

C I T Y O F T A K O M A P A R K, M A R Y L A N D

Regular Meeting of the Mayor and City Council

November 10, 1986

8:00 PM

AGENDA

- 8:00 CALL TO ORDER: Mayor Del Giudice  
ROLL CALL: Councilmember Bradley  
Councilmember d'Eustachio  
Councilmember Haney  
Councilmember Iddings  
Councilmember Levy  
Councilmember Sharp  
Councilmember Williams
- 8:02 PLEDGE
- 8:05 ADOPTION OF MINUTES OF OCTOBER 14, 1986 REGULAR COUNCIL MEETING
- 8:10 MAYOR DEL GIUDICE'S COMMENTS AND PRESENTATIONS
- 8:20 ADDITIONAL AGENDA ITEMS
- 8:30 CITIZENS' COMMENTS (those not directed at items on Council Agenda)
- 9:00 ADMINISTRATIVE REPORTS
- 9:05 (1) Resolution establishing and appointing members to Housing Director  
Selection Advisory Committee  
Citizens comments  
Council action
- 9:10 (2) Second Reading of Tenant's Right of First Refusal Ordinance  
Citizens comments  
Council action
- 9:30 (3) Second Reading of Rental Housing Legislation  
Citizens comments  
Council action
- 10:00 (4) First Reading of an ordinance establishing Personnel Procedures  
Citizens comments  
First Reading
- 10:30 (5) First Reading of Proposed Collective Bargaining Ordinance  
Citizens comments  
First Reading
- 11:00 (6) Resolution of City support for youth care services within community  
Citizens comments  
Council action

ADJOURN

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REMINDERS: Monday, November 17 -- Council Worksession  
Monday, November 24 -- Regular Council Meeting

THE CITY OF TAKOMA PARK, MARYLAND

Regular Meeting of the Mayor and Council  
November 10, 1986

CITY OFFICIALS PRESENT:

Mayor Del Giudice	City Administrator Wilson
Councilmember Bradley	Asst. City Administrator Habada
Councilmember d'Eustachio	Acting Corp. Counsel Silber
Councilmember Iddings	
Councilmember Levy	
Councilmember Sharp	
Councilmember Williams	

ABSENT: Councilmember Haney

The Mayor and Council convened at 8:19 P.M. on November 10, 1986, in the Council Chamber, 7500 Maple Avenue, Takoma Park, Maryland. Following the pledge, the Minutes of the Regular Meeting of October 14, 1986 were presented for approval. Councilmember Sharp noted for the record that regarding the discussion on page 19 in which questions were raised concerning the administration of the factoring process, in his opinion any questions and/or allegations had been satisfactorily answered by a report from the Assistant City Administrator. Mr. Sharp moved adoption of the minutes, duly seconded by Councilmember Levy; motion carried unanimously.

The Mayor noted that The Great Peace March, as reported in the Washington Post, would be arriving in the D. C. area on the 14th of the month and would be participating in the demonstration on the 15th in D. C. He said the march leaders are seeking some possible sites for camping and were considering coming to Takoma Park during their arrival stage; however, it now appeared they had made arrangements to arrive and camp at Catholic University. He said they were still looking for a location where they could rest and disband the operation, which is quite large. Mayor Del Giudice commented he had been working with the group, and Councilmember Levy and her husband Jay Levy had been very helpful. He said in addition to continuing discussions about whether or not the City could provide a demobilization site, there would probably be talks about what other assistance the City might be able to provide to the marchers; he encouraged that anyone wishing to participate in the planning contact either himself or Jay Levy, and said the march had asked that he convey their invitation to City residents to join them in the demonstration in D. C. on November 15.

CITIZENS' COMMENTS:

Travis Price, 7301 Birch Avenue, representing Takoma Old Town Bus. Assn.: said business owners were advised by letter only the end of the prior week that State Highway would begin construction on the streets for signalization in the business area on the present date (Monday). He said there has been a lot of furor and discussion among the business owners; that they had only finished convincing the City to postpone tearing up the sidewalks due to the fact that a major portion of their heavy business traffic and income occurs during November and December. He said while they have pushed for the signalization for years and no one disagrees with wanting it done, the timing was the most inopportune that could have been chosen. He said SHA had been contacted and agreed to postpone the work until March 1, however, said the City's response to complaints made by some of the merchants was considerably less than desirable. The Mayor commented that the last word he had from Mike Snyder of SHA earlier in the day was that there would be additional consultation within SHA to determine whether or not the work would proceed or be delayed. He said his primary concern was that if the decision were to proceed that the work be completed within the initially projected time frame, i.e., by the end of the month. He said a final decision would be made by SHA by 11/12/86 concerning whether to proceed or delay. Mr. Price reiterated comments about the poor timing of the project and the fact that, should SHA decide to proceed, considering the likelihood of inclement weather and other factors, it was not too likely they would complete the work by the end of the month; he emphasized that the merchants would be happy to have the new signalization, but opposed the time chosen to accomplish it. Councilmember Iddings expressed concern that, based on SHA's past record, if the project were postponed it would be for an indefinite and perhaps lengthy period. He said the signal is desperately needed, particularly by elderly people living in Takoma Towers for safely crossing the street, and he feared if the project did not move forward now, it might be a long, long time before the installation takes place. Mr.

Price emphasized that 30-40% of the merchants' yearly income is made during the upcoming 2-month period, and pointed out it was not as though business in the area was thriving. Councilmember Levy commented that, weighing all factors, including the struggle small businesses experience, the existing lack of parking in the area and the fact that construction in winter is seldom completed as anticipated, she would support postponement of the project and felt that if enough pressure were brought to bear on SHA, they would reschedule the work for March and carry through with the commitment. Councilmember Bradley concurred with Ms. Levy's views as expressed, and pointed out that while she spends considerable time in Old Town and has talked with numerous senior citizens there, none have commented on the safety issue of the intersection as suggested by Mr. Iddings, nor had she perceived it to be of a pressing nature, despite realizing that it had been a longterm goal. She commented that SHA should be required to give more advance notice to a municipality when it intends commencing major construction; said that this project, in addition to other work by Insituform that is going on along Carroll Avenue, could pose a substantial threat to the businesses in the area. The Mayor asked that Old Town merchants recognize that there is a linkage between this project and the Takoma Junction Project and said there is a fear that if this project is delayed, it may adversely affect work slated to be done in Takoma Junction by SHA and Pepco. Following additional dialogue, Councilmember Bradley moved that staff be directed to contact SHA at 9:00 A.M. on 11/12/86 and express the City's position in favor of delaying the construction related to signalization in Takoma Old Town from November until March 1, 1987; the motion was duly seconded by Councilmember Levy.

Sammy Abbott, 7416 Holly Avenue: spoke concerning the longterm efforts on the part of the City to get the signalization approved and accomplished; he said he had personally complained about the safety issue of the lights there and related attempts during his administration to get something done about the problem, however, said the issue had not come up for discussion for some time and he would support asking SHA to delay beginning the work until March. He questioned Councilmember Iddings' apparent sense of urgency about the project when it had not been actively pursued for some time.

The motion to request postponement carried with Councilmembers Bradley, d'Eustachio, Levy and Sharp voting Aye; Councilmember Iddings voting Nay, and Councilmember Williams Abstaining.

ITEMS FOR COUNCIL ACTION:

1. Resolution establishing and appointing members to Housing Director Selection Advisory Committee.

The Mayor noted that initial discussion in worksession had been concerned with appointing a 5-member committee, however, said his recommendation was that a total of 7 members be appointed, including Councilmembers Bradley, Iddings and Sharp, the City Administrator (or his designee), Diane Jenkins (a tenant), Lloyd Johnson (a general public representative on COLTA), and Diane K. Loya (a member of the Takoma Park Owners' Association); he so moved, duly seconded by Councilmember Levy. Councilmember Sharp commented he felt the number of members excessively large to deal with a non-partisan issue and said a smaller group could probably reach agreement more quickly and efficiently. Councilmembers Bradley and Williams concurred with Mr. Sharp's comments. Councilmember Levy remarked that she felt quite the opposite, that the position has been such a critical one that representation from various pertinent groups would be helpful in making an appropriate selection. The question was called; the resolution was passed by unanimous vote (Councilmembers Bradley, Levy, Sharp and Williams present and voting Aye; Councilmembers d'Eustachio and Iddings temporarily absent; Councilmember Haney absent).

RESOLUTION #1986-71  
(attached)

The Mayor noted that the current draft of the Tenants' Right of First Refusal Ordinance incorporated language resulting from a number of worksession discussions; he pointed out that he had asked that Ms. Bottum of Acting Corporation Counsel's staff address several points and suggested that the item be deferred to afford Ms. Silber time to contact Ms. Bottum and ascertain whether she would be responding.

