

Testimony of Jim Michaels on Eliminating the One-Person Veto for Property Tax Rates

July 16, 2024

Section 305 of the County Charter specifies three different voting thresholds for the Council's decision-making on the budget. Today, approving the operating budget can require a supermajority of either seven votes or eight votes depending on the circumstances. If an increase in property tax rates is needed to fund that budget, the tax increase must be approved by the unanimous vote of all sitting Council members (eleven votes).

I agree with the Charter Review Commission's recommendation to change Charter Section 305 so that approval by two-thirds of the Council's sitting members (eight votes) is the consistent standard for approving all three actions governed by Section 305. As Chair of the Commission, I wrote a separate opinion to highlight one aspect of the Commission's recommendation that deserves greater discussion.

The Commission's proposal would eliminate the one-person veto created by Section 305's requirement for unanimous approval to increase property tax rates. I favor that result because a supermajority of two-thirds is adequate for encouraging negotiation and compromise on the decision about tax rates. On the other hand, the existing unanimous approval requirement, rather than encouraging compromise, serves to force concessions to appease even the tiniest faction regardless of their position's merit. Section 305 currently allows a one-person veto that cannot be overridden. Even the County Executive does not have that type of absolute veto authority. Accordingly, I support the proposed change for approving tax increases even if the other proposed changes to Section 305 are not made.

The Commission's recommendation reflects a sincere belief that a uniform two-thirds vote requirement for all three actions would establish a clear and predictable decision-making framework that aims to have consistency in how key policy decisions are decided, thereby bolstering public trust in the legislative process. However, the public discussion might seek to minimize the significance of those benefits and focus instead on just one thing – the possibility that some future increase in property tax rates could occur with the support of 8, 9, or 10 votes when it might have been prevented due to an inability to achieve unanimous approval by all 11 Council members. But having the unanimous approval provision in our Charter suggests that we're willing to sacrifice fundamental fairness and cast aside the democratic principle of majority rule if that results in a smaller tax bill.

Some have noted that the unanimous approval requirement has, so far, not prevented our Council from obtaining the consensus needed to adopt a budget that is adequately funded. That doesn't justify it logically or explain its necessity. I also recognize that in certain limited circumstances, state law overrides Section 305 and allows the Council to adopt a budget that includes a property tax increase without unanimous approval, which occurred as recently as 2023. But I don't believe our historical good fortune justifies preserving a provision that has the potential to permit just a few to overturn the will of the majority.

The origin of the unanimous vote requirement is a 2008 ballot initiative that was approved by a margin of only 5,060 votes out of the 443,652 voters who participated in the November, 2008 election. That was when “unanimous” meant the support of 9 Council members. We currently have over 1 million County residents and over 684,000 registered voters (22% more than 2008).¹ After 16 years and an expansion of the Council that now requires 11 unanimous votes, it’s not only reasonable but sensible to give today’s voters a chance to revisit this issue, just as our Charter Review Commission revisits these issues from time-to time.

Some might argue that the voters’ decision in 2008 to adopt the “unanimous” standard should be respected and allowed to stand. Using that rationale, we never would have asked voters in 2008 whether to replace the 7 out of 9 vote requirement previously adopted in a 1990 ballot initiative. The history of Section 305 alone demonstrates that we consider our Charter to be a living document, adaptable to meet changing circumstances, current needs, and present-day values. Our Charter Review Commission exists precisely because Montgomery County residents expect us to continually re-evaluate the Charter and consider the benefits of potential changes.

While we might wish to never see another tax increase, that’s nevertheless a power we grant to our democratically elected legislators, with the expectation they can and will determine when the circumstances and public interest call for them to do just that, even if it’s politically unpopular. The financial well-being of our County depends on the majority having both the wisdom and courage to do so. Allowing 1 or 2 legislators to veto and override the will of 9 or 10 others reflects a system in which a small minority who are unwilling to lose, are permitted to create a stalemate that forces an outcome that was already rejected by the majority as suboptimal.

Attaining the required supermajority of two-thirds can require negotiations and compromise that take more time than a simple majority, but supermajorities are already required currently for all three approval actions listed in Section 305. The proposal would only add one additional vote to one of the three actions, while reducing unanimous approval to a two-thirds majority for another action, which should take less time, not more. Overall, the proposal would reduce the possibility of a stalemate.

Unanimous vote requirements have the potential to magnify the influence of narrow or special interests and allow them to prevail over the broader public interest even with the most minimal support. It does not serve the best interests of the County to allow one or two Council members to exercise veto power over nine or ten other members who represent the vast majority and a broad cross section of our highly diverse County. There’s also an unnecessary risk that one or two members could use their potential veto as leverage to obtain support for

¹ By comparison, in the November, 2008 General Election, Montgomery County had 557,673 registered voters.

something that might benefit their district or some special interest but not benefit the County as a whole. The judicious use of supermajorities has its place, but allowing one or two votes to prevail over the other nine or ten has the potential for undermining democratic principles.

I disagree with the argument made by some that unless we require unanimous approval, some areas of the County will go unrepresented, and the process will lack participation and input from a diverse range of stakeholders. That argument confuses the right of the minority view to be represented and heard, with the right of the minority to control or change the outcome. Requiring a two-thirds vote of 8 to approve tax increases will still require negotiation with the minority when it has as few as 4 out of 11 votes. While some might argue that unanimous approval is needed to ensure the minority view is not ignored, in truth it's intended to ensure the majority can be ignored by giving the minority veto power over the majority with just a single vote.

I reject the suggestion that we should ignore the Commission's recommendation because it might be politically unpopular and possibly defeated. That argument is particularly unavailing when the question presented is simply whether voters should be allowed to decide the issue at the ballot box. I don't doubt the potential for a well-funded campaign by special interests to defeat the proposal. But I also do not doubt the ability of rational, well-informed voters to reject the arguments that place financial self-interest above basic democratic principles. Voters already did that in 2020 by rejecting a proposed amendment that would have banned all property tax increases even with unanimous approval. After 16 years, today's voters have a legitimate interest in reconsidering the voters' 2008 decision by a thin margin to allow an extreme minority veto. I recommend that our Council give voters that opportunity.

As an aid to readers, below I provide an abbreviated summary of the history of the unanimous approval requirement in Section 305:

Background on the supermajority requirement for approving property tax rates

In 1990, voters approved a ballot initiative that amended Charter Section 305 to require a supermajority instead of a simple majority (7 votes of the 9-member Council) to approve real property tax rates that would produce revenue exceeding the amount of revenue produced in the preceding year after adjustment for inflation. However, a 2008 ballot initiative resulted in voters approving another amendment, this time changing the 1990 supermajority requirement to require the votes of all 9 Council members instead of 7 (i.e., all sitting members at that time). That meant that after 2008, a single Council member could block passage of a budget

avored by the other 8 members.² While 443,652 voters in Montgomery County voted in the November 2008 election, that ballot question to amend Charter Section 305 was approved by a margin of only 5,060 votes.³

In 2018, voters approved another amendment to replace the requirement for 9 votes with a requirement that all current Council members approve, to ensure that approval can be obtained by a unanimous Council if there is a vacancy on the Council.

In 2020 voters approved a ballot initiative revising Section 305 again, so that the provision would apply to increases in the property tax rate itself rather than to increases in the revenue produced by that rate.⁴ Based on another 2020 ballot initiative that amended the Charter to expand the Council's size, it now takes the unanimous vote of 11 Council members to increase property tax rates. In the same election, voters rejected an amendment proposed by a citizen petition that would have outright prohibited any increases in property tax revenue above the rate of inflation even with unanimous approval by all Council members. That ballot initiative was rejected by the voters.⁵

² The 2008 Ballot Question appeared as follows:

Property Tax Limit - Votes Needed to Override – Charter Amendment by petition:

Question B – Amend Section 305 of the County Charter to require a unanimous vote of 9 Councilmembers, rather than the 7 out of 9 votes currently required, to levy a tax on real property that will produce revenue that exceeds the annual limit on property tax revenue set in that section.

³ Election result for the 2008 Amendment to Charter Section 305:

Votes for: 194,151 (50.7%).

Votes against: 189,091 (49.3%).

⁴ Votes for: 299,720 (62.5%)

Votes against: 179,512 (37.5%)

⁵ Votes for: 204,163 (42.9%)

Votes against: 272,277 (57.1%)