

September 10, 1991

TO : Distribution Noted Below
VIA : James S. Wilson, Jr. City Administrator
FROM : Paula S. Jewell, CMC
City Clerk *Paula*
SUBJECT: Council Summary from September 10, 1991 Regular Meeting

DEPARTMENT HEADS: PLEASE READ EACH ITEM CAREFULLY FOR MATTERS THAT MAY PERTAIN TO YOUR DEPARTMENTS.

- [] 1. Pre Council Meeting - The Council met in pre-session at 7:30 PM to interview two COLTA candidates.

Regular Council Meeting

- [] 1. Mayor's Comments -
- a. Award to Brent Haloviak - Mayor Sharp announced that the Maryland Commission on Physical Fitness awarded a certificate of participation to Columbia Union College's Brent Haloviak for his participation in the Governor's Fitness Program. Mr. Haloviak was nominated by the City for his contributions to the promotion and development of fitness in Maryland. Mr. Haloviak directed the April Fool's 10K race.
 - b. Resolution of Condolence - Resolution #1991-69 was unanimously passed by the Council, expressing condolences to the family of Brian Gardner, the director of the Institute of Governmental Services (IGS), who passed away on August 6th. Mr. Gardner had been instrumental in providing the City with assistance in its Charter and Code review. CITY CLERK to forward the Resolution to Mr. Gardner's family and a copy to IGS.
- [] 2. Citizens Comments Requiring Staff Follow-up
- a. Oswego Avenue Mulch Pile - Montez Boatman and other Ritchie and Oswego Avenue residents expressed concern that the PUBLIC WORKS leaf mulch pile is emitting unpleasant odors and needed to be cleaned up.

- b. Crime in Takoma Park - Citizen Naomi Turner and **COUNCILMEMBER ELRICH** as well as other citizens expressed concern about the increase in crimes committed by young people in the City. Specifically referenced was the homicide in Ward 5 and the drive by shooting in front of the Maple Avenue deli. Questions were raised whether the City could control the amount of congregating that takes place on Maple Avenue. (**POLICE DEPARTMENT**)
- c. The Council will discuss at the 9/16 worksession a resolution proposed by the Takoma Park Peace Network, entitled "Save Our Cities".
- d. **COUNCILMEMBER DOUGLAS** would like the **CITY ADMINISTRATOR'S** review on the Boston Avenue speed hump matter. Speed humps were inadvertently installed on Boston Avenue without benefit of Council consideration or public hearing.

Other Citizens Comments (on items not on Council Agenda)

- [] 1. Approximately 60 speakers addressed the Council on two unrelated, however connected issues. The change in the Recycling Program to go to once-a-week trash pickup and the contract termination of the Newsletter Editor. The Council expressed their own comments on both matters as well.

Recycling - There was no immediate desire to put the recycling issue on a November referendum. The Council decided to go ahead with the September 30th public briefing to decide how and when the recycling program should be evaluated. There seemed to be consensus that the change in the recycling program would begin as scheduled.

Newsletter - Council agreed that the Newsletter Editor was a contractual position only--and not a City employee and therefore was not entitled to a hearing on the **CITY ADMINISTRATOR'S** decision to terminate her contract. There was some Council agreement that the process in which her termination was handled could have been done in a better way. In addition, that the review of the Newsletter should have taken place. Other than agreeing to convene a Newsletter Review Committee to conduct a review, there was no Council decision made on what to do about the issue of the Editor's firing.

Agenda

- [] 1. Stormwater Management - Ordinance #1991-30 was accepted at first reading, establishing minimum stormwater management requirements and procedures and providing for a permit process for stormwater management development. **CITY ADMINISTRATOR WILSON** noted that the ordinance, as accepted at first reading would start going forward for review by the County and State agencies. **MR. DOUGLAS** suggested that if this review process isn't completed before this Council leaves office, the entire process would have to start over again with the new Council. **MR. SHARP** noted that he had some changes that he'd like to be incorporated as amendments at first reading, and he would pass these along to **PUBLIC WORKS DIRECTOR KNAUF**. There was no objection from the Council on this.

- [] 2. Article 7 (Including Rent Petition Standards) - Upon motion by **MR. HAMILTON** and without objection, this item was tabled to September 16th. The Council agreed to hold a Special Session at 7:30 on 9/16 prior to the worksession that night. **DHCD** to assist with the preparation of flyers to notify tenants, Kay Dellinger will deliver these.

- [] 3. COLTA Appointments - Tabled to 9/16/91.

- [] 4. P.G. County Preservation Citizen Advisory Committee - This has been tabled to the September 23 Council meeting. **MAYOR SHARP** announced that the Council had only received two names of persons interested in serving. The Council encouraged citizens associations on the Prince George's side of the City to submit names of persons to serve on this important CAC.

- [] 5. Takoma/Langley CDA - Main Street Designation - Resolution #1991-70 was unanimously passed, as amended. (correction in the last "Whereas" clause to add the word "from"). The Resolution expresses the Council's support for the designation of the Takoma/Langley Crossroads commercial area as a "Maryland Main Street". **COMMUNITY DEVELOPMENT COORDINATOR VINCOLA** will be submitting an application on behalf of the CDA to the Maryland **DHCD**.

- [] 6. Montgomery County Redistricting - Resolution #1991-71 was unanimously passed, endorsing certain criteria expressed by the Takoma Park Council for consideration in the Montgomery County redistricting plan. **CITY CLERK** to forward copy of the Resolution to the Montgomery County Executive.

- [] 7. Surplus Campaign Funds - Ordinance #1991-31 was accepted at first reading, regulating the use of surplus campaign funds by candidates for City Election. The Council wants to discuss some examples of what surplus campaign funds can and can not be used for. This discussion will take place at the 9/16 worksession. Second reading and adoption is scheduled for 9/23/91.
- [] 8. 1991 City Election - Ordinance #1991-32 was accepted at first reading, as amended, setting forth the 1991 Nominating Caucus and City Election. Second reading is scheduled for 9/23/91.

Copies to: City Council
City Administrator Wilson
Assistant City Administrator Habada
Corporation Counsel
Personnel Officer Hobbs
Housing & Comm. Dev. (Grimmer, Schwartz, VinCola, Ross)
Public Works (Giancola, Laster, Roy)
Police Dept. (Fisher, Wortman, Young, Rosenthal)
Recreation Department
Library
Accounting Division
Cable Office (Robert Smith)
Newsletter - For Information Only (Carollyn James)
Admin. Office (Mitchell, Rivers, Johnson, Vidal)

CITY OF TAKOMA PARK, MARYLAND (FINAL 9/14/92)
Regular Meeting of the City Council

September 10, 1991

CITY OFFICIALS PRESENT:

Mayor Sharp	City Administrator Wilson
Councilmember Douglas	Asst. City Admin. Habada
Councilmember Elrich	City Clerk Jewell
Councilmember Hamilton	Corporation Counsel Silber
Councilmember Leary	Asst. Corp. Counsel Perlman
Councilmember Moore	
Councilmember Porter	
Councilmember Prensky	

The City Council convened on Tuesday, September 10, 1991 at 8:10 p.m. in the Council Chamber at 7500 Maple Avenue, Takoma Park, Maryland.

Following the Pledge of Allegiance, the following remarks were made.

MAYOR/COUNCIL COMMENTS AND PRESENTATIONS:

Mr. Sharp announced that Brent Haloviak, the organizer of last year's April Fool's Day Run, was awarded a Certificate of Participation for his participation in the Governor's Fitness Program. Mr. Sharp noted a report in the newspaper this week regarding the Tobacco Industry trying to get states to pass laws which would preempt local governments in the hopes that state laws would be weaker; Mr. Sharp said two of the local jurisdictions that were mentioned as a possible target for the laws which had existing smoking ordinances, were Takoma Park and Bowie.

Mr. Elrich commented that a 19 year old boy had been murdered in his neighborhood and he as well as his neighbors, were very distressed over the crime. He said there were deeper problems than just the one murder and his neighborhood had organized a meeting attended by about 50 people to discuss these issues which existed in their neighborhood. Mr. Elrich urged everyone to think about what was happening in all of the communities and suggested that a town meeting be held to discuss what was happening in the City on a community level and what could be done about the problems.

ADDITIONAL AGENDA ITEMS

Mr. Sharp read a Resolution of Condolence for the family of Brian Gardner, who passed away on August 6th; the Resolution was moved by Mr. Douglas, seconded by Mr. Hamilton.

Mr. Douglas spoke about how Brian Gardner's diligent work had contributed to the Charter Review Committee and he added his personal condolences to the family.

COUNCIL ACTION: The Resolution of Condolence passed unanimously.

RESOLUTION NO. 1991-69
(Attached)

CITIZEN COMMENTS: (those directed at items not on Council Agenda)

Montez Boatman, 133 Ritchie Avenue said on August 22nd, the citizens's association sent a letter to the Council regarding the leaf mulch pile that was exuding offensive odors to the people who lived nearby.

Geneva Cross, 39 Oswego Avenue said she lived next door to the Public Works's leaf mulch pile and the odors which came from the dump were so bad that she ran her air-conditioning constantly

because she could not open their windows due to the offensive odors.

Mr. Sharp said the issue had been brought to Council's attention last week and it was his understanding that Mr. Hamilton and Ms. Boatman had been meeting with the City Administrator to discuss the problem. He said he felt the City needed to start offering distribution services for the mulch and the City would deal with this problem as quickly as it could.

Mr. Wilson noted that there were several problems that the mulch pile created and there were several solutions; he said staff had already started to look at those options of how to dispose of the mulch at the lowest cost.

Catherine Gamble, Resident, Oswego Avenue said the odor from the mulch pile was unbearable; she also could not open her windows due to the terrible smell.

Mr. Hamilton noted that the problem with the mulch pile was not new; it surfaced over a year ago and the City had dump trucks remove it; however the the idea was to recycle it or recultivate it in order to control the odor which would be costly.

Catherine Dickerson, 38 Oswego Avenue said she lived adjacent to the mulch pile and the stench was so bad that when she turned her fan on, there was an odor that came through the window. She also said it was impossible to sit outside because of the unsightliness and offensive odor.

Dean Brand, 7300 Hancock Avenue addressed the Council on the matter of a lot that was divided into two lots where the new owners planned to build a very large house there which would endanger a 200 year old tree. He asked if there was any redress on the matter.

Mr. Douglas responded that there was a resubdivision in which notices were sent out by the County and the City and Mr. Brand should have received one. He said a number of the councilmembers were quite concerned when they saw the application for re-subdivision, but he supported it because the owner of the property had gone to great lengths to design a house that would take into account the fact that the tree was there and would work within that parameter recognizing the importance of preserving the tree. Mr. Douglas said that the tree was very old and large but it was not in good health; however there would be steps taken to try to preserve it, but it was likely the tree would eventually die.

Naomi Turner, 7667 Maple Avenue said she and other tenants in her building were sorry for the tragedy in Mr. Elrich's neighborhood and she spoke of an incident two years ago when the same thing happened in her neighborhood. Ms. Turner said her main concern was the gathering crowd of young people selling drugs along the Maple Avenue corridor and intimidating honest people going to and from work. She urged the Council, Police Department and citizens to work together to clean up the Maple Avenue corridor because people were prisoners in their own homes.

Mr. Sharp suggested getting the Council together with the police chief as well as some code enforcement people to help alleviate the problems and get some lighting in the Maple Avenue deli area.

Mr. Elrich said one issue raised with other neighborhood associations was the police policy towards small dealers versus the larger dealers, and he said serious consideration needed to be given to which one to target to get rid of. He said if the larger dealers could not be caught, it might be more valuable to get rid of the small dealers. He also said that the unfortunate thing about harassing the low-level crime was that it pushed it to

another community although he did not feel it was worth endangering the Maple Avenue corridor for fear of pushing crime someplace else. Mr. Elrich commented that everyone needed to take a more proactive approach in getting the small dealers off the street.

Tom Anastasio, 32 Columbia Avenue, (representing the Takoma Park Peace Network) said the group was dedicated to advancing the cause of peace in Takoma Park. He said that the Save Our Cities Campaign started in Baltimore and residents from Baltimore would march on Washington, D.C. on October 12th. Mr. Anastasio said the campaign was endorsed by Mayor Flynn of Boston, the Chair of the U.S. Conference of Mayors, and the Takoma Park Peace Network. He submitted a resolution to be considered by this Council on September 16th.

Joan Jacobs, 7428 Carroll Avenue said she was involved in the Takoma Park Peace Network and she endorsed the comments made by Mr. Anastasio. She also said the stress on the City and the environment were reaching a critical point and the root cause was stated in the resolution; she urged Council to take serious consideration of the resolution and that she planned to be at the worksession to answer any questions.

Jack Mitten, 501 Philadelphia Avenue read a letter he sent to the Takoma Voice regarding speed humps on Boston Avenue and said he had been informed that the City staff had made a mistake and they were taking action to correct it and go through all the requirements to maintain the speed humps which were installed on the City streets. Mr. Mitten said he was surprised that this item was not on the agenda tonight because the City staff had been aware of it for over a month, and the speed humps had been in place for almost two months.

Mr. Sharp noted that he and Mr. Mitten had conversed about the issue a week ago and that the speed humps were installed in error and if the citizens don't want them they should be removed; however there was a process to put speed humps on streets and there were some citizens in the area who had developed such a petition. He said if it did comply with the petition requirements there would be a public hearing; if it did not, the speed humps would be removed.

Mr. Leary noted that the number of signatures required by Ordinance had been submitted to the City Clerk and the public notice for a public hearing would appear in the next issue of the City Newsletter. The worksession on the request would take place on September 30th; the public hearing would take place on October 14th, at which time the decision would be made as to whether to leave the humps in or remove them.

Chris Donconi, 6701 Little Eastern Avenue said speed humps were put on his street last year and he felt speed humps were good on flat runs, but he lived on the edge of a hilly area which presented problems in the wintertime.

Mr. Douglas said he shared Mr. Mitten's concern regarding process and said that he would be interested in hearing from Mr. Wilson how this problem could arise and what he intended to do to assure that it would not happen again.

CLERK'S NOTE: The Citizens Comment period continued with speakers commenting on the issues of recycling and the firing of the Newsletter Editor

1. Recycling

Mr. Sharp said there was extensive support for recycling in Takoma Park and the City needed to make more of an effort to explain to people the benefits of recycling, i.e., the waste diverted from the landfill, the dollar amount which would be saved by the City, and the rebates received from the counties. Mr. Sharp said additional

money had been put in the budget for outreach and recycling education and this would create more participation. He said the recycling program was implemented without increasing the cost of trash collection which meant the frequency of the pickup of non-recyclables had to be reduced. He also said that he was not opposed to supporting twice-a-week pickup for non-recyclables if that was what people wanted, and he was not opposed to holding a public hearing or a referendum on the matter either, but there were two points to keep in mind; 1) it would cost additional money and 2) Takoma Park was not presently in a position to go to twice-per-week non-recyclable pickup.

Addressing the issue of the Newsletter Editor firing, Mr. Sharp said that a big problem had occurred in the Council's failure to conduct a 6-month review of the Newsletter as called for in the Newsletter Guidelines and said if that had been done, a lot of the problems that had come up might have been alleviated. He said plans were underway to solicit persons to serve on an expanded Newsletter Review Committee and he would be interested in hearing from those present on this.

Item #2 - Newsletter Editor

Rev. Ronald Albaugh, 7202 Central Avenue said he had been asked by some of the citizens present to give an invocation to begin this session of the meeting.

Mr. Douglas interrupted Rev. Albaugh and said that he had concerns about the separation of church and state and the role of religion in public institutions. Mr. Douglas said he felt it was wrong that the Senate and the House started every day with an invocation and it was wrong if this Council did this also because it was not a simple matter; however if the Mayor were to allow the invocation, he hoped the Reverend would not be offended if he stepped out of the room briefly while this took place.

The Mayor commented that unless there was objection from the Council, the Rev. Albaugh could proceed. (Clerk's Note: There was no objection voiced from the Council).

Ms. Porter noted that although she did not leave the room, she disagreed with his decision on this and it was not the right thing to do.

Mr. Sharp said that he would not prohibit any citizen from speaking his opinion. The Council had a right to overturn his decision, but it did not.

Mr. Prensky said that he did not have a problem with any citizen making any comment before Council, but he did have a problem with it being phrased in the context of a religious prayer.

Karen Mitchell, 7600 Maple Avenue, President of AFSCME Local No. 3399 said if the Council could be forced into discussing the issue of the former newsletter editor by a group of citizens, there should be a concern with this happening to a union representative employee or any other employee and it was extremely inappropriate. She also said that had Ms. James been a permanent part-time employee, she would have been represented by the Local No. 3399, and if she were in the group of other employees she would have come under the City's personnel regulations in Sec. 8(b) of the City Code, and as such would have been able to request that the City Administrator convene the Personnel Appeals Board to hear her grievances. Ms. Mitchell said that attempts by Ms. James and others to have a personnel matter discussed on the public record concerned the Union that it would set an unproductive and destructive, if not illegal, precedent and she and the other City employees hoped that this avenue of discussion would be stopped by the Council before it started.

Kathy Breckbill, Woodland Avenue said she felt the Newsletter was not a function of the Council; it was for the information of the people and she personally felt that Ms. James had been the best editor in the 12 years that she has lived in Takoma Park. She said that she re-read the issues, especially the issue in question, and some of the editorial format that was used was misunderstood. She said Ms. James should be reinstated with back pay to the time of the receipt of her first letter since there were two letters of dismissal, which was also a questionable practice. Ms. Breckbill then praised the recycling program, saying it was the best in the State.

Robert M. Keach, 7223 Garland Avenue said as a resident for over 40 years, he had seen mayors and councils come and go, but this was the first time he had ever heard of a council refusing to hold a public hearing on an issue as important as changing the trash collection. He said he was against once a week trash collection and he was willing to pay extra for the service if necessary.

Michael Leccesi, 321 Lincoln Avenue said he would not want to pay higher taxes for once a week pickup because some people were not willing to have garbage pails with lids. He pointed out that recycling issues had been raised in public hearings through a series of budgetary hearings held by neighborhood associations and he was disappointed that more people had not participated in these.

George Frederick, 8005 Carroll Avenue said as a property owner at his residence for 36 years, he felt that the Takoma Park government did not represent his best interests. He said property assessments continued going up as well as his taxes and he felt services were declining. He concluded by congratulating some of the members of the Council who could add to their scrap book the publicity that they would surely receive from the Tobacco Industry.

Raymond Messick, 7224 Garland Avenue said he lived in Takoma Park for 36 years, and he was almost ashamed to say that the Council represented Takoma Park. He said he was appalled to sit and watch councilmembers who were ashamed to get up and Pledge Allegiance to the Flag. He also said that he had been told that the council had the best interest of the citizens, but he doubted this because when he and other taxpayers were told that they would have to freeze their trash because the City could not afford to pick it up, and yet to be told that the City was saving money by having a recycling program. It did not make sense. Mr. Messick said he hoped that in the next election there would be people on the council who would be sensitive to the needs of the citizens.

Mr. Sharp said the Council met with citizens associations to discuss the budget. One of the issues discussed was the move to once a week pick up; there were citizens who said that they supported the once a week pickup and wondered why it had taken so long to do it, and there were citizens who were opposed to it. Most people did not speak about it. Mr. Sharp noted that an article in the May-June Newsletter notified residents that next year's budget contained a proposal for curb-side plastic bottles and wastepaper recycling, and noted that there would not be a special hearing on the issue. The City Council, instead, would take public comments on the proposed budget changes during budget deliberations. Mr. Sharp said he wanted citizens to understand that it would not make sense to try to do the recycling without a discussion.

David Lurie, 614 Elm Avenue commended the councilmembers who left during the invocation presented earlier and said it was wrong to pray at the meeting and it raised serious questions about the separation of church and state. He noted his support to the Save Our Cities Resolution and encouraged Council to discuss the matter at their earliest convenience. He also said he was in complete support of the recycling program; the expansion of the program to once a week pickup was not a reduction in service but a shift in

service. With respect to Carolyn James, he said he thought that the firing was well-deserved and overdue because over the past year, the Newsletter was engaged in a lot of biased and inaccurate reporting and the City Newsletter should be objective and non-biased. He said the recycling/garbage issue was misrepresented badly in the headline and it was also inflammatory. He concluded by saying that Ms. James was the person who eliminated the Peace column from the Newsletter which was a valuable part of the paper.

James Benfield, 519 New York Avenue said he was proud to live in Takoma Park, which was one of the most progressive cities in the entire State of Maryland. He said that Takoma Park was on the right track with recycling; one of the purposes of curbside recycling was to avoid the tipping fees and, as a taxpayer, he wanted to hold down his taxes or to pay for more important services. He said that he was willing to make the sacrifice of having once a week trash pickup and he suggested a rodent abatement program to get rid of the vermin. Mr. Benfield said he was not in favor of a City subsidized newspaper and Ms. James lost the distinction of the difference between a newsletter and a newspaper.

Cheryl Schutz, 301 Ethan Allen Avenue said she was a writer and an English major and when she read the article in the Newsletter slanted against recycling, she found the article stuck to the facts of the changes occurring in the City. She said the article apparently surprised people and caused a lot of reactions, but the article was not important; what was troublesome was that someone was being censored and it was absolutely wrong for the City to do so.

Carolyn James, said she was at the meeting to address the citizens of Takoma Park. Ms. James said she was told that the Takoma Park Newsletter was independent of the City Council and the municipal workers and it was supposed to act as a bridge between the community and the municipal building. Ms. James said she wanted to make the Newsletter a more readable paper than it had been in the past and she put together a paper that she felt would match up to what was expected. She said she put an editorial process into place, which had never existed before, and a production format was instituted which brought the City directly into the production of every issue of the Newsletter.

Ms. James also explained the process of how articles would be returned to the City Administrator and departments in the form of galleys. She said the galleys were returned to Mr. Wilson for his editing and proofreading. Ms. James said the camera-ready boards would then go back to Mr. Wilson for final approval before they could go to print; the City was actively involved in the Newsletter at least twice. Ms. James said she knew that Mr. Wilson liked the Newsletter and the whole process, because he always took the time to look at the camera-ready boards. She stated emphatically that at no time did any issue of the Newsletter come at any point as a surprise to the City of Takoma Park.

Ms. James read a memo she had received from Mr. Leary which stated in part that he had advocated abolishing the Newsletter because he thought the taxpayers should not have to pay to provide a service that was performed quite adequately by the Takoma Voice. Nevertheless, he admired what Ms. James had done with the Newsletter and felt that the Newsletter was a far better publication now than it had ever been before.

Ms. James continued by saying that Mr. Wilson proofed and edited the story on the expanded recycling program. She said on July 29th a number of people came to the Council meeting complaining about that issue. She said that Mr. Douglas started blaming the Newsletter for the citizens showing up and embarrassing the Council. Ms. James said after that, she wrote Mr. Douglas a letter with Mr. Wilson's guidance and informed him that if he had specific complaints about the Newsletter, she would reserve the next issue

for him to address those complaints. She also said on August 5th there was a secret meeting of the City Council who told Mr. Wilson that the Newsletter editor had to be fired and it was her understanding that the only person who did not endorse the firing was Mr. Leary.

Ms. James said she received a letter on August 7th indicating that she was fired. Ms. James said she signed a letter of agreement with the City of Takoma Park, and in the letter, it outlined what her duties were and it stated that her job was a permanent part-time position, subject to annual review, but she never had an annual review. Ms. James said when she called Mr. Wilson and inquired as to what had happen; Mr. Wilson told her it was out of his hands. Ms. James said she told Mr. Wilson that she was a part-time permanent employee and there was a grievance route in the City. She said she asked Mr. Wilson to check and find out how she could have access to the grievance procedure. The next she received a letter which told her to "forget the letter that you received on August 7th, we have decided that you are not a permanent part-time employee, you are a contractor".

Ms. James said she had never seen a contract between herself and the City, and what the letter meant was that she had no access to the grievance route. She said she then wrote to the City Council and requested a hearing. Ms. James began to read her letter of dismissal.

Mr. Sharp interrupted her and said that she was making the letter public, which was completely within her right to do, but it was not made public by the City.

She then read the dismissal letter and concluded by saying if it were to be found that she was unfairly dismissed, she wanted a written apology from the City Administrator, the City Council and the Mayor, and she also wanted her job back.

Mr. Sharp commented that there was a legal issue that had been indirectly raised--that there was an entitlement under state law to a hearing. He asked the City Attorney for an opinion on this and he also asked for a response from Mr. Wilson.

Mr. Hamilton interrupted the discussions to suggest that because of the late hour, the Council table First Reading of the Ordinance regarding Article 7.

Mr. Prensky said he was concerned with tabling the issue because of the recommendation from legal counsel regarding timing and the variety of legal issues that came back to the City in relation to the current rent control law, and whether or not the City would be at a dramatic risk of losing the law with no replacement. Mr. Prensky also questioned whether the Council could adequately notify all of the relevant parties of the decision to bring this discussion back on another night in the coming week.

COUNCIL ACTION: Following comments by some residents in attendance who were planning to speak on the Article 7 Ordinance, the Council moved without objection to table discussion of Article 7 to September 16th.

STAFF AND COUNCIL COMMENTS ON NEWSLETTER FIRING

Corporation Counsel's Comments on Firing Of Newsletter Editor

Sue Silber commented that Ms. James was not accurate. She cited a State law provision which was Article 23(a) of the Code, which stated "the City was empowered to create ordinances to allow certain kinds of classes of people to have hearings; specifically employees when they were fired". She said that this by no means created the right; the right was the choice of the City and in the particular situation, it allowed for permanent employees if they were fired as well as most of the City work force being covered by

Collective Bargaining Agreements which allowed for grievance procedures and arbitrations. Ms. Silber also said that nowhere in the Code was there anything that said the City Newsletter Editor was covered by those provisions; the City Newsletter Editor provisions were always a contract position with a one year term and would be subject for review if the term were continued beyond that time, it was the choice of the City Administrator.

Mr. Wilson pointed out that if it were his job to edit and proofread the Newsletter, why did he have an editor on the payroll? He said that he reviewed as best he could under the circumstances the products which were put in front of him, and he was in no way a professional journalist; that was what Ms. James was hired to be. He continued that he was in no way in a position to do anything more than advise the editor about certain issues which had the potential for violating under law someone's rights when it came to something such as the publication of all of the employee salaries which Ms. James planned to present in a form which included all of the fringe benefits and everything else that employees never actually saw. He said that the nuances of headline content, placement, size, and the impact of where an article would go, were an editor's responsibilities and not the responsibilities of the City Administrator. Mr. Wilson said in reviewing any aspect of the Newsletter, his primary focus was to proofread.

Mr. Douglas noted for the record that Council had complied with the open meetings law; they had publicized the Executive Session on the agenda and they met in Council Chambers and voted to go into Executive Session to discuss a pending legal matter which had to do with the Washington Adventist Hospital bond issuance. He said the Council took a vote as to whether at the end of the worksession it would go into another Executive Session to discuss the personnel matter which was not specified; he said that Ms. James was one of the two personnel matters that was discussed.

