

Introduced: _____

Enacted: _____

Effective: _____

ORDINANCE NO. 1986-_____

Short Title: Personnel Procedures Ordinance

Draft No. 6 -- 11/19/86

AN ORDINANCE TO:

(a) Create a new chapter governing personnel matters in City government;

(b) Substantially revise the aspects of the personnel system relating to:

- (1) describing positions and classes of positions;
- (2) allocating positions to classes;
- (3) assigning classes to pay grades;
- (4) establishing criteria for objectively evaluating classes of positions;
- (5) determining the compensation of an employee;
- (6) appealing personnel decisions relating to employees through a grievance procedure;
- (7) establishing a Personnel Appeal Board;
- (8) authorizing the personnel officer to adopt personnel regulations under specific procedures;

(c) Establish merit principles;

(d) Define "class specification", "approved position", "personnel action", and "position";

(e) Designate the City Administrator as the personnel officer and assign most personnel duties to the personnel officer;

(f) Require that the personnel officer put in writing any credit given to employees for former service to the City;

(g) Clarify certain provisions of the personnel law; and

(h) Make general minor changes in the personnel laws.

THE ORDINANCE amends the Code of the City of Takoma Park by:

Creating Chapter 8B and re-numbering the following sections without any changes.

<u>Old Section Number</u>	<u>Title</u>	<u>New Section Number</u>
2-55	General policy	8B-109
2-56	Business activities and solicitation	8B-110
2-57	Outside employment	8B-111
2-58	Privileged information	8B-112
2-66	Pay period	8B-123

2-67	Determination of an employee's pay increase	8B-124
2-68	Salary rates for reallocations, promotions and demotions	8B-125
2-71	Authorized leave	8B-129
2-72	Requests for leave	8B-130
2-73	Accounting responsibilities and procedures	8B-131
2-74	Holiday leave	8B-132
2-75	Annual leave	8B-133
2-76	Sick leave	8B-134
2-76.1	Compensatory leave	8B-135
2-77	Injury leave	8B-136
2-78	Military leave	8B-137
2-79	Maternity leave	8B-138
2-80	Bereavement leave	8B-139
2-81	Jury leave	8B-140
2-82	Civic Duties	8B-141
2-83	Policy	8B-142
2-84	Recruitment	8B-143
2-85	Qualification requirements	8B-144
2-86	Application	8B-145
2-87	Examinations	8B-146
2-88	Appointment	8B-147
2-89	Purpose	8B-148
2-90	Duration	8B-149
2-91	Expiration	8B-150
2-92	Seniority	8B-151
2-93	Break in employment	8B-152
2-94	Promotion policy	8B-153
2-95	Demotion	8B-154
2-96	Transfer of an employee	8B-155
2-97	Resignation	8B-156
2-98	Layoffs	8B-157
2-99	Purpose	8B-158
2-100	Maintenance of the system	8B-159
2-101	Procedure	8B-160
2-102	Evaluation results and consequences	8B-161
2-103	Responsibility; applicability to police	8B-162
2-104	Types of disciplinary actions; severity	8B-163
2-105	Reasons for disciplinary action	8B-164
2-106	Reprimand procedures	8B-165
2-107	Disciplinary probation	8B-166
2-108	Expiration of disciplinary probation	8B-167
2-109	Suspension	8B-168
2-110	Dismissal	8B-169
2-111	Purpose	8B-170
2-112	Responsibility	8B-171
2-113	Payment for non-city provided training programs	8B-172
2-114	Higher education program	8B-173
2-116	Hospitalization	8B-175
2-117	Life insurance	8B-176
2-118	Hours	8B-177
2-119	State retirement	8B-178
2-124	Authority	8B-183

Repealing, renumbering and re-enacting the following sections with changes.

<u>Old Section Number</u>	<u>Title</u>	<u>New Section Number</u>
Sec. 2-50.	Purpose of regulations	8B-101
Sec. 2-50.1	Employee's Personnel Committee	8B-102
Sec. 2-51.	City Administrator's responsibility	8B-103
Sec. 2-52.	Employee responsibility	8B-104
Sec. 2-53.	Applicability of regulations	8B-105
Sec. 2-54.	Definitions	8B-108
Sec. 2-59.	Political activity	8B-113
Sec. 2-60.	Preparation of position classification plan	8B-116
Sec. 2-61.	Allocation of positions	8B-117
Sec. 2-62.	Job descriptions	8B-118
Sec. 2-63.	Position classification plan amendments	8B-119
Sec. 2-64.	Reclassification	8B-120
Sec. 2-65.	Preparation of pay plan	8B-122
Sec. 2-69.	Salary rates for transfers	8B-126
Sec. 2-70.	Overtime	8B-128
Sec. 2-115.	Salary adjustments	8B-174
Sec. 2-120.	Grievance rights of employees	8B-179
Sec. 2-121.	Procedure	8B-180
Sec. 2-122.	Composition	8B-181
Sec. 2-123.	Meetings	8B-182

Adding the following new sections:

- Sec. 8B-106 Adoption of administrative regulations
- Sec. 8B-107 Merit principles
- Sec. 8B-114 Overview of compensation in the classified service
- Sec. 8B-115 Positions in the classified service
- Sec. 8B-121 Assigning a class to a grade
- Sec. 8B-127 Compensation for new employees

SECTION 1. CREATING A CHAPTER ON PERSONNEL.

Chapter 8B of the Takoma Park Code shall be entitled "Personnel." It shall be divided into Article 1, "Civil Service" and Article 2, "Collective Bargaining". The divisions of Article 1 shall be the same as the divisions of Article 5 of Chapter 2. The following sections are renumbered as sections of Chapter 8B, "Personnel."

<u>Old Section Number</u>	<u>New Section Number</u>	<u>Title</u>
2-55	8B-109	General policy
2-56	8B-110	Business activities and solicitation
2-57	8B-111	Outside employment
2-58	8B-112	Privileged information
2-66	8B-123	Pay period
2-67	8B-124	Determination of an employee's pay increase
2-68	8B-125	Salary rate for reallocations, promotions and demotions

2-71	8B-129	Authorized leave
2-72	8B-130	Requests for leave
2-73	8B-131	Accounting responsibilities and procedures
2-74	8B-132	Holiday leave
2-75	8B-133	Annual leave
2-76	8B-134	Sick leave
2-76.1	8B-135	Compensatory leave
2-77	8B-136	Injury leave
2-78	8B-137	Military leave
2-79	8B-138	Maternity leave
2-80	8B-139	Bereavement leave
2-81	8B-140	Jury leave
2-82	8B-141	Civic duties
2-83	8B-142	Policy
2-84	8B-143	Recruitment
2-85	8B-144	Qualification requirements
2-86	8B-145	Application
2-87	8B-146	Examinations
2-88	8B-147	Appointment
2-89	8B-148	Purpose
2-90	8B-149	Duration
2-91	8B-150	Expiration
2-92	8B-151	Seniority
2-93	8B-152	Break in employment
2-94	8B-153	Promotion policy
2-95	8B-154	Demotion
2-96	8B-155	Transfer of an employee
2-97	8B-156	Resignation
2-98	8B-157	Layoffs
2-99	8B-158	Purpose
2-100	8B-159	Maintenance of the system
2-101	8B-160	Procedure
2-102	8B-161	Evaluation results and consequences
2-103	8B-162	Responsibility; applicability to police
2-104	8B-163	Types of disciplinary actions; severity
2-105	8B-164	Reasons for disciplinary action
2-106	8B-165	Reprimand procedures
2-107	8B-166	Disciplinary probation
2-108	8B-167	Expiration of disciplinary probation
2-109	8B-168	Suspension
2-110	8B-169	Dismissal
2-111	8B-170	Purpose
2-112	8B-171	Responsibility
2-113	8B-172	Payment for non-city provided training programs
2-114	8B-173	Higher education program
2-116	8B-175	Hospitalization
2-117	8B-176	Life insurance
2-118	8B-177	Hours
2-119	8B-178	State retirement
2-124	8B-183	Authority

SECTION 2. AMENDMENTS TO THE CODE.