2. Second Reading of Rental Housing Legislation.

Councilmember Sharp moved adoption of the ordinance with the date of December 1, 1986 to be inserted in Section 3.(c)(1) in the appropriate space, and with the exclusion of Section 6., which would be discussed and adopted separately. The motion was duly seconded by Councilmember Iddings. Councilmember Williams moved that in Section 3.(c)(1)5., the portion beginning with ... "A landlord may seek a temporary waiver"... and ending with ... "a final order on the request."... be stricken in its entirety. Councilmember Sharp spoke in opposition to so doing and explained his rationale. Mr. Williams commented that it seemed inequitable that a landlord could seek relief through COLTA on the grounds of economic hardship, but tenants were not afforded that same right, i.e., rent rollbacks based on economic factors. Councilmember Bradley duly seconded the motion. Mr. Williams continued at length, speaking concerning the basic unfairness in the fact that landlords could seek a waiver on prohibited rent increases on the basis of economic hardship but there was no provision for a tenant to seek relief from rent increases on that same basis; he said many constituents had voiced their concerns to him about that inequity. Councilmember Bradley pointed out that economic hardship had not been defined in the legislation, noting similar weaknesses/omissions in other housing-related legislation, such as a formula for determining permissible rent increases or guidelines for COLTA for the making of exceptions to the rent guidelines. In the Section Mr. Williams had moved to strike, she raised questions about COLTA being delegated full authority for making final decisions concerning time extensions related to rent increases gained through a temporary waiver. Mr. Sharp pointed out the language proposed to be stricken had been in all drafts to date of the legislation, yet no question had previously been raised about it; concerning questions raised by Ms. Bradley about time constraints placed on the correction of code violations, he said he would expect that Housing has control over time frame requirements imposed for correction of specific violations and the authority to exercise some discretion in those matters.

Mike Davidson, representing UMAAC and Edinburgh House Tenants' Assn.: stated that one of the groups that would be filing a class action lawsuit against the City would be the Edinburgh House Tenants' Association, based on the fact, as pointed out by Councilmember Williams, that the law favors landlords in economic hardship situations -- did not feel that the law provided equal access to both landlords and tenants, particularly in regard to the waiver provisions. He said he had questions about a number of issues in the paragraph addressing temporary waivers -- said he had never heard of an escrow account being set up by a landlord -- was not sure that was legal. He asked why a tenant should be expected to give a landlord a loan on a commodity or service that they are not being provided. He said the legislation should be referred to Corporation Counsel and re-examined carefully prior to any vote. The Mayor pointed out that some jurisdictions require landlords to place security deposits in escrow accounts and that they be held and maintained separately, thus, it is not unheard of for landlords to set up that type of account. The question was called on the motion to strike paragraph 3 of Section 3.(c)(1)4. in its entirety; the motion failed with Councilmembers Bradley and Williams voting Aye; Councilmembers d'Eustachio, Iddings, Levy and Sharp voting Nay. The question was called on the motion to adopt the ordinance, excluding Section 6., with an effective date of December 1, 1986. Mr. Davidson commented that the guts of the legislation, as it is written, do not speak to the spirit of the law, in terms of the "Whereas" clauses. He said at first reading of the legislation he had asked why a current and valid license was not incorporated into the body of the language -- said that had not been addressed in the process at all. He pointed out that just because the taxes and Licensing Fee had been paid did not mean the landlord holds a current and valid license. Additionally, he said a final inspection was supposed to occur at the Edinburgh House in September; however, the landlord was granted a 60-day extension -- because of stall tactics and maneuvers, the building has not been inspected to date. He said Section 3.(c)(1)1. should address abatement of violations, rather than whether or not time allowed for correction of violations has elapsed because the fact that a given amount of time has passed does not equate with whether or not a violation has been corrected. Similarly, he said Section 3.(c)(1)2. should address correction of violations rather than elapsed time. He suggested that subsection 4. of that same section would be an appropriate place to insert the requirement that the landlord hold a current and valid license. He suggested that terminology referring to dwelling units and apartment buildings should be

consistent throughout the legislation, which it is not. Additionally, he said it should not be a requirement that serious violations be documented by Housing in order for automatic rent increases to be invalid, otherwise landlords can go ahead raising rents despite existing violations, and tenants will go on paying for services they are not receiving. He pointed out that in Section 4., halfway through the paragraph, the language concerning written notice is very vague and non-specific. He stated that UMAAC opposes the fact that the legislation contains language which, if a landlord were to sell his property in the City or cease doing rental property business in the City, releases him from responsibility for fines or violations -- he asked that the underlined language at the end of Section 4., addressing that issue, be explained; also suggested that the language requiring the landlord to hold a current and valid license be added at the end of that section, as well as at the end of Section 5. (substitute section). The Mayor commented that the language in Sections 4. and 5. was that which would actually appear in notices sent out to tenants, thus, the language contained therein was in a more familiar vein and used such terms as "your building" and "your apartment" versus more formal and stilted terminology.

Councilmember Williams commented that Mr. Davidson's remarks expressed the concerns of a vast number of tenants, and urged that his colleagues on the Council weigh carefully what had been said. Councilmember Levy remarked she had had similar concerns, however, said that many of the questions raised are already addressed by City law, e.g., Licensing, though not the particular legislation under consideration. She said that, essentially, the proposed legislation was an additional incentive for landlords to maintain decent standards in their buildings. Councilmember Bradley commented that in worksessions she had argued that the proposed ordinance was an add-on piece of legislation; said Mr. Sharp had mitigated some of her arguments concerning the administrative burden when he deleted the rent increase reporting requirements. She said she, too, had intended proposing that the ordinance be amended to state that there would be no rent increases if the landlord held a provisional license. She said she had initially voted in favor of Licensing because she felt it would be a major legal tool for pressuring landlords who did not comply with codes and COLTA Orders, did not pay their City taxes, etc.; said she did not believe that program had been afforded ample opportunity to be fully effective; did not feel all the interrelated pieces of Housing legislation had been effectively tied together and the ordinance at hand may be redundant -- perhaps a better approach, and one she would support, would be to amend the Licensing legislation and incorporate those points addressed in this proposed legislation. Councilmember Sharp stated that the proposed legislation was not redundant to any provisions contained in the Licensing law; said it does in fact add an additional power to the City which the City does not presently have. He said that this legislation is not anti-tenant -- gives tenants more power and more effort that they can make with regard to control of their situation than they presently have. Councilmember Iddings echoed Mr. Sharp's comments.

Marc Elrich, 8110 Roanoke Avenue: expressed support for comments made by Mr. Davidson about addressing abatement of violations in the language of Section 3., rather than speaking to elapsed time allowed for correction of violations. He spoke in favor of requiring that violations be abated before rent increases are permitted, otherwise the possibility would be opened up for allowing rent increases when work had not been done. He spoke in favor of landlords losing their rent increases for the year if they did not comply with a COLTA Order within the allotted time frame -- said he thought that would have considerably strengthened the City's law and provided strong incentive for landlords to comply with the law within the allotted time frame. He said he also would have liked to see the original proposal under which all rent increases would have required approval from the Housing Department, but which had apparently been put aside as being too administratively burdensome; commented it seemed a shame that expensive computer equipment was not being properly utilized in Housing, and could have relieved the anticipated burden if put to use as originally intended. He spoke in favor of writing the strongest and best laws possible rather than scaling them down to avoid any anticipated failure based on past performance. He commented he realized Section 6. would be considered separately, but would have liked to see stronger language in that section.

Dennis Seekins, 8217 Roanoke Avenue: said he thought improvements had been effected in the proposed legislation since it was first presented -- thought it was a lot more pro-tenant. He expressed concurrence with Ms. Bradley's comments concerning adding separate pieces of legislation, remarking in favor of amending the Licensing ordinance as mentioned. He commented on having seen an ad in the Washington Post for a multi-unit building for sale which specifically noted that it was located outside the jurisdictional boundaries of Takoma Park, giving the message to potential purchasers that it would not be subject to the City's hassles. Councilmember Iddings commented that, to the contrary, perhaps the advertiser wanted to limit the number of calls from people wishing to buy properties in Takoma Park.

Mr. Davidson commented that while Mr. Sharp had stated the legislation was pro-tenant, any landlord could come and just by filing papers get approval for a rent increase regardless of the condition of their building, based on an economic hardship; 45 days thereafter COLTA would issue a final decision on whether the increase was justified -- he said that leaves the door wide open for abuse and it certainly would be abused. He reiterated earlier comments about weaknesses in the ordinance. The Mayor raised question about COLTA making a decision on a rent increase without a hearing being held; Mr. Sharp said that was an omission -- that to his knowledge, COLTA had always held a hearing, with involved parties duly notified, prior to making a decision. Councilmember Williams commented concerning the endless amending, inserting, deleting, altering of legislation to the point where, down the line, it was difficult to discern what it all meant; said to his knowledge, while Licensing was adopted, it had not to date ever been properly and completely implemented. The Mayor pointed out that the purpose of the ordinance under consideration was to create an additional procedure prior to a landlord being able to impose the automatic rent increase allowed under the law; he said he too regretted that the provision requiring the reporting of all rent increases to Housing had been removed from the legislation, however, hoped that once some of the matters requiring attention in that department had been addressed, that requirement could be reinserted. He said the legislation being considered had been formulated by Councilmember Sharp; he had put a great deal of time and effort into it, and deserved credit. Councilmember Williams expressed a difference of opinion with that statement, questioning whose original suggestion had been the basis of the legislation.

