



Office of the General Counsel
Maryland-National Capital Park and Planning Commission

Reply To

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October 6, 2020

Memorandum

TO: The Montgomery County Planning Board

FROM: Adrian R. Gardner
General Counsel

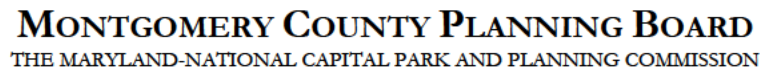
RE: Montgomery County Ballot Questions: Resolution 20-110

At Chair Anderson's request, our office has prepared the attached resolution for consideration during your meeting this week. Upon its adoption, Resolution 20-110, captioned "Resolution in Support of Ballot "Question A" & Opposition to Ballot "Question B" for the 2020 General Election in Montgomery County, Maryland," would formally establish the Board's policy position on these two important ballot questions.

As you know, these questions propound competing tax policies for the Montgomery County Government. Question B would all but repeal the existing charter requirement that calls for a unanimous vote of the County Council in order to increase the rate of certain real property taxes above the annual rate of growth in the property tax base (computed with certain adjustments for inflation and a handful of other items). More specifically, Question B would jettison the current rate-setting authority, effectively creating a constant yield structure that approaches a CPI-adjusted freeze on future funding. By contrast, Question A maintains the existing requirement for a unanimous vote, but would eliminate the annual revenue cap that is tied to the growth in aggregate property values. We have also attached a recent editorial for additional context.

These ballot questions portend serious consequences for the Montgomery County Government, including the operating functions that are integral to the work of our agency. As an aside, even though we have previously explained why these charter provisions are not legally operative with respect to Commission taxes because they conflict with enabling statutes and for other reasons, it is clear nevertheless that additional constraints on County budget resources will disrupt the Commission's work program. According to our agency's budget team, any additional disruption is particularly troubling in view of a difficult economic picture overall.

Attachments



**IN SUPPORT OF BALLOT “QUESTION A” &
OPPOSITION TO BALLOT “QUESTION B”
FOR THE 2020 GENERAL ELECTION IN MONTGOMERY COUNTY, MARYLAND**

WHEREAS, the Montgomery County Planning Board (“**Planning Board**”) hereby takes administrative notice that the voters of Montgomery County will consider two ballot questions relating to County property tax limits, as described further below, in the upcoming general election that culminates on November 3, 2020; and

WHEREAS, under existing law, Section 305 of the Charter of Montgomery County, Maryland (“**Section 305**”), any imposition of County real property taxes requires a unanimous vote by the County Council if the imposition would yield more revenue than the amount generated in the preceding fiscal year (calculated with certain allowances in the tax base and after adjustment for annual consumer inflation); and

WHEREAS, one deleterious effect of Section 305, among others, is that it precludes the Montgomery County Government from capturing fully the natural growth in revenue that would otherwise inure to benefit local service delivery from the growth in property values attributable to the County's successful planning initiatives and policy outcomes; and

WHEREAS, ballot “**Question A**” (attached hereto as Exhibit 1) would amend Section 305 to allow the Montgomery County Council to establish a tax rate for County real property taxes that exceeds the rate approved for the previous year – but only with a unanimous council vote in favor of any such rate increase; and

WHEREAS, upon passage, the effect of Question A will be to correct the impact of Section 305 by providing greater flexibility and allowing the Montgomery County Government to capture fully the revenue enhancement available from rising property values in the ordinary course; and

WHEREAS, by contrast to the ameliorative effect of Question A, ballot “**Question B**” (attached hereto as Exhibit 2) would amend Section 305 to fully prohibit the County Council – notwithstanding even a unanimous desire otherwise – from imposing a County real property tax that yields more revenue than the amount generated in the preceding fiscal year (calculated with the same allowances in the tax base and adjustment for inflation provided in existing law); and

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Approved as to
Legal Sufficiency: _____ 10/06/2020 _____
M-NCPPC Legal Department

WHEREAS, upon passage, Question B would grossly exacerbate the existing deficiency of Section 305 by establishing an all-but-absolute cap on future revenue growth capable of starving the County Government of resources needed to provide services essential to the well-being of the communities and residents it serves; and

WHEREAS, although the application of Section 305 is not authorized by the Code of Maryland, Division II of the Land Use Article, with respect to property taxes imposed for the Maryland-National Capital Park and Planning Commission (“**Commission**”), the Planning Board and Commission nevertheless have been partners with the Montgomery County Government in serving Montgomery County communities and residents since 1954 and 1927, respectively; and

WHEREAS, the Planning Board and Commission is a vested stakeholder in the public debate about any charter amendment that portends to further constrain the Montgomery County Government County Government’s ability to provide resources necessary to deliver vital recreation and other services that are related to, or implicated by, the mission of our agency; and

WHEREAS, the Planning Board has duly reviewed and considered the direct and collateral impacts of the ballot questions identified herein on the mission of this entire agency.