CONTINUED CITIZEN COMMENTS:

Edward Kimmel, 215 Manor Circle said the incident was an embarrassment for Takoma Park in general, and nobody escaped blame. He said if the Newsletter was an experiment in free journalism, and its purpose was to create more competition for the Takoma Voice and have an alternative forum, he felt it was tax dollars mis-spent. He also said he felt a great need to hear the City's view on the matter and he blamed Mr. Wilson for his "hands-off" approach, and said that Ms. James should be financially compensated.

Walter Mulbry, 7010 Woodland Avenue, co-chair of Takoma Park Recycling Task Force said he was in support of the Phase III Recycling Program and that the Recycling Taskforce did extensive research and outreach and put together proposals for each phase of the process which publicly promoted the program. He also said that the issue of two pickups per week of trash of non-recyclables needed to emphasize the economics--if additional crews were hired to continue a second trash pickup each week, it would cost the City over \$100 thousand. He said the Takoma Park Recycling Task Force felt that the City had more urgent needs for the money than for a second pickup each week. Mr. Mulbry concluded his remarks by reminding the citizens that there would be a meeting on September 30th which would talk about ways to improve the recycling program once it was underway.

Steve McGovan, 7416 Glenside Avenue said he felt that if Council were willing to have a referendum on the subject, it was a good idea, but he felt that they were not giving enough information to the citizens. He also said he had mixed feeling about the way Ms. James' situation was handled.

Brenda Platt, 45 Philadelphia Avenue, member of the Institute for Local Self-Reliance said that Takoma Park's 30% recycling rate was the highest recycling rate for any community in Maryland and also in the entire Washington/Metropolitan area and probably in the mid-

Atlantic region. She also said that when Phase III was implemented, it would be among the best two dozen programs in the entire Country in terms of the percentage of city-collected waste which would be combined with recycling. Ms. Platt noted that skyrocketing landfill costs had spurred recycling activities across the country; in the northeast landfill costs were \$5.00 per ton in 1980, and in this area were about \$60-\$70 per ton and in some areas of the northeast they had reached \$150 per ton and were still going to increase. She also said that Montgomery County was planning an 800 ton per day incinerator and the initial cost was \$100 million. She said Phase III included adding mixed wastepaper and plastics which would maximize recycling in the City of Takoma Park, which moved from 15% recycling of city-collected trash to 30% and it would be less when Phase III were put into affect. Ms. Platt said she was not in favor of twice per week trash collection because it was inefficient.

Kit Gage, 14 Philadelphia Avenue (read a letter from Robin Metalitz) said Robin who was only 10 years old, and her sister and her parents had been separating their paper trash and plastics from the regular garbage for a number of months, and because of that experience her family had only used one day trash collection, and she hoped that the other citizens would learn to do the same.

Kit Gage said she was the first Chair of the Takoma Park Recycling Task Force and they understood that one of its main jobs was public education; from the beginning they had to educate people as well as themselves about recycling. She explained the process the Taskforce had taken to share they they discovered and why the changes were being proposed. Ms. Gage said they also had pushed for articles in the newsletter and discovered that some of the articles had been abbreviated; they had fought for first pages and larger headlines, space, etc., but had not always been successful in getting the kind of coverage that they wanted.

Rita Marth, 7308 Cedar Avenue said that she was a member of the Recycling Task Force and the Recycling Task Force wanted people to realize that economics were on their side, and it was a costly and unnecessary service to have a second trash collection day.

T.P. Bianco, 204 Philadelphia, said he was disappointed with the Takoma Park community who were fighting the Newsletter issue and who had split the progressive community; they had managed to get themselves on the wrong side of the recycling issue as well as attacking their fellow allies on the Council. He also said he was disappointed with Council because they did not follow the proper review procedures on the Newsletter matter and he appealed to both parties to calm down and find a compromise on the issue. Mr. Bianco suggested that Council acknowledge its errors and give some kind of limited or technical reinstatement to the editor with immediate review, review of Council's process, and the change of the nature of the newsletter. He indicated that he had sent a letter to Council on this issue and he proceeded to read it aloud for the benefit of the audience.

Ferd Hoeffner, 22 Montgomery Avenue, member of Takoma Park Recycling Task Force thanked the community for their active participation in recycling; their 90% participation rates and the tremendous response to the voluntary drop-off off of wastepaper and plastic. He also thanked the community who came to the workshops which sponsored the recycling project. Mr. Hoeffner said there was more to be done on the recycling agenda; providing the opportunity of recycling to the apartments, procurement policies for the City and County, improving the composting system, citizen education and waste reduction. He appealed to the community to put some of their energy into some constructive participation on recycling. Mr. Hoeffner said the once per week pickup was not a cut, it was a redistribution of how the pickups were made and where they were made. He concluded by saying that the issue of freezing garbage came up at a public meeting from a citizen who was not on the

Recycling Task Force.

Jack Mitton, 501 Philadelphia Avenue said the City Newsletter should be returned to the clear, straightforward informational newsletter-style format that it had before it was expanded to its current controversial editorial newspaper style. He also said that it should be a newsletter, and the important information would not have been buried on page 7 and the paper would only be 4 pages long. Mr. Mitton said the City officials and staff should be working with the taxpayers and encouraging participation rather than strongly discouraging it. He said that the more discouraged conscientious citizens became, the less they would want to participate.

Milford Sprecher, 24 Pine Avenue said he froze his garbage and as chairman of the Revenue Advisory Committee, they came up with the recycling idea. He also said that he was on the Recycling Committee and he supported the program. Mr. Sprecher commented that there were four people in his household and they put out non-recyclables one day per week and that when the wastepaper pickup came into effect, they would only put non-recyclables once every two weeks.

David Band, 7101 Sycamore Avenue said he felt that Council was representative of him and when he had a problem, he called his councilperson and was adequately represented. He also said he was in favor of Phase III of the recycling program; it was not a cut in service but it was a redistribution of services. Mr. Band said with regards to the curbside pickup of plastics, all wastepaper and newspaper, there was not enough to justify adding an additional pickup and he too, had a family of four and they could go two weeks without filling up a trash can of non-recyclables. He also said he believed it was in the best interest of the residents and the greater community.

Paul Plant, 7411 Carroll Avenue said all good people go home at 10:00 p.m. in Takoma Park and there were a lot of people who wanted to speak but had left. He continued to say that the distribution of the City Newsletter was always very bad, and he was sure that Ms. James was to blame. He said that he attended a civic association meeting in March and he was not sure that eliminating the trash service was discussed, but he said if it had been discussed, he would have realized that the way it was presented was, in a sense, propaganda. Mr. Plant said the City should have held an open public review Newsletter meeting and told her that they were not satisfied with her. Mr. Plant also said to go behind closed doors and discuss her and then say that she was not an employee was not right. He concluded by saying if non-voting people were to move into Takoma Park, they would not have to pledge allegiance either.

Frances Phipps, 7210 Holly Avenue said it was a mistake how the evening's public participation had been handled, and that Sam Abbott at his worse, would have moved everybody along and they got to the mike even. Ms. Phipps said that a great deal of time had been taken up inappropriately, and she admired the job that Mr. Wilson had done tonight. It was not the time for him to respond and she felt the whole issue had been very painfully handled. Ms. Phipps said many of the people who had come to speak had left. She said that two-thirds of Takoma Park did not recycle; the apartments and businesses did not recycle. She said 30% of the residents were the principal taxpayers who were having a cut in services.

Bob Guldin, 7925 Sligo Creek Parkway said he understood what Carolyn James was going through because he had been in the same position once and he knew what she was trying to accomplish, but it was clear to him that she went overboard and was not accomplishing it well. He also said if he, doing the work as an editor for GW University, had gone as far as she had gone in putting forward his point of view in contradiction to the organization's goals and

point of view, he would have been fired -real fast, and that was what happened to Carolyn James. He also said that he felt Carolyn James focused on what she wanted to put across and putting out an interesting publication, but it appeared that she fairly consistently ignored things that she should have put forth on behalf of the City. He said she should have been better supervised and the process of reviewing her work was not done well; however he believed that Carolyn James had to go, but she should have been eased out more gracefully and more intelligently. He continued by saying that the City would have to mend some fences and show that it paid attention to employee's rights and to citizen input also, and he hoped that it could be done better and more effectively in the future. He concluded by saying that he strongly supported the recycling program.

David Prosten, 6625 Eastern Avenue said the reality was that the overwhelmingly majority of the people in the City felt that they really were not apprised and had no input into changing a very basic City service that everyone had grown used to. He said that the process was bad because there was no public hearing. Likewise, he said while there was a process in place to deal with the City newsletter, the process was not followed. He said it was his belief that the reason Ms. James was fired was because she reported a piece of news on the first page of the Newsletter that brought 20 or 30 people out to a City Council meeting who said "what's this about the garbage?", which was an embarrassment.

Rino Aldrighetti, 7213 Central Avenue said the issue was that recycling was good, but the question was could there also be good process at the same time. He said he was pleased to see the presence of the senior citizens who had come to the meeting and who were rarely seen in Council Chambers. He continued by saying that he felt it was important that whatever Council did pertaining to Carolyn James was to follow their own process, but he felt that she should be put back into her role, because it was not an issue of what the Newsletter should look like, but a question of doing the right thing. Mr. Aldrighetti said that if Council wanted to fire her, reinstate her, put her through the process and do it right, but don't do it through secret meetings.

Lynne Bradley, 8112 Flower Avenue said she and her whole household supported recycling. She also said the reason that the meeting was going on for so long was because there were at least three hearings which should have taken place earlier in the year. She also said it was not the responsibility of the Recycling Task Force, but the responsibility of the elected officials who were elected and paid to provide the kind of leadership and information so that the citizens would not be cut short. She said there was a process in place that could have been used, but Council did not use it, whether intentional or not. Ms. Bradley told the Council that they must realize that they were elected to be leaders and to bring citizens together to have the discussions, but not in a crisis mode.

Kay Dellinger, resident of Hampshire Towers said there should have been a public hearing if the trash pickup was going to be changed from twice per week to once per week, and Council should have listened to what the citizens had to say before making a decision. She accused the Council of consistently making a decision in secret and then informing the citizens. Ms. Dellinger said that the firing of Carolyn James was completely wrong and if the Council wanted to fire Ms. James, there should be a process and a public hearing. She then asked Council if they were going to hold a public hearing on changing the trash pickup to once a week, a public hearing on recycling and a public hearing on the firing of Carolyn James, because that was what the citizens wanted.

Leah Kedar, 7014 Woodland Avenue said she could not imagine that anyone in Takoma Park was against recycling, however she felt there were a few egocentric people who were concerned about how much

garbage one citizen had as opposed to another. She also said the reason the Council did not follow due process was because there was a general arrogance in the group that manifested itself when they came together as a group. Ms. Kedar said that public hearings were needed on the issue of recycling and garbage, even though they may come to the same decision as present, but it was still their duty to hold public hearings on the issues. On the firing of Carolyn James, Ms. Kedar said that Ms. James was not officially reviewed, which was not due process on the part of the Council; she should have been officially told that they were unhappy with her work.

Mr. Elrich read a note that Holly Mines, 8004 Maple Avenue left for him to read stating that recycling was important and asking why throw away when you can save and why fill up our planet with landfills.

Terence Mulligan, 28 Philadelphia Avenue said he had been working as a writer for Carolyn James and the Takoma Park Newsletter. His feeling from directly working for her was that the Newsletter had become an objective newspaper and was not the voice of the City Council; it reflected views of individual members of the City Council as well as facts, police reports, and views of the members of the community, as was intended by the former editor Sam Abbott. Mr. Mulligan said he saw a radical change in the paper when Ms. James took over. He felt as an editor, Ms. James reported the facts accurately; gave Council the opportunity to let their voice be heard whether it was a minority opinion on the Council or part of the majority. He further stated that he lived in a house with five other adults; they had three large trash barrels which they set out twice a week and they generated a lot of trash. Mr. Mulligan said they recycled a lot also, and they participated in the program willingly, but the decision made by the Council was wrong because the citizens were not given a voice in it.

Tom Gagliardo, said he agreed with Lynne Bradley that the argument would have been unnecessary had there been a public hearing on the three topics; recycling, frequency of trash collection, and the newsletter editor. He continued by saying he would agree with Mr. Kimmel in that there was an issue of fairness involved regardless of what may be legally required and that issue of fairness required that Council would at least listen to Carolyn James' side of the story. Mr. Gagliardo said he would endorse Ms. Phipps proposal to continue twice per week pickup for the remainder of the fiscal year in order for a realistic sampling to be made, and the results could be revealed and a discussion could be based on fact. Mr. Gagliardo commented that twice per week pickup was not needed either. He continued by saying that the meeting was great because with all that had gone wrong, something right had happened; everyone got together and had a discussion and hopefully everyone listened to one another and a very sound proposal had been made by Ms. Phipps which he felt should be adopted by the City Council immediately. He continued by saying if money could be saved by not buying specialized equipment for trash collections, everyone would benefit from it.

Cheryl Schutz said she did not see a problem with having prayer at the meetings as long as it did not affect a decision that was made for the City. She also said after listening to all the speeches, she felt that by all appearances, the dismissal of Carolyn James whether it was warranted or not, seemed to have been made on a political basis, and it was absurd and sad that it came to this. She concluded by saying that she hoped that Council would reconsider the circumstances which lead to her dismissal and for the reputation of the City because it would eliminate all questions of a political dismissal.

Kevin Muchler, Woodland Avenue commented that Council had some fence-mending to do, and the Council should do something to smooth it with her personally and professionally, for the sake of the City. Mr. Muchler said with respect to recycling and trash pickup, it was a matter of perception in many ways, and to cut the services

would not be an enhancement. He said that it was ironic that the Council spent so much time being concerned with the streetscapes and beautification, but at the same time, trash cans littered the sidewalks for two and three days a week. He also said that he was disturbed when he found out that Ms. James was forbidden from publishing any of the salary figures in the newsletter because he felt it may have been an appropriate means of educating the public, with respect of how the City spent its money.

Mr. Clinansmith said the people who lived in apartment buildings were denied access or were effectively discouraged from participating in recycling because of the policies of many of the management companies which organized and ran the apartment buildings. He also said that apartment dwellers could not separate their papers and place them by the backdoor, could not have separate bins for glass and plastic, nor take out the recyclable elements and set them aside for a later collection because landlords wanted the trash to be taken directly from the kitchen garbage bag down to the trash dumpster; the disabled and blind could not make the trip. Mr. Clinansmith also said that he felt that the Council had gotten the message that they must take the citizens into their confidence before they could govern them.

COUNCIL COMMENTS

Mr. Sharp asked the Council if there should be a referendum on twice per week trash pickup.

Mr. Prensky said in reference to the person who gave the invocation at the beginning of the meeting, he did not come to a religious meeting, but he was interested in hearing his words and if had stated that he was going to give his opinion or speak his mind, he would have been much happier with the beginning of his presentation. Mr. Prensky explained why the meeting had been delayed to another day. He said during Rosh Hashanah, the Jewish people celebrated the beginning of a new year and repented for sins committed in the past year; the 10 days between Rosh Hashanah and the day of atonement - Yom Kippur - were referred to as the "Days of Awe," during which time the Jews were directed to take note of their wrongdoings in an effort to improve themselves. He continued explaining that during that time, they examine their lives and their relationships; it was a tradition to blow a ram horn each morning to awaken their souls to what they had done and what they could do in the future and people took time during that period to apologize to friends, acquaintances and colleagues for anything that they had done to offend them, in order to put things behind them as the new year began. Mr. Prensky said it was in that tradition that he was apologizing publicly to Mr. Rino Aldrighetti, Tom Gagliardo, and Leah Kedar; during the August 12th worksession he lost his temper and had behaved in an unacceptable fashion, he was not pleased with his behavior, he was sorry for treating them in a disrespectful manner, and he would not do so again.

Mr. Douglas indicated that it was 12:30 a.m. and that he knew a lot of citizens had stayed late and he wanted to address some major points; bad facts, wrong conclusions, etc., and most of which were not worth the time in trying to refute. Mr. Douglas continued by saying that he was comfortable with the recycling issue as well as the process of giving information to Carolyn James about how she was doing her job. He said he was not comfortable with the way Ms. James employment was terminated but it was not the City Council's decision, it was the decision of the City Administrator. He also said that he was not in favor of having a public hearing on her performance and if there were to be a review of performance, it should happen between her supervisor and her. Mr. Douglas said that he had concerns about Ms. James for a long time as to her ability to do her job as a newsletter editor, her professionalism, her objectivity and her judgement. He said that he had communicated his concerns to the City Administrator and on occasion, directly to her. He also said that he had heard complaints from citizens about how they were treated by Ms. James

when they submitted material to her; complaints from staff about the way they were treated by her. He said that many times the Council had been castigated by citizens for process; for not telling them about what was going on, and in many cases much of the problem came back to Council's inability to communicate what was going on through the City Newsletter, and he felt that much of it went back to the newsletter editor's ability to judge how to present the information to the citizens. Mr. Douglas referred to the "secret meeting of August 5th" by saying for the record a Councilmember had asked that the newsletter editor's performance be raised with the City Administrator again before the "fateful" issue came out, and it was put on the agenda before it came out, and it appeared that it was the reason Council discussed it, but it was not the reason it was discussed on August 5th, and it was not the reason it was put on the agenda. He also said that the Council did not direct the City Administrator at the Executive Session to do anything; they only brought up the fact that he needed to deal with some performance problems; he was reminded that he was Ms. James' supervisor and he was expected to take charge of the issue and he did - whether right or wrong, but Council did not direct Mr. Wilson to fire the newsletter editor.

On the issue of recycling, Mr. Douglas said that he felt that the right policy choice was made and he was willing to discuss it again on September 30th; he was very concerned to not confuse citizens as to what to do with their trash.

Mr. Douglas then announced that he would not be running for re-election; for a variety of reasons, all of which had to do with his desire to see his family more than he had been seeing them. He said one of the next issues that the new council would have to face would be the issue of the newsletter and he agreed with Bill Brown and the person who stated that it was a newsletter and not a newspaper and that news was slanted by how it was placed, what was printed and was not printed as well as the words used and the headlines. He commented that he would be happy to come back and help figure out what the role of a newspaper was, because it was a major issue that needed to be addressed; how it could keep people informed about process without appearing to bias the process.

Ms. Porter said that she felt positive about the meeting. She said that the Council did not begin the recycling process by intentionally shutting citizens out. She said the intention was a desire to communicate with people in a way which had not been done and looking back she agreed that there should have been a public hearing; the public hearing was not held because Council felt that the process would be superior to a public hearing in terms of Council being able to talk to citizens informally and receiving their direct one-on-one responses. Ms. Porter said that people had been notified that once a week pickup was about to begin also. She indicated that she had received a lot of calls from people who expressed their desire to continue the process. She also said that it appeared to her that the Council should go ahead with the decision that was made but it should be set as an experimental trial basis and then have a public hearing and more neighborhood meetings and make a decision which would fit into the budget process as to whether or not to go ahead with it. Ms. Porter said that it was not possible to go ahead with recycling and maintain twice a week trash pickup because of the way the sanitation crews were organized, and it was not the question of spending more money; new crews would have to be hired, reallocating people's work schedules and it was too close to the time period to do that.

Ms. Porter continued by saying that she agreed with the decision which was made pertaining to the newsletter; she also had problems with the way the Newsletter operated; she felt that the citizens were not receiving as much information as they could; Ms. Porter said she was open to suggestions, and she did not feel what was done was illegal or unfair.

Mr. Elrich indicated that before the meeting began, he had talked to people who were concerned about the change in the recycling process and one of the suggestions he had was to handle the situation differently. He said to have a discussion on the 30th of September was too soon to have a meaningful discussion and that he would like to see a review to take place in three months after it had gone forward and to hear what citizens had to say, and direct mid-course corrections to the process if possible. Mr. Elrich said when the trash and recycling hearings were set as part of the budget process, part of the assumption that it could be done was that the entire night should have been taken up by discussing trash collection, and Council assumed that it would have been the night that people came to voice their opinions. He said people he spoke with were in support of the recycling and were willing to live with the change to once a week trash pickup, and he took it as being generally reflective of the mood of the people in the community; Council listened and the citizens were heard. He said that Council did not attempt to do anything in secret nor did it attempt to make it a minor issue, nor downplay it. Mr. Elrich said he supported a dual-purpose newsletter in the community and he did not want the newsletter to be reduced to its former self which merely listed a series of events and reported what was happening in the City.

Mr. Elrich continued by saying that he did not question that the paper was a more readable paper; there were very strong and valuable improvements made to the style of the paper, but whether or not the paper effectively informed the citizens of the City, he did not feel comfortable about it. Mr. Elrich said that Carolyn James had referred to her story as factual and accurate, and he did not consider it very tasteful to take a picture from northern Virginia and put it next to a headline and not identify the picture or where it came from, or even have a qualifier in there which said "this is northern Virginia, could this happen here".

Mr. Elrich also commented on the recycling issue by saying that the message did not get across the way it should have. He also said that he politically more than likely agreed with the editor on the issues than disagreed with her, and he did not like the personal and nasty tone to which it had come to because it was not constructive, and it did not further any review of the newsletter or a general concern about making sure that the citizens in the City were well-informed or whether things were done to reinvigorate the activism that he felt a lot of citizens missed; he felt there were ways to do that and he was saddened and disturbed at the way the process had worked itself out. He said he was sorry that it was not handled in a more appropriate way, but he did not disagree with the outcome of that decision and he hoped that Council could go forward and that the newsletter would not become a casualty to the process.

Mr. Leary explained why he did not agree with the decision not to renew Carolyn James' contract. He said his reasons had to do with substance and not process. He said that he opposed the decision which was made because he very much admired what she did with the newsletter. He also said during the past year, he believed that the newsletter as newspaper was the best it had ever been. Her performance had not been flawless; the majority of the City Council had the legal right to urge the City Administrator to make the decision that he made, given their view of the way that she handled the news. Mr. Leary also said that he remembered on more than one occasion, when some of the people who protested the decision insisted that the City Council be more actively involved in overseeing the performance of the newsletter editor, and that was what happened over a month ago. He further stated that the best time to cancel a contract was when it expired. He also said that personnel decisions should not be made or rehashed in public hearings. Mr. Leary read the guidelines of a newsletter: Enforcement of the Editorial Policy: enforcement of this editorial policy shall be the responsibility of the City Council, which shall review the operations of the newsletter on a semi-annual basis.

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never been done.

Mr. Sharp commented that there was a review in 1985, 1987, and 1989 and that twice a year had turned out to be every two years.

Mr. Leary commented also that those reviews had never dealt with the kind of personnel management performance which led to the decision; they had dealt with the style of the newsletter. He also said the episode was regrettable, and it reinforced his long-held view that the City government should not be in the business of trying to run a newspaper. He said that governments who tried to run newspapers as opposed to newsletters faced an almost impossible dilemma; editors who successfully fulfilled the legitimate function of challenging those in authority infuriated their publisher who happened to be the elected officials of the City government in this case.

Mr. Leary also said that the other danger which had been experienced in Takoma Park was that the newsletter infuriated a large number of citizens who paid for it and the kind of objectivity which satisfied both of the competing impulses was likely to be so boring that few would read it, and his question was why continue to spend \$35,000 of taxpayers money every year to keep alive the acrimony and bitterness that had almost constantly swirled about the newsletter since it was converted into a newspaper 10 years ago, when there was a perfectly, acceptable, and cheaper way of keeping citizens informed about their government--the Takoma Voice. Mr. Leary said he hoped that his alternative would be seriously considered after a public hearing.

Regarding trash pick up, Mr. Leary said there were a lot of citizens who were apprehensive about it or opposed to the idea of reducing garbage pickups to once a week, and that there should have been a public hearing on the subject also. He said it made sense to give the new program a fair test before asking again for citizen comments, and if at the end of the test period there were persuasive evidence that twice per week trash pickup was needed, he would be prepared to make the necessary budgetary decisions to do that; the decision would have no effect on the on-going efforts to expand recycling. He also said to have a question on the ballot was worth considering and finally he said as a result of the discussion on rodent problems, it was a real issue that should be looked into. Mr. Leary said that the City Council and staff needed to address the problem as quickly and effectively as possible.

Mr. Hamilton said he felt the problem was in finding money to alleviate the leaf mulch problem. He said that he still had a grave concern about the distribution of the Newsletter and an alternate way needed to be looked into because the way it was being distributed using tax dollars was not fair to the City residents. Mr. Hamilton said from a management point of view, the firing of Ms. James was not handled properly, but from his position he was in support of the City Administrator's decision. He also said that the recycling program was working and he had learned that most landlords would say that they wanted to save money but they would pass the initial cost of whatever it would cost to the tenants in their rents; that was the problem he had with multi-family recycling and if the landlord would benefit, the tenant should not have to pay for it. He also said that another issue in multi-family household recycling was the landlord paid a private company to pick up the trash, but if the City wanted to look at the 2.2 square miles and pick up all the trash within the City, it would be costly and he did not think it was feasible, fair, or possible that the small amount of homeowners had to carry the 100% burden of everyone in the City. Mr. Hamilton suggested that recycling for businesses be the next phase to look at.

Mr. Moore said he felt the process by which Carolyn James was dismissed was completely wrong, because regardless of how people felt about the job she was doing, there should have been a review

by the City Administrator with input from the City Council in a meeting together. He also said that a consensus needed to be reached in the City on what the role of the Newsletter should be; whether it should remain a newspaper-type format or a notice-oriented news sheet with just notices of upcoming events and hearings or whether it should be abolished altogether. He continued by saying it was unfortunate that the recycling and trash issues got mixed up in the newsletter issue and it was a mistake not to have a public hearing on the proposed Phase III of the recycling program and what it would mean for trash pickup. Mr. Moore indicated that he agreed with the expansion, he endorsed it, there was too much of a commitment to change it, he felt that the next City Council would revisit the issue after it had been in place for several months and commit itself to doing whatever would be necessary, and he did not feel that twice per week trash pickup was necessary. He concluded that he did not feel it was fair to say that the Council made a point of ignoring the citizens, because Council had always made a lot of effort to go out and get input from the citizens.

Mr. Prensky commented he had problems with Carolyn James before she became the Newsletter editor and he brought up several incidents. He said he had written a detailed memo to her asking her about inaccuracies, misquotes, omissions and he asked for clarification, and instead of responding, she published his memo as a letter to the editor and attached "dear editor" to the top which he did not put into his memo. Mr. Prensky said that he found that personally objectionable, and it raised serious questions about her use of the Newsletter. He said he continued to have tremendous problems with Ms. James portrayal of the policies and programs of the City; had heard numerous complaints from City staff on their inability to get information in the Newsletter on the twisting and changing of information once it was submitted to the Newsletter without any opportunity to see the final galleys. He said that he had also had numerous comments from citizens in his ward over the misuse of the Newsletter in terms of infringement of the guidelines in the Newsletter, as well as specifically taking articles that citizens had submitted and editing them to a degree that the person no longer understood that their views were being presented, but their name was being attached to them. He also said he expressed his criticisms to Ms. James and Mr. Wilson and in public worksession to other members of the City Council. He said he felt that there was no lack of information for the City Administrator to evaluate the performance of the newsletter editor and when he decided to not renew her contract, he felt it was a correct decision. Mr. Prensky suggested that the Council hold a public hearing on the nature and future of the City's Newsletter. He also said that it appeared that Ms. James would prefer a public process to evaluate her performance as the newsletter editor, and he was in support of that, and if that were to happen, he believed that the City staff, officials and citizens of Takoma Park had equal access of giving their views on her performance.