Sections 2-50, 2-50.1, 2-51, 2-52, 2-53, 2-54, 2-59, 2-60,
2-61, 2-62, 2-63, 2-64, 2-65, 2-69, 2-70, 2-93, 2-115, 2-120,

2-121, 2-122, and 2-123 are repealed, renumbered and re-enacted as follows and Sections 8B-105, 8B-107, 8B-114, 8B-115, 8B-121, and 8B-127 are added as follows:

ARTICLE 5. CIVIL SERVICE.

Division 1. Administration.

Sec. 8B-101. Purpose of the personnel system.

The purpose of the personnel system contained in this Article is to encourage a work environment which maximizes employee morale and the efficient delivery of services to the citizens of Takoma Park. The system is intended to insure that employees receive comparable salaries if their positions involve comparable duties, required experience, responsibilities, and authority.

Sec. 8B-102. Employees' personnel committee.

In furtherance of Sec. 8B-101 above, there shall be established an employees' personnel committee. The committee shall be comprised of one employee representative from each department and division, to be elected by their representative departments and divisions. The Committee shall meet monthly with representatives of City administration to review any proposals that would impact employees. The monthly meetings may be deferred upon mutual agreement of committee members and administration representatives. The full committee may be broken down into smaller subcommittees to accommodate meetings on specific issues.

Specific guidelines for the functioning of the full committee and its subcommittees shall be set forth for consideration and approval by the Mayor and Council.

The Mayor and Council shall consider the recommendations of the committee when making decisions that would impact employees.

Sec. 8B-103. Personnel officer's responsibility.

(a) The City Administrator is the personnel officer. In this capacity, the City Administrator bears the responsibility of administering all personnel matters. The personnel officer may delegate his authority in personnel matters to an assistant.

(b) The personnel officer may adopt regulations to implement the personnel system. The regulations must be consistent with the laws of the City and must further the purpose of the personnel system.

Sec. 8B-104. Employee responsibility.

It shall be the responsibility of every employee to acquaint himself or herself with the personnel laws and regulations and any personnel manual in effect.

Sec. 8B-105. Applicability of this article.

The provisions of this Article apply to all employees of the City of Takoma Park, unless the provisions conflict with or are inconsistent with state or federal legislation or a written contract of employment.

Sec. 8B-106. Adoption of administrative regulations.

The City Administrator must use the following procedures when adopting regulations relating to personnel matters.

(a) Except for emergency regulations, the personnel officer must publish proposed regulations in the Takoma Park Newsletter. If the newsletter is not published, the proposed regulations must be published in another publication that is widely distributed in the City. The City must give every employee a copy of the newsletter or other publication.

(b) The newsletter, or other publication, must contain a deadline and a procedure for submitting written comments on the proposed regulations. The deadline must be at least 10 days after the proposed regulations are published.

(c) The personnel officer must review all of the written comments that are submitted before adopting the proposed regulations. The personnel officer may adopt the regulations as proposed or with amendments.

Sec. 8B-107. Merit principles.

(a) The following are the merit principles of the City's personnel system. The City should manage its personnel system under these principles.

(1) The work force should represent all segments of society. The City should recruit qualified individuals from appropriate sources to achieve this goal.

(2) The City should select and advance employees solely on the basis of relative ability, knowledge, and skills.

(3) Employees and applicants for employment should have an equal opportunity to compete openly and fairly to show their relative ability, knowledge, and skills.

(4) The City should treat all employees and applicants for employment fairly and equitably in all aspects of personnel management. Political affiliation, race, color, religion, national origin, sex, ancestry, marital status, age, sexual orientation, and handicapping condition are not relevant to their treatment. The City must give proper regard for their privacy and constitutional rights.

(5) The City should pay employees equally for work of equal value.

(6) All employees should maintain high standards of integrity, conduct and concern for the public interest. However, the City should not dismiss an employee, unless the cause for the dismissal bears a rational relationship to the employee's job performance.

(7) The City should use its work force efficiently and effectively.

(8) The City should retain employees on the basis of the adequacy of their job performance. If an employee's job performance is inadequate, the employee should correct the job performance. If an employee cannot or will not improve his job performance to meet required standards, the City should dismiss the employee.

(9) If education and training would result in better organizational and individual performance, the City should provide employees with effective education and training.

(10) The City should protect employees against arbitrary action, personal favoritism and coercion for partisan political purposes.

(11) The City should prohibit employees from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination of an election.

(12) The City should protect employees against reprisal for lawfully disclosing information if the employee reasonably believes that the information indicates:

- (A) a violation of any law, rule or regulation;
- (B) a mismanagement of resources;
- (C) a gross waste of funds;
- (D) an abuse of authority; or
- (E) a substantial and specific danger to the public welfare.

(b) The merit principles of the City do not create a private cause of action for any person. However, in a grievance, an employee may demand that the City comply with the merit principles.

Division 2. Definitions.

Sec. 8B-108. Definitions.

(a) The following terms and words, wherever used in this Article, shall be defined as:

(1) Allocation - The assignment of an individual position to an appropriate class.

(2) Appointment - The placement of a person in a position in the City's classified service.

(2.1) Authorized position - A position approved by the Mayor and Council in the annual budget or an amendment to the annual budget.

(3) Class - A group of positions which are sufficiently similar in general duties and responsibilities to warrant the use of the same position title, rate of compensation, and minimum qualifications.

(3.1) Class Specification - A written description of the essential characteristics of a class of positions, including the title, nature and level of work, typical examples of duties, education and experience, requirements and knowledges, skills, and abilities needed to perform the work of the class.

(4) Continuous Service - Employment without interruption, except for absences on approved leaves, or approved absences to serve in the Armed Forces of the United States.

(5) Demotion - A reassignment of an employee from a position in one class to a position in another class which has a lower maximum pay step.

(6) Immediate Family - An employee's immediate family shall include: mother, father, siblings, children, and other dependents.

(7) Incumbent - An individual who occupies a given position and performs the assigned duties and responsibilities of that position.

(8) Job Descriptions - The written description of the duties and responsibilities of a position within the City's classified service.

(9) Layoff - The involuntary, nondisciplinary separation of an employee from a position.

(10) May - The word "may" is to be construed as vesting discretionary authority in certain positions.

(11) Overtime - Overtime pay is that compensation which is paid to an employee for work performed in excess of the normal work period of the employee.

(12) Pay Grade - A range of pay which is assigned to a given class.

(13) Pay Plan - The official pay schedule of pay grades and pay steps adopted by the Council to set set prescribed rates for each grade and step and any adjustments to pay and bonuses adopted by the Council.

(14) Pay Step - A particular rate of compensation found within the range of a pay grade (for example, Steps A through J, L-1 and L-2).

(15) Permanent Full-Time Position - A group of duties and responsibilities which requires the employment of one (1) person for one hundred percent (100%) of a work day, and for at least a one (1) year period.

(16) Permanent Part-Time Position - A group of duties and responsibilities which requires the employment of one person for not less than twenty-five percent (25%) of a work day, but less than one hundred percent (100%) of a work day on an average basis, and for at least a one (1) year period.

(16.1) Personnel action - A promotion; a demotion; a detail; a transfer; a separation or any significant change in duties or responsibilities which is inconsistent with the employee's job description.

(16.2) Position - A group of duties and responsibilities which is the basic unit of organization for personnel in the City, and which is filled by one (1) employee or by two (2) employees who share the position.

(17) Position Classification Plan - The official compilation of class specifications outlining the duties, respon-

sibilities and qualifications of each class within the City's classified service.

(18) Probationary Period - A six (6) month period of time considered an an integral part of an incumbent's induction process, either for original appointment or promotion, during which the employee is required to demonstrate fitness for the position prior to receiving permanent status. For Police Officers, the probationary period is one (1) year.

(19) Promotion - A change in the position of an employee to a vacant position in a different class that is assigned to a higher pay grade.