NOW THEREFORE, BE IT RESOLVED, that the Planning Board hereby shall, and hereby does, **support** the adoption of **Question A** by referendum to be held during the Montgomery County General Election of 2020; and

BE IT FURTHER RESOLVED, that the Planning Board hereby shall, and hereby does, **oppose** the adoption of **Question B** by referendum to be held during the Montgomery County General Election of 2020; and

BE IT FURTHER RESOLVED, that the Executive Director shall present this resolution for consideration by the full Commission during its next regularly scheduled meeting.

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner _____, seconded by Commissioner _____, with Commissioners _____, _____, _____, _____, and _____ voting in favor at its regular meeting held on Thursday, _____, 20__, in Wheaton, Maryland.

Casey Anderson, Chairman
Montgomery County Planning Board

Question A

Charter Amendment by Act of County Council

Property Tax Limit - Limit Tax Rate Increases

Amend Section 305 of the County Charter to prohibit the County Council from adopting a tax rate on real property that exceeds the tax rate on real property approved for the previous year, unless all current Councilmembers vote affirmatively for the increase. This amendment would replace the current property tax limit, which requires an affirmative vote of all current Councilmembers to levy a tax on real property that would produce total revenue that exceeds the total revenue produced by the tax on real property in the preceding fiscal year plus any increase in the Consumer Price Index. The current property tax limit exempts real property tax revenue derived from: (1) newly constructed property; (2) newly rezoned property; (3) certain property assessed differently under State law; (4) property that has undergone a change in use; and (5) property in a development tax district to provide funding for capital improvements.

- ☐ For / A Favor
- ☐ Against / En Contra

Question B

Charter Amendment by Petition

Property Tax Limit - Prohibit Override

Amend Section 305 of the County Charter to prohibit the County Council from levying an ad valorem tax on real property that would produce total revenue (not including property tax revenue from certain enumerated sources) 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. Section 305 currently permits the County Council to exceed the limit on real property tax revenue only upon the affirmative vote of all current Councilmembers

- ☐ For / A Favor
- ☐ Against / En Contra

Opinion | Why Montgomery County residents should reject these four ballot initiatives

Opinion by Editorial Board

MARYLAND'S STATE constitution sets a low bar for motivated citizens eager to impose their will on local governments. Even in the state's behemoth county — Montgomery, with 1.1 million residents — just 10,000 valid signatures are required to place a referendum on the ballot. That has been a standing invitation to citizens with grievances to appeal directly to the voters.

Two such proposals appear on this fall's ballot, and such is the County Council's distaste for them that it added rival measures to compete with each. In both cases — one involving property tax increases; the other, the composition of the council itself — the citizens' initiative is a bad idea. Yet neither of the council's competing proposals is preferable to the status quo. Montgomery voters should vote against [Questions A, B, C and D](#).

Questions A and B offer rival methods to limit increases to annual property taxes, which account for about a third of county tax-supported revenue. For 30 years, property tax revenue increases have been pegged to inflation, plus new construction, a strict ceiling exceeded rarely since 1990 that can be breached only if all nine council members agree.

On this year's ballot, an initiative by veteran gadfly [Robin Ficker](#) (Question B) proposes locking in the current cap, with no breaching rights even for a unanimous council. The Question B proposal would make no difference in most years but could hamstring the county during economic slumps when the council tries to safeguard parks, libraries and other amenities. The competing, council-backed proposal ([Question A](#)) would set a different cap — on the property tax rate, rather than overall receipts. That would have yielded slightly more revenue — about \$13 million annually since 2004, on average, a pittance against Montgomery's nearly \$6 billion budget. The council's argument that its tax-cap proposal would help attract new employers to the county is unconvincing; just as likely, some might see it as a back-door tax increase. In fact, the current regime has worked well enough; the council has generally stuck to the limit, and county services are amply funded.

The other two ballot questions propose changes to the makeup of the nine-member council, which consists of four members elected at-large and five who represent districts. A plan to switch to nine individual districts (Question D) is [backed](#) by labor unions and real estate interests; they reckon they'd gain influence on a council stripped of at-large members. Yet an all-district council might also be more parochial.

The competing, council-backed blueprint (Question C) would retain the four at-large seats and add two district seats, for a total of 11 members. While it's true the county's population has boomed in recent decades, and some upcounty residents feel under-represented, it would take a finely honed ear to detect any broad clamor to expand a council that has done fine with nine members. As it is, every citizen can vote for five of the nine council seats — their own district representative, plus four elected at-large. That seems like plenty.

Read more: