

AGENDA

CHARTER REVIEW COMMISSION

Wednesday, January 10, 2024, 8:00 a.m.

Council Office Building, 6th Floor, Potomac River Conference Room, 100 Maryland Ave., Rockville, MD

[Virtual Zoom Link](#)

(All times are approximate)

8:00 a.m. – ADMINISTRATIVE MATTERS

- Acknowledgment of a Quorum
- Approval of Agenda
- Approval of minutes of December 13, 2023, meeting

8:05 a.m. – REPORTS BY STUDY GROUPS

8:05 - 8:25 Group 1: Voter Direct Election of Council President

8:25 - 8:50 Group 2: Other Council Election & Structure Issues

8:50 - 9:05 Group 3: Requirements for Budget & Revenue in Charter Sect. 305

9:05 - 9:20 Group 4: Executive Appointments - “Non-merit” Positions under Charter Sect. 215

- Group summary of its research: information & data gathered.
- Options considered with Pros & Cons for each.
- Conclusions? Was there a group consensus? Individuals’ views?
- Other Commission members: questions or requests for additional information?
- General discussion and debate: next steps?

9:20 - 9:30 a.m. – SCHEDULING PUBLIC LISTENING SESSIONS

- Purpose: seeking input on topics likely to be the subject of recommendations in first Report
- Proposal for scheduling (all with pre-registration, and all recorded):
 - Virtual, 1 weekend morning Feb. 3 or 4 (11:30 a.m. – 1:00 p.m.);
 - In-person, 1 weekday, Council Office Bldg. between Feb. 1 – 8 (2:00 - 3:30 p.m.);
 - Virtual, 1 weekday early evening Feb 12 – 13, or 15 (6:00 - 7:30 p.m.).
- Discuss methods for soliciting public participation (with Commissioner CeCe Grant)
 - Press release distributed to media, e-mail subscribers, boards & commissions list
 - Direct e-mail to 5 Citizens Advisory Boards (via Regional Directors)
 - League of Women Voters?
 - Social media accounts?

9:30 a.m. – REPORT FROM STAFF: COMMENTS RECEIVED IN RESPONSE TO NOVEMBER PRESS RELEASE

- Number of public comments received to date.
- Method for providing Commissioner access to comments.

9:30 a.m. – REMINDER OF NEXT MEETING

- February 14, 2024, at 8:00 a.m.
- Anticipated Discussion
 - Takeaways from public comments and listening session(s)
 - Straw poll on each topic: does a majority favor a recommendation or conducting further study?
 - Making plans and assignments for drafting first Report.
 - Report may include:
 - Findings & recommendations approved by a majority (if any)
 - Write-ups of minority or dissenting views (if any)

- A status report for topics that are still being studied (with projected date for follow-up report containing any recommendations).
- A possible schedule:
 - First draft(s) circulated to all Commissioners and Staff by March 2
 - Can provide written comments to drafter before March 13
 - Discussion at March 13 meeting
 - Second draft(s) circulated by March 27
 - Commission final vote on issuing report at the April 10 meeting.

ADJOURN

MEETING DISCUSSION DOCUMENTS ATTACHED BELOW

Charter Review Commission report – Group 1

Term of Council President:

The Montgomery County Charter provides for a President of the County Council to be elected by members of the council. ¹ **The Charter Review Commission has been asked to explore options for expanding the term of the President of the County Council.**²

Authority of election of Council President: The Montgomery County Charter section 108 provides that the Council shall elect a president to preside over meetings; however, the Charter is silent regarding the length of the term.³ Currently, the Council elects a president and a vice-president each December for a one-year term, and the election every December is stated in the Montgomery County Code. Although an election every December implies a one-year term, the length of the term is not stated in the Code. Further, there is no limit to the number of terms a Council President may serve. Traditionally, the Council President has only served one term and then the Council elects a new President.

An amendment to the Montgomery County Charter would affect the Montgomery County Code. However, it is within the authority of the County Council to amend the section of the code governing length of the term of the President of the County Council.⁴ Additionally, it is within the authority of the County Council to elect a Council President to multiple terms.

Duties of the Council President: The major duties of the Council President include setting the Council agenda and work schedule, reviewing and signing official documents of the Council, and acting as spokesperson for the Council. ⁵

¹ Charter of Montgomery County Maryland **Sec. 108. Officers of the Council.** The Council shall elect, from among its members, a president of the Council, who shall preside over meetings of the Council. The Council may provide for the selection of such other officers or employees as it may deem desirable for the exercise of its powers. The Council may employ or retain special legal counsel to assist it in the exercise of its powers and may provide by law for special legal counsel to assist, advise, or represent any office of the legislative branch in the exercise of its duties. Any special legal counsel employed or retained under this section shall be subject to appropriation and is not subject to Section 213.

² This issue was raised by then-President of the Montgomery County Council, Evan Glass, at the October 11, 2023, meeting of the Charter Review Commission; and by the current President of the Montgomery County Council, Andrew Friedson, at the November 8, 2023, meeting of the Charter Review Commission.

³ Montgomery County Code Art IV, Division 2, Subdivision 1, **Sec. 2-67. Election of officers.**

The council shall elect from among its members not later than December 31 in the year in which they take office, and at such other times as the council in office shall determine, a president and a vice-president. The president shall be the presiding officer, and in his absence the vice-president shall preside and perform the duties of the president. (1970 L.M.C., ch. 23, § 1.)

⁴ Section 101 County Council. All legislative powers which may be exercised by Montgomery County under the Constitution and laws of Maryland, including all law-making powers heretofore exercised by the General Assembly of Maryland ...shall be vested in the County Council. Section 111. Enactment of Legislation. The Council shall enact legislation only after public hearing upon reasonable notice. No legislation shall be enacted by the Council unless it receives the affirmative vote of six members of the Council.

⁵ Rules of Procedure of the County Council. Rule 1 (g) Election of Council officers; determination of committee structure and membership.

History of this Issue: The Charter Review Commission has addressed this issue three times. In 2008, the issue was briefly considered and then deferred to a later date for further exploration. In 2014, the Charter Review Commission recommended no change because the Charter does not limit the number of years a Councilmember can serve as President.⁶ In 2018, the Charter Review Commission again recommended no change.⁷

Models: Among Maryland's 23 counties plus Baltimore city, 19 council presidents are elected by the local council or board (Allegany, Anne Arundel, Baltimore County, Calvert, Caroline, Carroll, Cecil, Dorchester, Frederick, Garrett, Howard, Kent, Montgomery, Prince George's, Queen Anne's, Somerset, Talbot, Wicomico, Worcester) while 5 council presidents are elected directly by voters (Baltimore City, Charles, Harford, St. Mary's, Washington).⁸

Term of office for President: Among Maryland's 23 counties plus Baltimore city, the term of office for council president, if defined, is for a period of either 1 year or 4 years. Four counties do not define a specific term (Frederick, Garrett, Harford, Kent); eight have a president serving a term of 4 years (Allegany, Baltimore City, Caroline, Carroll, Charles, St. Mary's, Somerset, Washington); and twelve have a president serving a term of 1

(1) The Council elects a Council President, a Council Vice-president, and other officers as Council desires at first Council meeting each December.

(2) At the first or second meeting of new Council term, the Council approves, by majority vote, the structure and membership of Council committees. At the direction of Council Vice-President, at least 4 days prior to the first meeting of the term the Clerk must post on the Council's website a proposed committee structure and membership.

(h) *Presiding officer.*

(1) *Presiding and points of order.* The President presides at Council meetings and decides all points of order.

(2) *Appeal.* All presidential decisions provided for in these Rules and Robert's Rules of Order can be appealed, and on appeal may be reversed by majority vote.

(3) *Delegation of authority.* Unless any law or these Rules specify otherwise, the President may delegate any function assigned to the President under these Rules to another Councilmember or the Council staff. The President by a memorandum to the Council Clerk may designate one or more Councilmembers in succession as acting President to sign any legislation enacted by the Council when the President and Vice-President are not available.