Councilmember Iddings moved to amend Section 3.(c)(1) to insert language at the end requiring that the landlord hold a current and valid license, duly seconded by Councilmember Sharp. Mr. Sharp noted that the same provision should additionally be inserted in Sections 4. and 5. Councilmember Bradley commented that the approach being taken was making the legislation more convoluted, amending the Licensing ordinance would be a simpler and more straightforward approach. Following brief additional discussion, Mr. Davidson suggested inclusion of that same provision in Section 1. of the ordinance, which was accepted as an editorial amendment. Landlord Mike Mead pointed out that due to the turnover and problems in the Housing Department within the past year, a landlord may have fulfilled all the requirements and still not physically be in possession of his License due to backlog problems; the Mayor stated that the departmental records should reflect whether a landlord was entitled to a current and valid license, whether or not the actual piece of paper had been mailed. In response to query, the Mayor stated that the license status of a landlord who had an appeal pending would probably have to be dealt with on a case by case basis. In ensuing discussion, it was noted that if an annual inspection had not been performed, the landlord would presumably have a provisional license. The question was called on the motion to amend; the motion carried unanimously. Brint Dillingham raised questions concerning whether the proposed ordinance would affect reporting requirements set forth in Section 6-80.22 of the City Code; response was that it would not, inasmuch as that section was in no way referenced in the legislation under consideration.

Ginja Carter, Neighborhoods Together: asked that a fact sheet similar to that provided with the Tenants' Right of First Refusal be made up for the legislation under consideration; the Mayor concurred that would be most helpful for all concerned, including the Council.

Following dialogue between the Mayor and Mr. Davidson related to ques-

tions raised by Mr. Davidson to which a response had not been given, Councilmember Levy pointed out that the legislation had been discussed at worksessions several times, at which times citizen comments and input would have been appropriate, and said it would have been appreciated if feedback had been offered at those prior to the legislation being scheduled for adoption. Councilmember Sharp commented that the issues raised by Mr. Davidson had been raised by him previously and the discussion was redundant. Councilmember Iddings explained and clarified language contained in Section 4. of the proposed ordinance to the satisfaction of Mr. Davidson. Landlord Mike Mead pointed out a typographical error in line 1 of Section 3.(c)(1) -- "unlawful" should read lawful.

The ordinance, as amended, with the exclusion of Section 6., was adopted by roll call vote as follows: AYE: Councilmembers d'Eustachio, Iddings, Levy and Sharp; NAY: Councilmembers Bradley and Williams; ABSENT: Councilmember Haney.

Councilmember Sharp moved adoption of Section 6. of the ordinance, duly seconded by Councilmember d'Eustachio. The Mayor noted this section would amend provisions pertaining to control of rents on vacant apartment units. Following brief discussion of the fact that 60-day evictions require a Court Order signed by a Judge, it was explained by the Mayor that under the provisions of this section, vacancy decontrol would be retained but is restricted and would not apply in instances where a vacancy is caused by a 60-day notice to quit and vacate. Councilmember Williams commented that the section under consideration would not favorably alter or impact the existing situation. Councilmember Sharp stated that his proposal was not the same as what now exists -- if the legislation proposed by him were adopted, any landlord evicting without cause would not gain any monetary advantage in terms of being able to raise rents.

Dennis Seekins, 8217 Roanoke Avenue: said he felt Section 6. would provide protection for people being evicted for no cause in order for landlords to be able to raise rents; he spoke in favor of allowing landlords to raise rent on voluntarily vacated units 15% above comparable in order to let them recoup money lost by not taking the permissible automatic annual increase on tenants who could not afford to pay it.

Marc Elrich: spoke in support of the proposed legislation, however, said he felt there should be no vacancy decontrol at all; if landlords have a substantial case supporting raising rent in excess of the permissible 4%, they should go to COLTA. He spoke concerning 60-day no cause evictions, which he said have been used as a means to circumvent the City's Rent Stabilization, and on which Section 6. of the proposed ordinance would impose some control -- he said he would prefer it be made stronger, but that it was an improvement over what presently exists. He related situations concerning the issuance of 60-day notices in buildings on Roanoke Avenue, as well as elsewhere in the county, and commented on those. Ginja Carter commented that not only in the buildings on Roanoke Avenue mentioned by Mr. Elrich had tenants received 60-day notices, but in several others as well that she was aware of. She inquired whether such notices were frozen pending investigation if a tenant filed a retaliatory eviction complaint with COLTA or whether the eviction would proceed; Councilmember Williams remarked he was personally aware of such cases and that the tenant was evicted on schedule. Mr. Sharp commented that the tenant's best hope was to immediately file with COLTA upon receipt of such a notice. Ms. Carter inquired whether a tenants' association could file the complaint; response was in the affirmative. Councilmember Bradley commented on the need to make tenants aware of what they should do in such instances. Mr. Davidson inquired what the situation would be if an individual vacated an apartment of his/her own accord; the Mayor responded that the landlord would be permitted to raise the rent, if he had not taken an automatic increase within the year, to whatever level would be on a par with a comparable unit within his building.

Dennis Seekins, 8217 Roanoke Avenue: said he felt the provisions of Section 6. would afford protection to those people who were being evicted for no cause so that landlords could raise rents; he spoke in favor of allowing the landlord to raise rent on voluntarily vacated units to 15% above comparable to allow them to recoup monies lost by not imposing the permissible automatic annual increase on those tenants who could not afford to pay the increased amount -- he referred to such cases in his own building and said

he felt sure other landlords had done likewise in certain instances. He said that would be an equitable approach and existing tenants would not be hurt by it.

Diane Jenkins: thanked Councilmember Sharp for the proposed ordinance, as well as all those who had worked with him on it; said she felt it was an excellent piece of legislation and she looked forward to seeing it adopted.

Brint Dillingham: commented in favor of the initial draft of the proposed ordinance which would have deleted the vacancy decontrol provision in its entirety; he inquired why that was altered in the process. Councilmember Sharp responded that his goal was to address no cause evictions in such a way that a landlord could not use it to circumvent the Rent Stabilization Ordinance. He said as far as he had able to discern, the ability to raise rent on a vacant unit to the level of a comparable unit had been in the Code since Rent Stabilization was originally adopted; said the wisdom of prior Councils seemed to be that there was benefit to the City in that provision. He said he thought perhaps that should be addressed, but it would be a fairly major issue, and he felt the approach he had taken to address the 60-day evictions, which was his goal, was preferable at the current point in time. Mr. Dillingham remarked that while addressing the 60-day evictions was certainly a worthy goal, the initial version of the ordinance deleting vacancy decontrol would have accomplished both and provided more comprehensive control.

Daryl Stevens, 6800 Westmoreland Avenue: inquired whether certain rental units in single-family dwellings were still due for phaseout in 1988; response was affirmative -- those would revert to single-family as scheduled. It was noted the proposed legislation would apply to rental buildings containing 5 or more units, as does Rent Stabilization.

Gregory Hamilton, 7600 Maple Avenue: he said there is a need, which he had brought up at worksessions, to provide in the proposed ordinance that in vacant units, if there were any outstanding code violations, a rent increase would not be permitted. He said new tenants had moved into the Park Ritchie within the last 6-7 months and rent had been increased on the units prior to their occupancy -- said often new tenants would not even be aware of existing violations prior to moving in.

Mike Mead: commented that, as a landlord, he would have no objection to Mr. Hamilton's suggestion because if there were a vacant unit in his building, he would want to rent it to nice people and would want the apartment to be as perfect as possible for them to move into; he said he thought most landlords would feel that way. He commented on the part he played in the making of provisions relating to comparable level of rent within a building on vacant units during adoption of the original ordinance.

Vincent Abell: inquired whether, if he had taken an automatic annual increase on a tenant's apartment in January and they moved out now, he would be able to raise the rent on that unit. The Mayor stated that his reading of the City Code was that if a rent increase had been taken on a unit within 12 months, another could not be implemented until the end of a 12 month period. Mr. Abell commented that his understanding had been that more than one increase could not be imposed on a particular tenant within a given year; it was noted that the permissible increase related basically to the unit and not to the tenant. Mr. Abell remarked he felt that was an unfair burden on the landlord, placed an additional burden on all existing and remaining tenants, to in essence freeze income on a building for an extended period in some instances. Concerning vacancy decontrol on vacancies that occur either voluntarily or through eviction for cause, he said he had presented petitions of support last week to the Mayor and Council signed by both tenants and landlords; he presented additional such petitions signed by tenants. He said vacancy decontrol works toward rent stabilization rather than rent control, benefits the longterm tenants and residents, as well as the elderly and others on fixed incomes, because it helps stabilize and keep their rents a little lower.

Larry Ravitz: said he found the amount of opposition to vacancy decontrol surprising, despite the fact it has considerable merit for constituents; said obvious benefits accrue to existing tenants from it. He said he was well aware of some of the problems with it, specifically the threat of retaliatory evictions, however said control is placed on that by the re-



striction that if a 60-day notice is issued, that unit is not subject to a rent increase beyond 4%. He spoke in favor of doing everything feasible to eliminate retaliatory evictions, even making them a criminal offense, if possible. He said vacancy decontrol was not an attempt to put one over on tenants, that it benefits both the existing tenants and the landlords. He suggested posting a notice in the common area of rental buildings to the effect that 60-day evictions for the purpose of the landlord making more profit was specifically illegal so that all tenants would be aware. He commented concerning the need for sufficient income for landlords to maintain service levels in buildings and keep them in an acceptable state of repair, and said that vacancy decontrol would provide assistance in achieving those goals without penalizing tenants.

In light of the hour and the fact there were 3 major items remaining to be addressed, Councilmember Levy moved limiting comment to 3.5 minutes per speaker.

Mr. Ravitz asked that Council postpone the vote on Section 6. concerning vacancy decontrol for a period of time that would allow joint landlord-tenant discussions about the issue, and expressed a desire to work with Neighborhoods Together, UMAAC, and all other interested parties on it.

Councilmember d'Eustachio duly seconded Ms. Levy's motion to limit debate; the motion failed with Councilmembers d'Eustachio, Levy and Sharp voting Aye; Councilmembers Bradley, Iddings and Williams voting Nay. The Mayor noted that he could vote in order to break a tie vote, however, chose not to exercise that option; he did, however, point out that the City Code allows citizens 5 minutes to express their views on a subject -- said that should probably also apply to Councilmembers. Following additional brief comment, he said he would ask that speakers voluntarily comply, but would enforce the 5 minute limit.

Leslie Agro, Pres. of Neighborhoods Together: said the organization she represented felt it a necessity that there be rent control on vacant units because there is already a situation where people are getting 60-day eviction notices and rents will be allowed to increase if there is not control. She presented petitions signed by tenants supporting the Tenants' Right of First Refusal legislation, as well as the ordinance under consideration -- particularly the section imposing control on rents on vacant units.

Dyan Loya, landlord representative and property manager: said in the past year she had seen a spirit of cooperation between landlords and tenants that had never previously existed; she said she applauded that and strongly urged that Council allow a little more time before making a decision on vacancy decontrol.

Dennis Seekins: urged that more time be allowed to better address potential problems for rental property owners that could be generated by the provisions of Section 6. as presently proposed.

Section 6. of the ordinance was adopted by roll call vote as follows: AYE: Councilmembers Bradley, d'Eustachio, Iddings, Levy, Sharp and Williams; NAY: None; ABSENT: Councilmember Haney.

ORDINANCE #1986-44  
(attached)

3. Second Reading of Tenants' Right of First Refusal Ordinance.

Attorney Mary Bottum of the Acting Corporation Counsel's staff summarized the provisions of the legislation. She noted the legislation would apply to all rental units in the City with the exception of owner-occupied buildings with 4 or less rental units (a 5-unit building with the owner living in one unit would not be covered); pre-existing accessory apartments, property sold to family members as defined in the legislation if the sale is for the purpose of the family member occupying the property as their principal residence within 30 days, property sold at a foreclosure sale, and property on which a contract for sale has already been signed when the legislation becomes effective. Mayor Del Giudice commented briefly on the proposed amendments which had been prepared for consideration. Councilmember Iddings remarked that at a prior meeting at which notification requirements were discussed, landlords had been specially notified in advance and a

substantial number attended to voice their comments; he inquired whether such notice had been given of the present agenda. The Mayor responded that mention had been made at worksessions more than once in recent months that the intention was to schedule the legislation for the current meeting; said no special notification was done, however, the customary Friday agenda mailing went out on schedule.

Ms. Bottum noted that while the legislation covers pre-existing accessory apartments, one issue not fully addressed was those units in the Montgomery County portion of the City which contain too many units for zoning compliance and which the county code requires be converted back to single-family dwellings by a specified point in time. She suggested the addition to Sec. 6-82 of language as follows to cover any eventualities related to such reversions:

"If any property decreases in the number of rental units in connection with a sale, each tenant in the rental dwelling shall be entitled to all rights under this Article and the owner may choose which contract, if any, to accept. The number of rental units after the decrease shall determine whether the provisions of Sec. 6-93, 6-94, 6-95 or 6-96 apply."

Councilmember Iddings moved adoption of the ordinance, duly seconded by Councilmember Sharp. Councilmember Bradley moved to amend the ordinance by addition to Sec. 6-82 of a second paragraph containing the language read and proposed by Ms. Bottum; the motion was duly seconded by Councilmember Iddings.

Susan Bray, 61 Walnut Avenue: commented on speakers failing to identify themselves; she explained she is a tenant, that the building is a single-family owner-occupied dwelling with one rental unit which she occupies. She alleged that whoever is charged with delivery of the City Newsletter had deliberately avoided delivering the issue containing information concerning Tenants' Right of First Refusal to tenants. She said she felt a lot of tenants, particularly those who occupy units such as her own, had not been duly notified, and did not want to see the legislation adopted without proper notification to all. She said, as a unionist herself, she had hoped to address the Collective Bargaining Ordinance which was on the agenda, but due to the late hour, would not be able to remain and do so; said she did not feel the initial goal of the current administration to limit agenda and curtail all-night meetings had materialized, but hoped something could be done to improve the situation.

Councilmember Levy thanked Ms. Bray for her comments and hoped staff would be directed to look into the Newsletter distribution problem in connection with rental units in single-family dwellings; she concurred with comments about the length of agenda and discussions, meetings continuing beyond hours that were reasonable for many citizens to remain in attendance. Concerning the legislation under consideration, she said she would be voting in favor of the ordinance, but wanted to make clear that she disagreed that owner-occupied buildings with 4 or less rental units should not be covered by the requirements of the ordinance -- at least by the requirement that notice be given -- because those tenants' homes are often sold out from under them. She related knowing people who have gone through the District's process, which has longer time frame provisions, and said they had told her that all the time provided was needed; said she had felt the time periods provided in the City's legislation should have been longer, however, supported the spirit of the ordinance and would vote in favor of it. She commented briefly that when a new Housing Director is settled in the position, this legislation should be given substance by developing guidelines and assistance for those tenants who want to form cooperatives.

The question was called on the motion to amend the ordinance by insertion of additional language in Sec. 6-82; the motion carried by unanimous vote. The Mayor moved to amend the ordinance by insertion in Sec. 6-87, para. 3, of additional language requiring notification by mail from the lender's trustees to the President and Secretary of any existing tenants' association in a rental building which is going to foreclosure sale; the motion was duly seconded and carried by unanimous vote.

The Mayor moved to amend the next to the last paragraph of Sec. 6-86 of the ordinance by insertion of additional language requiring owners of rental

property intending to sell the property to notify the President and Secretary of each tenants' association in the building(s) by sending by first class mail a copy of the written offer of sale; the motion was duly seconded and carried by unanimous vote.

The Mayor moved to amend Sec. 6-95 and 6-96 by insertion of a new subsection (3) (with renumbering of existing subsections to 4, 5 and 6, accordingly) which would shorten the 30-45 day periods allotted for tenants to organize an association, if such association already exists in the building. Councilmember Levy commented in opposition to shortening the time periods, based on experiences of individuals she knew who had gone through a similar process. The motion was duly seconded.

A. J. Mitchell: said having had some experience with this, he opposed shortening the allotted time -- if anything, said it should be lengthened. He said, even if there was an existing tenants' association, once notification was received that the building would be sold, they needed time to deal with all the issues that arise.

The Mayor, with the agreement of the seconder, withdrew his motion to amend. Councilmember Sharp moved to amend Sec. 6-81(3) by deletion of the terms "former spouse" and "former domestic partner," duly seconded by Councilmember Iddings. Following brief discussion concerning the rationale for inclusion of those persons, Mr. Iddings withdrew his second; the motion died for lack of a second.

Attorney Bottum raised the need to address Sec. 6-81(9) insofar as the membership percentage requirement in order for a tenants' organization to be recognized as such under the legislation; Councilmember Levy moved that the 1/3 requirement be amended to read one-half (1/2); duly seconded by Councilmember Bradley. Following brief discussion, Councilmember Levy withdrew her motion. Councilmember Bradley suggested that the present 1/3 requirement be retained for the purposes of acting on behalf of tenants under Sec. 6-95 and 6-96 up to the time of organization and formation; for purposes of submitting a contract, the requirement would increase to membership representation of 1/2 the dwelling units in the rental building (excluding those dwelling units for which there had been no tenant for the previous 90 days). Councilmember d'Eustachio expressed concern about amending the section; said he felt it should be made as easy as possible for groups of tenants to organize -- if more stringent requirements were imposed, it would complicate the process. He said it was his opinion that the currently proposed 1/3 of the tenants in a building was a substantial number to become organized in support of a particular effort, and would adequately represent the intent and, perhaps, capability to proceed. Councilmember Iddings concurred with Mr. d'Eustachio's comments; said he would support keeping the section as is. Councilmember Bradley remarked that during the initial phase following receipt of notification, the 1/3 requirement might be too high; she moved that the requirement be reworded to require that by the time contract negotiation commences, at least 50% of the dwelling units must be represented by the tenants' association; the motion was duly seconded by Councilmember Levy. Vincent Abell commented that 51% was the requirement in D. C.

Nancy Moore: stated she was an attorney practicing in D. C.; she said in that jurisdiction, in order for the tenants to initially start the process (during a registration period), they are required to have 51% documented interest. Following brief discussion, Councilmember Bradley amended her prior suggestion to require 51% tenant representation at the time of commencement of contract negotiations.

Vincent Abell: spoke in favor of the 50% requirement; said lacking that amount of tenant support, the proposition of tenants buying a building would not be workable. He said rents on vacant units should be decontrolled if a building goes cooperative, otherwise tenants would never be able to get a loan for it.

A. J. Mitchell: expressed support for the 1/3 and 50% requirements as suggested by Ms. Bradley; he said those figures fit pretty closely to what could have taken place at Park Ritchie when tenants were interested in a co-op conversion of the building.

The question was called on Councilmember Bradley's motion to amend; the

motion failed for lack of a majority (3-3 vote; Councilmembers Bradley, Levy and Williams voting Aye, balance of Council voting Nay).

Marc Elrich: urged that Council adopt the legislation; concerning supporting programs, he said it was likely there would be Block Grant monies available for use for tenant purchases in the coming year, and that there was technical assistance available in the metropolitan area -- thus, lack of supporting City programs should not be perceived as a reason to delay adoption of the legislation. He said he perceived two weak areas in the legislation that should be addressed in the near future, i.e., the 60-day time limits on going to closing on large buildings (thought it would be found to be unrealistically short) and the area of the legislation where grounds are created for not accepting an offer to purchase based on income -- he pointed out that a lot of the state and county laws designed to assist tenants to purchase were designed to help people who would not otherwise meet the income criteria. Councilmember d'Eustachio commented that while there might be perceived to be a gray area or potential for abuse in the legislation concerning looking at an individual's income or means, the intent was that the entire package be examined in terms of whether it constituted a realistic or bonafide offer. He noted the need to weigh and balance the interests of both parties in the formulation of the legislation.

Councilmember Bradley commented she had been critical of certain provisions in the legislation, as well as the City's ability to implement; however, said she would be voting in favor of it despite some reservations. She referred to a suggestion made by her at an earlier meeting that the City hire a consultant, immediately develop some model projects, including an analysis of where financial resources exist and how groups could be helped to obtain technical assistance -- with the legislation to take effect one year hence. She referred to the vacancy in the Director of Housing Services position, and said she felt the staff capacity to implement the legislation was extremely limited if not non-existent. Additionally, she pointed out that the City has no experience in this field, no staff with expertise to provide support. She said she did not like to see legislation adopted and allowed to be just another piece of paper; said she and other Councilmembers receive continuing complaints about lack of implementation and enforcement of Housing laws. She reiterated that she favored the legislation philosophically, however, felt support measures were lacking and would have to be put in place in order to make it meaningful as well as workable.

Mike Mead: asked that Sec. 6-99, subsection (2), be stricken; he pointed out that provision was made concerning 60-day no cause evictions in Sec. 6-98(1), and said the provision in Sec. 6-99(2) did not seem reasonable. Additionally, he said he did not feel the provisions of Sec. 6-99(3) to be fair in that they would allow suit to be filed by a third party; Councilmember Iddings pointed out that the third party would have to be working with tenants or a tenant association in order to file suit. Mr. Mead said a third party should be allowed to sue jointly, but not separately. He appealed, based on personal health considerations, for inclusion of a provision in the legislation which would allow, should he be seriously incapacitated, the quick and unhindered sale of his rental properties by his family or trustees acting on their behalf, so they would not be burdened either financially or by management affairs. The Mayor advised Mr. Mead to seek private counsel in making provision for any such eventuality; said he did not readily see any way of dealing with that situation within the legislation, however, would re-examine it at a later time and, should it be the desire of the Council, the ordinance could be amended subsequent to enactment. Mr. Mead commented he had been asking for a copy of the legislation for some time, however, had been advised by office staff that it had been revised after being tabled and that the revised version was not available. The Mayor stated that there had been at least 5 revisions of the legislation and a prior revision should have been available at all times.

Dennis Seekins: expressed support for Councilmember Bradley's comments; said Licensing was supposed to resolve a lot of the continuing problems and did not think the proposed legislation would provide solutions -- said he was very discouraged about the whole process.

Councilmember Iddings commented he felt Mr. Seekins and Councilmember

Bradley were exhibiting "plantation mentality;" he said they appeared to assume that tenants did not have the faculty of recognizing the rights the legislation gives them and were not competent to exercise those rights, which he did not believe. He spoke in support of the proposed ordinance. A brief exchange ensued between Mr. Seekins and Councilmembers Iddings and d'Eustachio. Councilmember Sharp raised a question about Sec. 6-81(7) in relation to cases such as the Park Ritchie, to which Ms. Bottum responded.

Nancy Moore: reiterated she is an attorney in D. C., was present at the request of Neighborhoods Together. She spoke in support of the ordinance and encouraged that Council adopt it; said in D. C., it had allowed low and moderate income people to become homeowners and she felt it to be a workable piece of legislation. She did, however, comment that Sec. 6-88(3), paragraph 2, should be amended to clarify intent and avoid any loophole for possible litigation -- particularly the wording "...nationally accepted, objective, pre-qualification criteria for institutional financing"... She reiterated comments made earlier by Mr. Elrich and Councilmember Levy about specified time periods, opining that they are not realistic in light of the numbers of people trying to go to closure in the current market.

The question was called; the ordinance was adopted by roll call vote as follows: AYE: Councilmembers Bradley, d'Eustachio, Iddings, Levy, Sharp and Williams; NAY: None; ABSTAINED: None; ABSENT: Councilmember Haney.

ORDINANCE #1986-45  
(attached)

Councilmember Bradley, in response to Mr. Iddings' earlier remarks, stated that while speakers do not always agree, she felt it best to attempt to refrain from personal comments or attacks and tried to do so herself, despite the occasional heated debate; she said she resented such uncalled for comment.

Mayor Del Giudice stated that it was Corporation Counsel's recommendation, based on comments and discussions with representatives of a proposed employee union, that agenda item (5), the Collective Bargaining Ordinance, be tabled until the next worksession for discussion of proposed amendments to the draft. Consensus of Council was to do so.

Lacking a quorum, the Chair adjourned the meeting at 12:34 A.M. Councilmember d'Eustachio noted for the record that those Councilmembers remaining were Councilmembers d'Eustachio, Iddings and Sharp. The Mayor and Council will reconvene in regular session at 8:00 P.M. on November 24, 1986.

Introduced by: Mayor Del Giudice

Adopted: 11-10-86

RESOLUTION NO. 1986-71

WHEREAS, the Charter and Code of Takoma Park, Maryland, 1972, as amended, under Article 2, Sec. 2-10, empowers the Mayor or Council to appoint such special and standing committees as may be deemed necessary; AND

WHEREAS, that same aforementioned section of the Code provides that the duties of said committee may be prescribed by the Mayor or Council at the time of establishment or subsequent thereto; AND

WHEREAS, a need has arisen for a group, comprised of both elected officials and citizen representatives, to commence a process aimed toward filling the vacant position of Director of the City's Housing Services Department; AND

WHEREAS, names of qualified citizens who might serve on the committee have been placed in nomination by Councilmembers for membership on the committee.

NOW, THEREFORE, BE IT RESOLVED THAT the Mayor and Council shall appoint members to a special committee to be known as the Housing Director Selection Advisory Committee; AND

BE IT FURTHER RESOLVED THAT the following individuals are hereby appointed to serve on the Housing Director Selection Advisory Committee:

Councilmember Lynne Bradley  
Councilmember Carl Iddings  
Councilmember Ed Sharp

Diane Jenkins, Tenant

Lloyd Johnson, General Public Rep., COLTA

Diane K. Loya, Takoma Park Owners' Assn.

City Administrator (or his designee)

Adopted this 10th day of November, 1986.

ORDINANCE NO. 1986-44

WHEREAS, THAT because well-maintained and affordable rental housing is in the interest of all citizens of Takoma Park; AND

WHEREAS, THAT because compliance with the landlord-tenant laws of Takoma Park is an important aspect of maintaining such housing; AND

WHEREAS, THAT because under the present Code there is a possibility of Takoma Park's policy of rent control being circumvented when apartments become vacant.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MD.

SECTION 1. THAT the Mayor and Council hereby provide that there shall be no increase in rents in Takoma Park if a landlord desiring to impose such an increase has any outstanding code violations, has failed to obey an order of the Commission on Landlord-Tenant Affairs, or has unpaid licensing fees or City taxes, or does not hold a current and valid license; AND

SECTION 2. THAT rental dwellings which become vacant as a result of no-cause evictions are subject to the identical requirements for rent increases as are occupied rental dwellings; AND

SECTION 3. THAT Section 6-80.17(c) of Article 7 of the Takoma Park City Code, 1972, as amended, be amended with the addition of subsection (c)(1), as indicated below:

(c)(1) It shall be lawful for any landlord or anyone acting on behalf of a landlord to charge or collect any rent for any dwelling unit which exceeds the lawful rent chargeable for such unit on December 1, 1986, only if:

1. the dwelling unit does not have any code violations, notice of which has been served prior to the notice of rent increase under Section 6-15 of this Chapter in the form detailed in Section 6-14 of this Chapter and for which the time allowed for correction of the violations has not lapsed; and

2. the building in which the dwelling unit is located does not have any serious code violations as defined in Section 6-16 of this Chapter, notice of which has been served prior to the notice of rent increase under Section 6-15 of this Chapter in the form detailed in Section 6-14 of this Chapter and for which the time allowed for correction of the violations has not lapsed; and

3. there are no outstanding orders of the Commission on Landlord-Tenant Affairs with which the landlord is required to comply concerning any rental unit owned by the landlord in the City of Takoma Park; and

4. the landlord has no unpaid licensing fees with regard to any rental unit owned by the landlord in the City of Takoma Park, and

5. the landlord has no unpaid City taxes with regard to any rental unit owned by the landlord in the City of Takoma Park, and

6. the landlord holds a current and valid license with regard to any rental unit owned by the landlord in the City of Takoma Park.

Any rent increase shall be prohibited until such time as the landlord complies with the unfulfilled requirements.

A landlord may seek a temporary waiver from the above prohibition only on the grounds of economic hardship by filing a request, which shall include a date by which the landlord will correct the deficiency(s) on which basis an increase is prohibited, with the Commission on Landlord-Tenant Affairs. The Commission shall issue a final order regarding the waiver within forty-five (45) days. After review, the Commission may grant permission for the landlord to

collect the increased amount, provided that the amount of rental increase be placed by the landlord in an escrow account and retained in that account until the landlord has corrected the deficiency(s). If the landlord fails to correct the deficiency(s) in the time granted by the Commission (which may not exceed sixty (60) days from the date of the Commission's order) the landlord must return the amount in the escrow account to the tenants and may not impose a rent increase until the deficiency(s) is corrected. If the Commission fails to hear the landlord's request for a temporary waiver within forty-five (45) days, the landlord may collect the proposed rent increase provided that the amount of rental increase is placed by the landlord in an escrow account and retained in that account until such time as the Commission issues a final order on the request.

SECTION 4. THAT Section 6-80.17(e)(3)(A) shall be changed to read as follows:

"2. HOWEVER, NO RENT INCREASE MAY BE MADE IF there are serious outstanding Housing Code violations in your apartment which the landlord has been ordered to repair prior to the notice of rent increase but has failed to do so in the time provided; or there are serious Housing Code violations in your building which affect the health, safety, and/or welfare of the tenants which the landlord has been ordered to repair but has failed to do so within the time provided; or the rent for your apartment was increased within twelve (12) months preceding the effective date of the rent increase called for in this notice; or if you did not receive this written notice at least sixty (60) but not more than ninety (90) days before the effective date of the rent increase called for in this notice; or if the landlord has failed to obey an outstanding order of the Commission on Landlord-Tenant Affairs to which the landlord continues to be subject for any rental dwelling in the City of Takoma Park; or if the landlord has failed to pay the licensing fee for any rental dwelling in the City of Takoma Park; or if the landlord has failed to pay City taxes for any rental dwelling in the City of Takoma Park; or if the landlord does not hold a current and valid license for any rental dwelling in the City of Takoma Park.

SECTION 5. THAT Section 6-80.17(e)(3)(B)2 be deleted and have the language indicated below substituted for it:

The deleted section reads as follows:

"2. HOWEVER, NO RENT INCREASE MAY BE MADE IF there are serious outstanding Housing Code violations in your building which affect the health, safety, and/or welfare of the tenants; or the rent for your apartment was increased within twelve (12) months preceding the effective date of the rent increase called for in this notice; or if you did not receive this written notice at least sixty (60) days before the effective date of the rent increase called for in this notice."

The substituted section shall read as follows:

"2. HOWEVER, NO RENT INCREASE MAY BE MADE IF there are outstanding Housing Code violations in your apartment which the landlord has been ordered to repair prior to the notice of rent increase but has failed to do so within the time provided; or there are serious Housing Code violations in your building which affect the health, safety, and/or welfare of the tenants which the landlord has been ordered to repair but has failed to do so within the time provided; or the rent for your apartment was increased within twelve (12) months preceding the effective date of the rent increase called for in this notice; or if you did not receive this written notice at least sixty (60) days but not more than ninety (90) days before the effective date of the rent increase called for in this notice; or if the landlord has failed to obey an outstanding order of the Commission on Landlord-Tenant Affairs to which the landlord continues to be subject for any rental dwelling in the City of Takoma Park; or if the landlord has failed to pay the licensing fee for any rental dwelling in the City of Takoma Park; or if the landlord has failed to pay City taxes for any



rental dwelling in the City of Takoma Park; or if the landlord does not hold a current and valid license for any rental dwelling in the City of Takoma Park."

SECTION 6. THAT Section 6-80.17(n) shall be amended to read as follows:

(n) Any vacant apartment unit may be rented at the level of comparable apartment units within a building with "comparable" being defined on the basis of square footage, amenities, and whether the apartment is an efficiency or has one, two, three, or more bedrooms; efficiency, one-bedroom, two-bedroom, three-bedroom-or-more apartments; except that this Article is applicable to any dwelling unit which becomes vacant as the result of an eviction without cause.

SECTION 7. THAT Section 6-80.17(c) shall be redesignated as (c)(2).

(Strikeover) denotes deletions from current Code.

(Underlining) denotes additions to current Code.

Ordinance No. 1986-45

WHEREAS, Tenants are a significant proportion of the population of the City of Takoma Park; and

WHEREAS, Takoma Park tenants and associations of tenants would welcome the opportunity to purchase the property they live in and become permanent residents of the City of Takoma Park; and

WHEREAS, At present tenants often do not know when an owner wishes to sell a building until sale to a third party has already occurred; and

WHEREAS, It is in the interests of the general welfare of the citizens of the City of Takoma Park as a whole that long term or permanent residency be encouraged; and

WHEREAS, The Department of Housing Services of the City of Takoma Park may utilize such resources as are within its disposal to assure that tenants are aware of rights given them by this Ordinance and are empowered to take advantage of these rights.

THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND

SECTION 1. THAT Section 6-108(b) of the City Code is hereby repealed and simultaneously reenacted as set forth below.

Section 6-108(b). A license may be transferred from an owner(s) to a subsequent or additional owner(s), but such license shall be deemed valid only when the information required in Section 6-105 pertaining to the new owner has been submitted under penalties of perjury to the Director, along with a transfer fee not to exceed \$50.00 or the full-year application fee then in effect, whichever is less and when the offer to sell and all other tenant rights given under Article 8 have been given.

SECTION 2. THAT Article 8 Tenant Opportunity to Purchase as set forth below is hereby added to the City Code:

ARTICLE 8. TENANT OPPORTUNITY TO PURCHASE

Sec. 6-81 Definitions

The words in this ordinance shall have their usual and ordinary meaning except as expressly provided as follows:

(1) domestic partners means persons who have lived together for at least one year and who consider themselves to be in a committed relationship or hold themselves out as being in a committed relationship or,

if they have lived together for less than one year, can show other indicia of a committed relationship. A person is not a domestic partner if he/she has moved in with the owner for the purpose of obtaining rights under this Article.

(2) dwelling unit means any part of a rental dwelling rented as a living space with cooking and eating facilities for one or more persons who constitute a living-together unit.

(3) family member means any spouse, former spouse, domestic partner, former domestic partner, parent, sibling or child.

(4) owner means any natural person or legal entity such as a corporation, limited partnership, partnership or joint venture which has a legal or beneficial interest in a rental dwelling or has the legal right to act for or instead of one who has such legal or beneficial interest. The term owner includes trustees in bankruptcy but does not include trustees of a mortgagee or its successors or assigns. The term owner does, however, include a mortgagee or lender who has purchased a rental dwelling at a foreclosure sale or who has accepted a deed in lieu of foreclosure.

(5) "put on the market for sale", means any of the following: (a) signing a listing contract with a real estate broker; or (b) posting a "for sale" sign

on or near the property; or (c) placing an advertisement to sell or trade the property in any newspaper, newsletter or other means of written, audio or video communication; or (d) entering into a sales contract for the dwelling unit or for the property which includes the dwelling unit with a natural person, corporation, partnership or other entity that is not a tenant in the dwelling unit or is not composed of tenants in the dwelling unit or their assigns.

(6) rental dwelling means any structure, including a single family house, a semi-detached house, a row house and a multifamily building which is occupied by a tenant except that the term rental dwelling does not include a rooming house or temporary housing as these are defined in City Code Section 6-1 (20) and (23) respectively or any replacement sections, nor does the term rental dwelling include any space in a hospital, hospice or dormitory.

(7) sale means the transfer for consideration and does not include transfer by will, intestate succession, gift or by deed given in lieu of foreclosure, but does include a trade of real property for other real or personal property. Consideration may include money, the transfer of other valuable assets or the giving or assuming of a promissory note or other financial obligation. For rental dwellings owned by a

corporation, the term sale includes the transfer of the majority of the outstanding shares of stock in the corporation. For rental dwellings owned by a limited partnership, the term sale includes the transfer of any general partnership interest and duties. For rental dwellings owned by any other business entity, the term sale means the transfer of a majority interest in the business entity.

(8) tenant means any person who occupies a dwelling unit for living or dwelling purposes with the consent of the owner or the owner's agent.

(9) tenant association means an organization whose members represent tenants in at least one-third (1/3) of the dwelling units in a rental dwelling, excluding those dwelling units for which there has been no tenant for the previous ninety (90) days.

#### Sec. 6-82 Tenant Opportunity to Purchase

If the sale of a rental dwelling is within the coverage of Section 6-83, before an owner of a rental dwelling may go to closing on the sale of the rental dwelling or issue a notice to quit in a case in which the owner is either contemplating sale of the rental dwelling within 6 months or has put the dwelling on the market for sale, the owner shall give all tenant(s) an opportunity to purchase the rental dwelling at a price

and on terms which constitute a valid offer of sale.

If any property decreases in the number of rental units in connection with a sale, each tenant in the rental dwelling shall be entitled to all rights under this Article and the owner may choose which contract, if any, to accept. The number of rental units after the decrease shall determine whether the provisions of Sec. 6-93, 6-94, 6-95 or 6-96 apply.

#### Sec. 6-83 Dwelling Units Covered

All rental dwelling units in the City of Takoma Park are covered by this Article except for the following:

(1) for single family dwellings and 2-4 unit buildings, all rental dwellings sold to a family member provided that the family member intends to occupy one unit in the dwelling as his/her primary place of residence within 30 days of the sale. The burden of proof is on the owner to prove the family member relationship and the bona fide intention to occupy.

(2) all dwelling units in rental dwellings containing less than five (5) units if an owner who is a natural person occupies one unit in the building as his/her primary place of residence.

(3) all pre-existing accessory apartments as defined in Sec. 59-G-2.00 of the Montgomery County

Code.

(4) all dwelling units under a contract of sale which was executed prior to the effective date of this Article.

PROVIDED, however, that all owners of rental dwellings excluded from coverage under Sec. 6-83(1), (2) and (3) must notify all tenants by regular mail at the dwelling address when they put the property on the market for sale or when they have accepted a contract to sell the property, whichever occurs first.

#### Sec. 6-84 Contract Rights of Tenants

The tenant rights given by this Article shall be implied by operation of law into every existing or future lease or other landlord-tenant contract for property covered by this Article.

#### Sec. 6-85 Sale Void if Tenant Opportunity To Purchase Not Given; Attorney Fees; Contract Damages

If an owner does not comply with any requirement of this Article in connection with the sale of a rental dwelling covered by this Article, such sale shall be void and reasonable attorney fees shall be awarded to the prevailing tenant(s) in any action to void the sale. In addition, reasonable attorney fees shall be



awarded to the prevailing tenant(s) in any action for breach of contract arising under this Article.

Sec. 6-86 Valid Offer Of Sale

A valid offer of sale shall be in writing by the owner and shall include, at a minimum, the following:

(1) The asking price and material terms of the sale;

(2) A statement that the tenant has the right to purchase the rental dwelling under this Article;

(3) A statement as to whether a contract with a third party currently exists for the sale of the rental dwelling. If such a third party contract does exist, a true and complete copy of it shall be attached to the written offer.

(4) A statement that the owner will make available to the tenant, within seven (7) days of receiving a request for the information, a floor plan of the building, an itemized list of monthly operating expenses for the past year, utility consumption rates for each of the two preceding years, capital expenditures for each of the two preceding years, the most recent rent roll, a list of tenants, and a list of vacant apartments.

The owner shall send, by first-class mail, a copy

of this written notice to each tenant, to the President and Secretary of each Tenant Association in the rental dwelling, and to the Director of the Takoma Park Department of Housing Services in addition, a copy of the written notice shall be posted in a conspicuous place in the common area of any multi-family dwelling.

An offer of sale is not valid unless the data and information required in subparagraph (4) above is actually supplied to the tenant(s) if requested.

#### Sec. 6-87 Owners' and Lenders' Obligation Upon Foreclosure

An owner of a rental dwelling who receives a notice of default from a lender must, within five (5) days of receipt of the notice, post a copy of the notice on the door of a single family dwelling or in a prominent place in the common area of a larger rental dwelling.

An owner of a rental dwelling in foreclosure must supply to the trustees of the mortgagee, no later than the end of any period during which the owner has the right to redeem the property, all information necessary under the "Valid Offer Of Sale" Section of this Article.

A lender's trustees who are foreclosing on a rental dwelling must give notice of the time, place and

terms of sale to the tenants in the rental dwelling, by posting such a notice on the door of a single family dwelling or in a prominent place in the common area of a larger rental dwelling, and to any Tenant Association in such building, by mailing such a notice to the President and Secretary of any such Association, within the time frame currently applicable under state law or court rules for giving notice of such information to the present record owner of the property.

Sec. 6-88 Good Faith Bargaining

The tenant and owner shall bargain in good faith for sale of the rental dwelling. The following constitute prima facie evidence of bargaining without good faith:

(1) The failure of an owner to offer the tenant a price or terms at least as favorable as that offered to a third party, within the time periods specified in Sections 6-93, 6-94, 6-95 and 6-96, respectively, without good cause for so doing;

(2) The failure of an owner to accept an offer from a tenant or tenants which substantially conforms with the price and material terms of a third party contract, within the time periods specified in Sections 6-93, 6-94, 6-95 and 6-96, respectively, without good cause for so doing; or

(3) The failure of a tenant or an owner to comply with the provisions of this Article without good cause. All owners and tenants are presumed to be aware of the provisions of this Article and lack of knowledge of the law is not "good cause" under this Section.

It is not evidence of bargaining in bad faith for an owner to require, before accepting a contract to purchase, that tenant(s), together with any persons or entities referred to in Sec. 6-91, demonstrate that they meet the nationally accepted, objective, pre-qualification criteria for institutional financing then acceptable in the secondary mortgage market and applied by realtors in the regular course of their business.

#### Sec. 6-89 Deposit

The owner shall not require the tenant to pay a deposit of more than 5 percent of the contract sales price in order to make a contract. The deposit shall be refundable in the event of failure of the tenant to perform under the contract within the statutory period, despite good faith efforts.

#### Sec. 6-90 Third Party Contracts And Tenants' Right to Purchase

Whenever an owner enters into a contract with a third party to purchase a rental dwelling, the owner shall immediately send a true and complete copy of this

contract to all tenants in single family to 4 unit dwellings and to all tenants and tenant associations in rental dwellings with more than 4 units. The tenant or tenant association has 15 days from receipt of the contract in which to offer to purchase the dwelling on terms substantially the same as those in the third party contract. If the third party contract is received by the tenant or tenant association during the negotiation period specified in sections 6-93, 6-94, 6-95 or 6-96, respectively, the 15 day period shall not begin to run until the end of the specified negotiation period. All contracts with third parties shall be contingent on the rights of tenants to purchase under this Article. The time periods for negotiation of a contract of sale and for settlement under this Article are minimum periods, and the owner may afford the tenants a reasonable extension of such time, without liability under a third party contract. Third party purchasers are presumed to act with full knowledge of tenant rights under this Article.

Sec. 6-91 Exercise or Assignment of Rights

Tenants or a tenant association may exercise rights under this Article in conjunction with a third party or public agency PROVIDED THAT the tenants or tenant association involved in the purchase must retain

at least a twenty five percent (25%) interest in the property and that the tenants and all tenant association members must agree to maintain their ownership interest in the property for at least one (1) year after purchase and to reside in the property for at least one(1) year after purchase unless in connection with the property there is a Unit Owner's Association or a Board of Directors and the Unit Owner's Association or Board of Directors approves the sale or lease of the tenant's interest in the property.

#### Sec. 6-92 Waiver Of Rights

An owner shall not request, and tenants may not grant, a waiver of the right to receive an offer of sale or any other right under this Article.

#### Sec. 6-93 Single-family Rental Dwellings

The following provisions apply to single-family dwellings:

(1) The tenant shall have a reasonable period within which to negotiate a contract of sale with the owner; this time period shall be at least 15 days. For every day of delay by the owner in providing information as required by this Article, the negotiation period is extended by 1 day.

(2) The contract of sale shall specify a reasonable period, considering current market conditions, between execution of the contract of sale and settlement for the tenant to secure financing or financial assistance; this time period shall be at least 60 days.

