a commitment for such a process. The intent of the Council was to legislate that the County Executive shall recommend such an increase in his budget and other matters as might be needed to implement the cost-of-living policy.

Councilman Menke moved, duly seconded, that the words [After the budget is approved] be deleted from line 5, page 2, and the following inserted in lieu thereof: To the extent funds are provided in the approved budget,.

In response to an inquiry from President Scull as to whether the proposed amendment would destroy the purpose of the bill, Councilman Manke stated that he does not believe it will. He does not believe that this Council can adopt a law that binds future Councils to appropriate funds to provide a cost-of-living adjustment that is 75% of the CPI. However, after the budget is adopted, it is proper to require that the CAO carry out the intent of the Council. The County Council, answerable to the voters, must be the body that decides the major policy issue of salary increases for County employees. He stated that his amendment will protect the CAO from performing an illegal act if the Council has not provided the funds, and it will avoid raising false hopes that employees will receive 75% of the CPI no matter what happens with respect to funding.

Councilman Potter stated that the language of the bill sets a standard for cost-of-living increases and forces the presentation of a budget by the County Executive which takes into account changes in the cost-of-living. He believes that is a proper approach to the situation. The ultimate consideration and decision by the Council must take into account the many factors involved, such as a national policy for curbing inflation. He expressed the view that the amendment offered by Councilman Menke provides for full consideration of the major aspects of the fiscal situation by the Council. If the Council wants to cut the budget, it must decide whether to cut the cost-of-living allowance, or to cut employment and services. He stated that such decisions should not be left to the CAO.

Councilman Colman stated that, without Councilman Menke's amendment, if the Council does not provide adequate funds in the budget, there would be a requirement that the full 75% of CPI cost-of-living be provided and the shortfall compensated by reductions-in-force (RIFs). With at least a \$20 million shortfall facing the next Council for FY 1980, the layoff problem will be serious enough without destroying or precluding some flexibility between the cost-of-living increase and employee layoffs. He expressed the view that the amendment is desirable.

Director of Personnel Lloyd pointed out that the provision for an automatic cost-of-living increase that is 75% of the CPI was part of a comprehensive pay package proposed by the County Executive last spring. There are two major factors in the pay system, the annual increments and the cost-of-living adjustment. It was agreed that the variable would be the annual cost-of-living increase, and, accordingly, the annual merit increments were reduced significantly to a very modest amount. The intent at that time was to put into law a requirement that the cost-of-living adjustment would be 75% of the CPI each year. Mr. Lloyd stated that if the cost-of-living adjustment is to be limited by the availability of funds, the Executive Branch will have to reconsider its action to reduce the annual increments.

Councilman Menke stated that if the Council does not provide the funds for a 75% of CPI cost-of-living adjustment, or if there is a depression and fall-off of tax revenues, the CAO is faced with violating the law or involving RIFs.

President Scull suggested that the law could be amended by the Council in the event of an emergency situation such as a depression to avoid violation of the law by the CAO. She stated that enactment of this bill, without the amendment offered by Councilman Menke, is a major step that the Council agreed to take last spring.

Councilman Menke stated that during the spring when the Council is making decisions on the budget, it would not have time to amend the law if it is necessary due to the lack of funds. He believes that the Council is already taking a major step by writing into law what the Executive must present in his budget, and that the CAO must implement the cost-of-living adjustment. He also believes it is clear that the intent of the Council is to grant a 75% of CPI cost-of-living increase. He does not believe, however, that it is legal to constrain what future Councils may decide. Neither is it appropriate to put the CAO in a position of violating the law or laying off employees. He expressed the view that the Council's commitment last spring was to introduce and consider this legislation.

Councilman Colman stated that if it is the opinion of the Executive Branch that the amendment offered by Councilman Menke violates agreements with employees, then he no longer desires to support the amendment. However, he stated that no legislative body can bind the next one. If a situation did occur where the

CAO would be in violation of the law, the Council would have to enact emergency legislation to amend this law.