Mr. Prensky said he believed what had attached all the issues together - trash, recycling, and the Newsletter, were in fact to a large extent the fault of the Newsletter editor's judgement, choices, and omissions. He cited the May 18th newsletter with all of the information that everyone needed was buried on page 7 without public notice, without headlines, etc., that was a very succinct indication of how all three of the problems had come together and he felt it showed the disservice that the former Newsletter editor did to the citizens and staff of the City. He said that Council made a great effort to involve citizens in the process which talked about the once a week trash pickup and the recycling program; he attended 12 of the 15 community association meetings, additional notices were sent out by City staff to various associations which asked them to discuss the issues at their meetings, and there was some mention in the Newsletter and the Takoma Voice. Mr. Prensky said that the frustration which he felt was one of the process results and after-the-fact confrontation

which was no way to run a city or an organization nor a community, because there had been citizens who came to the Council after it was felt a decision had been made, and people had been frustrated by the results of those decisions. He had also been frustrated with the feeling that people had missed their opportunities and their obligations to the citizens, the opportunities which Council had tried to generate and the obligations to pay attention to what was going on in the City before the decisions were made.

He continued by saying one major suggestion that had come to his attention which he endorsed was for the City to televise Council worksessions. In the matter of trash and recycling, Mr. Prenskey said he did not feel that he had heard any new or compelling arguments that proved that once a week trash pickup was unworkable. He concluded by suggesting the Council continue with the trash and recycling programs, and he would commit himself to a complete review of the once a week trash program.

The Council then discussed the question of whether a public hearing or a public briefing would be held on the question of putting the issue to a referendum. Mr. Leary suggested that the decision on how and when will Council reevaluate the program, be decided September 30th.

Rino Aldrighetti commented that in reference to whether or not to have a referendum, Council should decide on what it would want publicized and people would have to deal with it or not deal with it.

AGENDA

1. First Reading Ordinance Re: Stormwater Management

Moved by Mr. Douglas; seconded by Mr. Hamilton.

Mr. Wilson said that he, the City Engineer and Public Works Director had met with the EPA representatives, and he was recommending going forward with first reading. He noted that the Council should take into account the fact that they may need 4 to 6 weeks before they could make sure that the interface with Montgomery County was sound. He also noted that the ordinance would have to be reviewed by the Department of Natural Resources.

Mr. Douglas pointed out that by mid-November the present council would leave and if they could not complete the action, the process would have to start over again.

COUNCIL ACTION: The Ordinance was adopted at first reading unanimously.

ORDINANCE NO. 1991-30
(Attached)

2. Resolution Appointing Members to COLTA.

RESOLUTION #1991-
(Attached)

3. Resolution Appointing Members to the Prince George's County Historic District Citizens Advisory Committee

Without objection, this item was tabled until the September 23rd Council meeting.

4. Resolution in Support of the Takoma/Langley CDA's Participation in the Main Street Designation

Moved by Mr. Moore; seconded by Mr. Hamilton.

Mr. Moore noted for the record that a word "from" was missing in last "Whereas" clause.

COUNCIL ACTION: The Resolution, as amended, passed unanimously.

RESOLUTION NO. 1991-70
(Attached)

5. Resolution Endorsing Plan Regarding Montgomery County Redistricting

Moved by Mr. Douglas; seconded by Mr. Hamilton.

Mr. Leary moved that the final "whereas" should read: whereas the Takoma Park City Council has reviewed and discussed the County Commission's proposals and had been asked for the City's position on these proposals". The amendment carried.

COUNCIL ACTION: The Resolution, as amended, passed unanimously.

RESOLUTION NO. 1991-71
(Attached)

6. First Reading Ordinance Re: Surplus Campaign Funds

Moved by Mr. Moore; seconded by Mr. Prensky.

Mr. Prensky commented that it would be helpful to the citizens and potential candidates for any office if there was a discussion about the kinds of expenditures which were and were not permissible under the new ordinance.

COUNCIL ACTION: The Resolution passed at first reading unanimously.

RESOLUTION NO. 1991-31
(Attached)

7. First Reading Ordinance Setting Forth the 1991 City Elections

Moved by Mr. Douglas; seconded by Ms. Porter.

Mr. Sharp read Section No. 4 which stated: that the Clerk shall also place the names of those qualified persons who had registered with the City Clerk as write-in candidates at least seven days before the election on separate ward voting machines. He noted that the phrase should read: "on each separate ward voting machine."

Mr. Prensky moved to amend the Ordinance by inserting the words "at least" to provide the minimum legal requirements, but also making mention that the notices would be published more widely using other sources such as the Montgomery and Prince George's Journals, City Newsletter, Cable, etc.

COUNCIL ACTION: The amendment carried without objection and the Ordinance, as amended, was unanimously accepted at first reading.

ORDINANCE NO. 1991-32
(Attached)

Upon motion duly made and seconded, Council adjourned at 2:25 a.m. to reconvene on Monday, September 16, 1991.

Introduced by: Mayor Sharp

RESOLUTION OF CONDOLENCE
#1991-69

WHEREAS, it was with great sorrow that the City Council learned of the passing on August 6th, 1991, of Brian M. Gardner after a brief illness; AND

WHEREAS, Brian Gardner served as the Director of the Institute for Governmental Service of the University of Maryland, where he was dedicated to providing consulting and research services to local governments in the State of Maryland; AND

WHEREAS, in 1989 Brian and the staff of IGS worked diligently with the City Council, City Staff and the Charter Review Committee in producing an entirely new Charter for the City of Takoma Park; AND

WHEREAS, more recently Brian had been working with the City on an extensive review and revision of the City's Code.

NOW THEREFORE BE IT RESOLVED THAT the City Council on behalf of Takoma Park employees, hereby extend to the family of Brian M. Gardner and the Institute for Governmental Service this expression of sympathy in the loss that they have suffered; AND


BE IT FURTHER RESOLVED THAT this Resolution be spread upon the permanent records of this City, and that a copy be prepared for the family of Brian M. Gardner.

September 10, 1991



Edward F. Sharp, Mayor

ATTEST:



Paula S. Jewell, CMC
City Clerk

Introduced by:

1st Reading:
2nd Reading:
Effective Date:

Drafted by:
Linda S. Perlman,
Assistant Corporation Counsel;
Richard Knauf, Public Works Director;
and Henry Gilford, P.E.

Draft Date: September 6, 1991

ORDINANCE NO. 1991 - 30

STORMWATER MANAGEMENT

WHEREAS, House of Delegates Bill No. 971 (Chapter 369, Acts of Maryland 1990) transferred to the City of Takoma Park, as of July 1, 1990, the authority of the Washington Suburban Sanitary Commission ("WSSC") for stormwater management in the City of Takoma Park; and

WHEREAS, the City of Takoma Park is now responsible for stormwater management activities and for the review and approval of stormwater management facilities constructed within the City of Takoma Park; and

WHEREAS, the City of Takoma Park deems it necessary and in the public interest to establish minimum stormwater management requirements and procedures and provide for a stormwater management permit process applicable to development occurring within the City of Takoma Park by enacting a new chapter of the Takoma Park Code dealing with stormwater management.

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

SECTION 1. The Takoma Park Code is amended by adding a new Chapter 10C, Stormwater Management, as follows:

CHAPTER 10C. STORMWATER MANAGEMENT.

Sec. 10C-1. Title.

The provisions of this Chapter 10C shall be known as the "Stormwater Management Act of the City of Takoma Park" (hereinafter "Act").

Sec. 10C-2. Purpose.

(a) The purpose of this Act is to protect, maintain, and enhance the public health, safety, and general welfare by establishing minimum requirements and procedures to control the adverse results of stormwater runoff within the City of Takoma Park. Proper management of stormwater runoff will minimize damage

to public and private property, reduce the effects of development on land and stream channel erosion, assist in the attainment and maintenance of water quality standards, reduce local flooding, and maintain, as nearly as possible, the pre-development runoff characteristics of the area.

(b) This Act shall apply to all stormwater management activities within the City of Takoma Park. The application of this Act and the provisions expressed herein shall be the minimum stormwater management requirements and shall not be deemed a limitation of any authority or powers granted by State law. The Department of Public Works shall be responsible for the coordination and enforcement of the provisions of this Act.

Sec. 10C-3 Definitions.

For the purposes of this Act, the following words and phrases shall have the meanings indicated:

(a) Applicant means a land owner, contract purchaser or other person, partnership, corporation, other legal entity, or agent thereof which assumes the legal responsibility for stormwater management or land development subject to this Act.

(b) City means the City of Takoma Park, Maryland.

(c) City Administrator means the City Administrator for the City of Takoma Park or a duly authorized agent.

(d) Department means the Department of Public Works.

(e) Detention structure means a permanent structure for the temporary storage of runoff which is designed so as not to create a permanent pool of water.

(f) Develop land means to change the runoff characteristics of a parcel of land in conjunction with residential, commercial, industrial, or institutional construction or alteration.

(g) Development means the process of changing the use of land, including the construction or alteration of buildings, structures, other improvements on the land.

(h) Director means the Director of the Department of Public Works or a duly authorized agent.

(i) Easement means a grant or reservation by the owner of land for the use of such land by others for a specific purpose or purposes, and which must be included in the conveyance of land affected by such easement.

(j) Impervious means the condition of being impenetrable by

water.

(k) Imperviousness means the degree to which land is impervious.

(l) Infiltration means the passage or movement of water into the soil sub-surface.

(m) Maintenance means any action necessary to preserve storm water management facilities in proper working condition, in order to serve their intended purposes and to prevent structural failure of such facilities.

(n) Retention structure means a permanent structure that provides for the storage of runoff and is designated to maintain a permanent pool of water.

(o) Stormwater concept plan means the overall proposal for a storm drainage system, including stormwater management structures, and supporting documentation as specified in the Stormwater Management Design Manual for all proposed developments.

(p) Stormwater design plan means the set of drawings and other documents that comprise all of the information and specifications for the systems, structures, concepts and techniques that will be used to control stormwater as required by the approved stormwater concept plan and the Stormwater Management Design Manual.

(q) Stormwater management means the collection, conveyance, storage, treatment and disposal of stormwater runoff in a manner to prevent accelerated channel erosion, increased flood damage, and/or degradation of water quality.

(r) Stormwater Management Design Manual means the Prince George's County Stormwater Management Design Manual, a manual of design, performance, and review criteria for stormwater management practices.

(s) Stormwater management plan means a set of representations, drawings or other documents submitted by an applicant in order to obtain a stormwater management permit and containing the information and specifications as required by the Department by any regulations adopted under this Act and by the provisions of this Act.

(t) Subdivision means the division of a lot, tract, or parcel of land into two or more lots, plots, sites, tracts, parcels, or other divisions by plat or deed.

Sec. 10C-4. Scope of Act.

No person shall develop any land without having provided for appropriate stormwater management measures that control or manage runoff and without having obtained a stormwater management permit, except as provided by this Act.

Sec. 10C-5. Adoption of Stormwater Management Design Manual.

(a) The "Prince George's Country Stormwater Management Design Manual, April 1991", as published by the Prince George's County Department of Environmental Resources, Division of Environmental Management, Watershed Protection Branch, and the "Standard Details for Stormwater Management Construction, December, 1990", as published by the Prince George's County Department of Environmental Resources, are hereby adopted as the design, performance, and review criteria for stormwater management practices in the City. A copy of the Stormwater Management Design Manual and Standard Details for Stormwater Management Construction are on file in the Office of the Director for public inspection and use.

(b) The following chapters of the Stormwater Management Design Manual are deleted: Chapter II (Permit Processing); Chapter VI (Bonding); and Chapter IX (Inspection and Enforcement Procedures).

Sec. 10C-6. Exemptions from Requirements.

The following development activities are exempt from the provisions of this Act and the requirements of providing stormwater management.

(a) Additions or modifications to existing detached one-family dwellings, except where the applicant proposes to connect directly to the public stormwater drain system;

(b) Developments that do not disturb more than five thousand (5,000) square feet of land area, except where the applicant proposes to connect directly to the public stormwater drain system;

(c) Land development activities which the Department determines will be regulated under specific State laws which provide for managing stormwater runoff.

Sec. 10C-7. Stormwater Concept and Design Plans Required.

(a) A stormwater concept plan shall be submitted for approval to the Department.

(b) All preliminary plats of subdivision shall be consistent with any City approved stormwater concept plan.

(c) The applicant shall submit a stormwater design plan to the Department.

(d) If any plan involves any stormwater management facilities or land to be dedicated to public use, the same information shall also be submitted for review and approval to the Department and any other appropriate agencies or departments identified by the Director for review and approval. This plan shall serve as the basis for all subsequent construction.

Sec. 10C-8. Permit Requirements.

(a) No stormwater management permit shall be issued or modified without the following, as applicable:

(1) A performance bond acceptable to the City['s Corporation Counsel] Administrator, if such a bond is required [by the Director] under Section 10C-13 of this Act.

(2) Copies of any recorded easements for off-site stormwater management facilities.

(3) An approved stormwater management design plan; provided that the Director may accept a stormwater management concept plan if it identifies the location and type of facilities to be constructed in sufficient detail to accurately estimate construction costs.

(b) Notwithstanding any of the provisions herein, the Director may require an approved stormwater design plan, recordation of all necessary easements, and an executed maintenance agreement prior to issuance of a stormwater management permit.

(c) Approved stormwater design plans shall contain a certification by the applicant that all land clearing, construction, development, and drainage will be done according to the plan[.] and according to all applicable City laws.

(d) In no event shall construction or any other land development subject to the provisions of this Act begin prior to the issuance of a stormwater management permit.

(e) Stormwater management permits shall be valid for one year from the date the permit is issued.

Sec. 10C-9. Fees.

(a) A nonrefundable application and plan review fee shall be paid at the time an application for a stormwater management permit is submitted. The amount of the fee shall be as follows:

(1) Residential development.

(a) Single family dwellings: \$75.00.

(b) Multi-family dwellings: Two to six units - \$25.00 per unit, with a \$75.00 minimum fee; Seven to twenty units - \$20.00 per unit; and Twenty-one or more units - \$15.00 per unit.

(2) Commercial, industrial, and institutional development: \$.05 per square foot of impervious area. By way of example, impervious area includes the roof of a building and paved parking area.

(b) Revision fee. No charge shall be made for the first plan revision submitted for review. The charge for the second and all subsequent plan revisions submitted for review shall be 50% of the original fee.

Sec. 10C-10. Permit Suspension and Revocation.

A stormwater management permit may be suspended or revoked after written notice is given to the permittee for any of the following reasons:

(a) Any violation(s) of the conditions of the stormwater design plan approval.

(b) Construction not in accordance with the approved plans;

(c) Noncompliance with correction notice(s) or stop work order(s); or

(d) The existence of an immediate danger in a downstream area in the opinion of the Director.

Sec. 10C-11. Minimum Requirements.

(a) The minimum stormwater control requirements shall provide management measures necessary to maintain the post-development peak discharges for two (2) and ten (10) year frequency storm events at a level that is equal to or less than the respective two (2) and ten (10) year pre-development peak discharge rates.

(b) Stormwater concept and design plans, where applicable, shall be consistent with adopted and approved watershed management plans or flood management plans as approved by the State of Maryland Department of Natural Resources in accordance with the Flood Hazard Management Act of 1976 (Title 8, Subtitle 9A of the Natural Resources Article, Annotated Code of Maryland).

Sec. 10C-12. Stormwater Management Measures.

(a) Stormwater management measures may include both structural and nonstructural elements. Natural swales and other natural runoff conduits shall be retained where practicable.

(b) Where additional stormwater management measures are required to satisfy the minimum control requirements, the order of preference of the measures to be used is as follows:

- (1) Infiltration practices;
- (2) Stormwater retention structures; and
- (3) Stormwater detention structures.

(c) All stormwater management measures shall be designed in accordance with the Stormwater Management Design Manual.

Sec. 10C-13. Performance Bond.

(a) The applicant may be required to provide a cash bond, irrevocable letter of credit, certificate or guarantee, or other means of security acceptable to the City['s Corporation Counsel] Administrator prior to the issuance of any stormwater permit for construction of a development requiring a stormwater management facility.

(b) If security is required, the amount of the security shall not be less than the total construction cost as estimated by the Department of the stormwater management facility.

(c) Any security required pursuant this Section 10C-13 shall include provisions relative to forfeiture for failure to complete work specified in the approved stormwater design plan, compliance with all the provisions of this Act and other applicable laws and regulations, and any time limitations.

(d) If security is required, the security shall not be fully released without final inspection of completed stormwater management facility and the acceptance of "As-Built" plans.

(e) A provision may be made for partial release of the amount of the security.

Sec. 10C-14. Inspection Schedule and Reports.

(a) Prior to approval of a stormwater design plan, the applicant shall submit a proposed staged inspection and construction control schedule. Inspections shall be conducted during construction of stormwater management systems in accordance with the Stormwater Management Design Manual.

(b) Any portion of the work which does not comply with the stormwater design plan shall be promptly corrected by the permittee.

(c) The permittee shall notify the Department before commencing any work to implement the stormwater design plan and upon completion of the work.

Sec. 10C-15. Inspection Requirements During Construction.

After commencing initial site operations, in addition to any inspections by the Department, the permittee shall provide for regular inspections to be certified by a registered professional engineer at construction stages as specified in the Stormwater Management Design Manual.

Sec. 10C-16. Final Inspection Reports.

(a) The permittee shall provide "As Built" plans certified by a registered professional engineer to be submitted upon completion of a stormwater management facility.

(b) A [The] registered professional engineer shall certify that the stormwater management facility has been constructed as shown on the "As Built" plan and meets the approved stormwater design plan and specifications.

(c) A final inspection shall be conducted upon completion of the stormwater management facility to determine if the completed work is constructed in accordance with the approved stormwater design plan.

(d) The Department shall maintain a file of all inspection reports.

Sec. 10C-17. Acceptance of Certification in Lieu of Inspections.

The Director, in his sole discretion, may accept the certification of a registered professional engineer in lieu of any inspection required by this Act.

Sec. 10C-18. Ownership and Maintenance of Stormwater Management Facilities.

(a) Any stormwater management measure which serves a single lot or facility shall be privately owned and maintained.

(b) All stormwater management measures relying on vegetated areas or site features shall be privately owned and maintained.

(c) All other stormwater management facilities shall be publicly owned and maintained.

Sec. 10C-19. Maintenance Agreement.

(a) An inspection and maintenance agreement shall be executed

for all private stormwater management facilities prior to the issuance of a stormwater management permit. Such agreement shall provide for access to the facility at reasonable times for regular inspection by the Department.

(b) The agreement shall be recorded by the applicant in the land records of the County prior to the issuance of a stormwater management permit.

(c) The agreement shall also provide that upon a failure to correct violations requiring maintenance work, within ten (10) days after notice thereof, the Department may provide for all necessary work to place the facility in proper working condition. The owner(s) of the facility shall be assessed the costs of the work. The costs of the work shall be a lien on the property, which may be placed on the tax bill and collected as ordinary taxes by the City.

Sec. 10C-20. Inspection for Preventive Maintenance.

(a) Preventive maintenance inspections of infiltration systems, retention, or detention structures may be made by the Department. The inspection schedule may include an inspection during the first year of operation and every three (3) years thereafter, as deemed necessary by the Director in his sole discretion.

(b) The Department shall maintain a file of all preventive maintenance inspection reports.

(c) If, after an inspection, the condition of a stormwater management facility presents an immediate danger to the public health or safety because of an unsafe condition or improper maintenance, the Department, shall take such action as may be necessary to protect the public and make the facility safe. The owner(s) of the facility shall be assessed any costs of such action and the cost shall be a lien on the property, which may be placed on the tax bill and collected as ordinary taxes by the City.

Sec. 10C-21. Modification of Requirements.

(a) The Director may grant a modification of the requirements of this Act if there are exceptional circumstances applicable to the site such that strict adherence to the provisions of the Act will result in unnecessary hardship and not fulfill the intent of the Act.

(b) A written request for modification shall be required and shall state the specific modification sought and the justification therefor. It shall include descriptions, drawings, and any other information that is necessary to evaluate the proposed modification.

(c) Any substantial modification of the stormwater design or concept plan may be referred to all agencies or departments which reviewed the original plan.

(d) Modifications of this Act which are so great that they constitute a waiver of the stormwater management requirements for an individual development may be granted only if the applicant can conclusively demonstrate that:

(1) The proposed development will not generate more than a 10 percent (10%) increase in the two (2) year pre-development peak discharge rate and will not cause an adverse impact on the receiving wetland, watercourse, or waterbody; or

(2) A site is completely surrounded by existing developed areas which are served by an existing network of public storm drainage systems of adequate capacity to accommodate the runoff from the additional development.

Sec. 10C-22. Appeals.

(a) Any violation notice issued pursuant to this Act may be appealed in writing to the City Administrator within ten (10) days of the date of the violation notice.

(b) Any person aggrieved by the decision of the Director denying a modification of the requirements of this Act may appeal such decision to the City Administrator, in writing, within ten (10) days of the date of the written denial.

(c) The appeal to the City Administrator pursuant to this Section is a prerequisite to any court action.

Sec. 10C-23. Penalties.

(a) Any violation of any of the provision of this Act shall be a Class A offense as set forth in Section 1-19 of the Takoma Park Code (Municipal Infractions).

(b) Each day that the violation continues shall be a separate offense.

(c) If the violation causes or has caused substantial danger to the public health or safety, then the Director may deem the violation a Class A misdemeanor offense as set forth in Section 1-20 of the Takoma Park Code (Misdemeanors).

(d) In addition, the City's Corporation Counsel may institute injunctive, mandamus, or other appropriate action or proceedings at law or equity for the enforcement of this Act or to correct violations of this Act or apply to the Court for restraining orders, temporary or permanent injunctions, or other appropriate

forms of remedy or relief.

SECTION 2: This Ordinance shall be effective immediately.

Adopted the _____ day of _____, 1991 by roll call vote as follows:

Aye:

Nay:

Abstained:

NOTE: Additions to this Ordinance made after the Council's September 3, 1991 worksession are underlined and deletions are [bracketed].

corr126/swmcode/mb

A:SWMCODE:Directordisc:dm:wp50

Drafted by: V. VinCola
Introduced by: Councilmember Moore

Adopted: Sept 10, 1991

Resolution 1991-70

A Resolution in support of the application of the Takoma/Langley Commercial Development Authority to the Maryland Department of Housing and Community Development for designation of the Takoma/Langley Crossroads commercial area as a "Maryland Main Street"

WHEREAS, the State of Maryland has established a "Maryland Main Street" competition for Maryland communities to submit applications for designation of their commercial area(s) as a "Maryland Main Street"; AND

WHEREAS, the Takoma/Langley Crossroads Development Authority (CDA) was established by the City Council in Ordinance 1987-54 for the express purposes of promoting and marketing the Crossroads area as well as for providing security, maintenance, and amenities; AND

WHEREAS, through the cooperative efforts of the City of Takoma Park and the Takoma/Langley CDA, the Crossroads commercial area is undergoing substantial improvements which are transforming the image of the area; AND

WHEREAS, as a result of the commercial revitalization, the Crossroads commercial area meets the minimum criteria for "Maryland Main Street" designation and could greatly benefit from such designation.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Takoma Park that the City Council supports of the application of the Takoma/Langley Crossroads Development Authority for designation by the Department of Housing and Community Development as a "Maryland Main Street," and that City staff is directed to submit an application on behalf of the CDA.

ADOPTED THIS 10th DAY OF September, 1991.

Introduced by:
(Drafted by: P. Jewell)

1st Reading: 9/10/91
2nd Reading

ORDINANCE #1991-31
TO REGULATE THE USE OF SURPLUS CAMPAIGN FUNDS

- WHEREAS,** the Elections Task Force, established by the City Council in 1990 was charged with addressing various election issues and making recommendations to the Council; AND
- WHEREAS,** the Takoma Park Elections Code adopted on 10/30/89 does not address the use of surplus campaign funds; AND
- WHEREAS,** one of the recommendations of the Task Force was that the City Council allow surplus campaign funds to be used for any community purpose, other than for personal use by the candidate, or for transfer to another candidate or political action committee.

NOW THEREFORE BE IT ORDAINED By the City Council of Takoma Park, Maryland That

SECTION 1: Chapter 4D, "Elections", Article 3 "Fair Elections Practices" is hereby amended by amending Section 4D-2 "Definitions" and adding Section 4D-8.

CHAPTER 4D
ELECTIONS
ARTICLE 1. IN GENERAL

Sec. 4D-2. Definitions.

(k) Surplus Campaign Funds. Funds left in a candidate's campaign account after the election is over and all campaign debts have been paid.

(re-letter remaining definitions)

CHAPTER 4D
ELECTIONS
ARTICLE 3. FAIR ELECTIONS PRACTICES

Sec. 4D-8. Surplus Campaign Funds.

(a) Surplus campaign funds may be used at the discretion of the campaign treasurer for any community or political purpose, except:

(1) the personal use of the candidate, the treasurer, or any member of the candidate's campaign staff, or the family members of those individuals (however, use of surplus funds to hold a party for campaign supporters shall be considered a permitted political purpose); or

(2) a transfer to a registered political action committee or a candidate other than the individual for whom the funds were raised.

(b) A violation of this section is a Class B offense.

SECTION 2: That this Ordinance shall take effect upon adoption.

In this Ordinance Underlining is used to show language being added to the Code.

ADOPTED THIS _____ day of _____, 1991 BY ROLL CALL VOTE AS FOLLOWS:

AYE:

NAY:

ABSTAINED:

ABSENT:

Introduced By:
(Drafted by: P. Jewell)

1st Reading: 9/10/91
2nd Reading:
Effective:

ORDINANCE #1991-32

SETTING FORTH THE 1991 TAKOMA PARK CITY ELECTION

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

SECTION 1. THAT the City Clerk shall call a Nominating Caucus of the citizens for the nomination of candidates for Mayor and Councilmembers on Tuesday, October 1, 1991 at 8:00 PM in the Municipal Building, 7500 Maple Avenue, Takoma Park, Maryland; the said Nominating Caucus shall be conducted as follows:

- a. At the beginning of the Caucus, the Secretary of the Caucus shall select by random drawing, ward numbers one through six to determine the order in which Ward nominations are received.
- b. Nominations for Mayor shall immediately precede all six ward nominations.