(20) Reclassification - An official change in the allocation of an individual position by raising it to a class that is assigned to a higher pay grade, reducing it to a class that is assigned to a lower grade, or moving it to another class assigned to the same pay grade.

(21) Series - Each class will be numerically grouped with those classes which possess similarity in the kind of work performed.

(22) Shall - The word "shall" is to be construed as mandatory.

(23) Suspension - An enforced involuntary leave of absence for disciplinary purposes.

(24) Temporary Employee - An individual who is appointed either to perform the duties and responsibilities of a permanent full-time or part-time position in an emergency situation or to perform the duties and responsibilities of a temporary position.

(25) Temporary Position - A group of duties and responsibilities which requires the employment of one person, either on a full-time or part-time basis for seasonal or other purposes.

(26) Transfer - Assignment of an employee from one position to another. Transfers can take place within a depart-

ment, between departments, between positions of the same class or between positions allocated to different classes.

(27) Vacancy - A duly authorized and budgeted position which is not occupied by an incumbent.

(28) Work Day - Work day refers to the number of hours regularly scheduled in one (1) twenty-four (24) hour period.

(29) Work Period - For Police personnel, a work period shall be fourteen (14) days in succession.

(30) Work Week - Work week refers to the number of hours regularly scheduled in a seven (7) consecutive day period.
Sec. 8B-113. Political activity.

All employees of the City shall be able to exercise their franchise in any election in which they may be eligible, and to express their opinion. All City employees have the explicit right either to participate or to refrain from participating in partisan political activity with the provision that no employee has the right to engage in partisan political activity during regular working hours. No City employee shall be permitted to hold any elective office within the City government. City employees may be permitted to accept appointive positions, within the scope of Section 8B-111.

Divison 4. Compensation in the classified system.

Sec. 8B-114. Overview of compensation in the classified service.

(a) The compensation of an employee is determined by the following steps.

(1) Identify the position that the employee is in.

(2) Identify the class that the employee's position is allocated to.

(3) Identify the grade that the employee's class is assigned to.

(4) Identify the step that the employee is in.

(5) Find the base salary in the pay schedule for the employee's grade and step.

(6) Add to the base salary any adjustments to salary provided by the pay plan.

(7) Add to the adjusted salary any bonuses provided by the pay plan.

(b) An employee is placed in a position by the personnel officer when the employee is hired.

(c) A position is allocated to a class by the department head with the approval of the personnel officer.

(d) A class is assigned to a grade by ordinance by the Council. The assignment must be based on an objective evaluation of each class and a determination that the work done by every class in the same grade is comparable in its primary elements.

(e) The step that an employee is in is determined by the personnel officer under this Article.

(f) The pay schedule is part of the pay plan. It is usually in the form of a chart.

(g) The pay plan may adjust an employee's salary to compensate for shift work, working conditions and other conditions affecting employment. This section does not create a right to any adjustment.

(h) The pay plan may add bonuses to an employee's salary. If any bonuses are given, they must be part of a program with a specific narrow purpose (for instance, attracting employees to certain positions or rewarding employees for the length of service to the City). This section does not create a right to any bonus.

Sec. 8B-115. Positions in the classified service.

(a) The Mayor and Council create and abolish positions by including or not including them in the City's annual budget. The Mayor and Council can create new positions and abolish existing positions by amending the budget after it has passed.

(b) The personnel officer prepares the job description for a new position. The personnel officer makes any changes to the job description after consulting with any incumbent of the position, the immediate supervisor of the position, and the department head.

(c) The personnel officer shall recommend to the Mayor and Council the abolition of a position whenever the personnel officer deems it necessary and in the best interest of the City.

Sec. 8B-116. Preparation of position classification plan.

The personnel officer shall prepare a Position Classification Plan encompassing all permanent part-time and permanent full-time positions in the City service. The Position Classification Plan shall consist of a list of all classes in the City's classified service and class specifications outlining the nature, duties, responsibilities, and qualifications of each class.

Sec. 8B-117. Allocation of positions to classes.

(a) Subject to the approval of the personnel officer, the head of each department shall allocate every permanent position in the department to a class. The positions in a class must be so similar in the nature of the work and the required experience and training that the same pay grade is appropriate for all of the positions in the class.

(b) For purposes of maintaining equity between employees, the personnel officer may allocate a position to a different class.

Sec. 8B-118. Class specifications.

(a) Each class within the City service shall have a written statement outlining its principal characteristics. The personnel officer writes the class specifications with the assistance of the department heads. Specifically, each class specification shall include:

- (1) A class title;
- (2) A description of the duties and level of responsibility and authority of the work;
- (3) A set of illustrative work examples;
- (4) A statement of the required knowledge, skills, and abilities; and
- (5) A statement of minimum qualification requirements.

(b) The class specification is not to be construed as a prescriptive framework for any position within a class. The illustrated duties and responsibilities for a class shall not be construed as an exclusion of duties and responsibilities which are of a similar kind and level. The class specifications shall not infringe upon a Department Head's or the City Administrator's power and authority to direct, assign and control the work of their respective subordinates. Qualifications expected of all incumbents of positions (for example, required licenses and certificates; good physical condition if the work of the position requires good physical condition); freedom from disabling defects which the personnel officer specifically finds would adversely affect work performance; integrity; sobriety; efficiency; concern for the public interest; courtesy; and productivity) shall be deemed to be implied in the qualification requirements of each class, even though not specifically mentioned in the class specification.

(c) All City employees shall be given a copy of their appropriate class specification and shall be furnished new ones should their positions be reallocated. Copies of class specifications for all classes shall be available in the City Administrator's office and may be reviewed by the public and any City employee.

Sec. 8B-119. Amendments to the position classification plan.

(a) Authority. The Mayor and Council may establish or abolish a class by ordinance. The personnel officer may only change a class specification to:

(1) accommodate the addition or removal of a position to or from the class;

(2) reflect changes in the job description of a position in the class; or

(3) insure equity in the classified system.

(b) Establishment of new class. No newly created position(s) designed to be allocated to a new class shall be filled until the Position Classification Plan is amended to incorporate the new class. The Mayor and Council establish the new class and the department head allocates positions to the new class with the approval of the personnel officer.

(c) Abolishment of a class. If the abolishment of a position under Section 8B-115 results in the abolishment of a class, the personnel officer shall also recommend to the City Council an amendment to the Position Classification Plan abolishing the class.

Sec. 8B-120. Allocating a position to a different class.

(a) Annual review of job descriptions. At the time of the employee evaluation and development discussion between the supervisor and employee, the employee's job description will be thoroughly reviewed to note any significant changes which may have taken place in the employee's job. The supervisor, with the employee's assistance, will prepare a description of proposed alterations, additions or deletions required in the job description and will forward these proposed changes to the personnel officer. The personnel officer will determine if the job description should be changed. With the department head, the personnel officer shall also determine whether the position shall

be allocated to a different class. The personnel officer must approve any changes in the allocation of a position to a class.

(b) Reconsidering allocation to a class. If there have been material changes in the level of duties, responsibilities, or nature of work of a position, the department head may ask the personnel officer to change a job description. If the personnel officer changes the job description, the department head may consider allocating the position to a different class with the approval of the personnel officer. Apart from the semi-annual employee evaluation and development discussion, an employee may request that the job description of the employee's position be changed or that the employee's position be allocated to a different class by submitting a written justification for such change to the department head. It is also within the department head's and the personnel officer's authority to initiate a review of an employee's allocation to a class when just cause exists. A position can be allocated to a new class assigned to a higher pay grade, lower pay grade or the same pay grade. When a position is allocated to a different class, it shall be assigned to a pay grade in accordance with this Article.

Sec. 8B-121. Assigning a class to a pay grade.

(a) The Mayor and Council must assign each class to a pay grade, by ordinance. The personnel officer must recommend to the Mayor and Council, a grade for each class. This recommendation shall be based on the written report of a committee established by the personnel officer.