(i) *Absence of presiding officer.* In the absence of the President, the Vice-President presides at Council meetings. In the absence of the President and the Vice-President, and if the Council has not previously elected a President pro tempore, the most recent past President in attendance and who sits on the Council must preside. If no past President is available, the Councilmembers present must select a President pro tempore to preside at that meeting. A Councilmember who presides at an in-person meeting or Committee meeting must be present in-person.

(j) *Recognition of Councilmembers.* A Councilmember must not speak on a matter until recognized by the President. The President must recognize a Councilmember who desires to speak unless recognition is improper under these Rules. If 2 or more Councilmembers seek to be recognized at the same time, the President must select the member who will speak first. After each Councilmember has had a reasonable opportunity to speak on a matter, the President may limit further discussion as necessary to conform to the Council's agenda.

(k) *Formation of groups.* A Councilmember must not form a group or appoint a member to a group that would advise or report to the Council unless approved by a majority and in accordance with the provisions governing Boards, Committees, and Commissions in Section 2-142 of the County Code. This Rule must not be construed to prevent a Councilmember from consulting with residents or organizations.

(l) *Council Correspondence.* The Council President must have support of at least a majority of Councilmembers to send correspondence in their capacity as Council President on behalf of the Council and must note whether such correspondence is on behalf of a majority of the body or as the Council's unanimous view. Councilmembers may individually or jointly send correspondence in their individual capacities and may include their title(s). Correspondence on behalf of individual Councilmembers must clearly identify those Councilmembers, and must not imply they are speaking on behalf of the body. (Res. No. 11-54; Res. No. 12-83; Res. No. 13-49; Res. No. 14-53; Res. No. 16-59; Res. No. 17-40; Res. No. 18-49; Res. No. 19-1443; Res. No. 20-35.)

⁶ Council President Term the Council President is elected by his or her colleagues to a single-year term. The Commission studied whether to amend the Charter to provide for a longer term. Since the Charter does not limit the number of years a Councilmember can serve as President, the Commission does not recommend any Charter changes on this issue. (Charter Review Commission Report, 2014. p2)

⁷ Council President Term the Council President is elected by his or her colleagues to a single year term. The Commission heard from Councilmember Floreen at its public hearing on this issue and considered whether to amend the Charter to provide for direct election of the Council President, to a four-year term, by the voters of the County. The Commission considered the benefits of such a process and contrasted them with the benefits of the existing provisions, and does not recommend a Charter amendment to provide for election of the Council President by the voters of the County. (Charter Review Commission Report, 2018. p3)

⁸ <https://www.mdcounties.org/DocumentCenter/View/5449/2023-NEOO---Co-Government-Structure?bidId=>

year (Anne Arundel, Baltimore County, Calvert, Cecil, Dorchester, Howard, Montgomery, Prince George's, Queen Anne's, Talbot, Wicomico, Worcester).⁹

Questions to be considered:

- Should President of the Council be a separately elected position?
- Should President of the Council remain as an internally elected position?
- Should President of the Council be expanded to a 2-year term?
- Should President of the Council be expanded to greater than a two-year term?
- Should President of the Council automatically rotate instead of being elected?
- Is the current system not working? Are problems foreseen?

Options:

1. **The County Charter remains unamended.** Instead of amending the County Charter, the County Council may amend the County Code to allow the office of President of the County Council to be a multi-year term.
 - a. **Arguments in favor of leaving the county charter unamended:**
 - i. allows the County Council the flexibility to resolve term issues internally.
 - b. **Arguments against leaving the county charter unamended:**
 - i. If the county council cannot resolve issues internally, an amendment to the charter forces a resolution.
2. **One At-Large Council member as President elected by voters.** Candidate for President may be on the ballot simultaneously for President and At-large position, but disclaims one position upon election to their preferred role.
 - a. **Arguments against this option:** prohibited by Maryland Law. Upon obtaining Legal Advice from Office of the County Attorney ("OCA")¹⁰, it was advised that three provisions in the law prevent individuals from: (1) having simultaneous candidacies for more than one public office and (2) holding more than one public office.¹¹

⁹ <https://www.mdcountries.org/DocumentCenter/View/5449/2023-NEOO---Co-Government-Structure?bidld=>

¹⁰ Amina Haleem, Assistant County Attorney II, Division of Government Operations, Office of the County Attorney, Montgomery County, Maryland. "The legal prohibition on an individual holding and serving more than one elective office at the same time is codified in both Charter Section 102 and the Maryland Declaration of Rights Article 35.

The legal prohibition on an individual holding simultaneous candidacies for public offices is codified in Maryland Election Law Code Section 5-204. This code applies to the County Council."

¹¹ **Montgomery County Charter: Sec. 102. Composition and Election.** The Council shall be composed of eleven members, each of whom shall be a qualified voter of Montgomery County. Four Councilmembers shall be nominated and elected by the qualified voters of the entire County. Each of the seven other members of the Council shall, at the time of Nomination and election and throughout the member's term of office, reside in a different Council district, and shall be nominated and elected by the qualified voters of that district. Any change in the boundaries of a Council district after a member is elected shall not render the member ineligible to complete the term for which the member was elected. **No member of the Council shall hold any other office of profit in state, county or municipal government.** No member of the Council shall be eligible for appointment during the member's term of office to any other office or position carrying compensation created by or under this Charter, except to County Executive in the event of a vacancy. (Election of 11-2-82; election of 11-4-86; election of 11-3-98; election of 11-4-14; election of 11-3-20.)

MARYLAND CONSTITUTION. Declaration of Rights. Article 35:

Art. 35. **That no person shall hold, at the same time, more than one office of profit, created by the Constitution or Laws of this State;** nor shall any person in public trust receive any present from any foreign Prince or State, or from the United States, or any of them, without the approbation of this State. The position of Notary Public shall not be considered an office of profit within the meaning of this Article. Nonelected membership in the militia of this State, a law enforcement agency, a fire department or agency, or a rescue squad shall not be considered an office of profit within the meaning of this Article; nor shall any remuneration received as a consequence of membership in a reserve component of the armed forces of the United States or of membership in the militia of the United States or of this State

3. **One At-Large Council member as President elected by voters.** The at-large candidate with the most votes is declared president of the county council. The president may resign the role of president but retain their position as council member. The president of the county council is then elected by the members of the county council.

4. **The County Charter remains unamended.** Instead of amending the County Charter, the County Council may amend the County Code to allow the office of President of the County Council to be a multi-year term.
 - a. **Arguments in favor of leaving the county charter unamended:**
 - i. allows the County Council the flexibility to resolve term issues internally.
 - b. **Arguments against leaving the county charter unamended:**
 - i. County Council is bound by changes to the county charter.

5. **Direct election of Council President.** Amend the County Charter to create an office of President of the County Council directly elected by Montgomery County voters. The term of this office would be for four years.
 - a. **Arguments in Favor of expanding the term of Council President:**
 - i. More time in the position means that the president has greater facility in accomplishing aims.
 - ii. Reliance by media on the same person for multiple years
 - b. **Arguments against expanding the term of Council President:**
 - i. The term “president” implies great power. The president may assert greater roles than are outlined in the County Code.
 - ii. A separately elected president could lead to factions within council
 - iii. A separately elected president could lead to discord between the council, the president, and the County Executive
 - iv. Currently, when the president speaks, that person speaks on behalf of the council; thus, the full weight of the majority of the county council is implied. If the President is elected independently of the council, the words of the President may not necessarily express the decision of the entire council.

be considered a present within the meaning of this Article (amended by Chapter 129, Acts of 1964, ratified Nov. 3, 1964; Chapter 61, Acts of 1990, ratified Nov. 6, 1990; Chapter 80, Acts of 1996, ratified Nov. 5, 1996).

Maryland Election Law Code. Title 5 – Candidates. Subtitle 2 – Qualifications. Section 5-204 - Candidacy for More Than One Office. Universal Citation: [MD. Election Law Code Ann. § 5-204 \(2021\)](#) (a) **An individual simultaneously may not be a candidate for more than one public office.** (b) An individual simultaneously may not be a candidate for more than one office of a political party. (c) Unless otherwise prohibited by rule of the applicable political party, an individual simultaneously may be a candidate for a party office and a public office.