(3) If 180 days elapse from the date an owner has given a valid offer of sale to a tenant under this Article and the owner has not sold or entered into a contract of sale for the rental dwelling, the owner shall comply anew with the provisions of this Article before selling the property.

Sec. 6-94 Dwellings With 2 Through 4 Units

The following provisions apply to dwellings with 2 through 4 dwelling units:

(1) The tenants may respond to an owner's offer first jointly, then individually. Upon receipt of a valid written offer of sale from the owner, a group of tenants acting jointly shall have 15 days to deliver to the owner and to the Director of the Takoma Park Department of Housing Services a written statement of interest. Following this 15 day period, each individual tenant shall have 5 days to deliver to the owner and to the Director of the Takoma Park Department of Housing Services a written statement of interest. The statement of interest must be a clear expression of

interest on the part of the tenant or tenant association to exercise the right to purchase as specified in this Article.

(2) The tenants shall have a reasonable period within which to jointly negotiate a contract of sale with the owner; this time period shall be at least 30 days from the date of delivery to the owner of a statement of interest. For every day of delay by the owner in providing information as required by this Article, the negotiation period is extended by 1 day.

(3) If at the end of the 30 day period and all extensions thereof the tenants have not jointly contracted with the owner for purchase of the property, each individual tenant shall have an additional 10 days within which to contract with the owner for the purchase of the rental dwelling.

(4) The contract of sale shall specify a reasonable period, considering current market conditions, between execution of the contract of sale and settlement for the tenant to secure financing or financial assistance; this time period shall be at least 60 days.

(5) If 240 days elapse from the date an owner has given a valid offer of sale to tenants under this Section and the owner has not sold or entered into a contract of sale for the rental dwelling, the owner



shall comply anew with the provisions of this Article before selling the property.

Sec. 6-95 Dwellings With 5 Through 20 Units

The following provisions apply to dwellings with 5 through 20 dwelling units:

(1) The tenants may respond to an owner's offer only through a tenant association which is organized in such a manner that the organization has the capacity to hold real property. Following receipt of a valid offer of sale by all of the tenants in the dwelling, the tenants have 30 days within which to form an organization with the capacity to hold real property including, if the chosen form is a corporation, filing articles of incorporation, electing officers and adopting bylaws or, if the chosen form is that of a limited partnership, filing limited partnership articles in accordance with the laws of the State of Maryland or, if the chosen form is a partnership, entering into a written partnership agreement.

(2) Within these 30 days the tenant association shall deliver to the Director of the Takoma Park Department of Housing Services a copy of its articles of incorporation, articles of limited partnership or partnership agreement and shall file with the Director and send by regular mail to the owner

a registration form listing the name, address and telephone number of tenant officers and legal counsel or other representative, if any, documentation that the tenant association represents at least one-third (1/3) of the occupied rental dwelling units as of the time of registration and such other information as the Director of the Department of Housing Services shall require. Registration is complete upon delivery to the Department of Housing Services of a complete and properly filled out registration form. Upon registration, the tenant association becomes the sole representative of the tenants, and the prior offer of sale is deemed an offer to the organization.

(3) The tenant association shall have a reasonable period within which to negotiate a contract of sale with the owner; this time period shall be at least 90 days from the date of receipt of the registration form by the owner. For every day of delay by the owner in providing information as required by this Article, the negotiation period is extended by 1 day.

(4) The contract of sale shall specify a reasonable time period, considering current market conditions, between execution of the contract of sale and settlement for the tenant association to secure financing or financial assistance; this time period

shall be a least 90 days.

(5) If 450 days elapse from the date an owner has given a valid offer of sale to tenants under this Article and the owner has not sold or entered into a contract of sale for the rental dwelling, the owner shall comply anew with the provisions of this Article before selling the property. In such a case, the tenant association shall also comply anew with the delivery of a registration statement requirements of this Section. The original legal documents creating the tenant association corporation, limited partnership or partnership remain effective unless defective under their own terms or other provisions of law.

Sec. 6-96 Dwellings With 21 Or More Units

The following provisions apply to dwellings with 21 or more dwelling units:

(1) The tenants may respond to an owner's offer only through a tenant association which is organized in such a manner that the organization has the capacity to hold real property. Following receipt of a valid offer of sale by all of the tenants in the dwelling, the tenants have 45 days within which to form an organization with the capacity to hold real property including, if the chosen form is a corporation, filing articles of incorporation, electing officers and adopting bylaws or, if the chosen form is that of a

limited partnership, filing limited partnership articles in accordance with the laws of the State of Maryland or, if the chosen form is a partnership, entering into a written partnership agreement.

(2) Within these 45 days the tenant association shall deliver to the Director of the Takoma Park Department of Housing Services a copy of its articles of incorporation, articles of limited partnership or partnership agreement and shall file with the Director and send by regular mail to the owner a registration form listing the name, address and telephone number of tenant officers and legal counsel or other representative, if any, documentation that the tenant association represents at least one-third (1/3) of the occupied rental dwelling units as of the time of registration and such other information as the Director of the Department of Housing Services shall require. Registration is complete upon delivery to the Department of Housing Services of a complete and properly filled out registration form. Upon registration, the tenant association becomes the sole representative of the tenants, and the prior offer of sale is deemed an offer to the organization.

(3) The tenant association shall have a reasonable period within which to negotiate a contract of sale with the owner; this time period shall be at

least 90 days from the date of receipt of the registration form by the owner. For every day of delay by the owner in providing information as required by this Article, the negotiation period is extended by 1 day.

(4) The contract of sale shall specify a reasonable time period, considering current market conditions, between execution of the contract of sale and settlement for the tenant association to secure financing or financial assistance; this time period shall be at least 90 days.

(5) IF 450 days elapse from the date an owner has given a valid offer of sale to tenants under this Article and the owner has not sold or entered into a contract of sale for the rental dwelling, the owner shall comply anew with the provisions of this Article before selling the property. In such a case, the tenant association shall also comply anew with the delivery of a registration statement requirements of this Section. The original legal documents creating the tenant association corporation, limited partnership or partnership remain effective unless defective under their own terms or other provisions of law.

#### Sec. 6-97 Time Periods

If a time period running under this Article ends

on a Saturday, Sunday or legal holiday for the State of Maryland, the time period is extended until the next day which is not a Saturday, Sunday or legal holiday.

If a sale of a rental dwelling covered by this Article is made or contemplated in connection with conversion of the dwelling to condominiums, the time limits for offering the dwelling to tenants and all other provisions in applicable state and county law are to be followed insofar as they conflict with this Article.

#### Sec. 6-98 Retaliatory Action

No owner may take retaliatory action against any tenant or group of tenants who exercise any rights conferred upon him or her or them by this Article. For the purposes of this Section, "retaliatory action" means eviction, threat of eviction, violation of privacy, harassment, reduction in quality or quantity of services not otherwise authorized by law, rent increases not authorized by law and any form of threat or coercion.

An owner shall be presumed to have taken retaliatory action if

(1) a "no-cause" notice to quit is issued to a tenant within ninety (90) days before the rental dwelling is put on the market for sale; or

(2) after the rental dwelling is put on the market for sale, a "no-cause" notice to quit is issued to any tenant who has not received a valid offer of sale under Section 6-86 of this Article.

#### Sec. 6-99 Enforcement

An owner, tenant or tenant association may seek enforcement of any right or provision under this Article through a complaint filed with a court of competent jurisdiction.

In addition to the above, the Director of Housing Services for the City of Takoma Park or his/her designated representative may conduct reviews to monitor compliance with all provisions of this Article.

In addition to any other remedy or enforcement measure herein provided, any of the following persons may seek, and any court of competent jurisdiction may (a) issue, restraining orders and/or temporary or permanent injunctions if the plaintiff is found likely to succeed on the merits of a complaint against an owner for violation of the provisions of this Article and/or (b) declare any transfer in which an owner has not complied with all requirements of this Article void and the transfer documents thereto set aside:

(1) any present tenant or association or

organization of tenants from the subject property;

(2) any former tenant who, within 180 days prior to filing suit, has either left a rental dwelling after being served with a "no-cause" notice to quit or has been evicted from a rental dwelling pursuant to such a notice;

(3) any third party or public agency working with the tenants or tenant association pursuant to Sec. 6-91.

The City of Takoma Park may, but in the exercise of its discretion is not required to, seek such restraining orders and/or injunctions on behalf of any of its citizens.

#### Sec. 6-100 Penalties and Severability

Any person or legal entity which violates any provision of this Article shall be guilty of a municipal infraction and shall be subject to a fine not to exceed the Maryland Code maximum limitation then in effect for municipal infractions. The violation may be considered a separate municipal infraction each day it is in existence.

If any provision of this Article, or any section, sentence, clause, phrase or word or the application thereof in any circumstance is held invalid, the validity of the remainder of this Article and the



application of any other provision, section, sentence, clause, phrase or word shall not be affected.

SECTION 3. THAT this Ordinance shall become effective on January 1, 1987.

NOTE: Underlining denotes additions to existing sections of the law.