SECTION 2. THAT a City Election shall be held at the Municipal Building on Tuesday, November 5, 1991, between the hours of 7:00 AM and 8:00 PM for the purpose of electing a Mayor and six Councilmembers. The Mayor shall be elected at large, and one Councilmember from each ward shall be elected by the voters of that ward only. The election shall be conducted by voting machines and, as nearly as practicable, all laws and regulations governing the use of voting machines in Prince George's County elections shall apply. Absentee voting shall be available as set forth by City Ordinance; AND

SECTION 3. THAT the City Clerk shall arrange with the Supervisors of Elections of Prince George's County for the use of seven voting machines at the said election, with a separate machine for the exclusive use of each of the six wards, and a seventh for the use only in the event of malfunction. The City Clerk shall place the names of the candidates nominated for Councilmember at the Citizens' Meeting on separate ward voting machines, with each machine displaying the names of candidates for one ward only, and shall place the names of persons nominated for the office of Mayor on all voting machines; all of the names of candidates nominated at the Citizens' Meeting shall be so placed, except any who

within three days thereafter may have filed in writing with the City Clerk a declination; AND

SECTION 4. THAT the City Clerk shall also place the names of those qualified persons who have registered with the City Clerk as write-in candidates at least seven (7) days before the election, on each separate ward voting machine; AND

SECTION 5. THAT notice of the Citizens' Meeting and the City Election to be inserted at least in the Montgomery County Business Record and the Prince George's Sentinel during the two weeks prior to October 1, 1991. In addition, the Clerk shall have inserted in the Montgomery County Business Record and the Prince George's Sentinel, during the week preceding the election, a facsimile of the arrangements of the names and wards which will appear on the voting machines; AND

SECTION 6. THAT voter authority cards and lists shall be prepared for each ward separately, bearing the names, addresses and election wards of all eligible voters as certified by the Boards of Supervisors of Election for Prince George's and Montgomery Counties, and supplied to the Judges of Election on election day; AND

SECTION 7. THAT the Clerk shall recommend to the City Council the names of persons for designation by the Council as Judges of Election on election day; AND

SECTION 8. THAT the Judges of Election shall meet in the Municipal Building as a Board of Election at 7:00 P.M., Wednesday, November 6, 1991, and shall determine and certify the results of the election, as provided in the City Charter; AND

SECTION 9. THAT the City Council shall meet in Special Session at 8:00 P.M., Wednesday, November 6, 1991, to receive the certification of election from the Judges; AND

SECTION 10. THAT this Ordinance becomes effective upon adoption.

Adopted this _____ day of _____, 1991 by Roll Call Vote as Follows:

AYE:
NAY:
ABSTAINED:
ABSENT:

Introduced by:

Adopted:

RESOLUTION NO. 1991-
APPOINTING REPRESENTATIVE TO COLTA

WHEREAS, there currently exists three vacancies on the City's Commission on Landlord and Tenant Affairs; AND

WHEREAS, four citizens have made application to serve on the Commission.

NOW, THEREFORE BE IT RESOLVED THAT THE CITY COUNCIL OF TAKOMA PARK, MARYLAND, does hereby appoint to the Takoma Park Commission on Landlord and Tenant Affairs:

Name	Address	Term Expires
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

TABLED

BE IT FURTHER RESOLVED, THAT this appointment is effective immediately.

Adopted this _____th day of _____, 1991.

ATTEST:

Paula S. Jewell, CMC
City Clerk

CITY OF TAKOMA PARK, MARYLAND (FINAL 1/5/93)

Special Session and Meeting of the City Council and
Stormwater Management Board

Monday, September 16, 1991

CITY OFFICIALS PRESENT:

Mayor Sharp	City Administrator Wilson
Councilmember Elrich	Asst. City Admin. Habada
Councilmember Hamilton	City Clerk Jewell
Councilmember Leary	Corp. Counsel Silber
Councilmember Moore	Asst. Corp. Coun. Perlman
Councilmember Porter	COLTA Exec. Dir. Tracey
Councilmember Prensky	Rents Analyst Baker

ABSENT: Councilmember Douglas

The City Council convened on Monday, September 16, 1991 at 7:55 p.m. in the Council Chamber at 7500 Maple Avenue, Takoma Park, Maryland.

Following the Pledge of Allegiance, the Mayor made his remarks.

MAYOR/COUNCIL COMMENTS AND PRESENTATIONS:

Mr. Sharp noted that Mr. Douglas was out of town. He then noted that the Council had just convened in Executive Session to discuss on-going criminal investigations and a legal matter.

Mr. Sharp announced that James Wilson would be retiring from his post as City Administrator on May 1st, and the process had been discussed regarding filling this position; there were two worksessions held to discuss the matter, including one in which the Council expressed a desire to hire an executive search firm to help with the search. He noted that the Council was still looking for citizen volunteers to serve on a committee which would be involved in the process.

Mr. Sharp noted that on September 10th, he proposed that the Council schedule on the agenda for September 30th, ways to deal with the Newsletter issue because it was clear to him that there should have been a review of the Newsletter. Mr. Sharp said he would also propose establishment of a neutral Newsletter review group to evaluate the Newsletters from October 1990 to September 1991 in the context of the guidelines and the provisions in the Letter of Agreement between the editor and the City, and take a look at the presentation of the news of the City, consistent with the editorial policy. Mr. Sharp also suggested that in the interim, the editor position not be filled on a permanent basis.

Mr. Leary suggested that the Council hold a public hearing in October on the proposition that the newspaper-like functions of the Newsletter as it had operated in the last several years would end. He also said that the informational announcements be provided to citizens through some arrangement with the Takoma Voice or independently by the City government, as it was done until 10 years ago. Mr. Leary said it also made sense to think about the future of the Newsletter in a broad way before hiring a new Newsletter editor.

AGENDA

SPECIAL SESSION

1. 1st Reading Ordinance Re: Stormwater Management

Motion was made to convene as the Stormwater Management Board and motion to adopt the Ordinance at first reading, with amendments was moved by Mr. Prensky; seconded by Ms. Porter.

Mr. Wilson noted for the record that after the last discussion the Public Works Director raised the question of getting authority through legislation to enter onto property to examine unsafe conditions and public health hazards, issue violation notices, etc.

COUNCIL ACTION: The Ordinance as amended was adopted at First Reading unanimously. (Absent: Mr. Douglas).

ORDINANCE NO. 1991-30
(Attached)

Motion to adjourn as Water and Sewer Board and reconvene as City Council was moved by Mr. Prensky; seconded by Mr. Hamilton.

2. First Reading of Article 7 - including rent petition standards
Ms. Tracey explained that Article 7 was a Landlord/Tenant Relations Act which had been reorganized and clarified and said that some of the significant changes in Article 7 included the fact that single-family dwellings were not exempt from rent control if the landlord owned two or more single-family dwellings. She said the kinds of fees that the landlords could charge to tenants had been clarified under new Article 7; there had been a section added to describe escalator clauses which was intended to make it easier for a landlord to keep to the once per year increase on a rental unit despite any vacancies during the year. Ms. Tracey also said that the new Article 7 additionally set occupancy restrictions to prevent discrimination based on the size of a family. She went on to say that the largest part which remained to be decided in Article 7 was the "rent increase petitions" section; the Council currently had two options before them. One was a model which could be described as return on cash investment, which was proposed by Mr. Hamilton. In this model the landlord would pay for all of the operating expenses and debt service out of rents that came into the building, and get a profit which would be equal to 6% of all of the cash that the landlord had in the building; the cash being defined as the amount the landlord put down as down payment, plus any payments made to principal since that time. The other was the cost-pass-thru model, proposed by Mr. Elrich, which established a base year for landlords. The base year established what the ratio was between the landlord's income and operating expenses, and what was left over could be called net operating income. She said if a landlord's net operating income had declined, i.e., if his operating cost increased from the base year to the present, the Commission could award the landlord an increase in rents to cover that increased in cost.

Ms. Tracey continued to explain that as a second alternative in the model, the landlord was also guaranteed an 8% return on cash equity, however the cash equity was defined differently in the second model. Cash equity was the landlord's cash flow i.e., everything that was left over after he spent all of the money he needed to run the building, plus annualized appreciation that he was realizing on the building, plus the tax benefit the landlord would gain every year from owning the building, divided by the same cash equity figure which she described earlier, i.e., all the cash the landlord had put in the building.

Mr. Prensky asked if, in Model E, the reason the base year was the base year was because it had within it an assumption of a reasonable rate of return going to the landlord.

Ms. Tracey explained that the base year assumed that the landlord's arrangements in financing were separate and the landlord's income and expenses were fixed. She also said that the landlord may not be making a rate of return at all; it ignored the large or small cost or whatever the landlord was paying for the building and what it did was say "these are your expenses on this building"; some buildings were more expensive from an operating standpoint than others. Ms. Tracey said if anything changed within that ratio and if the costs rose higher than the income, you got the increase and she did not know if there would be an assumption if the landlord was making a fair rate of return under that particular model. She concluded that it was her understanding that it ignored the debt service part of a landlord's cost and only looked at the

relationship between income and operating costs.

Ms. Porter commented that it was her understanding that the model which Mr. Elrich had proposed contained a single method of computing year-to-year increases, which would be on a cost-pass-through basis and alternate ways of setting the base year; one of those would be to pick a single year and another way would be to assume that a rate of return of cash equity was an alternative way of setting the base year. Ms. Porter said this did not offer alternative ways of computing year-to-year increases, but alternate ways of computing what cost should be in the base year.

Ms. Tracey replied that it allowed the landlord three options of setting a base year; 1990 was another year for which the landlord had full documentation for his expenses and his income, or 1979 which was a year before Takoma Park had rent control, and deflating all of his expenses and income by CPI index. She also said that the fallback method of giving the 8% rate-of-return would be after the establishment of the base year.

Mr. Leary asked how was it determined which of the three options applied to any particular landlord and how would the landlord determine which option to use.

Ms. Tracey said that the landlord could go through all three options; whichever option would give him the highest rent.

Mr. Elrich commented that he was frustrated because he did not see the proposal as being definite, but citizens were assuming this was the Council's position when it was only the beginning of the discussion. Mr. Elrich said he would rather come out of the situation with something that worked and something that made sense, than to be in a position of defending something which was written without all of the advice that could possibly be had in the process of developing it. He noted that he would like to hear comments from the Harrison Institute on the models and what could be done; what were their objections to the model he had proposed and how it could be made more workable. He also said that the goals should be defensible and workable.

Bob Stumberg, Harrison Institute said he interpreted his role to respond specifically to Councilmember Hamilton's and Councilmember Elrich's models. He continued by saying that he felt both models were workable, but specifically as drafted, unconstitutional. He explained that there were two ways to think about the issue. The first was to base your own model on one which had been upheld specifically in another jurisdiction, which was not logical, but the way the legal system functioned. He said there were some Maryland decisions on rent control, with most coming out of Montgomery County which were the most relevant but did not deal with the issues of rent control model for a landlord's return. The Montgomery County decisions essentially dealt with the authority of government to enact rent control in terms of whether there was a sufficient state of emergency or ongoing housing crisis. Mr. Stumberg said there were other decisions which came out of the Maryland Courts that dealt with the extent which municipalities may enact rent control as opposed to counties, and several decisions which came out of the City of Baltimore which dealt with the authority of citizens to use the petition process to legislate rent control. In essence, while none of the Maryland cases were on point for the decision to be made, they were generally supportive in what Takoma Park wanted to do in terms of using rent control as a continuing housing tool.

Mr. Stumberg said another way to do this was to provide an alternative rational basis for something that you might do differently, and that if you don't follow a precedent from another state, you must have some sort of rational basis in your legislative record to support your difference. Mr. Stumberg proceeded to explain pass-through by saying basically it was meant

to establish a base year, and the California and New Jersey Courts had upheld the pass-through approach and both had made clear that the base year had to be market rents, which was why there was a difficulty because the last free market rent year was 1979. But, Mr. Stumberg said that studies of area-wide rents showed that the ratio of Takoma Park rents to area rents in 1990 was approximately as it was in 1979, which supported the inference that no matter how they had changed, up or down, the ratio of rents were about the same and that should justify the Council using 1990 rents for a base year.

Mr. Stumberg said, however, that he did feel the use of 1990 as a base year was secure enough, and he recommended that Council not be satisfied with it as a constitutionally sufficient standard. Mr. Stumberg said to put in other alternatives was fine; let the landlord elect to use 1990 or to take a 3-year average, because other jurisdictions do all of those things which were perfectly legal, which created options for people, and the other option was to allow landlords to use the last year of a COLTA decision as a base year. He said since those were elections on the part of the landlord, they did not raise any constitutional problem. Mr. Stumberg referred to Mr. Elrich's proposal and said that he had difficulty with the proposal to approximate 1979 rents by backing into them, starting with current rents and deflating them according to either the rent stabilization levels that the Council had been using over the years on the rental income side, or COLTA decisions and to work backwards on the cost side for the landlords. He referred to a case in Berkeley, California where the Court of Appeals found Berkeley's method to be problematic. Mr. Elrich's proposal solved the problem which the Berkeley Ordinance created for itself, except for one detail. He explained that Mr. Elrich's proposal did not solve the problem with the backing up from current year to 1979. The Berkeley Ordinance essentially took a standard approach of inflating costs by 40% of CPI and made individual landlords apply to get the standard generalized increase. He said that they used a 40% index standard to keep costs current with inflation, which was thrown out as irrational and arbitrary because it was the basis of a political compromise and there was no study to support it. Mr. Stumberg said that Berkeley picked 1980 as their base year, which was the year that the recession started to take hold, whereas 1979 was a high inflation-high cost year, and the landlords felt that picking that particular base year, when compounded with the standard indexing process, did not give landlords an opportunity to raise their individual costs before their version of COLTA. Mr. Stumberg summarized his statements by saying that the cost-pass-through basic arguments were that it was the least disruptive mechanism that could be used in terms of changing the housing market; it changed the market as little as it possibly could. The current ratio of Takoma Park to area rents was approximately what it was in 1979 and it did not provide any artificial incentives for landlords to change their behavior, e.g., by inflating costs or refinancing. The downside of it was the administrative complications; double the amount of paper to determine actually what the cost experiences were.

Mr. Prenskey asked if that was only for the establishment of the base year or was it every year.

Mr. Stumberg responded that it was both and said you had to establish a base year and compare it to a second year; the year in which you made the petition and unlike other formulas which required you to look at one set of documents for a given year, you had to look at two years of documents.

Mr. Prenskey asked if Council were to work on that model over the next period of time and if the landlords were given the opportunity to select and work through the establish of their base year, would that be one set of documents on file per building and would it always be available to look at when they came forward to contest what the cost-pass-through would give them in some out-year and to

apply for something different.

Mr. Stumberg replied that it could be done either way--a repository could be created in which landlords would register and file their base year data, which was how it was done in D.C., and in doing so, resulted a lot of paper, and for several months it would be a busy time and extraordinary staff would be needed.

Ms. Porter asked Mr. Stumberg if what fixed the base year problem was offering the alternative for determining the base year.

Mr. Stumberg explained that you fix the constitutional problem by having an alternative; you fix the individual problem that Berkeley created for itself by allowing people to show their actual cost experience between the base year and the year in which they were seeking the increase. He cited a case in California where the Court spoke strongly in support of not only allowing for an indexing of the cost, but allowed an inflation index for the income established in the base year for one but not to inflate the other, which was considered an arbitrary result of the Berkeley formula.

Mr. Elrich said that there was no uniform way of doing this and said that it seemed to him that it was not logical to fully index; when a person has a mortgage, the mortgage was fixed and a person was paying for it with future and cheaper dollars.

Mr. Stumberg responded by saying that the way the courts looked at the formula was simply to start with a base year established by pre-market conditions and you were allowed to pass-through your additional operating expenses. He clarified by saying that you could use the model but could not rely on it for constitutional protection; an alternative way was needed to define a base year or an alternative way for calculating fair return for landlords.

Mr. Stumberg said if you could not use 1979 as a base year because of the problems with recordkeeping, use another system instead to define what a fair return would be on a base year. Mr. Stumberg said he had read of other jurisdictions which gave landlords an alternative to pass-through because there may have been extraordinary circumstances. It made sense if those were standards which were good enough to define a fair return on investment indefinitely, and he felt they would be sufficient to define it for a single year; particularly when you are giving more than one option on how to start.

He first referred to the return on cash investments standards: what was equity or cash investment and what was the rate to multiply it by. Mr. Stumberg explained that equity was something that both had in common - downpayment and mortgage, and most of them stopped there. He also said you could go further and he referred to the California Court and the New Jersey Supreme Court which had talked about some of those elements. Mr. Stumberg said another concern that Model E raised was whether one could include tax benefits as part of the landlord's return; and he said one could. He continued that it had to be done in a careful way and it should be responsive to either well-documented assumptions about the market and what landlords were seeking, in terms of market return, or to have a system that was sensitive to the individual needs and positions of landlords, which would raise administrative questions. Mr. Stumberg indicated that when he looked at the spread sheets to see how much of a difference it would make, and based on those buildings and the assumption that the landlord would be in the 28% tax bracket, he estimated the amount of depreciation that would be used on a tax return and divided it by 30 years and multiplied it by .28 and divided it by 12 to see what the monthly difference on rent would be. The range was from \$1.60 to \$17.00 per unit per month on those buildings, that is, from less than .5 percent to 2.6 percent. It was not a big deal, but marginally significant. He spoke of appreciation by noting that Model E had landlord's

appreciation as part of the rate of return and he strongly recommended Council to not include that in the formula; there was no precedent and no discussion of it except for one reference from a New Jersey court and there would not be a way to establish a record before Council which would support it as something that landlords typically sought. The Court stated that what you ultimately looked at was whether the formula made sense, and it was conceivable that a formula may undercut the purpose of rent control. The effect of it could be to drive people into condo conversion prematurely or when they would not otherwise consider it, or to constantly drag up the ratio of operating expenses as compared to gross rent. They were looking for practical results and he felt when appreciation of value was put into the formula, not only do you go far beyond the established precedent but you would be raising the question as to whether it would backfire or not.

Mr. Leary asked if any of the arguments previously made by Mr. Stumberg applied to the tax benefits formulas as well.

Mr. Stumberg replied that he did not think so; you could make a case which could say that tax benefits were a routine aspect of real estate investment practice, and you could establish a norm for gauging that, or you could allow a landlord to come in and show that they played no role in that particular return, and for the petition to allow the landlord to rebut whatever assumption that was put in. You add to the administrative burden when that was done, however. Mr. Stumberg said that it was legal to do and complicated to work out.

Mr. Moore asked Mr. Stumberg if you included appreciation would it backfire, and was he suggesting that it might encourage expenses on the property which would drive up the assessed value of it and price people out?

Mr. Stumberg responded no, he was saying that if you told people to apply for a hardship, they would look at that standard, and they would conclude that they would never qualify for a hardship. The likelihood was the inflation in the housing market would add so much appreciation in value, on top of whatever market trends there were, that no one could hope to qualify unless the percentage rent was 20 or 30 percent. He also said that the New Jersey Supreme Court was clear when it stated that if a person came up with a formula which looked as though it was designed to make anyone to give up hope of getting a hardship increase, the Court could turn around and say "this was counter intuitive, it was defeating the purpose of rent control" which was to strike a balance and try to keep people in the rental housing market rather than drive them out of the market and discourage them from ever seeking a hardship increase. He felt all the other factors could be justified.

Mr. Elrich said he found it hard to separate out the notion that one should not count the appreciation toward someone's gain and looking at the Berkeley Law and the way the judge ruled on it, he (the judge) did not say that the standards were bogus, but the lack of direction to the governing body was the problem. Mr. Elrich asked whether or not that was an error in how the case was approached or was the judge saying to count this but you need to provide the body more guidance in how you go about counting it. He asked what was significant was that the judge had that in front of him and made note of it and chose to focus on the guidance and not the fact that appreciation was used.

Mr. Stumberg said that the judge did not only focus on the guidance; he first focused on the 40 percent figure and the process and then he focused on the guidance. He also said that he saw other courts in other contexts who were not dealing with statutes that included it.

Mr. Elrich asked Mr. Stumberg if in coming to a fallback position,

was there another fallback that could be used which would get one out of addressing and would satisfy his concerns about having an adequate base year.

Mr. Stumberg responding by saying yes and for one thing, to tighten up the definition of equity or cash investment which would be legally sufficient. He said in terms of the effect on the market and whether it would work, it was an open question which would be discussed later. Mr. Stumberg added that the New Jersey Supreme Court went to great lengths to talk about how they thought it would make sense to develop such a formula, even though that was not specifically before them at that time. He said in the case of California Courts in talking about the cost-pass-thru, New Jersey felt the value should be indexed of the cash investment in order to preserve the purchasing power of that investment. He quoted the Court in part: if we had a law before us which said that the landlord's cash investment of \$1,000.00 in 1979 would still be valued as \$1,000.00 in 1990, you had effectively deflated the purchasing power of the \$1,000.00; it should no longer be \$1,000.00, it should have been bumped up by at least the CPI for every year since 1979, and that should be basis which we should apply the percentage. Mr. Stumberg continued by asking what was the rate. He said that Model E proposed 8% and Model H proposed 6%, and the rate was reciprocal, which had a lot to do with what was put into the base and the more that was taken out of the landlord's return part, the higher the rate should be to compensate it. He also said that he felt 6% was too low; it would be unconstitutional. Mr. Stumberg responded to Mr. Elrich's statements when he indicated that in a market where the demand exceeded the supply, that there was no risk in housing, by saying that there was no risk in getting tenants under that argument, except the fact that the vacancy rates were starting to go up in the market and that would be an issue which would be brought into the report. He also said that the other factors were that there were still considerable risks in terms of the rate of increase and operating costs, and there were considerable risks in terms of mortgage interest rates; increasingly landlords were being asked to put more equity down for either capital improvement loans or acquisition loans, and many landlords as opposed to none which was the case years ago, now had variable rate mortgages.

Mr. Elrich commented that in hearing so many references to the market rate and the landlords legitimate expectations in the market, when at the same time there was a history of courts upholding rent control which, in his mind, prima facia said that we recognize that rents would be held below market; the impact of holding rents below market was that a person would not earn the market return. He continued by saying that any logical person would say that the utility bills and cost of operating the building were fixed and the only thing that the rent control did was limit the cash-in and any judge who had upheld rent control seemed to be saying that he was upholding a system whereby in this one segment of the market a person would not earn a market return, and if that were the underlying assumption under which courts had upheld rent control for 45 years, did the Council have to come close to offering people what they would get in the market?

Mr. Stumberg said that was the way the judges wrote those opinions. He also said that the judges went further by saying that it was a logical assumption that over time, rent control would reduce the value of the property and they would accept it.

Mr. Elrich said it appeared to him that the maintenance in the operating income said it was going to assure that after you had paid the operating expenses you could continue to service your debt, and have some money left over as you expected, and he was not going to adopt the rent control ordinance, which in effect causes you to either borrow out of your savings to pay for your debt service or lead to the erosion to any gain you had after your principle interest payment.

Mr. Leary asked Mr. Stumberg what his judgment would be of the constitutional sufficiency of a formula which included downpayment, principle payments, and some calculation of tax benefits coupled with a rate of return of 8%.

Mr. Stumberg said that if you were to add the tax benefits and stick with 11%, he would feel safe; if it went down to 8% which was unconventionally low and incorporated the tax benefits (which was unconventional), he wondered about that. He continued by saying instead of using the return on investment concept, there were the idea of allowing landlords to increase rents, so that their gross rents would equal 1.66 multiplied by their operating expenses, i.e., you would be allowing people to constantly maintain a ratio of operating expenses to total gross rent of 60% to 100% total gross rent. Mr. Stumberg also said that the theory was that it tended to be the industry average which allowed people to maintain the cash flow they needed to run the property, make improvements, pay their debt service and make a profit, which was almost the same concept as the pass-thru approach. He said that what it would do would be to allow you to relate to your individual petition arguments to what the industry norms were and the standard value chosen by jurisdictions which was 60%. He spoke of an incident which happened last summer when the National Apartment Association came out with a study which compared Washington-area income in rental properties and expenses to other jurisdictions all around the country, and the figure that they came up with in master-metered apartments, was roughly .52 ratio which compared to the statutory model of .6%. Mr. Stumberg said in looking at the spread sheets and compared buildings that had gone through the COLTA process, he found that more of the buildings that went through the COLTA process came out with a lower rent after applying the formula than those that used the return on cash equity approach; the buildings which had a higher return under the 60% to 40% ratio, were the largest buildings.

Mr. Moore asked Mr. Stumberg about his statement which pertained to the moderate impact under the net operating income, by asking if it wouldn't be different if they had the incentive of the different formula up to now.

Mr. Stumberg said that the difference was that it was not being looked at as a permanent formula, but to look at it as an alternative way to establish a base year, and after that it was all cost-pass-thru which was the least disruptive model which could be applied to the housing market.

Mr. Elrich asked if he were to fix his model in a way which he felt was least disruptive to the housing market, and also survive the constitutional challenge, he would drop his rate of return section as a model and substitute the maintenance of operating income formula and use that as the 4th or 5th means of establishing a base year giving landlords the opportunity to make various cases, and then afterward he would go forward with maintenance and operating income.

Mr. Stumberg said there would be two basic options before Council, both would serve legal needs and the question would be what was the best judgment to use on how they would affect the market.

Mr. Elrich said it made sense to change the second part of what he had proposed to reflect it and after seeing the spreadsheets, he felt the data was supportive; a low impact alternative formula in terms of achieving objectives, and that was what he intended to go forward with. He also said that the first part of his proposal which eliminated the reference to an alternative means using the rate of return and substituting it with the basic model which was the percentage of net operating income; once the base year was set under one of the means that he laid out, in subsequent years it would go forward as maintenance net operating income, and to bring the petition forward on the basis of maintenance and net operating

income.

Mr. Prensky asked if 1990 could be the base year, 1979 if there was documentation to establish the base, rather than to require it of every landlord, to come in and establish the base year, the option was before Council of only requiring the establishment of the base year at the point where the landlord wanted to go into the petition process, and all of the discussion had been about the small percentage of cases which were not adequately addressed by the rent stabilization which was set once a year, which talked about the landlords who were not happy with it and felt that it would cause hardship.

Mr. Elrich commented that there was the use of COLTA which said take any year and justify it or take 1990 and explain to COLTA why there was something exceptional, because why would you accept it except for those exceptional circumstances, and the 5th one would be 1.66%.

Mr. Prensky proceeded to explain the additional change to Article 7 that he had proposed. If a landlord chose not to take the full amount of the stabilization rate that would be afforded them each year that the Council passed on, the additional 2% could be added on for the next subsequent tenant. He also said this removed the disincentive in the rent control law that presently encouraged the landlords to take the absolute, full maximum rent stabilization allowance every year because if they didn't, they could never recoup that. He also said that the proposal did not in any way cost any tenant more than they would pay if the landlord took the full increase every time they were allowed to; it only allowed for the possibility that the tenant may pay less, rather than the same. In essence, he said if the landlord had a reason to be compassionate for a while, but not to arbitrarily take away that compassion, but only end that compassion at the time the unit became vacant.

Mr. Prensky said that in the market rate model if the rents were close to what the market could bear and a landlord would feel if he raised the rent to the full 4% year, he may wind up with some vacancies that he did not want and if they felt they were up against what the market would bear. He also said that what he heard from tenants over and over again was that there was a guaranteed rent increase of what Council passed as a stabilization rate every year, and he felt that it was not a fair way to represent Council on what they had done because Council had always felt that the landlords did not have to take the maximum allowable increase, but the way in which the law worked was that "if they don't take it, they lose it for all time". He explained that his proposal allowed the possibility that tenants may pay less over a time, rather than the same total increase which was allowed year after year.

Mr. Moore asked if there was a way to differentiate between the situation outlined and one in which a landlord was unable to rent at the rent stabilization rate, and under the proposal would a landlord be able to accumulate those for future years.