6. Direct election of Council President, and Council election of Vice-President.

Amend the County Charter to create an office of President of the County Council directly elected by Montgomery County voters to a term of two years and an office of Vice President elected by the County Council for a subsequent two years.

There has been an assumption that the election of a President would be for 4 years, and that the Vice-President would still be appointed by Council members (for whatever number of years the Council members choose). Some think this would increase democracy by allowing voters to choose instead of having the selection made through backroom politics under the influence of various interest groups. Others think direct election of a President for 4 years would create a new political power center based on a candidate's ability to fund and win a countywide race -- so they don't see that as an improvement to the current rotational system that gives a diverse group of district members an opportunity to demonstrate leadership and gain county-wide support.

An option to address the concerns of both groups at the same time involves the following:

Voters would directly elect someone as an At-large member and as President (and voters also would elect 3 other At-Large members.) Then the new Council would take office and Council members would choose someone as Vice-President. HOWEVER, the Presidency decided by the voters would last for only **2** years -- after which time the Vice-President would become President for the next 2 years.

You could also consider whether there should be a mandate for the Vice-President to be a district member because the elected President must be an At-Large member. However, that would prevent a district Vice-President who becomes President from seeking to remain in the presidency at the end of their two years, unless they give up their District seat to run for the presidency as an At-Large member in the next election.

CRC report – Draft for Group 2

Term Limits for Council President:

The Montgomery County Charter provides for a President of the County Council to be elected by members of the council.¹ The Charter Review Commission has been asked to explore options for expanding the term of the President of the County Council.² One of those options is to amend the Montgomery County Charter to provide for election of the County Council President directly by the voters.

Term of Office for Council Members:

The Montgomery County Charter provides that “In no case shall a Council Member be permitted to serve more than three consecutive terms.”³ However, if the President of the Council is directly elected by the voters, then an unresolved issue is whether the Council President falls under the definition of Council Member and subject to the three consecutive term limit.

Models:

Of Maryland’s 23 counties plus Baltimore City, 5 council presidents are elected directly by voters (Baltimore City, Charles, Harford, St. Mary’s, Washington).⁴ Those council presidents serve for a term of four years, and is term limited in only one county.

Baltimore City – no term limit, 4 year term

Charles – no term limits, 4 year term

Harford – no term limits, 4 year term

St. Mary’s – 3 consecutive term limit, 4 year term

Washington – no term limits, 4 year term

¹ Charter of Montgomery County Maryland **Sec. 108. Officers of the Council.** The Council shall elect, from among its members, a president of the Council, who shall preside over meetings of the Council. The Council may provide for the selection of such other officers or employees as it may deem desirable for the exercise of its powers. The Council may employ or retain special legal counsel to assist it in the exercise of its powers, and may provide by law for special legal counsel to assist, advise, or represent any office of the legislative branch in the exercise of its duties. Any special legal counsel employed or retained under this section shall be subject to appropriation and is not subject to Section 213.

² This issue was raised by then-President of the Montgomery County Council, Evan Glass, at the October 11, 2023 meeting of the Charter Review Commission; and by the current President of the Montgomery County Council, Andrew Friedson, at the November 8, 2023 meeting of the Charter Review Commission.

³ Charter of Montgomery County Maryland, Sec. 105. Term of Office.

⁴ <https://www.mdcountries.org/DocumentCenter/View/5449/2023-NEOO--Co-Government-Structure?bidid=>

Arguments in favor of applying a term limit to an individual.

If the purpose of a term limit is to prevent an officeholder from accumulating undue power and deference because of length of holding the office, then applying a term limit to the individual is aligned with that idea. It is a fine distinction between holding the office of Council President and the office of Council Member, as they both are in the legislative branch of the county government and vote on matters. If an individual served three terms as Council President, and three terms as council member, then the intent of a term limit is diluted.

Arguments in favor of applying the standard 4-year term to Council President.

The offices of Council Member and County Executive each have a four-year term. Uniformity among the branches of county government may be simpler when all such officials are elected for a term of four years.

Arguments in favor of applying a greater term length for Council President.

If election of County Council Members occurs every four years for every member, it is possible that elections could result in an entirely new council with an entirely new president. Electing a Council President for a greater term length would ensure that some members with experience are in office to maintain continuity and facilitate any transition period.

Questions to be resolved:

If directly elected by the voters:

1. Is Council President in addition to the Council Member's three term limit?
2. How should the existing term limits for Council members (3 terms) be applied to a council member who has been directly elected by the voters as the Council President?
 - a. Option 1: no distinction, so that a term as President is simply counted towards that individual's 3 term limit
 - b. Option 2: considered as a separate office with its own term limit
 - c. Option 3: considered as a separate office with No term limit
 - d. Option 4: considered as a separate office with greater term length
2. Could an individual run for Council President and Council Member in the same election?
 - a. And only accept their preferred office?
 - b. Hold the office of Council Member and Council President?

- **Additional Note:**

The Charter Review Commission has inquired of the County Attorney's staff if they can please provide legal advice or an opinion on an issue arising out of the options for direct election of the Council President.

One proposed option would let any candidate file and run in both fields that appear on the ballot: the At-Large Seat for president as well as one of the other At-large Seats. The Charter Review Commission would like a legal opinion that this option would or would not run afoul of any Maryland election law. It could be set up so a candidate can only win and occupy one seat, but the Charter Review Commission would like legal advice to ensure MD law does not prevent someone's name from appearing on the ballot in both fields.

Group 2 – Staggered elections for Council – Draft for discussion

Should the terms of Council members be staggered so that the entire Council is not elected in one election? Would there be an election for 2 At-Large Seats and half of the District members every two years? Or would all the At-large members run at one time, with all District members elected two years later? What impact should the historically lower turnout in Gubernatorial primaries have in deciding this issue?

Current

Sec. 102. Composition and Election.

“The Council shall be composed of eleven members, each of whom shall be a qualified voter of Montgomery County. Four Councilmembers shall be nominated and elected by the qualified voters of the entire County. Each of the seven other members of the Council shall, at the time of Nomination and election and throughout the member’s term of office, reside in a different Council district, and shall be nominated and elected by the qualified voters of that district. Any change in the boundaries of a Council district after a member is elected shall not render the member ineligible to complete the term for which the member was elected. No member of the Council shall hold any other office of profit in state, county or municipal government. No member of the Council shall be eligible for appointment during the member’s term of office to any other office or position carrying compensation created by or under this Charter, except to County Executive in the event of a vacancy.”

Sec. 105. Term of Office.

“Members of the Council shall hold office for a term beginning at noon on the first Monday of December next following the regular election for the Council and ending at noon on the first Monday of December in the fourth year thereafter. In no case shall a Councilmember be permitted to serve more than three consecutive terms. Any member of Council who will have served three or more consecutive terms at noon on the first Monday of December 2018 shall be prohibited from commencing to serve a successive term of office at that time. For purposes of this Section, service of a term includes complete service of a full term and partial service of a full term. Partial service of a full term means service by a Councilmember of more than two years of a term.”

(American Legal Publishing, Online, As of January 8, 2024)

Proposed change to Charter:

Sec. 102. Composition and Election.

The Council shall be composed of eleven members, each of whom shall be a qualified voter of Montgomery County. **In 2026 and thereafter, Councilmembers will be elected for staggered terms, with six members, including two at-large members and four district members, to coincide with the US presidential election, and five members, including two at-large members and three district members, to coincide with the Maryland gubernatorial election. The selection of members to serve until the first Maryland gubernatorial election will be approved by an affirmative vote of a supermajority of the Council.**

ISSUES FOR DISCUSSION:

1. What year will this take effect? In 2026?
2. Should we have all At Large candidates run during the Presidential election and have all District candidates remaining on the Gubernatorial cycle?
 - a. This could alleviate the challenge of folks trying to decide whether to run at the district or at large level.
 - b. It would also make things simpler as the entire county will vote every two years, rather than potential confusion from splitting up who does and does not vote by district.
3. How many votes will we consider a “supermajority” vote of the Council? 6, 7, or 8?