(b) The committee shall objectively evaluate classes. In evaluating classes, the committee shall use a written job evaluation system that considers the following factors. The committee's written job evaluation system may use additional factors if the Mayor and Council approve the factors.

- (1) Required education.
- (2) Required experience.

- (3) Complexity of duties.
- (4) Risk of financial loss.
- (5) Contact with others.
- (6) Working conditions.
- (7) Supervision of others.

Sec. 8B-122. Contents, preparation and adoption of the pay plan.

(a) The pay plan must specify base salaries for pay steps A through J, ~~L-1, and L-2,~~ ^{and any other steps authorized by Sec. 2-68 of the City Code} for each pay grade. The pay plan may specify adjustments to the base salaries to compensate employees for unusual working conditions. Evening and night work may be one of these adjustments. The pay plan may also specify bonuses to be paid to employees as part of programs with specific narrow purposes. These purposes may include attracting employees to certain classes of positions and rewarding employees for the length of their service to the City. This section does not create a right to any bonus or adjustments.

(b) The base salaries should be competitive with salaries paid for similar work in similar public agencies. The base salaries for different grades should maintain the relative worth of work done by employees in classes assigned to different grades.

(c) The personnel officer shall prepare a pay plan covering all pay grades in the City's service. The plan must be based on the written report of the evaluation committee established by the personnel officer under Section 8B-121.

(d) The pay plan and any amendments to the pay plan are not effective until adopted by the Mayor and Council by ordinance.

Sec. 8B-126. Salary rates for transfers.

An employee shall continue to be paid at the same rate if an employee is permanently transferred:

(a) from a position in one class to a position in another class assigned to the same pay grade; or

(b) to another position in the same class.

Sec. 8B-127. Compensation for new employees.

When the personnel officer hires a new employee, the personnel officer may assign the employee to any step in the grade that the employee's class is assigned to. The assignment must be based on objective criteria established by regulation.

Sec. 8B-128. Overtime.

(a) It shall be City policy to make every effort to eliminate overtime work. However, recognizing that emergencies do occur which require overtime payment to be made, the City shall compensate employees in accordance with the Federal Fair Labor Standards Act of 1974 as amended and the Maryland Wage and Hours law as amended.

(b) All full-time employees shall be paid time and one-half for any hours worked over their normal work or regular duty hours, except that this section shall not apply to the incumbents of the positions enumerated below:

- (1) City Administrator
- (2) Department Heads, and Assistant Directors of Departments;
- (3) Assistant City Administrator(s);
- (4) City Clerk;
- (5) Economic and Community Development Coordinator;
- (6) Police Captain, Police Lieutenant(s).

Division 5. Reserved

Section 8B-152. Break in Employment.

(a) Except as provided in Subsection (b) of this section, a break in continuous service that occurs in any of the following fashions terminates all accrued seniority rights, including continuous service.

- (1) Voluntary termination on the part of an employee.
- (2) Formal discharge of an employee.

(3) Absence of the employee for more than three (3) working days without approved leave.

(b) (1) An employee receives full credit for former service towards the employee's seniority if:

(A) the employee was on a leave of absence for one year or less and the personnel officer approved the leave of absence in advance in writing; or

(B) the City laid off an employee for one year or less.

(2) The personnel officer may issue a written decision giving an employee credit for former service towards the employee's seniority if:

(1) (A) the employee resigned; or

(B) the City laid off the employee for one to three years; and

(2) the former service to the City lasted at least three (3) continuous years with satisfactory performance evaluations.

Sec. 8B-174. Salary adjustments.

(a) Notwithstanding the acquisition of additional education or training, and in harmony with the concept of "equal pay for equal work", the City shall make no adjustment in an employee's salary unless:

(1) The employee is promoted to a vacant position in the City service, in which case the rate of pay shall be determined in accordance with the regulations in Division 5 on the pay plan.

(2) An employee's position is subsequently re-allocated to one with a different pay grade assignment, in which case the rate of pay shall be determined in accordance with the laws in Division 4.

Division 14. Grievance procedure.

Sec. 8B-179. Grievance rights of employees.

(a) Any employee occupying a permanent position, who feels that he or she has received inequitable treatment through some personnel action, shall have the right to appeal, either personally or through a representative, for relief from the personnel action. Except as provided in Subsections (b) and (c) of this section, no issue involving a change in the pay plan, a policy prerogative of the Council, or any other issue which does not have a direct impact upon the day-to-day working conditions of the employee or relations with a supervisor shall be considered relevant. Consequently, these issues shall not be addressed through this grievance procedure.

(b) An employee may appeal a decision involving:

- (1) the description of the employee's position;
- (2) the assignment of an employee to a specific position; and
- (3) the allocation of the employee's position to a specific class.

(c) An employee has no right of appeal if the employee is not satisfied with the grade to which the Mayor and Council have assigned the employee's class. However, the employee does have the right to ask the Council to reconsider its decision. The employee should notify the personnel officer that the employee is asking the Mayor and Council to reconsider, so that the personnel officer can make the recommendation required by Section 8B-121(a).

(d) An employee must file a grievance under Subsections (a) or (b) of this section within fifteen (15) days after a decision has been made and the employee has been informed. After fifteen days, the employee loses the right to appeal.

Sec. 8B-180. Procedure.

(a) Except for grievances listed in Section 8B-179(b) or (c), and grievances involving dismissal from employment all grievances shall be handled in accordance with the grievance pro-

cedure in this subsection. The procedure to settle grievances shall be as follows:

(1) Step 1. The employee shall first present his or her grievance to the department head, who shall make every effort to dispose of the matter forthwith. If the issue cannot be resolved immediately, the employee shall return to work and await the department head's written decision. The department head shall render such decision within seven (7) days upon receipt of the grievance and make copies of the decision available to the personnel officer. Should the decision be unacceptable to the employee, the employee may proceed with the grievance procedure.

(2) Step 2. Should the employee elect to exercise his right to proceed with the grievance procedure, he shall petition the personnel officer in writing requesting a review of the case. Such request shall contain a list of the particular grievance(s). The personnel officer shall have fourteen (14) days to reach a decision concerning the grievance. The personnel officer shall consider all aspects surrounding the grievance, solicit informal testimony from the involved parties, and reduce to writing the outcome of the personnel officer's deliberations. Copies of the personnel officer's decision shall be given to the department head and the employee.

(3) Step 3. Should the employee receive an unacceptable decision, he may petition the personnel officer in writing requesting assemblage of the Personnel Appeal Board. The personnel officer shall promptly notify the chairperson of the Personnel Appeal Board to convene for the purpose of adjudication. The Board shall hear all facts pertaining to the case, but shall be informal in its conduct. The Board shall convene, hear testimony, and reach a decision within twenty-one (21) days upon receipt of the employee's request to convene the Board. The Board shall vote on the grievance and reduce to writing its deci-

sion. The decision rendered by the Board shall be final and binding.

(b) The following are the procedures for an employee to appeal a decision listed in Section 8B-179(b).

(1) Description of an employee's position.

(A) If an employee is not satisfied that the job description for the employee's position is accurate or opposes a proposed change, the employee should discuss the matter with the employee's supervisor and department head. Then, the employee should submit a written memorandum to the personnel officer justifying or critiquing any proposed changes. The personnel officer must respond in writing to the employee within fourteen (14) days.

(B) If the employee is not satisfied with the response of the personnel officer, the employee may make a written demand that the Personnel Appeal Board convene to hear the employee's appeal.

(C) The Personnel Appeal Board must convene within twenty-one (21) days and issue a decision within twenty-one (21) days after it convenes. The decision of the Personnel Appeal Board is final.

(2) Assignment of an Employee to a Specific Position.

(A) If an employee believes that the employee is doing the work of a position that the employee is not in, the employee may submit a written request to the department head that the employee be placed in the different position. The department head must respond in writing within seven (7) days.

(B) If the employee is not satisfied with the decision of the department head, the employee may submit a written appeal to the personnel officer within fourteen (14) days after the response of the department head was received or a response was due. The written appeal must justify the change on

the basis of the job descriptions of the two positions. The personnel officer must respond within fourteen (14) days.