Mr. Prensky responded yes, compassion was not required in the law, it was only his suggestion to the landlords in the City. He also said that his suggestion for the landlords would be that they could only rent at what the market would bear, and if the units were left vacant, landlords would be getting zero instead of a 2% or 3% increase, rather than the total of 4% which would be allowed this year. He continued by saying that the exact same thing applied no matter what the reason was on the part of the landlord for applying an increase lower than the stabilization rate; they could reserve the additional increase for the time when the apartment became vacant. Mr. Prensky concluded by saying he wanted to wait until a vacancy, because he did not want to create the possibility that a landlord could have less than the allowable increase and then for

retribution, decided to apply at any given moment the saved increases, and with his proposal it would only happen at vacancy.

CITIZEN COMMENTS:

Michael Duberstein, 106 Hodges Lane said that the process had been put under as much scrutiny as ultimate policies produced and said as an example, the Council's Housing Committee's initial draft provisions for the Rent Stabilization Act had language attributed to proposals made by a landlord group, and since then participation in the process had broadened. He continued by saying when the citizens became alerted about the issues, they had responded; many were tenants and others were homeowners. He also said that he had been asked by a Councilmember to participate because of his training as an economist and he responded by gathering and analyzing national and local data, and looked at the effect that the current rent control law has had on rents over the past 10 years. He indicated that he had studied comparable laws and effects in similar communities and had tried to keep residents involved and informed. Mr. Duberstein said that some people had asked him what stake and self-interest did homeowners have in this issue, and he said that they had a lot. He explained that Takoma Park was mostly a community of homes; with recent census data indicating almost 60% of Takoma residents were tenants, it was obvious that renter issues affected a large portion of the community. He continued that along with how educational quality was assured, housing policy showed how a community defined its future; Council's decision would be a major signal of how the Council viewed their community.

He also said while Council pondered about Takoma Park's affordable housing priorities, such priorities were linked to what would come out of the present debate. He urged the citizens and Council to remember that the City's current housing program, in which rent stabilization was the centerpiece, cost taxpayers over \$125,000 over the present fiscal year and any program in which significant tax dollars were being allocated, should be a legitimate matter of concern to every taxpayer and homeowner in Takoma Park. Mr. Duberstein also said that he was concerned that the rent stabilization debate would stay focused, because it was not a battle between all tenants on one side and landlords on the other; most of landlords never may resort to the petition process but the remaining seemed to rely upon the so-called "hardship provisions" over and over, and they may represent a hefty slice of the City's housing units and may employ confusing scare tactics in order for other landlords to think that they were under attack, but that was not the case. As long as deception may distort the process, it would be hard to reach a compromise. He also said even before the ultimate policy was made, he would like to focus attention to the need for ancillary administrative language. Mr. Duberstein cited page 27 of the Harrison Institute's Report which compared administrative concerns associated with every policy option and not just one factor stood out; the need to insure that operating expenses were not manipulated, which meant more than just to require landlords to document expenses. He also said that it was important that administrative procedures be included so that whenever landlords presented expenses, the tenants would have a guaranteed opportunity to examine documents and be allowed to comment for the Hearing record. He explained that such procedures assured continued citizen input and involvement. He read the suggested language: "At least 2 weeks prior to the COLTA hearing, the landlord shall provide COLTA with a complete and accurate set of the record substantiating the claims of incomes and expenses, including copies of all bills, receipts, and other appropriate proof of claim transactions. The tenants of the affected building will have free access to these records for the purpose of preparing and submitting to COLTA their own evidence or argument that the landlord's figures are inaccurate or that claimed expenses are unreasonable". Mr. Duberstein said that he had learned that the rental units in Prince George's County were already under a 1992 mandate to comply with the recycling guidelines while Montgomery

County, even with its ambitious program, had yet to require that bigger apartment buildings be covered. He noted that a recycling symposium, which covered large buildings and properties was being held in Rockville tonight. He suggested to Council to use its advocacy powers to urge Montgomery County to speed up the date, that large rental units were put under recycling. Mr. Duberstein suggested that until any large building recycling program was implemented, any landlord going through the hardship process must submit a specific recycling plan for that building before COLTA could award a rent increase. He also said that community recycling for homeowners and small rental units were already institutionalized; large management companies have had adequate time to prepare and implement recycling procedures, they had not done it willingly and probably never would unless they were under a mandate.

Phil Kete, recommended postponing taking formal action on rent control until the research and analysis was completed. He also said there were elements that Council had to make for a rent control program; 1) know the basic options which were laid out in the first Harrison Institute Report; 2) know which options and which variations within overall proposals were constitutional and which were not; 3) once you know which ones were constitutional, you must know which best served the objective of minimizing rents. He further stated that once you know which 4 or 5 proposals would reduce the rents by the most amounts, you look at the other interests e.g., maintaining units within housing stock, insuring proper upkeep, treating landlords fairly, making sure that buildings don't go condo, and by doing that you take the proposals which minimize the rents first and then decide among them if you would accept the higher rent in return for certain benefits. He also said once the analysis was done, you make the political decision, which would ultimately have to be made politically between lower rents and a theory that a particular proposal would lead to greater maintenance of the quality of the housing.

He said he suspected that some people did not follow Mr. Stumberg's discussion perfectly, which was due to the fact it was all garbled. He commented that when the transcript was replayed, it would look like a comedy program; there were no straight answers given, only sentences which did not explain anything. He said there was no written analysis from any attorney on the constitutionality of the proposals before Council. You were being asked to provide a higher rate of return for landlords because it was safe constitutionally, without a constitutional analysis. He said the original Harrison Institute Report repeatedly made legal mistakes. Mr. Kete said he felt that public officials who were legislating in a constitutionally sensitive area, on a matter which affected everyone and was coming out of the taxpayer's pocket, had an obligation to get to a level of seriousness that had not been arrived at yet. He concluded his remarks by suggesting to Council not to bring the proposals to the floor at this time because it would be premature, and to wait until the legal and economic analyses were done.

Juanita Nunn, 7777 Maple Avenue said the tenants in her building had been unable to find where a landlord should be guaranteed a profit on his investment. She said that the return on any investment was governed by many factors; housing was a business, and why should the tenants of Takoma Park guarantee the landlords an exorbitant profit on his investment. She said if and when the landlord decided that he was going to sell the building, it was at that time that the landlord received whatever equity he may have in the building, and to pass his costs onto the tenants, would be double-dipping. Ms. Nunn continued by asking why the government of Takoma Park found it necessary to impose this type of terror on the tenant population. She also said that if the housing providers felt that they were operating at a tremendous loss, they should consider selling their business to the tenants, and it seemed to her that they would get whatever equity they may have on their

initial investment and realize a significant profit. She further stated that the Takoma Park government should stop playing games with its citizens. She said if the Mayor and Council felt they wanted to do away with rent stabilization to do so. She spoke directly to Mr. Hamilton by saying that his proposal favored the landlords and the tenants had been forgotten, of which he was one. She asked who determined whether the landlord had a fair rate of return? In her opinion the only way that could be determined was to see rent receipts from all tenants. Ms. Nunn also said that operating expenses in most of the buildings had decreased and she questioned why should there be a 15% increase on the vacant units.

She continued by saying that she as well as the other tenants, did not see the need for passing the legislation at the present time, and she suggested the Council set up a task force of housing providers and tenants with a mediator. She indicated that the tenants were equally dissatisfied with Alternative No. 2 and said that every high-rise building along the corridor was receiving an adequate return, and that they could not support either Alternative which had been presented and they felt until extensive research was completed, the Council could not pass the legislation, and until there were specific guidelines or some direction by the Court, COLTA should not be authorized to give more than a 5% rental increase.

Linda Clinansmith, 7710 Maple Avenue said every time the issue of rent control came up, people would talk and the word that kept coming up over and over again was "equity", the freedom from bias or favoritism; people wanted to be treated equitably and fairly. She continued by saying that she was not living in Takoma Park when COLTA started, but longtime residents had told her that the idea of sitting down equitably and fairly, negotiating a fair solution to rent increases was what COLTA was all about. She said her only experience with COLTA came when her landlord asked her for a 15% rent increase, and the biggest problem that the tenants had was with the debt service, and COLTA had no clear-cut guidelines on it. Ms. Clinansmith also said that their landlord took out a large loan and used their building for collateral, and did not use any of the money for repairs or improvements, but COLTA still granted a 12% rent increase after all was said and done. Was that equity or fairness? She indicated that the property manager had boldly stated in the hearing that the constitution guaranteed a 12% return on equity to the landlord, but she did not believe it. Ms. Clinansmith also stated that the guidelines needed to be changed to state if there was going to be a rent increase, the decision should go into effect the day of the decision with no retroactivity. She concluded by urging Council not to accept either proposal until it had done its homework, because they had a good beginning and to keep it up and spend the extra time, so as not to have to keep coming back and going over and over the same thing.

Sakinah Shakur, 7777 Maple Avenue announced that citizens of Takoma Park found themselves again reviewing rent stabilization and trying to come up with a formula based on the findings of the Harrison Institute. She also said as a renter of Takoma Park and a member of the Essex House Tenants' Association, they were not informed until May that the present formulas were being considered. She continued by saying that she felt more time needed to be devoted to the issue of rent stabilization because the individual formulas as they were, tended to be weak; none of them had a recommendation for a ceiling and/or longer lease that would control the rents, or to protect the renters from skyrocketing rents. She noted that in the 3 years that she had lived in Takoma Park her rent had increased \$124.00, however the quality of service had decreased. Ms. Shakur recommended tabling the rent stabilization for now and forming a committee which would be comprised of tenants and landlords as well as the City attorney and/or mediator and use a combination of the 5 most used formulas and come up with another way which would benefit tenants and landlords, because with the continuing rising costs of rents coupled with inflation, the average renter would no

longer be able to afford housing in Takoma Park. She concluded by saying that there were enough homeless people in the communities, and to keep housing affordable in Takoma Park.

Michael Clinansmith, 7710 Maple Avenue, President of Mapleview Tenants Association said he wished that people would remember that the tenants were part of the equation and it did not matter how many formulas were put together; no matter what was put in at the end, if there was no one to charge the rent to, it was a moot point. Mr. Clinansmith said the landlords were forcing people out of Takoma Park; 20 people in his building had already moved out, one left because of the retroactivity provision that COLTA put in its decision, had to pay an extra \$1,000.00 within one month. He said he would rather the Maryland Court define the issues that Council should address, rather than seven different people running in different directions trying to make one simple adjustment to the law; let the Courts decide and let the constitutional precepts rule, and let the Maryland system of government work. He continued by saying that rules must be established for Article 7, because Council could not go to COLTA and say that they considered debt service and never define debt service, and the decision must have the appearance of equity, which must include the tenants in whatever decision it made.

Alfred Martins, President of Edinburgh Tenants Association, 7513 Maple Avenue said if the rents kept rising in Takoma Park, the tenants would soon abandon Takoma Park. He said that the request for rent increases should be viewed very critically so as not to give the landlord a field day to choose how much and how severely he could expose the tenants to a hardship, simply because he had not done his work right. Mr. Martins said when you wonder why there was a need for shelters or as had recently been proposed, a place for families who were facing severe hardships, it resulted from tenants who did not receive increases from their workplaces. He said that tenants who tried to pay the increases in their rent and did not receive increases in their salaries, were the ones who suffered the hardships, not the landlords.

William Savedoff, 6833 Eastern Avenue said he was a professional economist and a tenant and he had some concerns about the proposed law. He noted that Mr. Stumberg's response to Mr. Elrich's question regarding a \$1,000 CD not appreciating in value was that it would get a 6% rate of return that would be compounded annually. Mr. Savedoff said that Mr. Stumberg was confusing a nominal and a real rate of return. He said if one thought about a 6% return on a CD, part of that could be considered the percentage increase to adjust for inflation, i.e., 2-3%. He said the nominal rate of return on a CD would be 3% and most of the proposals he had seen about rates of return that constitute a hardship level for the landlord are on the order of 8-11% which was substantially higher than the CD and those were nominal returns. He said there were significant difference between the rate of return that has been put forward and the rate on a CD.

Mr. Savedoff continued by saying it was his understanding that there was concern that the guidelines which COLTA was operating under may be viewed as arbitrary by the Courts and if that were found to be the case, the stabilization law would be lost and he agreed. He also said that his concern was that the proposals which had been presented did not reduce the arbitrariness of the guidelines. He also said that he found the guidelines that included rates of return were entirely arbitrary because they seemed to be based on legal precedence and not on any economic foundation, and he did not see any reason why that rate of return should not be 30% or 1%, until he had done an analysis which would show what the rate of return on a comparable investment should be. He continued and said that if the landlords were not selling off the properties and buying U.S. Treasury Bonds or General Motors certificates, etc. it was some indication that they were pleased with what they had. He strongly urged Council not to include a

rate of return provision unless they had a very strong substantial market analysis or something that would give them a reason for selecting 8.2%, etc. and if they would go in the direction of the cost-pass-through, Council should give some concern of who got to choose the base year, and if it was made the choice of the landlord they would run into a difficulty which would be to balance tenant and landlord interest, and it was just as possible that the base year that the landlord would choose, was also a strange year, and there had to be some ability in such a provision to balance landlord and tenant interests in the selection of that base year.

Paul Spratlin, Tenant League said he noticed that one of the beliefs of all the parties involved in the issue was that there should be a base year in which there was a tangible reason for allowing these enormous rip-offs to go on and be established, and he did not see a reason for it because everything that the City Council had discussed had assumed that the exorbitant rents that people were paying should be allowed to continue; he felt it should be reversed.

Andrew Busby, referred to a leaflet that was handed out with a summary of COLTA decisions which he had read and said that he discovered that all of the COLTA figures were added wrong. He also said that the average request from the landlords that COLTA reported was 17.4% and when it was added through with the figures they used, it came out to 20%.

Tom Gagliardo, said he endorsed the statements of Phil Kete and Juanita Nunn. Unless and until there was a clear statement in writing of what was proffered as the constitutional minimum, no debate could be had and he felt it behooved the City leadership, particularly the Mayor, to obtain the report and to make it available to those in the community who were interested in it. He also suggested it be made available to the lawyers and the economists in the community to comment on it so that once the constitutional minimum was defined, there could be a political debate. He referred to a memo dated September 13th from Ms. Grimmer and Ms. Tracey to the Mayor and Council which stated "however Silber stressed that it is crucial that the current Council pass this legislation and not leave any details to the incoming Council". He asked Ms. Silber why she felt it was crucial that the current Council and not the incoming Council deal with the issue.

Sue Silber, Corporation Counsel said they were not her words; her words were elsewhere in the agenda packet in which she simply pointed out that the idea of passing temporary legislation instead of delaying somewhat the passage of permanent legislation had a serious downside which meant that it would confuse the community and the landlords, and might create more problems that it solved, because it added to the suggestion that whatever formula chosen was somewhat arbitrary. She said that she had always said it was very important to get this passed as quickly as possible and said that there were court cases which concerned them and the legal point that legislation lapses if it would go to first reading under one Council and did not finish up under that same Council. She continued that she felt it was encouraging that the debate was going on in the community and they had received the kind of expert advice that the Harrison Institute had provided which was a deeper and more useful discussion because of Harrison than previous ones since she had been the Corporation Counsel. Ms. Silber said what distressed her was the fact that some of the people who had spoken had the assumption that there were malicious motives by staff, and accused staff of not caring about tenants' interests, when in fact, all of the posters which had been shown about inordinate increases or arbitrary decisions by COLTA, go back to the same basic point, which was that there needed to be a better piece of legislation and that Council should be applauded to have taken that on, and she felt that everyone should trust it to be a good piece of legislation which could be defended in Court.

Tom Gagliardo said that motives was a fine debating point but it was fallacious when you set up straw people and knock them down, which was all the last comments were. When he was Corporation Counsel he had been warned repeatedly not to make political statements and he characterized Ms. Silber's statements as highly political. Mr. Gagliardo said that he had not heard from Ms. Silber as City Attorney, nor Linda Perlman the Housing Specialist, nor Mr. Stumberg who is the outside retained expert, what the minimum constitutional requirement was, which was what the debate required. He said no one was accusing any of the lawyers, councilmembers, or city staff of having ill motives, what was needed was a legal predicate in order to have a real political debate.

Kay Dellinger, Hampshire Towers said that she wanted a rent control law which would allow rents to go down as well as up and she also wanted a law that prohibited retroactivity. Ms. Dellinger said that she recalled at a worksession, the staff of the Housing Department had been told to make a recommendation about which formula they believed should be adopted and she had seen no recommendation from the Housing Department yet and she asked why. She also referred to the 12% increase on vacant apartments and said that it should be removed because there was no rent control if there was 12% increase vacant apartments.

Mr. Sharp replied that the Code currently provided for rents in vacant units to be increased to the level of comparable units in the building. There was nothing in the law that guaranteed any rate of return to a landlord; the current law provided that COLTA could grant increases providing "up to" a 12% return.

Naomi Turner, 7667 Maple Avenue said for one whole year, Parkview Towers had 15% on vacant apartments; COLTA gave the landlord a 7% increase and 15% on vacant apartments and their case was still pending. She also said that the tenants were paying 15% on the vacant apartments, because they had a big turnover and they were paying for it.

COUNCIL COMMENTS

Mr. Elrich said he tried to make reference to his own personal concerns; he did not consider a landlord's hardship the same as a tenant's hardship, which he had made clear and his interest was in having a piece of legislation that had the least impact on tenants and not the greatest impact on tenants. He continued by saying that he had little confidence in state housing laws. He also said that one of the things that he had asked for continuously was for Council to try to understand what the impact of the different formulas would be. Mr. Elrich said that Council had analyzed 20 COLTA cases as well as hypothetical cases to see what they would do, and when he examined it, he looked for the model that had the least impact on the tenants; he looked for the model that would generate rent increases that in the least number of cases would wind up exceeding the rent stabilization guidelines and in that analysis, was the lowest impact model of all the models Council had before it.

Mr. Elrich said that it was the one model which never triggered an increase over the rent stabilization guidelines using COLTA, and he felt it was instructive because he had tried to raise the issue before Council and it was a theoretical discussion to have; he wanted the discussion to be focused on what the impact would be of the different models; what would be the cost in terms of real cases; what would the different models have done with the COLTA cases they knew, and the model that he chose and tried to put forward, was the model that would have been the least injurious to tenants. He also said that was the same way he approached the rate of return argument. He did use Berkeley's rate of return model, and he said that he was not comfortable with it and that was why he was happy to hear that it would be feasible to use an alternative model to set a base year, which also had a minimal impact, and was

the second least likely model to produce rent increases over the rent stabilization guidelines. His first concern was the preservation of the affordable housing stock in Takoma Park for the long-term and his second concern was that whatever law would be passed, the City would not be left naked without a rent control law, with the opportunity for landlords to then have a field day with the City. He also said his first concern was the adoption of a model that would further the purposes of rent control.

Mr. Elrich suggested instead of looking at the debate in terms of a court case that Council was trying to race against, to think about what was going on in terms of the rent increases that tenants have received in their buildings. He continued that he had been appalled by the COLTA decisions and he was uncomfortable with the standards set for COLTA and he would not like to leave Article 7 in place a day longer than it had to be in its present form, because it would continue to generate the kinds of awful decisions that it had generated already. Mr. Elrich said he saw a chance to do the law in a way in which it would be beneficial to maintaining the ethnic, racial and economic mix of Takoma Park, and that could not be accomplished without effective rent control and without a commitment to affordable housing. He also said that he felt he had a constitutional duty not to pass a law which constituted a taking; he felt he had a moral duty to try to create a law that protected the interest of the tenants of the City. He said he had tried to do that in the best way he knew how; he asked numerous people for legal advice; asked people for their opinion; he had looked to see what models were available and held up to the test of time.

Mr. Hamilton indicated that when he first started working with the issue, it had become clear to him that it was hard as a tenant to understand that there was an increase process for the landlords, a petition which was increased over and above the stabilization rate. He said once you started to deal with how much of an increase it opened up a lot of debates. He said his first priority was to make sure rent control/rent stabilization would stay and it was important to understand that having a challenge of a law that was approximately 10 years old was a situation that was hard to change. Mr. Hamilton said he supported the cost-pass-through only because at the beginning he had been told that it was a good way to go if rent control did not exist. He also said that his argument with Mr. Elrich's proposal was that he knew in his ward that the landlords and property owners could not go back to 1979; the majority of the buildings had changed hands 4 or 5 times; they had been in bankruptcy, been sold, etc. Mr. Hamilton continued by saying that he also had been told that it was an unconstitutional thing to do and he was concerned about taking an idea right now and putting a theory in front of a judge based on 4 or 5 different models that other people had put together. He also said it started out with 6 models and those were the one that he looked at. He said that the other concern that he had with Mr. Elrich's proposal was the fact the he wanted to charge landlords \$25.00 per unit for filing a petition, and his concern was that the landlord would pass the cost to the tenant. He suggested having a model that was constitutionally upheld with an option to the tenants of a defective tenancy process that would counteract the rent increase process. He said the other issue in Article 7 that was sitting on the table was that the vacancy rate was 2.5 times the stabilization rate, which meant that right now if Article 7 were passed, the vacancy rate would only be 10%.

Mr. Prenskey said he was confused by some of the comments and accusations that he heard. He also said that he was sure that some of them were misunderstandings and misrepresentations and he did not think that they were malicious. He continued by saying that this was the first issue that he had heard about when he was running for office; his predecessor, Paul d'Eustachio, told him that he had better get up to speed on the issue because it was something that the Council was going to have to deal with; he did and the issue had been before Council long before he took office 22

months ago; Council had been reviewing and revising Article 7, and people who talked about the process beginning in May were misinformed. Mr. Prensky indicated that in the introduction to the revised Article 7, the basic finding was that there was still a housing emergency in Takoma Park, which was the genesis of the understanding to try to protect the tenants of the City. He commented that he had difficulty understanding and accepting the rights of the landlords; the landlords did have rights in Takoma Park; the constitution did not guarantee anybody a rate of return; the constitution did not guarantee anybody a profit, but the courts of the various states of the United States had done that, and they had done that by throwing out laws that did not allow what they called "a reasonable return on investment". He said he did not define what was a reasonable return on investment, and apparently the courts did, which was what the judges were paid to do.

Referring to Mr. Stumberg's recommendations, Mr. Prensky said that they were consistently based on the decisions of those courts which were relevant to the Takoma Park case. Mr. Prensky said there were reviews by the Corporation Counsel of the two basic proposals in front of Council, and the people who have said that there had not been a review by Corporation Counsel were incorrect, and the people who have said that this was an election issue were misinformed. He said there was a need to create more predictable standards for rent increases above the annual stabilization rate or else Council ran the risk of letting Takoma Park's rent control die. Mr. Prensky said that if the Takoma Park rent control died, there were no constraints on greed, misguided or mischievous landlords in the City, and it was his responsibility, as an elected official, to protect the interests of all of the people in the City. Mr. Prensky said he believed in moving forward as rapidly as he could, and he felt Council was accomplishing that purpose. He continued by saying that he favored the present proposal that he heard which said if a landlord did not choose to accept the current stabilization rate and instead chose to seek a higher rate through the petition process, that in fact they would run a risk of a roll back in rents if COLTA would determine that it would be the logical conclusion of their petition.

Ms. Porter commented that at the end of last week's discussion, she had felt that something constructive had been accomplished. She also said that with all the opinions which had been expressed, she felt everything was moving forward and Council and citizens were beginning to understand each other better. However, she did not feel that way about the present discussion. Referring to the accusation by speakers that the Council was making a political decision not to delay, she said that if Council was making a political decision it would be to delay because there was no political benefit to push forward with such an issue if there was substantial opposition. Ms. Porter continued her remarks by saying there had been times when tenants had come before the Council complaining about the current COLTA process and many of the issues that citizens had brought forward sounded like severe problems with the present process; she did not remember any landlord coming before Council saying that they did not like the current COLTA process, which suggested to her that what they had at present was not necessarily beneficial to the tenants. Ms. Porter said that the Council was trying to replace it with something that would be more beneficial to tenants. She also said that the longer the delay, the longer there would be a less beneficial process in place, and she did not feel that it would be beneficial to tenants at all.

Ms. Porter referred to a suggestion made that Council should pass something and let it be struck down and then Council would be aware of what issues it had to deal with. She said she felt that there was a real danger in doing that because once it was struck down, there would be no guarantee that there would be anything in place to prevent landlords from raising rents to whatever they chose. She said if Council had to enact emergency legislation, it would

have to put together something on a very quick timeframe, and she was sure that it would not be something which would be more beneficial than what Council could put together with more thought and more of the process that it was presently going through. Ms. Porter said that she felt the best thing to do would be to go with something which was more beneficial to tenants than the current process appeared to be and go ahead and do what seemed to be the best thing of the choices before Council. She felt one of the choices would be fair and would result in fewer large rent increases than the current law.

Mr. Moore commented that he was on the Housing Committee which had been going through the issue for a long time and he understood what Mr. Stumberg was talking about and he understood the calculation and he also understood what Council was trying to accomplish. However, he still had questions left that he was not satisfied with. He also said he did not have strong feeling that Mr. Elrich's proposal was legally defensible to create a base year on the basis of rents which were not under rent control for 12 years. He said his disagreement with both of the proposals was more basic: how was either model related to what a reasonable return on investment actually was? He did not see any connection with any of the five models which had been looked at and he felt that they did not address the question.

Mr. Moore also said that he felt the most protective model would be the one that Mr. Elrich had put forward; most protective to tenants, but he did not see how it related directly to what a reasonable return of investment was which was what Council was trying to accomplish in terms of a due process issue. He continued by asking what was a reasonable rate of return, constitutionally speaking, on a real estate investment because he had not seen anything yet which told what it was. It was not comparable to a CD, not as liquid, could not be compared to an oil well, and he was not sure how it would turn out in court and he did not like seeing a lot of money spent on something that he did not have enough information to act on. Mr. Moore said he was willing to support a suggestion that Council get some legal advice to help him understand what the basic concepts were behind those in order for them to put together something that could be supported.

Tom Gagliardo said at a time when he used to see and greet people on the street, members of Council did not speak to him but Mr. Moore did. Both last week and this week Mr. Moore had shown flexibility and had shown that he listened to people who had come before him to make points which they felt were important. He told Ms. Porter that nobody said that the current law should be preserved, everybody felt it could be improved; the issue at present was a bonafide concern, exactly the same concern that Mr. Elrich expressed when he first said "he wanted a law that would protect tenants, but he did not want an indefensible law", which was the same point that Mr. Moore was making, nobody wanted an indefensible law. He also said that he had discussed Mr. Elrich's proposal and it made sense to him and he was in support of it; the proposal was to accept it at first reading and everyone would work on it before the second reading.

Mr. Leary said he agreed with Mr. Elrich's modified proposal, however he also agreed for the reasons set forth by Mr. Moore and he didn't think Council knew whether the proposal satisfied the constitutional minimum. He also said that Council should be assured of that before it was passed at second reading and if it took until January 1992, so be it. He continued by saying that one of the questions which should go into the analysis was whether a proposal would ever permit granting an increase more than the general stabilization level and whether it would satisfy the constitutional minimum. Mr. Leary said he felt that Mr. Kete was correct in saying whatever Council wanted to pass, they needed to make certain it had sufficient evidence to establish constitutional legitimacy, which may be something more than Council had been

presented with.

Mr. Sharp commented that the due process as he had taken it to be all along was the arbitrariness of the standards under which COLTA made its decisions; i.e., you could put two different rent petitions in with the same numbers and come up with different decisions.

Mr. Moore said he understood it to be a due process taking issue. Mr. Sharp said that the issue had arisen in the course of the debate. He commented that Mr. Elrich had worked hard on the issue, and he did support it with the modification and he was also in support of going forward in the way he had indicated. But he also felt that he would like to at least see the rest of Article 7 go forward if the rent petition standards needed to be separated.

Mr. Prenskey said that nobody knew the number or nobody had the magic answer. There was no constitutional minimum to a rate of return, what Council was trying to determine was a standard which would be judged to be fair; that would be judged what would be called a reasonable rate of return. He said nobody had the answer to what that number happened to be; Council was struggling to do that in a way which would create the fewest cases in front of COLTA to protect the tenants in the current rent situation in the City. Mr. Prenskey said he would like to see Takoma Park without any more gentrification; the likelihood was less diversity because if affordable units were lost, a more rich and probably more white, a more economically, racially, and ethnically homogenous mix would be what Takoma Park would wind up with. He also said that there was no magic number and he felt that Mr. Elrich's proposal was solid as 2/3 or 3/4 of the base of what we were trying to do, and he was willing to spend more taxpayers' money to get some study of the urban economic situation if that was what was necessary in our minds and our hearts to justify the law that we pass. He was recommending that Council go forward with first reading with what was before it; the motion was seconded by Mr. Elrich.

Mr. Elrich said his understanding was that the rate of return section was out and substituted, maintenance of Net Operating Income was 60-40.

Mr. Stumberg explained that the title of the formula was Maintenance of Net Operating Income or Maintaining the Ratio of Net Operating Income, and the ratio could be expressed as either 60-40; 60 referring to operating expenses or 1.66 X operating expenses.

Mr. Clinansmith said his concern with the equity as expressed by COLTA was past decisions and the way it went about making its decision at present. He also said that tenants wanted a law which would be equitable to both the landlords and the tenants; it must be equal all the way across the board and it must not tilt for some nebulous reason at the end to give more percentage than was reasonable given the facts that were presented. Mr. Clinansmith went on to say that he still was receiving comments from the people in his building, and he had been kind to COLTA in his criticism, because some of the things that the tenants have said were not kind and the last time the tenants went to COLTA in their decision, they were presented with copies of invoices, slips, etc., something that if it were presented in a regular court, the judge would put you in contempt.

Andrew Busby suggested the Council not pass Mr. Elrich's proposal because he felt many things were wrong with it, and tenants had many objections with it. He pointed out the fact that after the election there would be a substantially different council and it would be unrealistic for them to have to go through the same issue again. He asked why not do the decent thing and do a real study.

Mr. Elrich explained to Mr. Busby that he was trying to create

models that could be evaluated and because the building was so atypical, there was a decision made to look at it with a different equity breakdown. He said when it was done and it was run as part of the real COLTA cases, it was run with the equity that actually existed; done one time as a model and another time as the real thing and was evaluated in all six different modes as it stood as the real building and not as a doctored-up or altered thing to try to create an ideal.

COUNCIL ACTION: The Rent Petition Standard portion passed at first reading. Mr. Hamilton moved Article 7 without the rent petition standards; seconded by Mr. Prensky.

Mr. Elrich proposed amendments to Sec. 6-94, by saying that he would like to see Council move to a determination of an annual rate in a manner which he felt was more like other jurisdictions did and he proposed the language in 6-94(a) after the word "the council" he would substitute "shall set a rate that is 70% of the Washington-area CPI all items", because the way the law was drafted at present, there was no guidance.

Mr. Sharp asked Mr. Elrich if he was suggesting that it would be done without the Council passing a stabilization rate every year.

Mr. Elrich said that he would have the Council formally adopt it as a stabilization rate.

Mr. Sharp asked if it replaced the recommendation or was it a different one.

Mr. Elrich indicated that it took away the recommendation and said "the Council shall set a rate that is 70% of the Washington-area CPI" in Section (a).

Mr. Elrich said strike out "the Council" and say "the stabilization rate shall be set at 70% of the Washington-area CPI all items".

Mr. Prensky asked Mr. Elrich what the formula proposed here would do to this year's stabilization rate?

Mr. Elrich responded that it would be 3.5%. He said it was what Council had intended to do, which was to be below the actual inflation rate.

Ms. Porter asked why was it set at 70% of the full CPI rather than the full CPI for housing and utilities.

Mr. Elrich replied that if housing would go up, it would have nothing to do with a cost factor for the landlord; it was a reflection of changes in the housing market and he was trying to assure that what he was passing through was an increase which would be adequate to cover increases in the actual operating costs, and the CPI included utilities and services, etc., all things that went into the landlord's costs.

Mr. Hamilton proposed adding a rate of 5% for tenants within existing buildings to transfer to a larger unit. He explained that if a tenant would relocate to a larger unit within an existing building, they would not be stuck to the market and re-qualify for the larger rents; i.e., if a person lived in a particular unit and the rent was \$500.00, and transferred to a larger unit, the increase could only be 5% of what the existing rent was presently.

Mr. Sharp asked what if the larger unit was already being rented for \$700.00.

Mr. Hamilton replied it was not a vacancy rate.

Mr. Moore said he assumed that the point was to protect tenants from moving in a building from having to suffer the vacancy rate

which would be higher than 5%.

Mr. Hamilton replied that it was true; it would be a 5% increase versus the 10% increase.

Mr. Prensky asked Mr. Hamilton if he was suggesting that if a person moved from a one-bedroom unit that was \$500.00 to a two-bedroom unit that was \$700.00, when the vacancy occurred between the time a person moved from the first to the second unit, the only increase the landlord could take would be 5% of \$700.00 as opposed to the currently permitted 10%, and it would guarantee a smaller increase on the current rent in the larger unit?

Mr. Elrich said he would also put forward a proposal to remove the provision which allowed for a higher increase on vacant units. He felt if Council was to go to a pass-through model and allow landlords the pass-through costs, there was no good reason to give them a higher rate of increase.

Mr. Sharp said all of those things needed to go in tandem because the vacancy rate relieved pressure on current tenants.

Mr. Prensky commented that if Section 2 was entirely eliminated, his proposal for compassionate non-raising of tenant's rents would be eliminated. He would like for that provision to be saved.

Mr. Prensky asked COLTA if there was anything in Article 7 as proposed at first reading that would have a landlord's petition wind up automatically on a roll-back if in fact, he proposed to include an equal risk factor to be attached to the petition standards; if the landlord chose not to accept the current stabilization rate and instead chose a higher rate through the petition process, he/she ran the risk of the determination that by law under the new Article 7 a roll-back in the rent could be ordered if the numbers in the petition formula determined that the rents should be lower than they were currently being charged.

Mr. Clinansmith commented that the one word that the citizens were looking for was "retroactivity", they wanted a total ban on retroactivity and to put the pressure on COLTA to make the decision more quickly and not penalize the citizens because of the lack of action.

Mr. Hamilton asked if it was not agreed that if a petition went to COLTA, a landlord could still take the normal rent increase, but wait until the petition was reviewed without having additional increases retroactively applied?

COUNCIL ACTION: First Reading of Article 7 passed unanimously. (Absent: Douglas).

ORDINANCE NO. 1991-31
(Attached)

Upon motion duly made and seconded, Council adjourned at 12:15 a.m. to reconvene on Monday, September 30, 1991.

Re-read at 1st Reading: 9/16/91
1st Reading: 9/10/91
2nd Reading:
Effective Date:

Introduced by:

Drafted by:
Linda S. Perlman,
Assistant Corporation Counsel;
Richard Knauf, Public Works Director;
and Henry Gilford, P.E.

Draft Date: September 12, 1991

ORDINANCE NO. 1991 - _____

STORMWATER MANAGEMENT

WHEREAS, House of Delegates Bill No. 971 (Chapter 369, Acts of Maryland 1990) transferred to the City of Takoma Park, as of July 1, 1990, the authority of the Washington Suburban Sanitary Commission ("WSSC") for stormwater management in the City of Takoma Park; and

WHEREAS, the City of Takoma Park is now responsible for stormwater management activities and for the review and approval of stormwater management facilities constructed within the City of Takoma Park; and

WHEREAS, the City of Takoma Park deems it necessary and in the public interest to establish minimum stormwater management requirements and procedures and provide for a stormwater management permit process applicable to development occurring within the City of Takoma Park by enacting a new chapter of the Takoma Park Code dealing with stormwater management.

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

SECTION 1. The Takoma Park Code is amended by adding a new Chapter 10C, Stormwater Management, as follows:

CHAPTER 10C. STORMWATER MANAGEMENT.

Sec. 10C-1. Title.

The provisions of this Chapter 10C shall be known as the "Stormwater Management Act of the City of Takoma Park" (hereinafter "Act").

Sec. 10C-2. Purpose.

(a) The purpose of this Act is to protect, maintain, and enhance the public health, safety, and general welfare by establishing minimum requirements and procedures to control the adverse results of stormwater runoff within the City of Takoma Park. Proper management of stormwater runoff will minimize damage to public and private property, reduce the effects of development

on land and stream channel erosion, assist in the attainment and maintenance of water quality standards, reduce local flooding, and maintain, as nearly as possible, the pre-development runoff characteristics of the area.

(b) This Act shall apply to all stormwater management activities within the City of Takoma Park. The application of this Act and the provisions expressed herein shall be the minimum stormwater management requirements and shall not be deemed a limitation of any authority or powers granted by State law. The Department of Public Works shall be responsible for the coordination and enforcement of the provisions of this Act.

Sec. 10C-3 Definitions.

For the purposes of this Act, the following words and phrases shall have the meanings indicated:

(a) Applicant means a land owner, contract purchaser or other person, partnership, corporation, other legal entity, or agent thereof which assumes the legal responsibility for stormwater management or land development subject to this Act.

(b) City means the City of Takoma Park, Maryland.

(c) City Administrator means the City Administrator for the City of Takoma Park or a duly authorized agent.

(d) Department means the Department of Public Works.

(e) Detention structure means a permanent structure for the temporary storage of runoff which is designed so as not to create a permanent pool of water.

(f) Develop land means to change the runoff characteristics of a parcel of land in conjunction with residential, commercial, industrial, or institutional construction or alteration.

(g) Development means the process of changing the use of land, including the construction or alteration of buildings, structures, other improvements on the land.

(h) Director means the Director of the Department of Public Works or a duly authorized agent.

(i) Easement means a grant or reservation by the owner of land for the use of such land by others for a specific purpose or purposes, and which must be included in the conveyance of land affected by such easement.

(j) Impervious means the condition of being impenetrable by water.

(k) Imperviousness means the degree to which land is impervious.

(l) Infiltration means the passage or movement of water into the soil sub-surface.

(m) Maintenance means any action necessary to preserve storm water management facilities in proper working condition, in order to serve their intended purposes and to prevent structural failure of such facilities.

(n) Retention structure means a permanent structure that provides for the storage of runoff and is designated to maintain a permanent pool of water.

(o) Stormwater concept plan means the overall proposal for a storm drainage system, including stormwater management structures, and supporting documentation as specified in the Stormwater Management Design Manual for all proposed developments.

(p) Stormwater design plan means the set of drawings and other documents that comprise all of the information and specifications for the systems, structures, concepts and techniques that will be used to control stormwater as required by the approved stormwater concept plan and the Stormwater Management Design Manual.

(q) Stormwater management means the collection, conveyance, storage, treatment and disposal of stormwater runoff in a manner to prevent accelerated channel erosion, increased flood damage, and/or degradation of water quality.

(r) Stormwater Management Design Manual means the Prince George's County Stormwater Management Design Manual, a manual of design, performance, and review criteria for stormwater management practices.

(s) Stormwater management plan means a set of representations, drawings or other documents submitted by an applicant in order to obtain a stormwater management permit and containing the information and specifications as required by the Department by any regulations adopted under this Act and by the provisions of this Act.

(t) Subdivision means the division of a lot, tract, or parcel of land into two or more lots, plots, sites, tracts, parcels, or other divisions by plat or deed.

Sec. 10C-4. Scope of Act.

No person shall develop any land without having provided for appropriate stormwater management measures that control or manage

runoff and without having obtained a stormwater management permit, except as provided by this Act.

Sec. 10C-5. Adoption of Stormwater Management Design Manual.

(a) The "Prince George's Country Stormwater Management Design Manual, April 1991", as amended, published by the Prince George's County Department of Environmental Resources, Division of Environmental Management, Watershed Protection Branch, and the "Standard Details for Stormwater Management Construction, December, 1990", as amended, published by the Prince George's County Department of Environmental Resources, are hereby adopted as the design, performance, and review criteria for stormwater management practices in the City. A copy of the Stormwater Management Design Manual and Standard Details for Stormwater Management Construction are on file in the Office of the Director for public inspection and use.

(b) The following chapters of the Stormwater Management Design Manual are deleted: Chapter II (Permit Processing); Chapter VI (Bonding); and Chapter IX (Inspection and Enforcement Procedures).

Sec. 10C-6. Exemptions from Requirements.

The following development activities are exempt from the provisions of this Act and the requirements of providing stormwater management.

(a) Additions or modifications to existing detached one-family dwellings, except where the applicant proposes to connect directly to the public stormwater drain system;

(b) Developments that do not disturb more than five thousand (5,000) square feet of land area, except where the applicant proposes to connect directly to the public stormwater drain system;

(c) Land development activities which the Department determines will be regulated under specific State laws which provide for managing stormwater runoff.

Sec. 10C-7. Stormwater Concept and Design Plans Required.

(a) A stormwater concept plan shall be submitted for approval to the Department.

(b) All preliminary plats of subdivision shall be consistent with any City approved stormwater concept plan.

(c) The applicant shall submit a stormwater design plan to the Department.

(d) If any plan involves any stormwater management facilities

or land to be dedicated to public use, the same information shall also be submitted for review and approval to the Department and any other appropriate agencies or departments identified by the Director for review and approval. This plan shall serve as the basis for all subsequent construction.

Sec. 10C-8. Permit Requirements.

(a) No stormwater management permit shall be issued or modified without the following, as applicable:

(1) A performance bond acceptable to the City['s Corporation Counsel] Administrator, if such a bond is required [by the Director] under Section 10C-13 of this Act.

(2) Copies of any recorded easements for off-site stormwater management facilities.

(3) An approved stormwater management design plan; provided that the Director may accept a stormwater management concept plan if it identifies the location and type of facilities to be constructed in sufficient detail to accurately estimate construction costs.

(b) Notwithstanding any of the provisions herein, the Director may require an approved stormwater design plan, recordation of all necessary easements, and an executed maintenance agreement prior to issuance of a stormwater management permit.

(c) Approved stormwater design plans shall contain a certification by the applicant that all land clearing, construction, development, and drainage will be done according to the plan[.] and according to all applicable City laws.

(d) In no event shall construction or any other land development subject to the provisions of this Act begin prior to the issuance of a stormwater management permit.

(e) Stormwater management permits shall be valid for one year from the date the permit is issued.

Sec. 10C-9. Fees.

(a) A nonrefundable application and plan review fee shall be paid at the time an application for a stormwater management permit is submitted. The amount of the fee shall be as follows:

(1) Residential development.

(a) Single family dwellings: \$75.00.

- (b) Multi-family dwellings: Two to six units - \$25.00 per unit, with a \$75.00 minimum fee; Seven to twenty units - \$20.00 per unit; and Twenty-one or more units - \$15.00 per unit.

(2) Commercial, industrial, and institutional development: \$.05 per square foot of impervious area. By way of example, impervious area includes the roof of a building and paved parking area.

(b) Revision fee. No charge shall be made for the first plan revision submitted for review. The charge for the second and all subsequent plan revisions submitted for review shall be 50% of the original fee.

Sec. 10C-10. Permit Suspension and Revocation.

A stormwater management permit may be suspended or revoked after written notice is given to the permittee for any of the following reasons:

(a) Any violation(s) of the conditions of the stormwater design plan approval.

(b) Construction not in accordance with the approved plans;

(c) Noncompliance with correction notice(s) or stop work order(s); or

(d) The existence of an immediate danger in a downstream area in the opinion of the Director.

Sec. 10C-11. Minimum Requirements.

(a) The minimum stormwater control requirements shall provide management measures necessary to maintain the post-development peak discharges for two (2) and ten (10) year frequency storm events at a level that is equal to or less than the respective two (2) and ten (10) year pre-development peak discharge rates.

(b) Stormwater concept and design plans, where applicable, shall be consistent with adopted and approved watershed management plans or flood management plans as approved by the State of Maryland Department of Natural Resources in accordance with the Flood Hazard Management Act of 1976 (Title 8, Subtitle 9A of the Natural Resources Article, Annotated Code of Maryland, as amended).

Sec. 10C-12. Stormwater Management Measures.

(a) Stormwater management measures may include both structural and nonstructural elements. Natural swales and other natural runoff conduits shall be retained where practicable.

(b) Where additional stormwater management measures are required to satisfy the minimum control requirements, the order of preference of the measures to be used is as follows:

- (1) Infiltration practices;
- (2) Stormwater retention structures; and
- (3) Stormwater detention structures.

(c) All stormwater management measures shall be designed in accordance with the Stormwater Management Design Manual.

Sec. 10C-13. Performance Bond.

(a) The applicant may be required to provide a cash bond, irrevocable letter of credit, certificate or guarantee, or other means of security acceptable to the City['s Corporation Counsel] Administrator prior to the issuance of any stormwater permit for construction of a development requiring a stormwater management facility.

(b) If security is required, the amount of the security shall not be less than the total construction cost as estimated by the Department of the stormwater management facility.

(c) Any security required pursuant this Section 10C-13 shall include provisions relative to forfeiture for failure to complete work specified in the approved stormwater design plan, compliance with all the provisions of this Act and other applicable laws and regulations, and any time limitations.

(d) If security is required, the security shall not be fully released without final inspection of completed stormwater management facility and the acceptance of "As-Built" plans.

(e) A provision may be made for partial release of the amount of the security.

Sec. 10C-14. Inspection Schedule and Reports.

(a) Prior to approval of a stormwater design plan, the applicant shall submit a proposed staged inspection and construction control schedule. Inspections shall be conducted during construction of stormwater management systems in accordance with the Stormwater Management Design Manual.

(b) Any portion of the work which does not comply with the stormwater design plan shall be promptly corrected by the permittee.

(c) The permittee shall notify the Department before commencing any work to implement the stormwater design plan and upon completion of the work.

Sec. 10C-15. Inspection Requirements During Construction.

After commencing initial site operations, in addition to any inspections by the Department, the permittee shall provide for regular inspections to be certified by a registered professional engineer at construction stages as specified in the Stormwater Management Design Manual.

Sec. 10C-16. Final Inspection Reports.

(a) The permittee shall provide "As Built" plans certified by a registered professional engineer to be submitted upon completion of a stormwater management facility.

(b) A [The] registered professional engineer shall certify that the stormwater management facility has been constructed as shown on the "As Built" plan and meets the approved stormwater design plan and specifications.

(c) A final inspection shall be conducted upon completion of the stormwater management facility to determine if the completed work is constructed in accordance with the approved stormwater design plan.

(d) The Department shall maintain a file of all inspection reports.

Sec. 10C-17. Acceptance of Certification in Lieu of Inspections.

The Director, in his or her sole discretion, may accept the certification of a registered professional engineer in lieu of any inspection required by this Act.

Sec. 10C-18. Ownership and Maintenance of Stormwater Management Facilities.

(a) Any stormwater management measure which serves a single lot or facility shall be privately owned and maintained.

(b) All stormwater management measures relying on vegetated areas or site features shall be privately owned and maintained.

(c) All other stormwater management facilities shall be publicly owned and maintained.

Sec. 10C-19. Maintenance Agreement.

(a) An inspection and maintenance agreement shall be executed for all private stormwater management facilities prior to the issuance of a stormwater management permit. Such agreement shall provide for access to the facility at reasonable times for regular inspection by the Department.

(b) The agreement shall be recorded by the applicant in the land records of the County prior to the issuance of a stormwater management permit.

(c) The agreement shall also provide that upon a failure to correct violations requiring maintenance work, within ten (10) days after notice thereof, the Department may provide for all necessary work to place the facility in proper working condition. The owner(s) of the facility shall be assessed the costs of the work. The costs of the work shall be a lien on the property, which may be placed on the tax bill and collected as ordinary taxes by the City.

Sec. 10C-20. Inspection for Preventive Maintenance.

(a) Preventive maintenance inspections of infiltration systems, retention, or detention structures may be made by the Department. The inspection schedule may include an inspection during the first year of operation and every three (3) years thereafter, or as often as deemed necessary by the Director in his or her sole discretion.

(b) The Department shall maintain a file of all preventive maintenance inspection reports.

(c) If, after an inspection, the condition of a stormwater management facility presents an immediate danger to the public health or safety because of an unsafe condition or improper maintenance, the Department, shall take such action as may be necessary to protect the public and make the facility safe. The owner(s) of the facility shall be assessed any costs of such action and the cost shall be a lien on the property, which may be placed on the tax bill and collected as ordinary taxes by the City.

Sec. 10C-21. Unsafe Condition; Entry onto Property.

(a) If stormwater runoff in the City causes or threatens to cause an unsafe condition, then the Director is authorized to enter onto property for the purpose of determining the cause of the runoff, inspecting the condition causing the runoff, and determining whether the runoff is being properly managed or contained.

(1) For purposes of this section, an "unsafe condition" means damage to property or to the public health or safety.

(2) Any entry onto property shall be made at reasonable times and in a reasonable manner.

(b) If the Director determines that stormwater runoff in the City causes or threatens to cause an unsafe condition then the Director may issue a violation notice to the property owner.

(1) The violation notice shall specify the problem, the corrective action which is required, and the time within which corrective action must be taken. A property owner shall be given not less than two weeks to complete the corrective action in a good and workmanlike manner, unless, because of the nature of the unsafe condition, a shorter time is deemed necessary by the Director in his or her sole discretion.

(2) Failure to perform corrective action within the time specified in the violation notice shall be a violation of this Act.

Sec. 10C-~~21~~22. Modification of Requirements.

(a) The Director may grant a modification of the requirements of this Act if there are exceptional circumstances applicable to the site such that strict adherence to the provisions of the Act will result in unnecessary hardship and not fulfill the intent of the Act.

(b) A written request for modification shall be required and shall state the specific modification sought and the justification therefor. It shall include descriptions, drawings, and any other information that is necessary to evaluate the proposed modification.

(c) Any substantial modification of the stormwater design or concept plan may be referred to all agencies or departments which reviewed the original plan.

(d) Modifications of this Act which are so great that they constitute a waiver of the stormwater management requirements for an individual development may be granted only if the applicant can conclusively demonstrate that:

(1) The proposed development will not generate more than a 10 percent (10%) increase in the two (2) year pre-development peak discharge rate and will not cause an adverse impact on the receiving wetland, watercourse, or waterbody; or

(2) A site is completely surrounded by existing developed areas which are served by an existing network of public storm drainage systems of adequate capacity to accommodate the runoff from the additional development.

Sec. 10C-~~[22]~~23. Appeals.

(a) Any violation notice issued pursuant to this Act may be appealed in writing to the City Administrator within ten (10) days of the date of the violation notice.

(b) Any person aggrieved by the decision of the Director denying a modification of the requirements of this Act may appeal such decision to the City Administrator, in writing, within ten (10) days of the date of the written denial.

(c) The appeal to the City Administrator pursuant to this Section is a prerequisite to any court action.

Sec. 10C-~~[23]~~24. Penalties.

(a) Any violation of any of the provision of this Act shall be a Class A offense as set forth in Section 1-19 of the Takoma Park Code (Municipal Infractions).

(b) Each day that the violation continues shall be a separate offense.

(c) If the violation causes or has caused substantial danger to the public health or safety, then the Director may deem the violation a Class A misdemeanor offense as set forth in Section 1-20 of the Takoma Park Code (Misdemeanors).

(d) In addition, the City~~'s Corporation Counsel~~ may institute injunctive, mandamus, or other appropriate action or proceedings at law or equity for the enforcement of this Act or to correct violations of this Act or apply to the Court for restraining orders, temporary or permanent injunctions, or other appropriate forms of remedy or relief.

SECTION 2: This Ordinance shall be effective immediately.

Adopted the _____ day of _____, 1991 by roll call vote as follows:

Aye:

Nay:

Abstained:

NOTE: Additions to this Ordinance made after the Council's September 3, 1991 worksession are underlined and deletions are [bracketed].

Additions to this Ordinance made after the Council meeting on September 10, 1991 are highlighted and deletions are [bracketed and highlighted].

corr126/swmcode/mb

A:SWMCODE:Directordisc:dm:wp50

Drafted by: Councilmember Elrich/
E. Tracey, COLTA Executive Director

(RENT INCREASE PETITION STANDARDS- SECOND ALTERNATIVE)

MAINTENANCE OF NET OPERATING INCOME/ COST PASS-THROUGH

Section 6-90. Rent Increase Petitions.

(a) Whenever a landlord proposes a rent increase of more than the amount permitted by the rent stabilization allowance established in Section 6-94.1, the landlord shall file a petition using the form provided by the Commission.

(1) *Fees.* The cost of filing a rent increase petition with the Commission shall be \$25 per unit, or \$2,500 per building, whichever is less.

(2) *Notice of a Rent Increase Pursuant to a Petition.* The landlord shall notify each tenant affected by a proposed rent increase, no less than two months but no more than three months prior to the date the proposed increase is to take effect. The landlord shall also serve a copy of the petition form, including a listing of all the rents requested, upon each affected tenant within one month after the filing date of the petition.

(3) *Effective Dates of Rent Increases.* No effective date of a proposed rent increase listed on the petition shall be less than two months after the filing date of the petition.

(b) **Rent Increases Pursuant to a Hardship Petition**

(1) *Purpose of Section.* The purpose of this Section is to protect tenants from unwarranted rent increases, while also allowing rent levels which provide landlords with a fair return on their investment. This Section is designed to allow increases in the landlord's rental income only when the landlord demonstrates that the net operating income in the base year is larger than the net operating income in the petition year as defined in Section 6-90 (b)(3)(A). A landlord also has the option of showing that rent increases are necessary to enjoy an adequate rate of return, as defined below in Section 6-90 (b)(3)(B).

(2) *Definition of Net Operating Income.* The net

operating income for a property for either base year or petition year shall be the actual income, including rents and other considerations, less the allowable operating expenses incurred, pursuant to Section 6-90(b)(5), below, during the petition year.

(3) *Justification of the Rent Increase.* The petition shall include justification for the rent increase proposed using one or more of the following criteria:

(A) *Increases in operating expenses have risen faster than rental income.* The increases shall be measured against a base year of 1990, unless the landlord provides good cause why 1990 should not be used as a base year and provides adequate documentation for a year other than the 1990 base year.

(1) If the necessary data for the base year is not available or if the base year is demonstrated to be inappropriate for reasons other than the way the landlord has maintained the records of the property, the Commission may determine that another more appropriate base year shall be used.

(2) The base year net operating income shall be adjusted by the Commission if it is shown that the base year net operating income was exceptionally high or low in comparison to other years the building was in operation. In such instances, the Commission may make adjustments to reflect average expenses for the property over a reasonable period of time.