Four **at-large** Councilmembers shall be nominated and elected by the qualified voters of the entire County. Each of the seven **district** members of the Council shall, at the time of Nomination and election and throughout the member’s term of office, reside in a different Council district, and shall be nominated and elected by the qualified voters of that district. Any change in the boundaries of a Council district after a member is elected shall not render the member ineligible to complete the term for which the member was elected. No member of the Council shall hold any other office of profit in state, county or municipal government. No member of the Council shall be eligible for appointment during the member’s term of office to any other office or position carrying compensation created by or under this Charter, except to County Executive in the event of a vacancy.

Sec. 105. Term of Office.

Members of the Council shall hold office for a **staggered** term beginning at noon on the first Monday of December next following the regular election for the Council and ending at noon on the first Monday of December in the fourth year thereafter. In no case shall a Councilmember be permitted to serve more than three consecutive terms. Any member of Council who will have served three or more consecutive terms at noon on the first Monday of December 2018 shall be prohibited from commencing to serve a successive term of office at that time. For purposes of this Section, service of a term includes complete service of a full term and partial service of a full term. Partial service of a full term means service by a Councilmember of more than two years of a term.

What are Staggered Elections?

A staggered election is one in which only some of the seats or positions of a body are up for election at a specific time. This is in contrast with situations in which every seat or position is up for election at one time. Staggered elections generally occur when members are elected to seats at different times. For example, the United States Senate has staggered elections. Members of the Senate are elected into six-year terms. However, elections occur every two years for a third of the Senate seats. Over the course of a six-year period, every seat in the Senate will have been eligible for reelection.

Staggered Elections Advantages

Preserve Stability

One advantage of staggered elections is that they can help preserve stability and promote continuity. Long-term plans often require continuity, and retaining a certain portion of the Council across each election cycle can help continue initiatives without the interruptions that potentially replacing the entire or majority of the Council would bring. Council members who continue to hold their positions also preserve institutional memory, or common knowledge and experiences, and can enhance how the Council and County operates.

Foster a Long Term Viewpoint for County Operations

Staggered elections can also encourage long term thinking. If an entire Council can be replaced in a single election, the members might be incentivized to operate on short-term interests in attempts to secure reelection rather than operating on long-term interests that are better for the County at large. Relatedly, staggered elections might help protect Council members from groups who might try to pressure them into making short-term actions or decisions. Council members who serve a staggered four-year term might be more encouraged to focus on long term issues more effectively if they know some members will serve a term that overlaps with them.

Mentorship

Related to the previous point on preserving institutional memory, a staggered election can also help the Council offer more effective mentorship to new members. If only a portion of the members can be replaced in any given election, there will always be experienced members to offer guidance to new members. Otherwise, the Council can face the potential scenario of having an entirely new membership who are not experienced.

Staggered Elections Disadvantages

- Having a portion of members retain their seats during elections can be bad for the County if the Council is perceived to be making poor decisions that might have a negative impact on County operations or are very unpopular.
- Initially, a certain number of members will be protected from being replaced, and so they may be less accountable.
- There will be some amount of administrative cost to implement the change and hold Council elections more frequently.

Staggered Elections Applications

- As previously mentioned, staggered elections are often used in legislative bodies, such as with the U.S. Senate.
- In the U.S., twenty-seven states have staggered elections for their state senators. In these states, half of the seats in the state senates are up for reelection every two years.

Preliminary Report of the Budget Working Group (Group Three)

For the Montgomery County Charter Review Commission

David Nachtsheim
Mike Persh
Dylan Presman

December 2023

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Executive Summary

The role of a supermajority in a County Charter is to establish higher voting thresholds, typically requiring a larger proportion of votes beyond a simple majority, for specific decisions or actions, ensuring that significant or contentious matters garner broad support before being enacted. Consistency in supermajority thresholds within the County Charter is important for policymaking as it establishes a clear and predictable decision-making framework, fostering stability and coherence in governance. This uniformity ensures that key policy decisions requiring a supermajority are approached consistently over time, promoting transparency and bolstering public trust in the legislative process. Requiring a supermajority ensures agreement in the highest priority public programs and investments, bolstering public fiscal confidence.

In this Preliminary Report, the Budget Working Group (Group 3) focuses on Section 305 of the Montgomery County Charter and investigates whether the supermajority thresholds in this section should be made consistent at two thirds of the votes of sitting Council members. Changing the supermajority threshold from a specific number to “two thirds” provides flexibility for when there are vacancies on the Council and means that if the number of Council members changes, there is no need to make a change to the County Charter. There are three clauses in Section 305 that include supermajority thresholds, and each of the three are different requiring seven votes, eight votes, and a unanimous vote of the Council, respectively. The three clauses are interdependent and thus should be subject to the same supermajority standard. In fact, the third clause only comes into play if one of the first two clauses has been affected. This Report provides background and context to the issue and then lays out the Pros and Cons of making each of these three clauses have a consistent supermajority threshold of two thirds. This Preliminary Report does not draw conclusions on the issue at hand, which will come after the County Charter Commission has had an opportunity to discuss the issue as a group.

Charter Section 305 is a key provision in the Charter in that it addresses the overall budget process and approval thresholds for Montgomery County at large. Over the past 40 years or so, Section 305 has been amended several times. Changes in Section 305 reflect an ongoing and spirited discussion in Montgomery County in an effort to rationalize and continually improve the budgetary process. Other Maryland counties have somewhat different budget procedures and experiences and Montgomery County can benefit from that information.

The most recent change to Section 305 was in 2020 when voters approved a change from limiting increases in total revenue to limiting increases in real property tax rates. Also, in 2020, the Council added one (1) vote to Section 305 voting levels as the size of the Council went from 9 to 11 members. Still, the voting levels in Section 305 remain different in each clause resulting in an uneven supermajority level.

In this Report, the Budget Working Group (Group 3) presents its findings and, for reasons discussed in this report, suggests all voting levels in Section 305 should be subject to the same supermajority standard.

Source

“Sec. 305. Approval of the Budget; Tax Levies.

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

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

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

By June 30 each year, the Council shall make tax levies deemed necessary to finance the budgets. Unless approved by an affirmative vote of all current Councilmembers, the Council shall not levy an ad valorem weighted tax rate on real property to finance the budgets that exceeds the ad valorem weighted tax rate on real property approved for the previous year. The weighted tax rate is calculated by determining the sum of each property tax rate adjusted by the proportion of assessable base that is charged that tax rate.”

(American Legal Publishing, Code Library Online, November 3, 2020, unofficial version, highlighted text and Italics added for emphasis).

Background

The County Executive must submit a capital and an operating budget to the County Council each year. The council may increase, decrease, add or delete any appropriation item in the

budgets. By May 15 of each year the council must have approved the budgets and appropriated the necessary funds.

Section 305 of the Montgomery County Charter establishes the mechanisms by which budget spending levels and tax rates are established for Montgomery County. Section 305 establishes the voting thresholds for County Council decision making on county spending and tax rates. Within Section 305, the threshold issue is addressed three times and each time a different voting threshold is established (outlined below); in the first case the threshold is set at seven votes of the County Council, in the second case the threshold is set at eight votes and in the third case unanimous approval is required.

The Budget Working Group (Group 3) intends to investigate and make recommendations on whether the fact that there are three threshold levels established within Section 305 is significant and worthy of consideration for a Charter Amendment.

1. *“An aggregate operating budget which exceeds the aggregate operating budget for the preceding fiscal year by a percentage increase greater than the annual average increase of the Consumer Price Index for all urban consumers for the Washington-Baltimore metropolitan area, or any successor index, for the twelve months preceding December first of each year requires the affirmative vote of seven Councilmembers.”*

It takes a vote of at least **seven** County Council members (a super majority) for the operating budget to exceed the previous year's budget plus inflation.

2. *“Any aggregate capital budget or aggregate operating budget that exceeds the guidelines then in effect requires the affirmative vote of eight Councilmembers for approval.”*

Each year the County Council adopts spending affordability guidelines for the capital and operating budgets, including guidelines for the aggregate capital and aggregate operating budgets. It takes a vote of **eight** Councilmembers to approve an increase that exceeds these affordability guidelines (also a supermajority, but a different number).