(C) If the employee is not satisfied with the decision of the personnel officer, the employee may make a written demand that the Personnel Appeal Board convene to hear the employee's appeal.

(D) The Personnel Appeal Board must convene within twenty-one (21) days and issue a written decision within twenty-one (21) days after it convenes. The decision of the Personnel Appeal Board is final.

(3) Allocation of an employee's position to a specific class.

(A) If an employee is not satisfied with the class that the employee's position is allocated to, the employee should submit a written justification for a change to the department head. The written justification must be based on the job description of the employee's position and the class specifications for both the employee's current class and for the class which the employee maintains is more appropriate. The department head must respond to the employee in writing within fourteen (14) days.

(B) If the employee is not satisfied with the response of the department head, the employee may submit a written appeal to the personnel officer within fourteen (14) days after the response of the department head was received or a response was due. The personnel officer must respond within fourteen (14) days.

(C) The employee may make a written demand that the Personnel Appeal Board convene to hear the employee's appeal if the employee is not satisfied with the decision of the personnel officer, or if the personnel officer disapproves an allocation to a different class than the department head has approved.

(D) The Personnel Appeal Board must convene within twenty-one (21) days and issue a decision within twenty-one (21) days after it convenes. The decision of the Personnel Appeal Board is final.

(c) The following are the procedures for a probationary employee to appeal a decision to dismiss the employee.

(1) The employee may appeal a decision to dismiss the employee by submitting a written appeal to the City Administrator. The appeal must:

(A) state the reasons why the decision was improper; and

(B) offer any evidence supporting the employee's position.

(2) The personnel officer may:

(A) uphold the decision to dismiss the employee;

(B) reverse the decision to dismiss the employee;

or

(C) refer the appeal to the Personnel Appeal Board for final determination.

(d) The following are the procedures for a non-probationary employee to appeal a decision to dismiss the employee.

(1) The employee must ask the department head in writing to change the recommendation to dismiss the employee under Section 8B-169. The employee must state reasons for changing the recommendation and offer any relevant evidence. The department head must send a written decision on this request to the employee and the City Administrator within seven (7) days.

(2) Within seven (7) days after receiving the written decision of the department head, the employee must ask the City Administrator in writing to reverse the decision to dismiss the employee under Section 8B-169. The employee must state reasons for reversing the decision and offer any relevant evidence. The City Administrator must issue a written decision within 21 days.

(3) If the City Administrator does not reverse the decision to dismiss, the employee may make a written demand to convene the Personnel Appeal Board to hear the employee's appeal of the decision to dismiss.

Sec. 8B-181. Personnel Appeal Board - establishment and composition.

(a) There shall be a Personnel Appeal Board composed of five (5) members and one (1) alternate. Three (3) members shall be residents of the City, at least one of whom has experience as a personnel officer, and one of whom has experience as an employee representative. One member and the alternate shall be current City employees, and one member shall be a current management employee of the City. The alternate and the other City employee may not be in the same class or department.

(b) Except for the initial appointments, the Mayor shall appoint the members for terms of three (3) years. Initially, the Mayor shall appoint one (1) member for a term of one (1) year, two (2) members for a term of two (2) years, and two (2) members for a term of three (3) years. The alternate serves for the same term as the other City employee. Any member appointed to fill a vacancy occurring prior to the expiration of a term shall be appointed only for the remainder of that term.

(c) A City employee must not participate in the deliberations of the Board if the City employee is in the same class or department as the employee whose appeal is being considered.

(d) The alternate only meets with the Board if the other City employee is unable to attend or is disqualified under Subsection (c) of this section.

(e) Members of the Board shall be compensated for expenses incurred in the conduct of their role as a Board member.

Sec. 8B-182. Meetings.

The Board shall meet for the purpose of organization subsequent to appointment or re-appointment of a member. At this organization meeting, the Board shall elect a chairperson and vice-chairperson for the ensuing year. All other meetings shall be held for the purpose of hearing employee appeals and shall be called by the chairman upon receipt of proper notification to convene. A quorum of the Board is three (3) members.

Section 8B-183. Authority.

(a) The Board shall be the final arbiter in all cases brought before it.

(b) The Board only has the authority to hear employee grievance appeals if this Article specifically authorizes the Board to rule on the appeal.

SECTION 3. SEVERABILITY.

If a court holds that part of this ordinance is invalid, that invalidity does not affect the other parts of the ordinance.

SECTION 4. EFFECTIVE DATE.

This ordinance shall take effect upon enactment.

THE LAW OFFICES OF
SUSAN SILBER

SUSAN C. SILBER, ATTORNEY AT LAW
ADMITTED DC, MD AND NY
MARY P. BOTTUM, ATTORNEY AT LAW
ADMITTED DC AND MD
THOMAS E. STAMEY, ATTORNEY AT LAW
ADMITTED DC

PRINCIPAL OFFICE AND MAILING ADDRESS:
LANGLEY PROFESSIONAL BUILDING
7676 NEW HAMPSHIRE AVENUE, SUITE 416
LANGLEY PARK, MD 20783

1300 NINETEENTH STREET, N.W.
SUITE 240
WASHINGTON, D.C. 20036

626 INDEPENDENCE AVENUE, S.E.
SUITE 303
WASHINGTON, D.C. 20003

(301) 445-5400

MEMORANDUM

November 21, 1986

TO: Mayor and Council
VIA: James Wilson, City Administrator
FROM: Susan Silber, Acting Corporation Counsel *Susan Silber*
SUBJECT: Proposed Collective Bargaining Ordinance

CHANGES

The attached draft of the proposed collective bargaining ordinance (Draft 3 - 11/20/86) contains several changes since the previous draft. The following is a listing of these changes. They have not been highlighted by underlining them in the draft because the proposed ordinance is scheduled for introduction, and underlining in the official copy could be confusing.

1. Chapter 8B, "Personnel". Section numbers have been changed, as directed by the Council. The proposed personnel procedures ordinance establishes the new chapter.

2. Enacting language. Technical language has been added to say that the Mayor and Council are amending the Code. Sections on severability and effective date were also added.

3. Headings for subsections. Headings to subsections were added to make the ordinance easier to read and use.

4. Definition of "appropriate unit" in Section 8B-702. Problems were created in earlier drafts by designating an appropriate unit for managers, supervisors, and confidential employees. These employees have the right to form an organization and to "meet and confer" (see Section 8B-203). The other provisions of the article do not apply to them. The change leaves two "appropriate units".

5. Definition of "confidential employee" in Section 8B-202. The definition has been changed. The definition in the last draft attempted to define confidential employees in terms of one employee in each department who provides the most administrative support to management. The new definition responds to comments received.

6. Definition of "employer rights" in Section 8B-202. The right of the employer to determine if work should be contracted out has been taken out.

7. Definitions of "management personnel" and "supervisory employees" in Section 8B-202. These definitions have been combined as a matter of convenience. Surplus language has been removed. The accounting supervisor, the personnel officer, and anyone who handles labor relations (including negotiations) for the City have been added to the list.

8. Rights of managers, supervisors, and confidential employees in Section 8B-203. The last sentence was added to make it clearer that these employees do not engage in collective bargaining.

9. Right to strike. A provision was added to require that employees wait to strike until the 10-day notice period is over. See Subsection 8B-208(a)(4).

10. Minor editorial changes. These changes are not substantive. The most extensive change is at the end of Subsection 8B-206(a).

ISSUES

There are several issues that the Mayor and Council should still consider. Some were raised in my memorandum of November 17, 1986. Other issues may still be raised before the Mayor and Council take final action.

1. Which management, supervisor, and confidential employees should be excluded from the bargaining unit? (See definitions at Sec. 8B-202(b) and (h)).

2. If a union leads an illegal strike, what should be the appropriate remedy? Should it be left to a case by case determination? Should decertification for one year be the maximum penalty? (See Sec. 8B-208(e)).

3. What should be the time limits for the following:

a. A recognition election, once a petition has been filed? 60 days (this draft); 30 days (AFSCME draft) or a compromise, 45 days? (See Sec. 8B-205(a).)

b. Intervention by another employee organization: 20 days (this draft), 10 days (AFSCME draft), 15 days (a compromise)? (See Sec. 8B-205(a).)

4. Should temporary and part-time employees be included in an appropriate unit? Should they have a full vote when they work only a certain number of hours? In some departments the number of temporary and part-time employees exceeds the number of permanent and full-time employees.

Attachment
SS/ln

Introduced: _____

Enacted: _____

Effective: _____

ORDINANCE NO. 1986- _____

Short Title: Collective Bargaining Law

Draft No. 3 - 11/20/86

AN ORDINANCE to:

- (a) authorize employees to form employee organizations;
 - (b) provide procedures for certifying and decertifying employee organizations;
 - (c) require employee organizations to operate democratically;
 - (d) require the City to meet and confer with an employee organization of management employees, supervisors, and confidential employees;
 - (e) require the City and employee organizations to negotiate collectively in good faith on terms and conditions of employment;
 - (f) provide for the resolution of impasses in negotiations;
 - (g) authorize employees to strike under certain conditions;
- and
- (h) identify unfair labor practices.

THE ORDINANCE amends the Code of the City of Takoma Park by:

Adding to Chapter 8B, Article 2, "Collective Bargaining", containing the following sections:

- Sec. 8B-201. Legislative findings and purpose.
- Sec. 8B-202. Definitions.
- Sec. 8B-203. The employer's obligation to meet and confer with management personnel, supervisors and confidential employees.
- Sec. 8B-204. Internal employee organization democracy: The members' bill of rights.
- Sec. 8B-205. Recognition of an employee organization.
- Sec. 8B-206. Collective bargaining negotiations.
- Sec. 8B-207. Collective bargaining impasse.
- Sec. 8B-208. Strikes.
- Sec. 8B-209. Unfair labor practices.

SECTION 1. AMENDMENTS TO THE CODE.

Article 2, "Collective Bargaining", consisting of Sections 8B-201 through 8B-209, is added to Chapter 8B, "Personnel" of the Takoma Park Code to read as follows:

ARTICLE 7. COLLECTIVE BARGAINING

Sec. 8B-201 Legislative findings and purpose.

(a) Legislative findings. In enacting this ordinance, the Mayor and Council recognize that joint decision-making by government and public employees in matters affecting wages and working conditions increases responsiveness, communication, and efficiency. The City recognizes its responsibility to provide orderly procedures for the participation by its employees and their representatives in the formulation of personnel policies, the fair and considerate treatment of employees, and the resolution of questions and controversies with respect to the terms and conditions of employment, while simultaneously insuring that the public, welfare, health, and safety are maintained.

(b) Purpose.

The Mayor and Council enact this ordinance for the following purposes:

(1) To provide procedures for City employees to participate in the formulation and implementation of policies establishing or affecting their conditions of employment.

(2) To recognize the right of City employees to organize for the purpose of collective bargaining.

(3) To provide a means by which employees may select units appropriate for effective dealings between their representatives and the City.

(4) To insure that such units operate democratically and without discrimination.

(5) To require the City to meet and confer with certain employees and to negotiate and enter into written agreements with exclusive representatives of certain other employees on matters of wages, hours, and other terms and conditions of employment.

(6) To recognize merit principles and protections in employment.

(7) To establish a rational method of dispute resolution.

Sec. 8B-202 Definitions.

In this article, the following terms have the meanings indicated.

(a) Appropriate Units: There shall be two appropriate units among the employees of the City of Takoma Park, as follows:

(1) All sworn police officers except for Police Department management personnel.

(2) All other employees (including other employees in the Police Department) except for management and supervisory personnel and confidential employees.

(b) Confidential employees. An employee who has regular access to privileged information regarding personnel management or labor policies through the employee's duty to assist:

(1) The Mayor or a Councilmember;

(2) The City Administrator or assistant City Administrator; or

(3) A department head or assistant department head.

(c) Employee organization: Any lawful organization which admits municipal employees to membership, the primary purpose of which is to represent employees concerning terms and conditions of employment. An organization that practices a policy of illegal discrimination or that fails to accord its members the basic principles and procedures of internal democracy under Section 8B-204 is not an employee organization.

(d) Employee rights: Employees who are within the appropriate unit shall have, and shall be protected in the exercise of, the right of self-organization, to form, join or participate in any employee organization, or to refrain from forming, joining, assisting or participating in any employee organization, freely and without fear of penalty or reprisal, to negotiate or meet and confer (depending on their unit) through representatives of their own choosing on terms and conditions of employment as herein defined, and the processing and arbitration of grievances.

(e) Employer: The City of Takoma Park.

(f) Employer rights: Subject to the provisions of this Article, it is the exclusive right of the employer to establish or determine the mission of the departments of City government, set standards of service to be offered to the public, classify jobs under Article 1 of this chapter, exercise control and direction over its organization, operations and budget, and establish merit system principles which will guide its personnel actions.

(g) Grievance: A dispute that:

(1) concerns the application or interpretation of the terms of a collective bargaining agreement, the City Code, or the rules or regulations of the employer or any of its departments; and

(2) affects the terms and conditions of employment.

(h) Management and supervisory personnel: Any employee who:

(1) serves at the pleasure of the Mayor and Council;

(2) acts as a representative of the City of Takoma Park in collective bargaining;

(3) is the personnel officer for the City;

(4) the director or assistant director of a department;

(5) a sanitation, shop, or street supervisor in the Department of Public Works;

(6) a uniformed police officer at the rank of sergeant or above; or

(7) the City Administrator, Assistant City Administrator, City Clerk, Deputy City Clerk, Economic and Community Development Coordinator, or accounting supervisor.

(i) Strike: By concerted action, the failure to report for duty, the willful absence from positions, the stoppage or slowdown of work or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing, coercing or preventing a change in compensation or rights, privileges, obligations or other terms and conditions of employment.

(j) Terms and conditions of employment: All terms and conditions such as those which establish, affect or control: pay, fringe benefits, retirement and pension benefits, attendance and leave, promotions, transfers, layoffs, demotions, termination, discipline, evaluation, professional development, workload, work schedule, or health and safety. Terms and conditions must be consistent with federal, state, and local law, and must not be excluded under the prerogative of "Employer Rights", under this section.

Sec. 8B-203 The employer's obligation to meet and confer with management personnel, supervisors, and confidential employees

Management, ~~and~~ supervisory personnel, ^{and} confidential employees have the right to form an employee organization which represents their interests and is recognized as their exclusive representative. The employer shall provide such organization an opportunity to participate in the formulation and implementation of policies and practices affecting the conditions of the employment of these employees. None of the other provisions of this Article apply to these employees or an employee organization established under this section.

Sec. 8B-204 Internal employee organization democracy: the members' bill of rights

(a) Equal rights. Every member of an employee organization shall have equal rights and privileges within the organization:

- (1) to nominate candidates;
- (2) to vote in elections or referendums;
- (3) to attend membership meetings; and
- (4) to vote and participate in the deliberations upon the business of the organization at the meetings, subject to reasonable rules and regulations in the organization's constitution or bylaws.

(b) Freedom of speech and assembly. Every member of any employee organization shall have the right:

- (1) to meet and assemble freely with other members;
- (2) to express any views, arguments, or opinions; and
- (3) to express at meetings of the employee organization the employee's views, upon candidates in an election of the employee organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings.

(c) Responsibilities of members. Nothing in this Section shall be construed to impair the right of an employee organization to adopt and enforce reasonable rules concerning the responsibility of every member toward the organization as an institution and the responsibility of every member to refrain from conduct that would interfere with the organization's performance of its legal or contractual obligations.