(3) If the landlord seeks to have the base year net operating income computed from a year during which rents in the property were not controlled by rent stabilization, the Commission shall establish a base year of 1979 and calculate the base year net operating income as follows:

(i) Reduce the rental income of the petition year by the rent stabilization level from 1979 to the petition year.

(ii) Reduce each operating expense by the Consumer Price Indexes for each item, from 1979 to the petition year, as listed in the Commission's Regulations.

(iii) Calculate the base year net operating income pursuant to Section 6-90(a)

(8) and adjust the base year net operating income by 100 percent of the inflation rates from 1979 to the petition year.

(B) *Inadequate rate of return.* The rate of return shall be calculated by adding the landlords cash flow to the amount by which the rental property has appreciated since the landlord purchased the property, divided by the number of years the landlord has owned the property, and adding the tax savings enjoyed by the landlord during the petition year as a result of owning the property. This amount shall be divided by the total amount of cash equity the landlord has in the property, including down payment and all payments made towards principal since the purchase of the property.

(1) The cash flow shall be the net operating income established for the petition year, less payments towards mortgage interest during the petition year.

(2) Interest payments due to the refinancing of the rental property shall be allowed in calculating the landlord's cash flow only if the landlord shows that proceeds from the refinancing went toward maintenance or capital improvements in the property. If the landlord shows that a portion of the proceeds from refinancing the property were spent on maintenance or capital improvements, then the interest payment on the refinancing agreement shall be reduced to reflect that portion. This provision shall apply prospectively only.

(3) The interest rate on refinancing of the property shall be no more than prevailing market interest rates in effect at the time of the refinancing.

(4) The following information shall be included on the petition:

(A) The beginning and ending dates of the consecutive 12-month period, (which 12-month period must be within the 15 months preceding the date of the filing of the petition) during which the landlord's income and expenses were accrued. This period shall be considered the petition year.

(B) The beginning and ending dates of the consecutive 12-month period, if other than January 1 to December 31, 1991, during which the landlord seeks to

have the base date established.

(C) The method of accounting used: cash basis or accrual basis;

(D) The net income of the rental property, including rental income, income from laundry and parking, and other income generated by the property.

(1) The rental income used for the purposes of calculation shall be 92 percent of the maximum possible income collectible at the property, including the comparable value within the property of any resident manager's apartment, unless good cause is shown why an 8 percent vacancy rate, equal to one month's vacancy per unit per year, is unreasonable and would cause an undue hardship upon a landlord.

(E) The total number of rental units in the rental property.

(1) If the landlord is requesting increases for fewer than 100% of the rental units, the amounts for income, expenses, and equity shall be pro-rated for those units included on the petition.

(F) The dates that the proposed rent increases are to go into effect;

(1) The effective dates of the proposed rent increases shall not be more than 12 months after the filing of the petition.

(5) The following may be included as expenses for both the petition year and the base year:

(A) Utilities;

(B) Administrative expenses;

(1) In determining the management fee under administrative expenses, whether in an owner-managed rental property or where management services have been provided by a property management firm, the landlord shall provide proof of management services provided and expenditures claimed.

(2) Landlords who manage their own properties may deduct up to 6 percent of maximum

rental income for administrative expenses. Landlords who perform labor at the property shall document the times and nature of such labor. The landlord shall be allowed reasonable compensation for the labor performed at an hourly rate for skilled and unskilled labor, to be established in the Commission's Regulations. If the landlord wished to be compensated for skilled labor, the landlord must provide evidence having the necessary experience and skills for the job performed.

- (C) Operating and maintenance expenses;
- (D) Payroll;
- (E) Taxes and insurance payments;
- (F) Uncollected rents and vacancy losses;

(1) However, vacancy losses shall not be more than 6 percent of the maximum rent income, unless good cause can be shown why the vacancy rate is higher than 6 percent. Good cause shall be determined at the Commission's discretion.

(G) A pro rata share, using straight-line depreciation, of capital improvements which have a useful life in excess of one year.

(1) Depreciation shall be calculated using the City of Takoma Park Amortization Schedule.

(6) The following may not be included as expenses:

(A) Payments made for mortgage expenses, either principal or interest;

(B) Fines from noncompliance with Housing Code violations or COLTA orders;

(C) Damages paid to tenant as ordered by COLTA or the courts;

(D) Depreciation or other expense items recognized by the federal government but not recognized by the Takoma Park Code.

(E) Late fees or service penalties imposed by utility companies, lenders or other entities providing goods or services to the landlord or the rental property.

(F) Membership fees in organizations established to influence legislation and regulations.

(G) Contributions to lobbying efforts;

(H) Contributions for legal fees in the prosecution of class-action cases;

(I) Political contributions for candidates for office;

(J) Maintenance expenses for which the landlord has been reimbursed by any security deposit, insurance settlement, judgement for damages, agreed upon payments, or any other method;

(K) Any expense for which the tenant has lawfully paid directly; and

(L) Attorney's fees charged for services connected with counseling or litigation related to actions brought by the City due to the landlord's failure to comply with applicable housing regulations or Chapter 6 (Housing) of the Takoma Park Code.

(1) This provision shall apply unless the landlord has prevailed in such an action brought by the City.

(M) Facts represented in the petition shall be documented by true copies of bills, receipts, and other financial records so that the Commission, should it find substantiation of the petition necessary, will have documents needed to substantiate the facts.

(7) The Commission shall not consider the landlord's request:

(A) Until the petition, including supporting documentation, has been submitted to the Commission; or

(B) When the landlord has not properly registered the rental property with the City of Takoma Park, and/or when the landlord has outstanding fees or fines with the Department.

(C) When the landlord has not filed required rent reports for the three (3) years prior to the filing date of the petition with the Department.

(1) The Commission may, at its discretion, waive the above requirement for good cause shown.

(D) When the landlord has unpaid city taxes with regard to any rental unit owned by the landlord in the City of Takoma Park.

(E) When the landlord has failed to comply with a final Order of the Commission on Landlord-Tenant Affairs concerning any rental unit owned by the landlord in the City of Takoma Park.

(1) However, the failure to comply with an Order of the Commission shall not constitute a basis to decline to consider the landlord's request if the Order has been appealed to the Circuit Court and no decision has been rendered on the appeal.

(F) When the landlord has petitioned for rent increases for the property within the last twelve (12) months preceding the date on the petition.

(8) In determining whether to grant, modify, or deny the landlord's request for a rent increase, the Commission shall review the petition and the documents submitted supporting the landlord's request, and make adjustments to the income and expenses as follows:

(A) Any arithmetical error for any expense listed on the petition shall be corrected and the petition shall be adjusted accordingly;

(B) Any error in calculating depreciation for capital improvements shall be corrected and the figures shall be adjusted accordingly;

(C) Any expense incurred outside the 12-month petition year or base date year shall be removed from the total;

(D) Any expenses not documented by bills, receipts, cancelled checks, bank statements, internally generated records of financial transactions, or other verifiable documents, shall be removed from the total;

(E) If the Commission finds that any of the landlord's expenses are inaccurate or not verifiable, the Commission, in its discretion, may notify the landlord and give the landlord a reasonable time after receipt of such notification to provide the Commission with appropriate documentation.

(F) If the Commission discovers, after a hearing on a landlord's request, that through error, oversight or omission, a material fact has not been documented in the record, the Commission may, in its discretion, reopen the record and allow all parties to respond in writing and submit additional documentation within one month of the close of the hearing.

(G) Any expenses found to be inaccurate or not verifiable, by evidence adduced prior to or at the petition hearing, unless approved by the Commission, shall be removed from the total;

(9) Once the Petition has been filed, and all preconditions for a landlord's request have been met, the Commission:

(A) Shall, in good faith, endeavor to issue its Opinion and Order ruling on the request within ninety (90) days of the hearing on the Petition.

(B) May, in its sole discretion, permit the landlord to begin charging the rent amount requested, not to exceed the rent stabilization rate in effect.

(10) After the Commission's adjustments to the landlord's original figures listed on the petition, the Commission shall calculate the landlord's base year net operating income by subtracting all allowable expenses approved for the base year from the landlord's income during the base year. The Commission shall then make an upward adjustment of the base year net operating income by 100% of the Consumer Price Index in order to calculate the allowable petition year net operating income. If the landlord's petition year documentation shows that the petition year net operating income is less than the adjusted base year net operating income, the Commission shall allow rents to be adjusted upwards to result in the adjusted base year net operating income.

(11) The Commission shall also calculate the landlord's current rate of return pursuant to Section 6-90(b)(3)(B), above. If, after the Commission's rent adjustments pursuant to the Commission's calculations of the net operating income, the landlord's rate of return on the rental property is less than 8 percent, the Commission shall then award the necessary rent increases needed to generate a 8 percent rate of return.

(c) Petitions for Rent Increases for Capital Improvements.

(1) *Purpose.* Landlords may petition the Commission for rent increases over the amount permitted by the rent stabilization allowance established in Section 6-94.1 in order to recover the costs of capital improvements. These cost must be amortized according to the amortization schedule in the Commission's Regulations. Rent increases following a capital improvement petition shall have the effect of reimbursing landlords, over time, for the costs of capital improvements.

(2) *Definition of Capital Improvement.* A capital improvement shall be any improvement to a unit or property, whether labor or materials, which has a useful life of more than one year, which is not annually recurring in nature, and which has a direct cost of \$200 or more per unit affected, or \$2,500, whichever is less.

(3) The rent ceilings for a unit or property shall be adjusted to reflect the amortized costs of planned or completed capital improvements to the unit or property, where such capital improvements:

(A) Are necessary to bring the unit or property into compliance or maintain compliance with applicable code requirements, provided that in determining the cost of a capital improvement no consideration shall be given to any additional cost incurred for increased property damage and/or deterioration resulting from an unreasonable delay in the undertaking or completion of any repair or improvement; or

(B) Are provided to maintain the unit or property in good physical condition and to maintain services provided to tenants, or

(C) Are provided by the landlord in good faith to primarily benefit the tenant(s). There shall be a rebuttable presumption that a specific capital improvement is so provided if it has been approved in writing by tenants in a majority of the units affected.

(4) *Amortized Cost.* The annual amortized cost of a capital improvement shall be calculated according to the following formula: the reasonable cost of capital improvement, plus the cost of financing, divided by the appropriate amortization period for that improvement.

(5) *Cost of Financing.* The cost of financing a capital improvement shall be the actual and reasonable amount of interest and other charges paid to the lender in

connection with a loan taken to finance the capital improvement.

(6) *Imputed Financing.* If a landlord has financed the capital improvement with her/his own funds, the cost of financing shall be deemed to be the amount of financing costs the landlord would have incurred had the landlord financed the capital improvement with a loan for the amortization period of the improvement, at an interest rate equal to ten percent (10%) per annum.

(7) *Amortization Schedule.* The cost of a capital improvement shall be amortized according to a the amortization schedule established in the Commission's Regulations. For capital improvements not listed in the schedule, the hearing examiner shall determine a reasonable amortization period. The amortization period for a capital improvement shall begin at the time a rent increase granted by the Board goes into effect, or two years after completion of the capital improvement, whichever occurs earlier. The filing of a petition shall stop the amortization period until the decision on the petition goes into effect.

(8) *Expiration of Amortization Period.* Notwithstanding any other provision of these regulations, the rent ceiling for a rental unit shall be adjusted downward per the amortization schedule by the amount of the upward rent ceiling adjustment attributable to a capital improvement after the end of the time period over which the cost of that improvement was amortized.

(9) *Future Improvements.* In order to encourage capital improvements, a landlord may petition for an upward rent adjustment in advance of the improvement. Such a petition will be based upon the anticipated future cost of the capital improvement/s that will be initiated within one year and completed within two years of the date of filing of the petition. If the adjustment is granted in whole or in part, it shall not take effect until the capital improvement is completed, and its actual costs and completion is documented to the Board.

(d) The following qualifiers shall apply to the granting of any rent increases pursuant to a hardship or capital improvement petition:

(1) If, after the Commission's calculations, rent increases greater than 15% are necessary to (1) result in the increases approved by the Commission pursuant to sections 6-90(b) or (c), above, the necessary increases shall be phased-in over a term of more than one year until the increases awarded by the Commission have been taken.

(A) If a landlord's required increase is phased-in over the term of more than one year, the subsequent increases shall be in addition to the rent stabilization level in effect in subsequent years.

(2) If the Commission determines that a unit requiring an increase of more than 15 percent is vacant, or if the unit becomes vacant before the required increase has been taken in full, then the Commission may, in its discretion, allow the required increase for that unit be taken in one year, or upon the vacancy of that unit, provided that it has been at least one year since the last rent increase for that unit.

(3) When serious outstanding Housing or Zoning Code violations affecting health, safety, or welfare are present at the property, the Commission shall order that all serious violations be corrected before the landlord may implement the rent increases granted by the Commission. A landlord, once he or she has corrected the serious violations, may take the increase prospectively only.

(4) If the landlord has demanded, accepted or received rent in excess of the lawful rent ceiling, rent increases approved under this Section shall not be effective until the landlord has refunded such overcharges.

(e) Upon its determination of the rent increase to be granted to the landlord, the Commission shall issue a written Opinion and Order and furnish copies of the Opinion and Order to the landlord and affected parties to the petition.

PROPERTY OF
CITY OF
MEMPHIS

September 18, 1991

TO : Distribution Noted Below

VIA : James S. Wilson, Jr. City Administrator

FROM : Paula S. Jewell, CMC
City Clerk *Paula Jewell*

SUBJECT: Council Summary from September 16, 1991 Executive
Session, Special Session and Worksession

**DEPARTMENT HEADS: PLEASE READ EACH ITEM CAREFULLY FOR MATTERS THAT
MAY PERTAIN TO YOUR DEPARTMENTS.**

- [] 1. Executive Session - Upon motion duly made, the Council convened into Executive Session at 7:10 PM to discuss a legal matter. The Council then convened into Special Session at 7:55 PM.

- [] 2. Stormwater Management Ordinance - Upon motion by Mr. Prensky, duly seconded by Ms. Porter, the Council convened as the Stormwater Management Board to ratify the Council's acceptance at first reading the Stormwater Management Ordinance #1991-30. Included were the amendments made by the Council at the 9/10/91 meeting. Second reading is scheduled for 10/14/91. Motion to adjourn the Stormwater Management Board at 8:12 PM was passed without objection.

- [] 3. Article 7 (including Rent Petition Standards) - The Council heard comments from approximately 20 speakers on the proposed alternative models for rent petition standards. After Council discussion, Mayor Sharp suggested that the two issues be separated out. Upon motion made by Mr. Prensky and seconded by Mr. Elrich, the alternative model re: "maintenance of net operating income" was accepted at first reading by a 5 to 0 vote (Mr. Moore abstained and Mr. Douglas was absent).

Mr. Hamilton moved acceptance of the ordinance at first reading amending Article 7 (without the rent petition standards section), duly seconded by Mr. Prensky and passed unanimously. The Council will discuss Mr. Elrich's, Mr. Hamilton's proposed amendments to Sec. 6-94, 6-94(a), and 6-94(a)(2) at a worksession.

(Over)

Worksession

- [] 4. Cable Board Ordinance - Consensus to move this to Council worksession on 9/30/91.
- [] 5. CDBG Block Grant Program and Affordable Housing - **VAL VINCOLA** explained the staff's recommendations for CDBG funding in program year 18. Bill Valdez was on hand to explain the CAC's recommendations. **DHCD DIRECTOR GRIMMER** is recommending, and Council concurred, that the City use the State DHCD team to develop the City's comprehensive affordable housing plan. Council consensus to accept the CAC's zero recommendation for CDBG funding of an assistant DHCD director position and go for the \$22,000 reprogrammed CDBG funds from the MHA Executive Director project. Consensus also to accept the CAC's recommendation for the Transitional Housing and Heffner Park proposals. Affordable housing issues to be discussed at a later date.

Regarding the Prince George's proposals, the consensus was to adopt **STAFF'S** recommendation for funding \$380,073 for the Takoma\Langley CDA commercial revitalization proposal. No Council consensus to go forward with the Rt. 410/650 proposal. **STAFF** commented that a more concerted effort is needed between the merchants, community associations, County staff, and persons in the unincorporated areas first and when this happens, **DHCD STAFF** will be organizing this at the appropriate time. (Staff note: probably begin late FY'92).

The CAC proposed to continue to monitor the projects throughout the budget process for the PY 18 program and this will be reflected in the language of the resolution scheduled for 9/23.

- [] 6. Save our Cities Resolution - Consensus to go forward with passage of the Resolution at the 9/23 meeting, with amendments made by the Council and accepted by the Peace Network. **CITY CLERK** to arrange for the amended resolution.

- [] 7. Surplus Campaign Funds - Council will discuss the questions raised as to what kinds of uses will campaign funds be allowed for at the second reading of the ordinance scheduled for 9/23.

Copies to: City Council
City Administrator Wilson
Assistant City Administrator Habada
Corporation Counsel
Personnel Officer Hobbs
Housing & Comm. Dev. (Grimmer, Schwartz, VinCola, Ross)
Public Works (Knauf, Laster, Braithwaite)
Police Dept. (Fisher, Wortman, Young, Rosenthal)
Recreation Department
Library
Accounting Division
Cable Office (Robert Smith)

Regular Meeting of the City Council
Monday, September 23, 1991

CITY OFFICIALS PRESENT:

Mayor Sharp	City Administrator Wilson
Councilmember Douglas	Asst. City Admin. Habada
Councilmember Elrich	City Clerk Jewell
Councilmember Moore	Library Director Robbins
Councilmember Porter	Asst. Corp. Counsel Perlman
Councilmember Prensky	Construction Specialist Ziek
ABSENT: Councilmember Hamilton	
Councilmember Leary	

The City Council convened on Monday, September 23, 1991 at 8:07 p.m. in the Council Chamber at 7500 Maple Avenue, Takoma Park, Maryland.

Following the Pledge of Allegiance, the following remarks were made.

MAYOR/COUNCIL COMMENTS AND PRESENTATIONS:

Mayor Sharp announced that Mr. Hamilton had suffered a traffic accident and would be absent this evening.

Ms. Porter announced that on October 16th at 7:30 p.m., at Carole Highland Elementary School, the new Prince George's County Superintendent would be speaking with parents and other interested citizens about his plans as Superintendent and plans for the school. Ms. Porter also announced that there would be a meeting at 7:30 p.m. on October 3rd at Sligo Church to discuss some issues concerning property on Glenside and the effect that any building would have on the adjacent park land.

Mr. Elrich announced that there would be a citizens' meeting in Ward 5 on September 29th at the Columbia Union College Student Building on the 2nd floor at 5:00 p.m.; the meeting would be a follow-up to the community meeting that was held 2 weeks ago, to discuss crime and safety in the area.

Mr. Sharp announced that on September 25th there would be a meeting organized by Mr. Hamilton with Police Chief Fisher, to discuss issues and solutions for problems arising on Maple Avenue; the meeting would start at 7:00 p.m.

Mr. Wilson announced that long time City Staff member Inas Ross' mother, Mary E. Mullin, had passed away on September 21st.

CITIZENS COMMENTS (those directed at items not on Council Agenda)

Rino Aldrighetti, 7213 Central Avenue indicated that he had a copy of the City Newsletter with him and he said because there were no pictures in the paper, one could not tell if there were any residents left in Takoma Park. He also suggested that if the Newsletter editor's column were to be continued it should be signed. Mr. Aldrighetti also asked what were the Council's objectives in marking the Newsletter up.

Mr. Prensky responded that he marked the Newsletter up with notes to remind citizens in his neighborhood of events which they might be interested in.

Mr. Aldrighetti noted that there were a number of editors who were working on the Newsletter and he asked Mr. Wilson and the Council if editorial statements were done on instructions from the Council and if this was going to be reflective of the kind of document produced in the future.

Mr. Sharp said that at the last Council Meeting, Mr. Leary had made it known that he was interested in having a public discussion about the Newsletter at the end of October. He also said that as far as he knew, the Council did not give direction to the Newsletter editor in the way that he (Aldrighetti) had implied. Mr. Sharp said he did not want to see the newsletter die and any statement that said the Council was going to kill the Newsletter was made without the Council having that debate, but the decision would be made by the next Council about the steps to take.

Mr. Elrich commented that the Newsletter was not the way he would like for it to look; however, it was not in the current form as a result of any of the Councilmembers. He also said that the editors were working on a temporary basis to make sure the present issue would get out. Mr. Elrich said that he would like to see the Newsletter return to the quality that it had and return to a more readable document as quickly as possible.

Susan Cahill, 313 Elm Avenue said that there was a dog on Poplar Avenue left outside that barked loudly all night. She said the noise stopped for several months but started up again and she called the police for two nights and she felt that she was using up the officer's time because they had more pressing problems to deal with, but she did not feel safe in dealing with the problem herself. She also indicated that she heard violent loud arguments coming from the house with the barking dog, and the house and grounds looked seedy and unkempt.

Mr. Sharp asked that Ms. Cahill give her statements to staff to help get the problem resolved as quickly as possible.

Debra Sossen, 6809 Allegheny Avenue asked about the proposal to block off part of Westmoreland Avenue and said she was dependent on other people for transportation needs and if the streets were blocked off, people could not pick her up on the way to work.

Mr. Prensky said that there would be a public hearing on the issue and he would be glad to speak with her about the details of the situation and how the plan may or may not serve her needs.

ADMINISTRATIVE ITEMS

1. Resolution Re: Staff and Citizens Advisory Committee Funding Recommendations from the Program Year 18 Community Development Block Grant Program

Moved by Mr. Prensky; seconded by Mr. Elrich.

Ms. Porter noted for the record that on the Prince George's side of the City, most of the City was not eligible for CDBG funds and the only part of the City that could receive grants for CDBG funds were areas on the east side of New Hampshire Avenue.

Mr. Elrich noted for the record he would vote for the resolution; however he had some displeasure that the City was spending \$380,000 of Block Grant money on the Takoma/Langley commercial revitalization and that the Committee expressed its sentiment for money to do things which he felt were more truly the purpose of block grants e.g., the housing rehabilitation, transitional housing programs which were located on the Montgomery County side of the request, and had Council asked for money from Prince George's County for those kinds of expenditures, they would not have likely received them. He also said that it was unfortunate that the City had to spend money the way it did, and Prince George's County did not see the meaning of legitimate social needs as a proper use of their block grant money.

Jim Martin, 6519 Second Avenue, member of the CAC commented that he was the president of the Takoma Park Symphony Orchestra which made a proposal for block grant funding, but was not recommended by the Citizens' Advisory Committee. He also said that he would like for

Council to reconsider the recommendation and consider some funding for the Takoma Park Symphony Orchestra. He continued by saying that this was the third year the Orchestra had been in business and he felt they had provided a very successful series in 1989, 1990 and 1991. Mr. Martin said they would like to make tickets available to low and moderate income people and to coordinate with the Recreation Department or other organizations which could help to provide transportation to bring these people to the concerts.

Mr. Sharp commented that part of the rationale had to do with having to establish that the criteria for lower and moderate income had been met. He said cassette tapes for the library had been purchased two years ago using CDBG money and they had to go through an extensive documentation effort to show that the tapes were used by low and moderate income people; he noted that the City could not do this and had to pay for the tapes.

Mr. Elrich said he felt the City budget could not support a City symphony and the most immediate need of low and moderate income people was the need for shelter and the need to address the issue of affordable housing, and he could not vote money for a symphony which would take money out of programs to support affordable housing.

Mr. Prensky said that he too was a subscriber to the symphony, but he agreed with Mr. Elrich. He encouraged the Symphony to establish a method to track audiences to determine the percentage of low to moderate individuals who typically attended events or they could stage events which would surely attract low and moderate income audiences such as Takoma Towers.

Mr. Moore said that if the City could establish that this sort of program would be eligible next year, it would be something that Council and the CAC should consider helping out with the funding.

Ms. Porter said she felt there was a lot of support on the Council for the symphony and what was being seen was a concern about the use of funds, both because of the record keeping problem and because of other competing priorities for the same funds.

Mr. Martin said on behalf of the orchestra, they greatly appreciated the City, the Council, and the Mayor's support and their idea was to move ahead more quickly and they would be back.

COUNCIL ACTION: The Resolution passed unanimously; ABSENT: Hamilton, Leary.

RESOLUTION NO. 1991-72
(Attached)

2. Resolution of Appreciation to CDBG CAC Members
Moved by Ms. Porter; seconded by Mr. Prensky.

Mr. Sharp said that once again as always, the CAC did a lot of good work in representing a wide range of interest in the City and the Council appreciated their efforts.

COUNCIL ACTION: The Resolution passed unanimously; ABSENT: Hamilton, Leary.

RESOLUTION NO. 1991-73
(Attached)

3. Discussion of Proposed Ordinance Abolishing Cable Board and Recognizing Takoma Park Community Television, Inc.

Mr. Wilson indicated that this was a revised ordinance from the original one, and it indicated a desire was to shift from municipal management to management by a non-profit corporation which would then be placed under contract which would define the significant

number of the details that the present ordinance did not address. He also said that an appropriate contract would have to be developed, reviewed, discussed, and issued if the basic principals were supported.

Mr. Prenskey asked how was the proposal developed for a 501(c)(4) organization when it was originally proposed to be a 501(c)(3) tax exempt organization. He said it was his view that if the not-for-profit organization were to manage the entire operation of the City's cable channel, there was a need for it to go beyond the franchise fee arrangement with Montgomery Cable Television.

Denise Jacobs, Executive Officer of TPCT said that the reason they applied for a 501(c)(4) was to be able to lobby for monies aside from going to the County because they figured that was where they could get the largest amount of funding.

Mr. Prenskey said as a 501(c)(3) TPCT could still go to the counties, Montgomery Cable, the City, and also to foundations who typically give money; he said foundations could not give tax-deductible money if they were a (c)(4) and they had narrowed the range of places they could go.

Ms. Jacobs said after discussing the issue and on the advice from the Corporation Counsel, they looked at this and figured out it was a trade-off and would be more advantageous for them to go for the (c)(4).

Assistant Corporation Counsel Perlman explained that the scope of a 501(c)(3) organization was very narrow and would limit them in some aspects. She also said that TPCT could have an affiliate; a lot of groups had 501(c)(3) and 501(c)(4) together which offered more flexibility and could be set up right away. She said that all of TPCT's functions did not seem to fall within the limitations of the (c)(3) organization because it was community-based and not just educational.

Mr. Elrich said he felt it was a move in the right direction but he was not wholly comfortable with going from a municipal channel to a channel totally handed over to the community side. He said there needed to be a measure of City control or City interface that was institutionalized in the process. Mr. Elrich said he felt that the City should retain an appointed seat on TPCT's Board to ensure the City's interest and input in the process. He also said that all citizens of Takoma Park should be eligible to vote for the Board and there should not be a dues requirement in Takoma Park, nor did he feel that the Board should be able to impose a work requirement as a privilege for voting; it was a municipal channel and the residents in the municipality should retain the right to vote for the Board of that channel. He also said that the City should retain the right to approve any changes to the bylaws or articles of incorporation which were the fundamental governing documents of the instrument of the body.