3. *“Unless approved by an affirmative vote of all current Councilmembers, the Council shall not levy an ad valorem weighted tax rate on real property to finance the budgets that exceeds the ad valorem weighted tax rate on real property approved for the previous year.”*

Increasing the aggregate weighted property tax rate takes a **unanimous** vote of the County Council. Note that this real property tax rate increase is only contemplated when the County Council has already considered and approved by a supermajority of seven or eight votes, as currently written, an increase in the budget for the next year. This clause is irrelevant in a year when the budget is not

increased. Also note that unanimity is not required for Council increases in other taxes or fees to provide the needed revenue for the increased budget.

Council's Responsibilities and Changes in Size

The current County Charter was adopted at an election held November 5, 1968 and the first seven-member Montgomery County Council was elected in 1970. Originally all of the Councilmembers were elected at large, i.e. by all of the voters. Five members were required to reside in their Council district. In November 1986, the voters amended the Charter to increase the number of Council seats in the 1990 election from seven to nine. In November 2020, voters amended the Charter to increase the number of Council seats from 9 to 11, starting in 2022, with four members elected by all the County's voters and seven elected by geographic district.

The Council's responsibilities are specified by the Montgomery County Charter and Maryland state law. The Charter defines the Council's powers in three major areas: legislation, land use, and the budget, and governs the balance of power between the Council and the County Executive. Some of the Council's principal responsibilities are:

- Appropriates money to fund the capital and operating budgets and sets the local property tax rate and other local taxes.
- Approves all land use plans including the General Plan, area master plans, and sector plans prepared by the Planning Board.
- Acts on zoning changes.
- Exercises oversight over County programs to ensure efficiency and effectiveness.
- Approves the six-year capital improvements, public services, and fiscal policy programs.
- Approves the county Ten Year Solid Waste and Water Supply and Sewerage System Plans.
- Serves as the Board of Health for Montgomery County.
- Enacts all County laws and amendments to the Code.
- Sets the tax rates required to fund the County budgets.
- Confirms major appointments made by the County Executive and appoints the members of the Montgomery County Planning Board and the Board of Appeals.
- Acts on or initiates reorganization plans for the County government's executive branch.
- Directs and reviews the annual independent audit of County government operations.

Supermajority Voting in Other Maryland Counties

Eleven Maryland counties have ratified charter forms of government: Anne Arundel, Baltimore, Cecil, Dorchester, Frederick, Harford, Howard, Montgomery, Prince George's, Talbot, and Wicomico. In addition, all of these are governed by county councils; and all (except Dorchester and Talbot) are led by county executives.

What is a supermajority voting and how is it applied?

Charters often require a simple majority of 50.1% for most decisions, however, it is not uncommon for counties in Maryland to require a supermajority for certain major actions, especially in budgetary matters. A supermajority is anything over 50.1%, though some counties set the supermajority at two-thirds (2/3 or 66.67%+) or even 100% (unanimity).

In matters that involve budgetary decisions, such as determining spending levels and tax rates, special capital expenditures and reserve drawdowns, an affirmative vote of more than a majority of a council is often required. As we consider changes to the existing Montgomery County Charter with respect to supermajority voting, it is useful and informative to see how other similarly situated counties in Maryland use supermajority voting to decide budgetary matters of significance. Examples from the Charters of Anne Arundel, Prince Georges, Howard and Baltimore counties follow.

Anne Arundel County (7 members on Council)

“Sec. 709. Action on the budget by the County Council.

After the public hearing specified in the preceding section, the County Council may decrease or delete any items in the budget except those required by the public general laws of this State and except any provision for debt service on obligations then outstanding or for estimated cash deficits. The County Council shall have no power to change the form of the budget as submitted by the County Executive, to alter the revenue estimates except to correct mathematical errors, or to increase any expenditure recommended by the County Executive for current or capital purposes. In any year except a year during which members of the County Council will be elected, the County Council may completely fund for the next two ensuing fiscal years those capital projects designated in the capital budget proposed by the County Executive which are designated to be completely funded for two fiscal years pursuant to Section 705 of this Charter. If the County Executive proposes amendments to the budget so as to increase items in the budget or add items to the budget, the Chair of the County Council shall give reasonable public notice of the proposed amendments and hold a public hearing on the amendments, provided that the County Council may *waive the public hearing by a vote of five members.*” (italics added, 2/3 approx.)

“Sec. 716. Restrictions on capital projects; amendment to capital budget after adoption of budget.

No obligations of the County shall be authorized in any fiscal year for or on account of any capital project not included in the County budget as finally adopted for such year; provided, however, that upon receipt of a written request from the County Executive, the Council may, by the *affirmative vote of five members*, amend the County budget. The total amount of appropriations to the capital budget may only be increased from revenues received from anticipated sources but in excess of budget estimates therefor, or from revenues received from sources not anticipated in the budget for the current fiscal year.”

Prince Georges County (11 members on Council)

Section 816. - Emergency Appropriations.

“To a public emergency, which constitutes a sudden, unexpected or unforeseen condition or occurrence, creating an imminent hazard to life, health or property and requiring an immediate action, the Council may, by resolution and upon the recommendation of the County Executive, make emergency appropriations from contingent funds, from revenue received from anticipated sources but in excess of the budget estimates therefor, from revenues received from sources not anticipated in the budget for the current fiscal year, or from any prior year available and uncommitted fund balance. To the extent that there may be no available unappropriated revenues to meet such emergency appropriations, the Council may, by legislative act *approved by a two-thirds affirmative vote of the full County Council*, authorize the issuance of emergency notes which may be renewed from time to time.

Howard County (5 members on Council)

Section 615B. - Restrictions on use of surplus revenues.

“(a) Restrictions on Use of Excess Surplus Revenue. Any excess surplus shall be used to:

- (1) Fund capital projects;
- (2) Reduce existing County debt; and/or
- (3) Fund appropriations in the current expense budget for capital outlay and for non-recurring expenses.

(b) Modification of Restriction. The restriction on the use of excess surplus imposed by this section may be modified by an ordinance passed by an *affirmative vote of 2/3 of the members of the County Council.*”

Baltimore County (7 members on Council)

Sec. 709. - Action on the budget by the county council.

“After the public hearing specified in the preceding section, the county council may decrease or delete any item in the budget except those required by the public general laws of this state and except any provision for debt service on obligations then outstanding or for estimated cash deficits. The county council shall have no power to change the form of the budget as submitted by the county executive, to alter the revenue estimates except to correct mathematical errors, or to increase any expenditure recommended by the county executive for current or capital purposes. The adoption of the budget shall be by the *affirmative vote of a majority of the total number of county council members established by this Charter on an ordinance to be known as the Annual Budget and Appropriation*

Ordinance of Baltimore County. With respect to county borrowing heretofore or hereafter approved by the voters as provided by section 718 of this article (notwithstanding any contrary provisions of borrowing ordinances heretofore approved by the voters), the county council, at any time, or from time to time, after adoption of the budget or amendments thereto as provided by section 716 of this article, shall adopt bond issue authorization ordinances authorizing the issuance of bonds at one time, or from time to time, to provide the means of financing capital projects included in the budget as amended to the extent the same are to be financed from borrowing. All of said ordinances shall be exempt from the executive veto.”

Supermajority Actions in Montgomery County

Supermajority voting on the Council for Montgomery County is well established and used practically every year. As recently as this past Spring, in evaluating the FY24 budget submission, the Council needed a supermajority to affirm the exceeding of the affordability guidelines.

FY 2024 Budget:

During the recent budgetary deliberations for FY24 in the Spring 2023, the budget submitted by the County Executive exceeded the spending affordability guidelines and pursuant to Section 305, the Council needed 8 votes (~2/3) to approve the amount. This action is documented in Council Agenda Item #2 (April 11, 2023). The Council took this action cognizant that additional revenue would be needed to fund the increase and with full understanding of the Council’s limited options for raising the additional revenue. In fact, the approval of the budget increase made it inevitable that an increase in real property tax rates would have to be considered, and approved if other taxes and fees were insufficient..

FY 2024 debate (Council Agenda Item #2 – April 11, 2023):

Aggregate Operating Budget

The County Code requires the Council to specify a ceiling on the aggregate operating budget (AOB) when adopting the operating budget spending affordability guidelines each February. The ceiling on the AOB established by the Council in February demarcates the threshold that requires eight affirmative votes if the Council chooses to exceed that ceiling when finalizing the budget in May.

For FY24, the Council established an AOB ceiling at \$5,686.1 million. The Executive’s recommended budget includes an AOB of \$6,049.7, an increase of \$363.6 from the Council’s AOB ceiling. **As a result, eight votes would be required to approve the FY24 operating budget as recommended by the Executive.**

May 2018 Charter Commission finding:

In Montgomery County, supermajority votes are required to raise property tax rates beyond the current level. Charter Section 305 requires all members (unanimous) of the Council to approve increasing the weighted tax rate on real property. This requirement was addressed by the Charter Review Commission in May 2018:

“Report of the Charter Review Commission

May 2018

We are recommending a change in the Charter provision governing how many Council Member votes are needed to override the charter limit on property taxes. We are NOT recommending a significant change, but only a limited change that we feel is logical. Currently, "a unanimous vote of nine, not seven Councilmembers" is needed to increase real property taxes beyond the Charter limit, which is tied to the increase in the Consumer Price Index. This is so even if there are not nine members currently serving on the Council. This restriction would effectively prohibit Council action when there is a vacancy on the Council, legally limiting the ability of the government to manage in a crisis. We recommend that the word "unanimous" be retained, but the phrase "nine not seven" be stricken and replaced with "all current." Also, the change from "nine" to "all current" will ensure that if the Council membership is increased in the future, there will be no doubt that unanimity will still be needed to exceed the Charter tax cap.

CHARTER TAX CAP

The Charter Review Commission recommends amendment to Charter Section 305's requirement to increase the real property tax above any increase in the Consumer Price Index from "a unanimous vote of nine, not seven, Councilmembers" to "a unanimous vote of all current Councilmembers."

Charter Section 305 currently requires a vote of all nine members to set a real property tax rate "that will produce total revenue that exceeds the total revenue produced by the tax on real property in the preceding fiscal year plus a percentage of the previous year's real property tax revenues that equals any increase in the Consumer Price Index." It should be noted that under the existing provision, if there is a single vacancy on the Council, there is no way that the Council can raise taxes in excess of the limit, as even a unanimous vote would only garner eight votes. There must be nine affirmative votes, even if there aren't nine sitting members of the Council.

Prior to 2008, seven votes were needed to exceed the "Charter cap." In the 1990s two efforts were made to change the seven vote requirement to a majority requirement of five. Both of those efforts were unsuccessful. The existing requirement was the result of a 2008 Charter amendment. "Question B" was petitioned onto the ballot of November 4, 2008, and received 194,151 votes in favor (51 %) and 189,091 votes against (49%).

The Commission has fielded requests from residents and interest groups to consider recommending an amendment to this provision throughout its term. At the Commission's

January 2016 public hearing, two of the three members of the public who testified asked the Commission to recommend that the nine vote requirement to exceed the Charter cap be changed to a majority of five, or possibly the super majority of seven votes that were required before 2008.

The Commission recommends that the current "nine vote" Charter provision be changed. However, we are not in any way suggesting that less than a unanimous vote should be required. Our concern is simply that by requiring nine votes, when the Council has one or more vacancies it is impossible to exercise this power. We do not think that is a good way to run a government. We do recommend a continuation of the unanimity requirement to raise property taxes for the simple reason that this requirement was imposed by a petition drive that was approved by the voters. While we understand the voters' intention in approving a requirement that unanimity is needed to break the Charter tax limit requirement, we feel it was not likely the intent of the voters to make this action impossible, *no matter what the circumstances*, when there are vacancies on the Council. If that had been the desire of the petitioners and the voters, they could have written that it is impossible to break the charter limit when there are one or more vacancies on the Council. They did not do that, so we believe the appropriate requirement is a unanimous vote of all current Councilmembers.

An additional potential benefit of this change is that, if the number of Council seats is increased in the future, no amendment will need to be made to this Section of the Charter in order to retain the unanimity requirement.

The Commission therefore recommends that the proposed amendment to Section 305 of the Charter in the Appendix on page A-69 be submitted to the voters for ratification on the November 6, 2018 ballot. The amendment would change the existing vote requirement to increase the real property tax above any increase in the Consumer Price Index from "a unanimous vote of nine, not seven, Councilmembers" to "a unanimous vote of all current Councilmembers."

Question and Proposals

The question that the Budget Working Group (Group 3) addressed is: Should the three different supermajority voting thresholds in Section 305 of the Montgomery County Charter be made consistent at two thirds of the votes of sitting County Council members (rounded up to the next whole vote)?

The calculation for two thirds is to take the number of sitting County Council members and multiply it by 0.667. The resulting number is rounded up to the next whole number in order to establish the voting threshold. For example, if there are eleven sitting members of the County Council, then $11 * 0.667 = 7.337$, which rounds up to 8. Therefore, the two thirds supermajority threshold for a County Council with eleven sitting members is eight. It should be noted that, as the threshold is based on the number of sitting County Council members, in the event of vacancies on the County Council the supermajority threshold would change accordingly, as illustrated in the table below.

Number of Sitting Council Members	2/3 Supermajority
11	7.34 [8]
10	6.67 [7]
9	6.00 [6]
8	5.34 [6]
7	4.67 [5]
6	4.00 [4]

NOTE: Roberts Rules of Order discusses Two-thirds Vote. “A two-thirds vote means two-thirds of the votes cast, ignoring blanks which should never be counted. This must not be confused with a vote of two-thirds of the members present, or two-thirds of the members, terms sometimes used in by-laws. To illustrate the difference: Suppose 14 members vote on a question in a meeting of a society where 20 are present out of a total membership of 70, a two-thirds vote would be 10; a two-thirds vote of the members present would be 14; and a vote of two-thirds of the members would be 47.”

Proposal 1: Increase supermajority requirement to two thirds for budget increases that exceed the increase of the Consumer Price Index (CPI)

“An aggregate operating budget which exceeds the aggregate operating budget for the preceding fiscal year by a percentage increase greater than the annual average increase of the Consumer Price Index for all urban consumers for the Washington-Baltimore metropolitan area, or any successor index, for the twelve months preceding December first of each year requires the affirmative vote of ~~seven~~ two thirds of the sitting Councilmembers (rounded up to the next whole number).”

Pros

- Consistency in the County Charter is crucial for ensuring fair and predictable governance, fostering public trust, and promoting a stable framework for local administration and decision-making.
- Consistency streamlines implementation complexity by providing a clear and uniform framework and facilitating efficient execution of processes or policies.
- Requiring a supermajority of two thirds increases acceptance by ensuring that a significant majority supports a decision and that the changes in the national economy are recognized as having an impact equal to the Council’s affordability guidelines, thereby enhancing legitimacy, promoting broader consensus, and mitigating the potential for decisions to be driven by narrow or partisan interests.

Cons

- Increasing the supermajority requirement makes policymaking slightly more difficult by raising the threshold for consensus, potentially leading to gridlock and hindering the ability to enact a budget within Charter-defined deadlines.
- Increasing the supermajority to two thirds reduces the span of control of the majority by necessitating a higher level of agreement, limiting the majority's ability to pass measures with a smaller margin of support.
- Increasing the supermajority to two thirds can increase the adverse influence of narrow and partisan interests.

Proposal 2: Restate the supermajority requirement as two thirds for budget increases that exceed the Council's affordability guidelines

“Any aggregate capital budget or aggregate operating budget that exceeds the guidelines then in effect requires the affirmative vote of ~~eight~~ two thirds of the sitting Councilmembers (rounded up to the next whole number) for approval.”

Pros

- Consistency in the County Charter is crucial for ensuring fair and predictable governance, fostering public trust, and promoting a stable framework for local administration and decision-making.
- With 11 members of the County Council, eight votes represent a two-thirds majority. There is precedent within Montgomery County and across other Maryland Counties for setting the supermajority threshold at two-thirds.
- Restating the supermajority threshold as two thirds maintains acceptance by ensuring that the affordability guidelines adopted by the Council address the highest priority funding requirements to serve the entire community, and that the priorities are fully implemented in the budget decisions.

Cons

- Maintaining the supermajority threshold at two thirds could slow down the policy process by elevating the difficulty of achieving consensus, leading to prolonged deliberations and impeding the timely enactment of policies.
- Maintaining the supermajority threshold at two thirds could increase the power of the minority by requiring their greater participation and agreement, granting them a substantial influence in decision-making processes.
- Maintaining the supermajority threshold at two thirds could increase the power of the narrow and partisan interests that would want to relitigate the affordability guidelines.

Proposal 3: Reduce supermajority requirement to two thirds for ad valorem weighted tax rate increases on real property tied to budget increases

“Unless approved by an affirmative vote of ~~all current~~ two thirds of the sitting Councilmembers (rounded up to the next whole number), the Council shall not levy an ad valorem weighted tax rate on real property to finance the budgets that exceeds the ad valorem weighted tax rate on real property approved for the previous year.”

Pros

- Consistency in the County Charter is crucial for ensuring fair and predictable governance, fostering public trust, and promoting a stable framework for local administration and decision-making.
- Reducing the supermajority threshold from unanimous to two thirds votes makes policymaking less complex by lowering the required level of agreement, facilitating more efficient decision-making and potentially reducing gridlock.
- Reducing the supermajority threshold reinforces the legitimacy of the Consumer Price Index and affordability guidelines as standards for determining the necessity of budget and tax increases.
- Reducing the supermajority threshold reduces the potential adverse influence of narrow or partisan interests.
- Reducing the supermajority threshold impedes efforts to relitigate the affordability guidelines and budget priorities.

Cons

- Raising tax rates is a complex policy issue with far-reaching consequences. Since the 1990’s, County residents expect unanimous votes to exceed the “tax cap”. In 2018, the Charter Review Commission addressed unanimous voting to exceed the “tax cap” and recommended keeping it and the Council re-affirmed it in 2020.
- Reducing the supermajority threshold from unanimous to two thirds votes diminishes shared decision-making and buy-in by lowering the requirement for broad consensus, potentially allowing tax decisions to be made without the full support and participation of a more diverse range of stakeholders.
- Council members represent different and distinct areas of the County, including at-large members, and achieving a full consensus on any vote to exceed the “tax cap” ensures that all areas of the County are represented.
- Enabling each Council member to have a veto in tax policymaking provides members who dissented in a budget increase with an opportunity to block full funding of the budget.

GROUP 4: EXECUTIVE APPOINTMENTS

Changes to Sec. 215 - Appointments

Question

Should Charter Sec. 215 be modified to enable the County Executive to fill specific non-merit positions without Council approval and should Council approval be subject to a time limit, e.g., 45-60 days?

Section 215

“Sec. 215. Appointments.

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

(American Legal Publishing, Code Library Online, November 3, 2020, unofficial version).

Background

The County Executive is the chief executive officer of Montgomery County and, in executing the laws, is responsible for seeing that the County operates effectively and efficiently. The County Executive does not have legislative power other than that expressly delegated by the Council or by the Charter.

Under Section 210, the County Executive appoints a Chief Administrative Officer (non-merit) subject to confirmation by the Council. The Chief Administrative Officer supervises all departments, offices, and agencies of the Executive Branch.

The County Executive, after receiving the advice of the Chief Administrative Officer, appoints a single officer to head each department, principal office or agency of the Executive Branch, and an officer to fill any position in the Executive Branch designated

by law as a non-merit position, all subject to the confirmation of the Council. A list of executive level non-merit positions is shown in the chart below.

Other than a limited number of designated Executive Positions (non-merit), employees of the Executive Branch are covered under the merit system (Section 216) and the hiring, supervision and retention process is subject to merit system and related provisions.

Montgomery County employs about 30,000+ employees, has a budget of \$6.8B dollars and delivers services for over a million residents. As might be expected, untimely filling of vacancies or ineffective personnel management, particularly at the highest levels, may have a deleterious effect on service delivery and the operations of the County.

Executive Salary Scales and Positions

EX0 – EXECUTIVE SALARY SCALE

Position Title
Chief Administrative Officer

EX2 – EXECUTIVE SALARY SCALE

Position Title
(4) Assistant Chief Administrative Officers

EX1 – EXECUTIVE SALARY SCALE

Position Title
Director Office of Consumer Protection
Director Department of Correction and Rehabilitation
County Attorney
Director Department of Environmental Protection
Director Department of Finance
Fire Chief, Fire/Rescue Service
Director Department of General Services
Director Department of Health and Human Services
Director Department of Housing and Community Affairs
Director Office of Human Resources
Director Office of Intergovernmental Relations
Director Department of Liquor Control
Director Office of Management and Budget
Director Department of Permitting Services
Director Department of Police
Director Office of Procurement
Director Office of Public Information
Director Department of Public Libraries
Director Department of Recreation
Director Department of Technology Services
Director Department of Transportation
Director Office of Racial Equity and Social Justice

EX3 – EXECUTIVE SALARY SCALE

Position Title
Special Projects Manager, Office of the CAO
Development Ombudsman, Office of the CAO
Director Criminal Justice Coordinating Commission, Office of the CAO
Division Chief MCFRS Volunteer Services
Chief Aging and Disability Services, HHS
Chief Children Youth and Family Services, HHS
Chief Special Needs Housing, HHS
Chief Behavioral Health and Crisis Services, HHS
Chief Operating Officer, HHS
County Health Officer
(5) Assistant Chiefs of Police, POL
Director Office of Community Partnerships
(5) Director Regional Services Centers
Transportation Policy Officer, DOT
Deputy Director of Operations, DOT
Deputy Director, DGS
Deputy Director, DHCA
Deputy Director, OMB
Chief Broadband Officer, DTS
Chief Data Officer, DTS
Chief Digital Officer, DTS
Chief Labor Relations Officer, OLR

Council Approval of Appointments

The County Charter was first adopted in November 5, 1968 and the first Montgomery County Council of 7 members was elected in 1970. In 2022, the number of Council seats increased to 11.

The Council's responsibilities are specified by the Montgomery County Charter and Maryland state law. The Charter defines the Council's powers in three major areas: legislation, land use, and the budget, and governs the balance of power between the Council and the County Executive. Some of the Council's principal responsibilities are:

- Appropriates money to fund the capital and operating budgets and sets the local property tax rate and other local taxes.
- Exercises oversight over County programs to ensure efficiency and effectiveness.
- Enacts all County laws and amendments to the Code.
- Confirms major appointments made by the County Executive and appoints the members of the Montgomery County Planning Board and the Board of Appeals.
- Acts on or initiates reorganization plans for the County government's executive branch.
- Directs and reviews the annual independent audit of County government operations.

The Council exercises its responsibility with respect to personnel management through administration of the merit system (Sec. 401) and oversight of the County Executive's non-merit appointments (Sec. 215).

“Sec. 401. Merit System.

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

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

Officers and employees subject to a collective bargaining agreement may be excluded from provisions of law governing the merit system only to the extent that the applicability

of those provisions is made subject to collective bargaining by legislation enacted under Section 510, Section 510A, or Section 511 of this Charter.

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

The Council by law may exempt probationary employees, temporary employees, and term employees from some or all of the provisions of law governing the merit system, but the law shall require these employees to be recruited, selected and promoted on the basis of demonstrated merit and fitness.

The Council by law may establish within the merit system a program to recruit and select qualified individuals with severe physical or mental disabilities on a noncompetitive basis.”

The Council is limited to 45 days a year for enacting legislation.

“Sec. 109. Sessions.

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

(American Legal Publishing, Code Library Online, November 3, 2020, unofficial version).

Appointments in Other Maryland Counties

Eleven Maryland counties have ratified charter forms of government: Anne Arundel, Baltimore, Cecil, Dorchester, Frederick, Harford, Howard, Montgomery, Prince George's, Talbot, and Wicomico. In addition, all of these are governed by county councils; and all (except Dorchester and Talbot) are led by county executives.

In other Maryland counties, to hire the single head of a department, agency and office, the County Executive is required to seek approval from the Council. While there are differences in whether the positions are identified and designated in the text of the Charter, other counties place time limits on how long the Council has to act on the County Executive's appointment.