(d) Dues, initiation fees, and assessments payable to local chapter of employee organization. For purposes of this Subsection, the term, "local employee organization" means an employee organization which represents only public employees of the City of Takoma Park, Maryland. The rates of dues and initiation fees payable by members of any local employee organization directly to such local employee organization shall not be increased, and no general or special assessment shall be levied upon such members, by said local employee organization, except:

- (1) by majority vote by secret ballot of the members in good standing voting at a general or special membership meeting of the local organization, after reasonable notice of the intention to vote upon such question; or

- (2) by majority vote of the members in good standing of the local organization voting in a membership referendum conducted by secret ballot.

(e) Protection of the right to sue.

(1) No employee organization shall limit the right of any member thereof:

(A) to institute an action in any court, or a proceeding before any administrative agency;

(B) to appear as a witness in any judicial, administrative or legislative proceeding; or

(C) to petition or communicate with any elected official.

(2) An employee organization may require a member to exhaust reasonable hearing procedures (but not to exceed a 6-month lapse of time), within such organization, before instituting legal or administrative proceedings against such organization or any of its officers.

(3) The employer shall not directly or indirectly finance, encourage or participate in, except as a party, any such action, proceeding, appearance or petition.

(f) Safeguards against improper disciplinary action.

An employee organization may not fine, suspend, expel, or otherwise discipline any member, except for nonpayment of dues unless the member has been:

(1) served with specific written charges;

(2) given a reasonable time to prepare a defense;

and

(3) afforded a full and fair hearing.

(g) Invalidity of constitution and bylaws. Any provision of the constitution and bylaws of any employee organization which is inconsistent with the provisions of this section shall be of no force or effect.

(h) Right to copies of collective bargaining agreements.

It shall be the duty of the secretary or corresponding principal officer of each employee organization to forward a copy of each collective bargaining agreement to any employee who requests a copy if the employee's rights are directly affected by such agreement. The officer shall maintain at the principal office of the employee organization of which he/she is an officer copies of any such agreement made or received by such employee organization. The copies shall be available for inspection by any member or by any employee whose rights are affected by such agreement.

Sec. 8B-205. Recognition of an employee organization.

(a) Selection of exclusive representatives.

If an employee organization files a petition with the City and the petition is supported by evidence that at least 30% of the employees in an appropriate unit wish to be represented by that employee organization for purposes of collective bargaining, then the City shall cause a secret ballot election to be held under the supervision of the Maryland State Department of Labor and Industry or its successor agency within 60 days after receipt of the petition. The City must notify all employees immediately after receiving a petition under this Section. Any other employee organization may intervene in the election if the organization files a petition supported by evidence of at least 10% representation in the unit. Any petition to intervene must be filed at least 20 days prior to the date of the scheduled election.

(b) Elections.

(1) Representation elections shall be conducted by the Department of Labor and Industry, a successor agency, or any other impartial agency selected by the mutual agreement of the parties. The entity conducting the election shall be subject to

the provisions of this law and the terms and conditions of such election agreement as may be reached by the parties. Except as otherwise provided, such entity shall resolve all legal issues or controversies relating to the conduct of the election.

(2) Representation elections conducted pursuant to this Section shall be by secret ballot and shall be subject to the following rules.

(A) All interested persons shall be given not less than 15 days notice of the time and place of the election.

(B) The ballots in all representation elections shall include a choice of "no representative."

(C) In an election where none of the choices on the ballot receive a majority, a runoff election shall be conducted, in which the ballot shall provide for a selection between the two choices or parties receiving the highest and second highest number of ballots cast in said election.

(3) The Department of Labor and Industry (or other impartial agency) shall certify the results of said election within 3 working days after the final tally of votes. If an employee organization has received more than 50% of the votes cast, it shall be certified as the exclusive bargaining representative for the unit.

(c) Authorization check. When evidence is presented to the City that more than 50% of the employees within the appropriate unit have signed authorizations for a particular employee organization to represent them, the City may, in lieu of a secret ballot election, request the Department of Labor and Industry or its successor agency to conduct a validation of the authorizations. Should the Department of Labor and Industry determine that more than 50% of the employees in the appropriate unit have so authorized a particular employee organization, the City shall request the Department to certify that organization as the exclusive collective bargaining representative for the unit.

(d) Dues and agency fees. Where an employee organization has been certified as the exclusive representative of the employees in a unit, it shall be the only employee organization eligible to obtain an agreement from the employer to deduct from the pay of those employees in the unit, who provide written authorization, any dues or fees designated or certified by the appropriate officer of the employee organization and to remit said fees to said employee organization. If an employee's religious practices do not permit the employee to pay dues or service fees to an employee organization, the employee may donate a sum equivalent to dues or fees to a charitable organization.

(e) Decertification.

(1) No incumbent certified employee organization shall be decertified unless evidence is presented to the City that more than 50% of the employees in the appropriate unit have signed authorizations for another employee organization, or more than 50% of said employees have signed statements requesting that no employee organization represent them. If such evidence shall be presented, the City shall request the Division of Labor and Industry or its successor agency to conduct a secret ballot election, which shall include the incumbent employee organization as a ballot choice. If the non-incumbent employee organization, or "no employee organization" gets more than 50% of the votes cast, then the non-incumbent organization or "no employee organization" shall be certified as exclusive representative for the appropriate unit. If more than 50% of the votes were cast for "no employee organization", then there will be no exclusive representative. Otherwise, the incumbent employee organization shall remain certified.

(2) Contract bar. A showing of authorization for a decertification election shall not be entertained unless submitted during the period between 120 and 90 days before the end of the term of a collective bargaining agreement.

Sec. 8B-206. Collective Bargaining Negotiations.

(a) Duty to Bargain in Good Faith. If an employee organization is certified as the exclusive representative of the employees in an appropriate unit, the employer and the employee organization shall have the duty to negotiate collectively and in good faith with respect to the terms and conditions of employment of employees in the unit. The organization must negotiate through its officials or representatives. To negotiate with each other in good faith shall mean that each party shall have a continuing obligation to keep the other informed on all matters within the scope of the representation and give reasonable written notice of any action proposed to be taken which would amend any ordinance governing terms and conditions of employment, or generally applicable personnel policies. The duty to bargain in good faith requires the employer to inform the employee organization about proposed changes and to negotiate them before they are implemented. These changes include any changes that have a significant impact on the terms and conditions of employment or on the employee organization. It does not matter whether the proposed changes involve:

- (1) practice or policy;
- (2) prerogatives of the employer; or
- (3) changes that take effect during or after the term

of the contract.

(b) Negotiations during working hours. Negotiations with an employee organization which has been accorded exclusive recognition may be conducted during the duty hours of the employee organization representatives involved in such negotiations, if they are employees within the appropriate unit, provided their attendance does not seriously interfere with the normal operations of the City and upon advance notice to their supervisor.

(c) City's representative. A duly appointed designee shall act as the City's primary representative for the purpose of con-

ducting any negotiations or other relationships between any recognized employee organization and the City government.

(d) Schedule for negotiations. Because effective and orderly operations of government are essential to the public, it is declared to be in the public interest that in the course of collective bargaining, the employer and the exclusive representative shall make every reasonable effort to conclude negotiations no later than February 1 of each year, and shall include provisions for an effective date, a reopening date, and an expiration date. With respect to matters requiring the appropriation of funds, the effective date of an agreement shall coincide with the employer's fiscal year.

(e) Grievance procedure in agreement. An agreement may contain a grievance procedure culminating in final and binding arbitration of grievances and disputed interpretations of such agreement. The grievance procedure shall set forth requirements for an election of remedies where other avenues of appeal may be equally available.

(f) Agreements in writing. Any agreement reached by the negotiators shall be reduced to writing and shall be executed by both parties. Such agreement shall be valid and enforced under its terms when entered into, in accordance with the provisions of this law and the City Charter.

