M E M O R A N D U M

October 30, 1991

TO: Sylvia Brown, Chair
Finance and Planning Subcommittee
Charter Review Commission

FROM: Marc P. Hansen Marc Hansen
Senior Assistant County Attorney

RE: Section 305 - Approval of the Budget; Tax Levies

You have asked if there is a conflict in Charter Section 305 between the so-called "TRIM" amendment and the "Question F" amendments.

In 1978 the following language (TRIM amendment) was added to Charter Section 305:

> "An aggregate operating budget which exceeds the aggregate operating budget for the preceding fiscal year by a percentage increase greater than that of the Consumer Price Index for all urban consumers for the Washington Metropolitan Area for the 12 months preceding December first of each year requires the affirmative vote of 6 Councilmembers. For the purposes of this section, the aggregate operating budget shall exclude operating budgets for enterprise funds, the Washington Suburban Sanitary Commission, the bi-county portion of the Maryland-National Capital Park and Planning Commission, and the Washington Suburban Transit Commission."

In 1990, the voters approved Question F which added the following provisions to Charter Section 305:

> "The Council, sitting as a spending affordability committee, 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 seven Councilmembers for approval.
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> Unless approved by an affirmative vote of seven Ccouncilmembers, the Council shall not levy an ad valorem tax on real property to finance the budgets 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 as

computed under this section. This limit does not apply to revenue from (1) newly constructed property, (2) newly rezoned property, (3) property that, because of a change in State law, is assessed differently than it was assessed in the previous tax year, (4) property that has undergone a change in use, and (5) any development district tax used to fund capital improvement projects."

Under Charter Section 305, the first step in the budget approval process requires the Council to adopt spending affordability guidelines. Section 20-55 requires the Council to adopt capital spending affordability guidelines by the first Tuesday of October.[1] These guidelines may be amended until the first Tuesday in February. An amendment, however, may not increase the guidelines by more than 10% over the guidelines adopted in October. After the capital guidelines become finalized in February, an override of the guidelines requires the affirmative vote of 7 Councilmembers. Section 20-59 requires the Council to establish operating budget guidelines, including a ceiling on funding from ad valorem real property tax revenue. The operating budget guidelines may be amended until the first Tuesday in April, subject to a 1% limitation on any amendment. After the April deadline, overriding the operating budget spending affordability guidelines require the affirmative vote of 7 Councilmembers.

Under Charter Section 303, the Executive must submit a capital budget by January 1 and an operating budget by March 1. Under Charter Section 305, the Council must approve an operating and capital budget no later than May 15th. If the aggregate operating budget, as defined in Charter Section 305, exceeds the CPI for the 12 preceding months, the budget must receive the affirmative vote of 6 Councilmembers.

Under Charter Section 305, the Council must make tax levies necessary to finance the budgets before June 30. An ad valorem tax on real property that exceeds the total revenue produced by the tax in the preceding fiscal year increased by the CPI requires an affirmative vote of 7 Councilmembers.

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[1] Unless otherwise indicated, Section references are to the Montgomery County Code (1984). In July 1991, the Council enacted Bills 29-91 and 30-91 which established a permanent process and criteria for adopting capital and operation budget guidelines respectively. Bill 29-91 is codified as Sections 20-55 through 20-58; Bill 30-91 is codified as Sections 20-59 through 20-62.

The budget process as established by Charter Section 305 could lead to difficult budget confrontations. An example, follows:

> A majority of the Council establishes the spending affordability guidelines at a relatively high level.[2] Subsequently, the Council adopts by 6 votes a budget under the spending affordability guidelines, but over the consumer price index threshold established by TRIM. The budget, however, requires the imposition of a real property tax rate that exceeds the CPI threshold imposed by Question F; accordingly, the proponents of the budget must obtain an additional vote to reach the 7 vote requirement.
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> If the seventh vote cannot be obtained, a budget stalemate will occur with limited options for resolution. The Council is under an obligation to adopt a balanced budget.[3] Both the Charter and State law require that the real property tax rate be set not later than June 30th.[4] Accordingly, some rate must be established. On the other hand, the budget cannot be amended after May 15th. This leaves two options: (a) one Councilmember will have to change his or her mind and vote to override the Question F real property tax limitation; or (b) a majority of the Council will have to impose a new tax (e.g., a development tax) or increase an existing tax (e.g., fuel energy).

In my opinion, the additions made to Section 305 by Question F do not conflict <u>in a legal sense</u> with the "TRIM" amendment. The TRIM amendment deals with the expenditure side of the budget equation, while the Question F amendment addresses the revenue side of the budget. While the Question F amendments may lead to some potentially difficult budget confrontations as discussed above, these confrontations do not rise to the level of an irreconcilable conflict. The general rule of statutory construction is that where two provisions appear to be inconsistent, one must make every effort to reconcile those provisions if it is reasonable to do so. <u>Maryland</u>

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[2] A majority of the Council is a majority of the councilmembers who vote in the positive and the negative on a question. A majority is not an absolute number.

[3] Section 305 provides that the Council shall "make tax levies deemed necessary to finance the budgets."

[4] See, Md. Tax-Property Code Ann. Section 6-302 (1986, 1991 Cum. Suppl.)

Industrial Financing Authority v. Meadow-Croft, 243 Md. 515, 221 A.2d 632 (1966). Schweitzer v. Brewer, 280 Md. 430, 374 A.2d 347 (1977).

I trust you will find this memorandum responsive to your inquiry. If you have further questions, please let me know.

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