Frederick County

“412. Appointment and Removal of Department Heads and Others

(a) The Executive shall appoint an individual to head each principal operating department, agency or office under the control of the Executive, subject to confirmation of the Council. Individuals appointed under this subsection shall serve at the pleasure of the Executive.

(b) Except as provided in subsection (c) of this section or prescribed by law, the provisions of this Charter or by ordinance, the Executive shall appoint all members of boards and commissions. All members shall be subject to confirmation by the Council. Individuals appointed under this subsection shall serve at the pleasure of the Executive, unless otherwise provided by law, the provisions of this Charter or by ordinance.

(c) The membership of boards and commissions that are established exclusively to advise the Council shall be appointed and removed by the Council, at the Council's discretion, unless such matters are prescribed by law, the provisions of this Charter or by ordinance.

(d) If the Council fails to take action within thirty days upon an appointment made by the Executive pursuant to this section, the appointment shall become effective.”

Prince Georges County

“Section 322. - Confirmation of Administrative Appointments.

Administrative appointments by the County Executive to the position of Chief Administrative Officer, head of an agency in the executive branch of the County government, or member of a board or commission and any executive director thereof shall be subject to confirmation by the Council. The Council shall hold public hearings on all such appointments not less than thirty days after their submission to the Council by the County Executive. If the Council fails to act to confirm or reject such appointments within forty-five days of their submission to the Council by the County Executive, the appointment shall stand approved. In the case of appointments by the County Executive to the position of Chief Administrative Officer or head of an agency in the executive

branch of the County government, a vote of two-thirds of the members of the full Council shall be required to reject such appointment. In the case of appointments by the County Executive to membership on a board or commission, or appointments of any executive director thereof, a vote of a majority of the full Council shall be required to reject such appointment.”

Anne Arundel County

“Sec. 405. Powers and duties of the office.

The County Executive shall be responsible for the proper and efficient administration of such affairs of the County as are placed in the charge or under the jurisdiction and control of the County Executive under this Charter or by law. In addition to and not by way of limitation of the County Executive's general duties of supervision and management of the executive branch of the County government, the County Executive shall have the following express responsibilities, duties and powers:

- (a) To supervise, direct and control, subject to law and the provisions of this Charter, the executive branch of the County and to appoint and remove the Chief Administrative Officer, Public Information Officer, Legislative Liaison Officer, Economic Development Officer, Planning and Zoning Officer, Administrative Hearing Officer, Director of Public Works, Director of Inspections and Permits, Director of Recreation and Parks, and Director of Aging;
- (b) To appoint, subject to confirmation by resolution of the County Council, the County Attorney, Chief of Police, and Fire Chief;
- (c) To present to the County Council the annual County budget in the manner and form hereinafter in this Charter provided;
- (d) To communicate to the County Council at least once a year a general statement of the finances, government and affairs of the County, with a summary statement of the activities of the several departments and offices thereof;
- (e) To present to the County Council from time to time such other information concerning the business and affairs of the County as the County Executive may deem necessary, or as the County Council by resolution may request, and to recommend such measures for legislative action as the County Executive may deem to be in the best interests of the County;
- (f) To assure that the County officers, boards, agencies, commissions, departments and employees faithfully perform their duties;
- (g) To assure that the laws of the State pertaining to the affairs, good order and government of the County, and the acts, resolutions, ordinances and public local laws of the County are duly executed and enforced within the County;
- (h) To make or cause to be made any study or investigation concerning the operation of the executive branch, the development of a legislative program, the means of financing County requirements, the social and economic development of the County, including but not limited to investigations of the affairs, functions, acts, methods, personnel or efficiency of any department, office or officer under the County Executive's jurisdiction;

(i) To veto, in the County Executive's discretion, ordinances of the County Council, in the manner, at the times and subject to the limitations of this Charter and to return the same to the Council with the County Executive's reasons therefor;

(j) Unless otherwise specified in this Charter, to appoint and to remove for cause the members of all boards, commissions, authorities and corporations created in or pursuant to this Charter or by law, except the County Board of Appeals and the Fire Advisory Board;

(k) To serve on all boards and commissions on which State law requires a County Commissioner to serve on all boards and commissions for which State or County law requires the County Executive to serve, however, when permitted by law, the County Executive may designate someone else to serve in the County Executive's place;

(l) To sign or cause to be signed on the County's behalf all deeds, contracts and other instruments and to affix the County seal thereto unless otherwise authorized by law or by this Charter;

(m) Except as otherwise expressly provided in this Charter, to issue, or cause to be issued, all executive orders, directives, licenses and permits;

(n) To prepare and issue, or cause to be prepared and issued rules and regulations to carry out the provisions of this Charter that relate to the functions of the Executive Branch, provided that before taking effect, all such rules and regulations, other than those affecting the internal operating procedures of the executive branch of the County government, shall be approved by the County Council by ordinance;

(o) To appoint pursuant to Article VIII of this Charter a Secretary to the County Executive, who shall have and may exercise all powers and functions heretofore conferred on the Clerk of the Board of County Commissioners, not otherwise fixed by this Charter, including but not limited to the power to attest the signatures of all County officials;

Baltimore County

Section 402. County executive

“(9) To appoint, subject to confirmation by the affirmative vote of a majority of the total number of county council members established by this Charter, the county administrative officer and the heads of all offices and departments of the county government for which provision is made in this charter. If the council fails to act to confirm or reject any appointment within forty days of its submission to the council by the county executive, the appointment shall stand approved;

(10) To appoint the members of all boards, commissions and authorities created in or pursuant to this Charter or by law”

Changes for Consideration

Enable County Executive to Appoint Lower-level Positions and Place a Time Limit on Council Approval For Top Positions

Sec. 215. Appointments.

Current:

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

Change:

The County Executive, after receiving the advice of the Chief Administrative Officer, shall appoint a single officer to head each department, principal office or agency of the Executive Branch, and an officer to fill any position in the Executive Branch designated by law as a non-merit position. *The single officer to head each department, principal office or agency of the Executive Branch are subject to the confirmation of the Council. If the Council fails to act to confirm or reject any single officer to head each department, principal office or agency of the Executive Branch appointment within days of its submission to the council by the county executive, the appointment shall stand approved.* Except for commissions appointed to advise the Council, the County Executive shall appoint, subject to the confirmation of the Council, all members of boards and commissions unless otherwise prescribed by state law or this Charter.

Pros and Cons

PRO

Currently, the Charter Sec. 215 requires the County Executive to obtain Council approval for any non-merit position, including assistant chiefs, deputy directors and chiefs. Under some circumstances, this could lead to an extended period with management uncertainty.

Montgomery County employs about 30,000+ employees, has a budget of \$6.8B dollars and delivers services for over a million residents. The untimely filling of vacancies or indefinite periods of management openings, particularly at the executive level, may have a disruptive effect on service delivery and the operations of the County. With the proposed change, the County Executive would have more flexibility to fill lower-level executive non-merit positions, while, at the same time, preserving the Council oversight responsibility for the single head of a department, agency and office. This change would affect only about 30+ non-merit EX2 and EX3 positions (see nearby chart) while maintaining the existing Council confirmation process for the EX0 and EX1 positions.

In addition, since the Council is limited to 45 days to enact legislation and public appointments, this is a reasonable change to focus the Council's attention on the highest-level positions as the County grows in size and complexity.

CON

Currently, the Charter Sec. 215 requires the County Executive to obtain Council approval for 60+ non-merit positions and, under most circumstances, there should be time to plan an orderly approval and transition process for new hires. The Council is responsible for and knowledgeable of many County decisions and operations and the selection of executive-level management personnel is a key oversight function for the Council. Removing the Council from the appointment confirmation process for non-merit positions may hinder the Council in its oversight of the executive branch.

In addition, if the County Executive is able to hire some non-merit positions without Council approval, there may be a tendency to request reclassification of additional merit positions to quicken the appointment process, although the Council would need to approve those requests (Sec. 401).

Adding a time-limit to the approval process will require the Council to prioritize the appointments on its schedule and may impact other legislative items.