(g) Submission of agreement to Council. A request for funds necessary to implement such written agreement and for approval of any provision of the agreement which is in conflict with any City law, ordinance, rule or regulations, shall be submitted to the City Council by the employer within the time schedule provided in the agreement. The City Council may approve or reject such request as a whole. If the submission is rejected, the entire agreement shall be returned to the parties for further bargaining and either party may reopen all or part of the agreement. If the Council rejects a request, it must give the parties a detailed statement of the reasons for rejecting the request, so that the parties may be properly guided when they resume bargaining. Such request shall be considered

accepted if the Council fails within thirty (30) days after submission to said body to take final action thereon. Failure by the employer or his representative to submit such request within the designated time period shall be considered an unfair labor practice committed by the employer.

(h) Conflicts between agreement and rules or regulations. If upon approval of the City Council, pursuant to Section 8B-206(g), there is a conflict between the collective bargaining agreement and any rule or regulation adopted by the employer, including merit system or other personnel regulations, the terms of such agreement shall prevail, except where specifically precluded by Charter or State law. Similarly, the City Council, upon approval of such agreement, should enact such legislation and appropriate whatever funds are required to comply with the collective bargaining agreement. Failure to enact the legislation and appropriate necessary funds is an unfair labor practice under Section 8B-209(a).

(i) Ratification of the agreement by employees. If the provisions of the constitution or bylaws of the exclusive representative require ratification of a collective bargaining agreement by its membership, only those members who belong to the bargaining unit involved shall be entitled to vote on such ratification notwithstanding such provisions.

Sec. 8B-207. Collective bargaining impasse.

(a) Mediation. Should the City and the certified employee organization be unable to reach agreement after a reasonable period of negotiations, then either party may declare an impasse and request that a mediator agreed upon between the parties be appointed or, that the Department of Labor and Industry or its successor agency provide a qualified mediator to attempt to facilitate the parties' bargaining process.

(b) Arbitration. Should mediation prove unsuccessful after 30 days have passed since the appointment of the mediator, the parties by agreement may require that a qualified arbitrator be obtained by agreement of the parties, or through application of

the Voluntary Arbitration Rules of the American Arbitration Association, or under the auspices of another organization agreed upon by the parties in writing. If the parties agree, the mediator may serve as the arbitrator. The arbitrator shall have the power to set hearings, take testimony under oath and reach determinations as to all terms and conditions of employment in controversy between the parties. The determinations of the arbitrator shall be submitted to the Council for approval in the same manner as any agreement reached by the negotiators, as provided in Section 8B-206(f), (g), and (h). If approved by the Council, the arbitrator's determinations shall be incorporated by the parties into a collective bargaining agreement.

(c) Invoking authority of the arbitrator. The authority of the arbitrator under Subsection (b) of this section may be invoked by the labor organization, without the agreement of the employer, where the labor organization representing the unit in question has been denied the right to strike.

Sec. 8B-208. Strikes.

(a) Conditions to the right to strike. It shall be lawful for an employee who is in the appropriate bargaining unit involved in an impasse to strike, if:

(1) The employee is not included in an appropriate bargaining unit for which the process for a resolution of a dispute is by referral to arbitration;

(2) The Impasse Mediator has certified that he is terminating the efforts to resolve the impasse and that all appropriate impasse procedures have been exhausted;

(3) Thirty (30) days have elapsed since the City Council has tried to resolve the dispute and to reach an agreement; or if 60 days have elapsed since the mediator's certification required in Subsection 8B-208(a)(2); and

(4) The exclusive representative has given to the mediator and to the employer, after the time specified in Subsection 8B-208(a)(3), a 10-day notice of intent to strike, and the 10-day period has ended.

(b) Alleged threats to public safety. Where the strike threatened or when the strike occurring reaches the point where the public health or safety is alleged to be endangered, the employer may petition the mediator to make an investigation to verify the danger alleged. The mediator shall set requirements that must be complied with to avoid or remove any such imminent or present danger or may require that all employees cease striking. In establishing such requirements, the mediator shall give strong weight to any agreement reached by the parties designating which employees shall be considered essential in the event of a strike.

(c) Unlawful strikes. No labor organization shall declare or authorize a strike of employees which is or would be in violation of this section. The employer may apply to the mediator for a declaration that the strike is or would be unlawful and the mediator, after affording the labor organization a reasonable opportunity to be heard on the applications, may make such a declaration.

(d) Authority of mediator in impasses. The mediator may order the parties involved to engage in such impasse procedures as the mediator may deem appropriate during the course of a strike, regardless of the legality of the strike.

(e) Authority of Department of Labor and Industry. If the Department of Labor and Industry finds that the organization has violated this section, it may order an appropriate remedy.

Sec. 8B-209. Unfair labor practices.

(a) Unfair labor practices. The following shall be deemed unfair labor practices which are prohibited.

(1) The employer is prohibited from the following activities:

(A) Interfering with, restraining, or coercing employees in the exercise of their rights of self-organization or non-organization.

(B) Inducing any employee(s) or employee organization(s) to commit any unfair labor practice.

(C) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. Nothing in this law or in any other law of this City shall preclude the employer from making an agreement with an exclusive representative to require the payment of a monthly service charge as a condition of employment. However, the monthly service charge may not be greater than the regular monthly dues to the employee organization. The monthly service charge is a contribution toward the administration of the agreement. Under the agreement the City may not discharge an employee who fails to comply with the contractual requirement unless:

(i) the employee has been given proper notice of the delinquency and adequate time to correct the deficiency ;
and

(ii) the employer has afforded the employee sufficient opportunity, protected by the requirements of due process and Section 8B-203 to defend against the petition for discharge.

(D) Controlling or dominating an employee organization or contributing financial or other support to it, except that the employer shall not be prohibited from permitting employees to negotiate or confer with it during working hours without loss of pay.

(E) Refusing to negotiate in good faith with a recognized employee organization.

(F) Violating Section 8B-204, "Internal employee organization democracy: The members' bill of rights", of this ordinance. Nothing in this subsection shall be interpreted to give the employer the right to enforce these provisions.

(2) Employee organizations are prohibited from the following activities.

(A) Interfering with, restraining, or coercing employees in the exercise of their rights of self-organization or non-organization.

(B) Inducing the employer or its representatives to commit any unfair labor practice.

(C) Refusing to negotiate in good faith with the employer.

(D) Refusing to represent all employees in its bargaining unit fairly, regardless of membership or non-membership in the union, and regardless of race, color, sex, national origin religious creed, ancestry age, marital status, handicap, or sexual orientation, provided, however, that nothing in this subsection shall be interpreted as conferring a right of enforcement of these provisions on the employer.

(E) Violating Section 8B-204, "Internal employee organization democracy: The members' bill of rights", of this ordinance, provided, however, that nothing in this subsection shall be interpreted as conferring a right of enforcement of these provisions on the employer.

(b) Procedure:

(1) In the event that a claim is made that an unfair labor practice has been committed by either the employer or employee organization, the complaining party shall file with the Mediation Service of the Division of Labor and Industry a verified complaint, setting forth a detailed statement of the alleged unfair labor practice. The party complained of shall have the right to file an answer to the complaint within 5 days after service thereof. After investigation, such agency may issue an order dismissing the complaint or may order a further investigation or a hearing thereon at a designated time and place. Any such hearing shall be conducted without regard for the strict rules of evidence, and a transcript of testimony shall be taken.

(2) If, upon all the testimony, the agency determines that an unfair labor practice has been committed, it shall state

its findings of fact and shall issue and cause to be served upon the party committing the unfair labor practice a binding order requiring the party to cease and desist from such practice within a specified period, and shall take such further affirmative action as it deems necessary to remedy the unfair labor practice. If, upon all the testimony, the agency determines that a prohibited practice has not been or is not being committed, it shall state its findings of fact and shall issue an order dismissing the complaint.

(c) Choice of remedies. Issues which may involve an unfair labor practice, as well as a grievance under the negotiated agreement, may, at the discretion of the aggrieved party, be filed as an unfair labor practice or a grievance, but not both.

SECTION 2. SEVERABILITY.

If a court holds that part of this ordinance is invalid, that invalidity does not affect the other parts of the ordinance.

SECTION 3. EFFECTIVE DATE.

This ordinance shall take effect upon enactment.