Councilman Potter agreed that there was a commitment with employees, and expressed the view that that commitment is the approach that should be taken in the budget. He recalled past budgets wherein there was considerable controversy over the cost-of-living adjustment. He stated that there will remain considerable pressure on succeeding Councils to reduce services and employment to whatever extent necessary to provide the full cost-of-living provision. If the Council does not provide sufficient funds, he does not believe that the CAO should be required to make the cuts necessary to provide a 75% of CPI cost-of-living increase.

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

Councilman Menke indicated that he will vote against the bill in its present form. He stated that it is poor legislation and does not protect the public interest.

Councilman Potter indicated that he will vote for the bill, noting that the next Council can amend the law if required to avoid the CAO being in violation of the law. He pointed out that the next Council will have to anticipate the situation well before May 15 in order to either provide the funds or amend the law. This could create considerable anxiety in a situation where five votes are needed to increase the budget by more than the change in the CPI, and to enact emergency legislation.

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

Councilwoman Gelman requested that enactment of Bill No. 37-78 be postponed until after the luncheon break so that she may have an opportunity to think about the implications of needing five votes to enact emergency legislation should that become necessary.

Councilman Menke moved, duly seconded, that enactment of Bill No. 37-78 be tabled until after the luncheon recess. His motion was adopted, Councilmembers Gelman, Menke and Potter voting in the affirmative and Councilmembers Colman and Scull voting in the negative.

Councilman Menke requested that Mr. Lloyd ascertain the County Executive's position on the amendment he had proposed to Section 35-74.

(The Council recessed at 12:15 P.M., and reconvened at 1:30 P.M.)

At the request of Councilwoman Gelman, upon motion of Councilman Colman, duly seconded, Councilmembers Colman, Gelman, Potter and Menke voting in the affirmative and President Scull voting in the negative, the Council agreed to reconsider the amendment to Section 33-74 offered by Councilman Menke.

Councilman Potter stated that 75% of the current increase in the CPI is $6 \frac{3}{8}\%$. That amount, added to the average $2 \frac{1}{2}\%$ annual increments, would give County employees wage increases of $8 \frac{7}{8}\%$, which is considerably above the President's guideline of 7% increase for wages. Amendment D to the County Charter, approved at the November election, requires five votes of the Council to increase expenditures by more than the CPI. This amendment makes no allowance for growth in the County or its services. If wages were to increase $8 \frac{7}{8}\%$, the Council would be facing a difficult situation, since salaries are 70% of the County Operating Budget. In addition, the oil producing nations are expected to increase prices by 10% this winter. It appears that the Council will be facing the five vote requirement for the FY 1980 budget. The Council is committed to cutting \$21 million worth of services, but even that may not bring expenditures down to within the CPI increase. In view of these difficulties, the Council must have room for reflection and evaluation of the fiscal situation as it exists at the time of budget adoption. Councilman Potter stated that if inflation continues to accelerate it will be necessary to increase the cost-of-living adjustment above the $6 \frac{3}{8}\%$ because of the pressure on County employees. On the other hand, if the President is successful in reducing the rate of inflation below 7%, the Council can lower the cost-of-living adjustment because less would be required to accommodate the needs of employees. If this is the situation, the County government should conform to the President's wage-price guidelines. Councilman Potter stated that the Council should have flexibility to meet any situation that arises, and should not be forced into an emergency revision of the law in order to conform to national policy and actual facts.

Councilman Colman stated that there is a provision in the recently enacted Bill No. 36-78, Comprehensive Merit System, that the CAO shall, subject to the approval of the County Council, promulgate and amend the general salary schedule. This is the method by which the CAO would implement the annual cost-of-living adjustment. If the County Council does not provide adequate funds in

the budget for the 75% of CPI cost-of-living adjustment, the Council can avoid the CAO being in violation of the law by disapproving the amendment to the general salary schedule. Such an action would require an ordinary majority vote of the Council.

Councilman Menke stated that County law is generally interpreted such that when the Council only has "approval" power over something, it can either approve it or disapprove it, but cannot amend it or substitute anything. If the Council simply disapproved the salary schedule, the CAO would still be required to implement the 75% of CPI cost-of-living adjustment. He expressed the view that the amendment that was considered earlier is necessary in order to provide flexibility.

Councilwoman Gelman stated that the Council did not have Amendment D to the County Charter before it when it discussed this issue previously. She stated that she did not support that amendment, but it is law and it must be upheld. The new Council will require a year to work under the new law to determine how it will affect the County. She expressed the view that it would be unwise to restrict a new Council to the five vote requirement on salary issues as well as Amendment D. She stated that the five vote requirement provides for government by a minority; it is not majority rule. Councilwoman Gelman stated that she cannot support Bill No. 37-78 in view of the amendment to the County Charter which requires five votes to increase the budget beyond the change in the CPI.

Councilman Colman pointed out that five votes of the Council are also required to enact emergency legislation, override a veto, or to adopt an emergency appropriation. It is not an unusual situation in County government. He stated that he will vote against the amendment offered by Councilman Menke. He expressed the view that this Council owes it to the CAO and employee groups to honor the agreement worked out last spring.

With respect to the President's wage-price guidelines, Mr. Lloyd stated that the wage guidelines do not apply in situations where there is an existing agreement or oral commitment made prior to October 1978. The Council's resolution of last May, No. 8-1935, represents such an agreement, and he is fairly satisfied that an action to grant more than a 7% cost-of-living adjustment would be within the guidelines.

Councilman Menke stated that Resolution No. 8-1935 adopted as policy the 75% of CPI cost-of-living adjustment, and stated that the Council would (and has) introduce legislation to implement that policy. The agreement of the Council, and the discussion today, makes it clear that the policy is to grant a cost-of-living adjustment that is 75% of the CPI; the bill clearly implements that policy. The issue here is not whether the Council is abrogating its agreement; the issue is how to implement it. In the past, the Council has at times received a budget recommendation from the County Executive with no cost-of-living adjustment at all in it. The Council had to take the initiative and add to the budget to provide a cost-of-living increase. That situation will no longer occur under the provisions of Bill No. 37-78. The bill will also remove the issue of the cost-of-living increase from last-minute considerations as it had been in the past. He expressed the view that his amendment is necessary in order to promote orderly government, not because of wage-price guidelines or the recent amendment to the Charter.

Councilman Potter expressed the view that the law cannot demand that the County Executive recommend a certain cost-of-living increase if he does not believe that is the proper thing to do.

Mr. Gibson, representing an association of minority employees, expressed the view that County employees are always being considered as the "bastard children" of the County government. Last spring, the County Executive presented a package to the Council regarding employee salary changes; it was never treated as a package. The new pay plan, with reduced increments, was implemented, but the cost-of-living provision was left until now. He noted that MCPS employees have a contract with the Board of Education calling for a 5% cost-of-living increase in FY 1980. That, combined with their 5% annual increments, will give them a 10% salary increase. The County employees are constantly being held back with lesser increases. He does not believe that this is proper. If Bill No. 37-78 cannot be enacted without Councilman Menke's amendment, he believes that employees would prefer to have their old pay plan, with 5% increments, and take their chances on the cost-of-living increase each year. He noted that MNCPPC and WSSC also have 5% annual increments.

Councilman Menke emphasized that the issue is not whether there should be a cost-of-living increase adjustment that is 75% of the CPI. He has not heard

any Councilmember indicate that such an adjustment would be unreasonable. The question is how to implement that policy. The proposed law does not demand that the Council provide funds to implement a 75% of CPI cost-of-living increase. If the Council did not, the CAO would have to make RIFs in order to give the remaining employees their cost-of-living adjustment. The Council and CAO should not be put in that position.

President Scull pointed out that the 75% of CPI cost-of-living increase was part of a package which represented a very significant reform of the pay plan. Annual merit increments were reduced, and were to be based on employee evaluations and recognition of superior performance, with outstanding employees receiving a higher increment than average employees. That part of the package was never implemented either. She looked at this package as a step in the direction that the people of the County have been urging for many years. It is with disbelief and heartbreak that she watches the County Council sabotage its own reform before it can go into effect.

Councilman Menke repeated his motion which is now before the Council, i.e., to delete the words [After the budget is approved] from line 5, page 2, and to insert in lieu thereof To the extent funds are provided in the approved budget.

Councilwoman Gelman stated that the amendment offered by Councilman Menke will eliminate the legal step of enacting emergency legislation to protect the CAO should the Council not be able to provide adequate funds in a future year.

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

Upon motion of Councilman Colman, duly seconded and without objection, the final sentence of Section 33-74 was revised to read as follows: 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 Colman, duly seconded and without objection, the Council approved the following amendments to Bill No. 37-78, as reflected in Draft No. 2:

Page 2, insert a new first sentence in Section 33-74: The County Executive shall provide as a part of the annual recommended operating budget for the County government sufficient funds to implement the cost-of-living adjustment required by this Section.;

Page 2, line 10, after the word "area", add: although pay grades 1 through 4 of the uniform salary plan to which minimum wage and certain seasonal employees are assigned will be adjusted by changes in the minimum wage rates and salary surveys to determine the competitiveness of such salaries.;

Page 2, lines 18 through 21, delete all of the language;

Page 2, line 23, delete [No provision of this law shall prohibit];

Page 2, line 24, delete [from adjusting] and insert in lieu thereof may adjust; delete [schedule] and insert in lieu thereof plan.

Page 2, line 25, insert the following phrase after the word "available": and approved by the County Council;

Page 2, lines 27 through 30, delete all of the language.

Upon motion of Councilman Colman, duly seconded and without objection, the Council deleted the word [schedule] from the sixth line of the title of the bill, and inserted the word plan in lieu thereof.

Upon motion of Councilman Colman, 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 and Menke voting in the affirmative, President Scull voting in the negative and Councilmembers Hovsepian and Moore being absent, Bill No. 37-78, Cost-of-Living Increase, was enacted, as amended.

Re: Enactment of Bill No. 50-78, Declaration of State of Emergency

Bill No. 50-78, Declaration of State of Emergency, was called for final reading. The Council had before it for consideration Draft No. 1 of Bill No. 50-78.

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. 50-78. By a yea and nay vote, Councilmembers Gelman, Colman, Potter, Menke and Scull voting in the affirmative and Councilmembers Hovsepian and Moore being absent, Bill No. 50-78, Declaration of State of Emergency, was enacted.

Re: Enactment of Bill No. 52-78, Pepco Pollution Control Bonds

Bill No. 52-78, Pepco Pollution Control Bonds, was called for final reading. The Council had before it for consideration Draft No. 1 of Bill No. 52-78.

stated that the Council seems to be favoring public regulation of CATV since it is restoring much of the language that was deleted previously. If this is the case, he believes that the Council should address the issues and provide more guidance in the law for the people who will be negotiating the agreements.

Upon motion of Councilman Colman, duly seconded, Councilmembers Colman, Scull, Gelman and Menke voting in the affirmative and Councilman Potter voting in the negative, the Council restored the deleted language of subsection (b), page 23, added a requirement for a public hearing prior to the extension of construction schedules, and deleted the capitalized language on lines 16 and 17.

Due to the lateness of the hour, the Council recessed its Legislative Session until later in the day.

(The Council recessed at 3:35 P.M., and reconvened in Legislative Session at 5:40 P.M.)

Due to the lateness of the hour, the Council agreed to continue its worksession on Bill No. 6-77 on Friday, November 17, 1978.

Resolution No. 8-2277

Re: Extension of Life of Bill No. 6-77, CATV

Upon motion of Councilman Menke, duly seconded and without objection, Resolution No. 8-2277 was adopted, extending the life of Bill No. 6-77, CATV, until July 1, 1979.

There being no further official business to come before the County Council in Legislative Session, the meeting adjourned at 5:41 P.M., to reconvene at 1:30 P.M. on Friday, November 17, 1978, or at the call of the President.

ATTEST:



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