Mr. Elrich continued by saying that he would like to see some sort of City interaction on the regulations and rates that were promulgated by the Board and that there be open-access and a means of enforcing it. He also said that at the point of dissolution, all assets of the Corporation should revert to the City. He said the City should have the ability to evaluate whether or not it was working and if determined that it was not a workable situation, the City should have the availability to revoke that charter of operation. Mr. Elrich also said that he did not object to the operation and use by the community group without restriction, but he would object to handing over title of that equipment to the community group. He referred to the services provided to the City and said that if the City had additional needs it should be able to make meaningful requests.

Mr. Douglas said that the management of the cable station had been

a vexing issue since he had been on the Council and that the cable board had not been an effective way of managing the station; there had been continued friction between the municipal side and the community side as well as staff and volunteers. Mr. Douglas said that there had been a lot of problems in trying to figure out what money belonged to whom and who was to be held accountable for it. He said that he realized the issue was more complicated and he was concerned that Mr. Elrich's questions needed to be addressed; however, doing the kinds of things that Mr. Elrich suggested would not solve the fundamental problem of trying to disassociate the complicated management system from the Council. He said the Council should not create a private club for people, and that it was a very real problem to contract with a group which set its own membership rules and its own method of operation through its bylaws; some people in the community would feel excluded from it. He also said that his objective was that the current system not be continued and he would be in favor of abolishing the cable board because he did not feel it was serving a useful purpose. Mr. Douglas said he did not mean for it to sound synonymous with casting out all of the volunteers because they were doing a wonderful job and there was a way to use them effectively and appropriately.

Mr. Prenskey said he was concerned with the choice of forming the non-profit organization, but the Corporation Counsel could be set up as the negotiator for the equipment. He said it was critical that the Council did not abandon its role of the co-franchiser with the County. Mr. Prenskey said another major issue that TPCT would be funded only through the use of franchise fees from the County, was in his view, was far too limiting.

Mr. Elrich said it was likely that the development of the County access center would be in the Municipal Building which would be another use of the City property. He also said that he had no problem with that but originally the cable fees were supposed to be a revenue enhancement for the municipalities, and he felt if the City did take on an additional role, it should receive some financial benefit of possible future financial arrangements.

Lynne Bradley, 8112 Flower Avenue said that she was the first chair of the Cable Television Citizen's Advisory Committee and although she had not been involved with Cable for several years, the discussions were re-creating long debates which they had over the years. She said that this was the beginning of a long discussion and another point in an evolution process where it was expected at some point there would be some kind of non-profit access corporation developed within Takoma Park. Ms. Bradley also said the role of the City as a public institution as a legal authority being a co-franchiser with the County, as well as some kind of official voice of how franchise fees were spent was still very legitimate. She said she would support having an exclusive non-profit access corporation which should be up to the citizens involved in that access corporation. In reference to the exclusive negotiator, she said that the Corporation should consider having a role for the City in terms of legal fees, negotiations and political persuasion.

Mr. Douglas asked why the Council should feel comfortable with TPCT being in charge and delegating all the responsibility and authority to one group.

Ms. Jacobs said all they would be doing was taking what they had done for the past two years and making it official; they were only saying that they would handle the coordination of the community, the Council meetings, teaching classes, etc. Ms. Jacobs said the community had made a lot of sacrifices to keep it alive and they would like to officially be the liaison between the City and the community in terms of the station.

Mr. Douglas noted that none of the questions and concerns had

anything to do with TPCT's challenge or commitment. He said some people were dissatisfied with not being able to do things the way they wanted and did not feel they had the same kind of access that other people had. He said that this was one of the concerns which needed addressing in order to reassure the citizens of Takoma Park that they had access to their community station and he asked how would a citizen have redress of their grievances.

Ms. Jacobs explained that the redress would be to the Cable Board of Directors. She said that the people who invested their time in the channel were the ones who should have a say and to have someone come in who did not know anything about the channel would be impractical; if someone came in and volunteered and did the work and they saw the needs, those were the people who should have the right to vote on it, and to have people to come in and vote on the day-to-day operation of the channel would not be practical.

Mr. Elrich said if that was the attitude and people did not feel comfortable with the group that was running the cable, they would leave and not stay around long enough to vote anyone out, and they may decide that it was too closed a process and they would not want to stay in, and it was not a prescription for democratic openness.

Mr. Moore commented that he agreed with Mr. Elrich and the problem was that the citizens viewed it as a closed process where none could become involved until they were members of the "club". He said that Mr. Elrich's suggestion to have people vote for the Board was a very good one, and to suggest that people who did not know about it, should not be allowed to vote on who ran the operation was like saying people who were not involved in the affairs of Takoma Park shouldn't be allowed to vote on who their City Council members were. He said people did not have to be experts in order for them to vote for someone to represent them on an issue.

Mr. Prensky said that it was critical for Ms. Jacobs to explain who determined the authority of who voted--the volunteers at the station or all residents of the City. Mr. Prensky said that this was the rudimentary discussion about whether or not Council could go forward with the not-for-profit being the prime manager of the City's assets.

Ms. Jacobs said the authority should be determined by the members of Takoma Park Cable which included apprentices, contributors, producers who came in to produce their show, etc.. She said a person would have to have a membership to take out the equipment because there was only so much equipment to go around. She said what had been happening was that people had been taking out the equipment and not completing what they were supposed to do, taking time away from others who were prepared. Ms. Jacobs said that the Board had to set up a structure to get people to complete their programs, show a commitment before equipment was handed out and be trained to make sure that equipment was used properly.

Debra Sossen, 6809 Allegheny Avenue said she was against the idea of the present corporation running the station. She said that a friend of hers, who was a member of the cable station and was on public assistance, had provided two televised programs for open access and was denied access by Dolly Davis, Greg Hamilton and Denise Jacobs. Ms. Sossen also said that she came to the cable station to help the Girl Scouts of America with a summer camp program and she wanted to share it with the community, but she was unable to. She also said that the Living Stage manager who headed the children's theater wanted to share a program with the community, but she was unable to because she was also denied access to the equipment. Ms. Sossen further stated that when she spoke with Dolly Davis, she was told to go away and not do anything and Ms. Davis said she would call her although she never did. She said that the new system did not work from her personal experience; if the present people were to be kept on the Cable staff, there would not be community access, but a monopoly subsidizing the few petty

tyrants.

Mr. Elrich asked Ms. Sossen if she were a dues-paying member of Cable.

Ms. Sossen replied no, but said her friend was and she worked with him and although she had offered her help, the Board was not willing to let her.

Mr. Elrich asked if her friend was trained on the equipment.

Ms. Sossen responded yes.

Mr. Elrich asked who barred her from doing her work.

Ms. Sossen indicated that it was Denise Jacobs who barred her, who, she said had ignored her and would not speak with her. She said she also spoke with Dolly Davis and waited for Greg Hamilton and finally she was basically told not to do this. She again said that Dolly Davis told her that it was politically unwise to produce that type of show.

Responding to Ms. Sossen's comments, Dolly Davis said that she was on the phone when Ms. Sossen tried to speak with her. She also said that it was a volunteer organization, there was only one person in the office at the time, and she had to answer the phone. She explained the policy and said that a person had to go to the classes for basic camera, basic editing, be a member, fill out a program treatment sheet, arrange to have to the equipment and then they got to use the equipment. She continued by saying that the person Ms. Sossen spoke about had not been there in a year and had to be recertified.

Rino Aldrighetti, 7213 Central Avenue said it was good that a lot of people were getting involved in the Cable issue and it was also good that they were encouraged to do so. He also said that the questions which had come up were very important ones. Mr. Aldrighetti commented that this was a City and in a democracy everyone got a chance at their say, whether they did the work or not. He said the point that citizens' groups forgot was that there were other people that they stopped reaching out to, and it was at that point they began to die as relevant organizations. He also said it would be a shame to take the City asset and reduce it. He said that the document which had been created was a good and important beginning and was a direction in which the City should move.

Mr. Sharp indicated that Council should figure out where they wanted to go with the issue and he did not feel that it was appropriate to go for a first reading at present; the issue needed to be sent back in order to address some of the issues which had been raised.

Cheryl Schutz, 301 Ethan Allen Avenue commented that she had some experience in video producing; she wrote and produced a documentary about the Silver Spring stage. She also said that to produce a video required a lot of training, skill and cooperation. She continued by saying that she had always perceived the City station as being funded by the taxpayers and she was surprised at some the attitudes that had been expressed. Ms. Schutz commented that in her experience with Robert Smith, he was the one who built the station to what is was today; a City asset, and she was alarmed that he could be dismissed from his position without any recognition of his devotion and commitment he had showed to the station.

Kay Dellinger, resident of Hampshire Towers said that the Takoma Park Peace Network had been having monthly peace concerts and there

had been no notification in the Newsletter or the Takoma Voice that the community side of cable television was going to start charging people to tape their events. She said they were told that the fee to use the equipment for one hour was \$200.00 and that they had to take up a collection in order to get the concert on the air. Ms. Dellinger said they were able to pay \$160.00 and taped one concert which would be the last peace concert taped because they could not pay that kind of money. She said the community did not have access to the cable television station anymore; it was an elitist thing, where non-profit organizations cannot get their activities on the air.

Paul Ngo, 902 North Hampton, Silver Spring said he lived in the area for two years. He said that some of the members came to use the equipment for private movies and that some people used the equipment and abused it. He related some of the costs incurred to repair damaged equipment and explained that fees were also charged to discourage people from using the station and equipment for private usage.

Denise Jacobs said if TPCT were asked to produce something from a citizen, there would be a fee charged; however, if a person took the classes, they would do it themselves. She said tapes, which cost \$17.00 had to be reviewed to ensure there was nothing obscene on them.

Kay Dellinger continued her remarks and expressed her disapproval of the corporation being formed and having Greg Hamilton as the CEO of the corporation. She said she opposed any member of the City Council to be the CEO of the cable corporation. Ms. Dellinger said that when Sam Abbott was the mayor, he was removed as the editor of the Newsletter, and she wondered how cable television hired Greg Hamilton. She also said she opposed the firing of Robert Smith because he was the one who built the station. She asked Mr. Sharp and Mr. Wilson for a list of all monies that had been received by the city side and the community side of cable television from whatever source, and a list of every expenditure that had been made in the last two years.

Mr. Sharp replied that there was a budget for the City side that would show the City's revenues and expenditures on that issue and it would show the community side also.

Mr. Prensky informed Ms. Dellinger that it was something that the City Council had requested six months ago and said it became part of the City's audited financial statements done by the CPA firm. He also said that there was a time when the bank accounts were separate from the City's funds. The City Council took a look at this and on the advice of the Corporation Counsel, felt it was inappropriate that those bank accounts were outside of the City's control. Mr. Prensky explained that those had been completely brought under the City's control, all monies deposited to the City's accounts, and all expenditures go through the City's approval process.

Mr. Douglas said he agreed with Ms. Dellinger that Mr. Hamilton being a member of the cable station was a conflict of interest. He said that he had some conversations with Mr. Hamilton who represented his intention to step aside as the CEO.

Mr. Prensky indicated he had a letter from one of his constituents, George Taylor, which was addressed to Mayor Sharp and also from a former resident of the City--Michael Hasty. He said that basically they had experienced difficulty in gaining access for producing a tape for the Cows for Kids campaign.

Mr. Douglas said that he felt Council was on the right track, work needed to be done and his concern was that no cable board should be elected this November because it would only complicate matters. He said he would favor a short-term approach that ensured retaining

a working relationship with City staff and the City Administrator's office in order to keep the status quo as the problems were worked out.

Mary Sinclair-Jacobs, member of Cable Board announced that community access did not mean free access; she said that the tapes cost money, equipment costs money and one year, she produced 26 programs that were shown on the air. She also praised the accomplishments of the cable station and told how expensive it was and she said she would welcome all citizens who were willing to commit their time and their finances to the cable station.

Verdie Watson, 7620 Maple Avenue commented that the tenants in her building could not even get cable, and asked what good did it do to have free cable television in Takoma Park if the residents could not have it.

Mr. Sharp asked Councilmembers to put their comments and questions into written form and suggested they continue discussion at the October 21st worksession; there was no objection.

Mr. Prensky commented that he believed that everything that had been said had been said in good faith, and he believed that the proposal in which cable had come forward with was being done in response to the evolutionary process that the City Administrator and the Council and the citizens had asked for. He said he did not have a problem with what had been brought to Council; he believed that the concerns of individuals and groups in the community were sincere and the goal and purpose was to make sense out of it and provide a happy ending.

5. Resolution in Support of Baltimore "Save Our Cities" Campaign
Moved by Mr. Prensky; seconded by Mr. Elrich.

Mr. Prensky noted that a number of residents of Takoma Park, many of whom were members of the Takoma Park Peace Network, had brought to his attention the Save Our Cities March that would originate in the City of Baltimore early in October.

Tom Anastasio, 32 Columbia Avenue said that it was no coincidence that cities were having problems and it was no coincidence that these social problems had come after a decade of movement by the federal government away from attention to domestic problems and excessive military spending. He also said as a city, it was important to recognize that the issues were crime, homelessness, educational system problems, etc. He continued by saying that the resolution would not save the cities but it was a step in the right direction; it aimed at the right things which needed addressing.

COUNCIL ACTION: The Resolution passed unanimously. (Absent: Mr. Hamilton and Mr. Leary)

RESOLUTION NO. 1991-74
(Attached)

4. Second Reading Ordinance Re: Surplus Campaign Funds
Moved by Mr. Prensky; seconded by Mr. Moore.

Mr. Sharp suggested that language be added that would indicate that a debt may include a payment to any contributor or candidate for cost incurred in furtherance of the campaign or repayment to any contributor or candidate for funds donated to a candidate.

Mr. Moore commented that he was going to suggest the same thing except he wondered if it would make an appearance of a problem if it were allowed to be done on an ad hoc basis, rather than a pro rata return to all contributors.

Michael Clinansmith, 7710 Maple Avenue commented that he had been

in a position as a campaign chairman for Delegate Dana Dembrow and had to account for a sizable amount of money. He said subsequent to the campaign's conclusion, they were besieged by a number of organizations that asked for donations of what was left over in their campaign fund. Mr. Clinansmith said that it was dangerous to try to determine how the funds would be used and even the State Legislature had not been able to solve the question. He concluded by saying that when it came down to funds in the political arena, it was a situation which lead directly because of the political gain to an immediate action of deception.

Mr. Douglas said that the U.S. Congress had eliminated the use of converting extra campaign funds back to personal use and there was a great deal of precedence for that. Commenting on this amendment, he said he felt that it was a reasonable use to reimburse large contributors for at least part of their large contribution whether they were the candidates or someone else. He also said that he was concerned about the appearance of preferential treatment and he would prefer to use language about loans.

Mr. Prensky noted that there were no restrictions in the current law on the use of surplus campaign funds from previous years. He also said that between first and second reading, what was needed was some language which spoke to the repayment of campaign loans, either to the candidates or supporters. Mr. Prensky recommended the language be put in terms of repayment of loans. He also said that any candidate who was responsible would go about learning what the campaign laws were before they raised large sums of money.

Mr. Douglas moved that the following words be added at the end of Section k, a debt may include a payment to any contributor or candidate for cost incurred in furtherance of a campaign, or repayment to any contribution or candidate for funds donated to a campaign. The motion was seconded by Mr. Prensky.

Ms. Porter said she was concerned about preferential treatment among contributors and an appearance of paying back some of the "big" contributors. She said she did not know why it could not be required that contributions which were not originally structured as a loan could not be paid back.

Mr. Elrich said that his preference would be in the same direction; it should be structured as a loan and paid back because it was a loan and he would prefer not to see it as just a contribution and have refundable contributions.

Linda Clinansmith, 7710 Maple Avenue remarked that she remembered some of the hassles that her husband went through. She continued by saying that he was Delegate Dembrow's campaign manager and there were a lot of hassles. She said that it was setting up people up for all kinds of problems.

Kay Dellinger asked the Councilmembers how many of them were given loans in the last election.

Mr. Prensky indicated that he loaned his campaign the initial funds to begin and when a large number of contributors contributed to his campaign he paid himself back from the money.

Mr. Elrich said he paid for all of his campaign.

Ms. Porter said she financed her own campaign.

Mr. Sharp said he spent a lot of money in 1985 and did not have a surplus of money to worry about.

Ms. Dellinger asked if the Councilmembers if they had any surplus campaign funds and what did they do with it.

Mr. Douglas said he kept his, which was about \$20.00.

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Mr. Douglas said he kept his, which was about \$20.00.

Mr. Prenskey said he had significant campaign money left over. He continued by saying that there were no rules and regulations and he wanted Council to be able to discuss the issue.

Mr. Douglas said that the point was that he could not keep the money and he would have to do something else with the money.

COUNCIL ACTION: Mr. Douglas made a motion to insert after "campaign debts" the phrase "including all loans"; seconded by Mr. Elrich.

Mr. Sharp asked why the word "treasurer" should be there instead of candidate.

Mr. Clinansmith explained that according to the State law, there must be a treasurer and a stated chairman who would take the responsibility under State law to file a report, and the treasurer had the authority to do such.

Mr. Prenskey explained that there were other laws that required financial disclosure of contributions, and the law took it through the payment of all campaign debts, and at the point when the election was over and there would be a surplus, at whose discretion should the surplus be used.

Mr. Clinansmith said it would have to be under the direction of the candidate, and since the person who usually set up the account with the bank was the treasurer who must countersign most checks, it was a moot point anyway.

Mr. Prenskey proposed to amend that section and remove the words "campaign treasurer" and insert the word "candidate"; seconded by Mr. Elrich.

COUNCIL ACTION: The amendment passed unanimously. The Ordinance as amended at second reading was adopted unanimously. (Absent: Mr. Hamilton and Mr. Leary)

ORDINANCE NO. 1991-31
(Attached)

6. First Reading Ordinance Regarding Removal of Handicapped Sign at 6901 Woodland Avenue and Changing Location of Day Care Signs
Moved by Mr. Elrich; seconded by Mr. Prenskey.

Mr. Sharp indicated that the handicapped parking area was no longer needed due to change in home ownership. He also explained that a 15 minute parking area previously located on Takoma Avenue had been moved due to location change of the day care operated by Montgomery College.

COUNCIL ACTION: The Ordinance was accepted at first reading (Absent: Mr. Leary and Mr. Hamilton)

ORDINANCE NO. 1991-35
(Attached)

7. Second Reading Ordinance Setting Forth the 1991 City Election
Moved by Mr. Douglas; seconded by Mr. Prenskey.

Mr. Elrich moved an amendment to the ordinance provision calling for the Mayor's nomination to follow the ward nominations in order to maintain crowd enthusiasm.

Mr. Douglas said the sentiment expressed by citizens in the past was that the Mayor as the primary elected official should go first because that was the primary office. Mr. Douglas remarked that under the Charter, the Mayor was now a member of the Council.

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Mr. Prenskey said he was uncomfortable with the idea that had come up because although the ordinance setting forth the election was an advertised item, this amendment had not been advertised. He said that the Council was in the midst of a major change; the City would be electing a Mayor who had a vote for the first time and he said it was important that the discussion be as complete as possible.

COUNCIL ACTION: The amendment carried by a 4 to 1 vote (Nay: Ms. Porter; Absent: Mr. Hamilton and Mr. Leary)

Mr. Sharp asked Ms. Jewell why the Council was designated to meet on Wednesday, the day after the election, and he asked if there were any reason why the election results could not be certified on the Monday following the election.

Ms. Jewell explained that the process outlined in the Election Code allowed for the results to be certified immediately after the election so that if someone were to contest the election or those results, that contest had to be filed within a designated time after certification.

COUNCIL ACTION: The Ordinance as amended was adopted unanimously. (Absent: Mr. Hamilton and Mr. Leary)

ORDINANCE NO. 1991-32
(Attached)

8. Presentation of proposals and First Reading Ordinance Awarding B.Y. Morrison Art Project Contract

Moved by Mr. Moore; seconded by Ms. Porter.

Robin Ziek, Construction Specialist said that the 8 member art selection committee met on September 16th and there were 6 members who voted for Jim Caldwell's presentation. She also said that everyone agreed to endorse it with some modifications. Ms. Ziek gave an update on the budget and with the reduction in fee, they had everything except the contingency. She said that the contingency was good to have on hand and in case there would be some extra costs. She said the fundraising would continue although she felt more comfortable that at least they were within their range.

Mr. Douglas asked if there had been any discussion regarding maintenance costs, who was responsible and how maintenance would be handled. He said he noticed that some of the work that was done several years ago in Takoma Junction and Old Town was deteriorating and no one was responsible for them.

Ms. Ziek said that in the contract model, they specified that the artist was responsible for the condition of the work for two years; they were in touch with an art conservator and she felt comfortable with the proposal.

Mr. Elrich commented that he liked the sculpture work; the painting seemed overwhelming to him in that setting.

Ms. Ziek said that the art work had been on display for over a month and she was very glad that they had the opportunity to do so because the public had a chance to comment. Ms. Ziek said she felt comfortable going forward with it and if she had to vote on it, she would not have been able to make a choice.

Mr. Douglas said in his opinion, neither one of the items captured what he felt should be there and he would vote against it for that reason.

Mr. Prenskey asked if the Council voted against the ordinance, what would happen next; would the committee go back to the other 102 submissions or ask for new submissions.

Ms. Ziek responded that they would take direction from Council.

Mr. Prenskey suggested if that were the case, he would like to see that decision taken out of the hands of the Council and instead select a committee of experts.

Mr. Douglas said he was concerned about the issue from a process standpoint. He said that Ms. Ziek made misleading comments in the beginning and he did not appreciate it.

Mr. Prenskey moved to table the ordinance and discuss it further at worksession.

Mr. Moore moved adoption of the ordinance; seconded by Ms. Porter.

Ms. Porter indicated that she agreed with Mr. Moore; she felt the art work would go with the other murals in that part of the City. She said that it was difficult to decide on public art but the process was a reasonable one; there was a procedure set up and a number of people had participated in it and made a judgement and she would be willing to support it.

COUNCIL ACTION: The ordinance was accepted at first reading by a 3 to 2 vote (Nay: Mr. Douglas, Mr. Prenskey). (Absent: Mr. Hamilton and Mr. Leary)

ORDINANCE NO. 1991-36
(Attached)

Upon motion duly made and seconded, Council adjourned at 11:50 p.m. to reconvene on Monday, September 30, 1991.

Introduced by: Councilmember Prensky
(Drafted by: P. Jewell)

1st Reading: 9/10/91
2nd Reading: 9/23/91

ORDINANCE #1991-31
TO REGULATE THE USE OF SURPLUS CAMPAIGN FUNDS

- WHEREAS,** the Elections Task Force, established by the City Council in 1990 was charged with addressing various election issues and making recommendations to the Council; AND
- WHEREAS,** the Takoma Park Elections Code adopted on 10/30/89 does not address the use of surplus campaign funds; AND
- WHEREAS,** one of the recommendations of the Task Force was that the City Council allow surplus campaign funds to be used for any community purpose, other than for personal use by the candidate, or for transfer to another candidate or political action committee.

NOW THEREFORE BE IT ORDAINED By the City Council of Takoma Park, Maryland That

SECTION 1: Chapter 4D, "Elections", Article 3 "Fair Elections Practices" is hereby amended by amending Section 4D-2 "Definitions" and adding Section 4D-8.

CHAPTER 4D
ELECTIONS
ARTICLE 1. IN GENERAL

Sec. 4D-2. Definitions.

(k) Surplus Campaign Funds. Funds left in a candidate's campaign account after the election is over and all campaign debts (including all loans) have been paid.

(re-letter remaining definitions)

CHAPTER 4D
ELECTIONS
ARTICLE 3. FAIR ELECTIONS PRACTICES

Sec. 4D-8. Surplus Campaign Funds.

(a) Surplus campaign funds may be used at the discretion of the candidate for any community or political purpose, except:

(1) the personal use of the candidate, the treasurer, or any member of the candidate's campaign staff, or the family members of those individuals (however, use of surplus funds to hold a party for campaign supporters shall be considered a permitted political purpose); or

(2) a transfer to a registered political action committee or a candidate other than the individual for whom the funds were raised.

(b) A violation of this section is a Class B offense.

SECTION 2: That this Ordinance shall take effect upon adoption.

In this Ordinance Underlining is used to show language being added to the Code.

ADOPTED THIS 23rd day of September, 1991 BY ROLL CALL VOTE AS FOLLOWS:

AYE: Douglas, Elrich, Moore, Porter, Prensky

NAY: None

ABSTAINED: None

ABSENT: Hamilton, Leary

Introduced by: Councilmember Prensky

Drafted by: V. VinCola

Resolution #1991-72

A Resolution to adopt the recommendations of the Citizens Advisory Committee regarding Community Development Block Grant requests to Montgomery and Prince George's Counties for Fiscal Year 1993 as amended by Mayor and Council, and to authorize DHCD staff to submit applications to the respective Counties.

WHEREAS, the City anticipates receiving federal Community Development Block Grant (CDBG) funds through Montgomery and Prince George's Counties for Fiscal Year 1993 (Program Year 18) to use for eligible projects; AND

WHEREAS, to achieve maximum citizen input into how CDBG funds received by the City are spent, the City government has formed a Community Development Block Grant Citizens Advisory Committee (CAC) composed of representatives of organizations for the purpose of reviewing and evaluating proposals for the use of available CDBG funds, and to make a funding recommendation based on those proposals to the Mayor and Council; AND

WHEREAS, the Citizens Advisory Committee has now completed its review and has issued its final report;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF TAKOMA PARK, MARYLAND THAT the recommendations of the Citizens Advisory Committee for requests for CDBG funding form Montgomery and Prince George's Counties have been amended as follows by the City Council and are hereby ADOPTED; AND

Montgomery County

Heffner Park	\$30,000
Housing Rehabilitation	\$50,000
Transitional Housing	\$37,000*
TOTAL	\$117,000

*Transitional Housing funds shall revert to Housing Rehabilitation if program not implemented by September 1994

Prince George's County

Takoma/Langley	\$380,073
Commercial Revitalization	

BE IT FURTHER RESOLVED THAT staff of the Department of Housing and Community Development is hereby authorized to submit applications for Fiscal Year 1993 (Program Year 18) CDBG funding for the recommended projects to Montgomery and Prince George's Counties.

ADOPTED THIS 23rd DAY OF SEPTEMBER 1991.

Introduced by: Councilmember Porter

Drafted by: Valerie VinCola

Resolution #1991-73

A resolution to recognize the members of the Program Year 18 Citizens Advisory Committee and express appreciation for their service to the City of Takoma Park

WHEREAS, to achieve maximum citizen input into how Community Development Block Grant (CDBG) funds received by the City are spent, the City Council is required to form a CDBG Citizens Advisory Committee (CAC) composed of representatives of citizen, tenant, civic, neighborhood, and business organizations and groups for the purpose of reviewing and evaluating proposals for the use of available CDBG funds, and to make funding recommendations based on those proposals to the Mayor and Council; and

WHEREAS, the Citizens Advisory Committee for Program Year 18 has completed its review and evaluation of proposals for the use of Community Development Block Grant (CDBG) funds to be received from Montgomery and Prince George's Counties during Fiscal Year 1993, and has submitted its recommendations to the Mayor and Council, AND

WHEREAS, the members of the CAC have generously volunteered their time, knowledge, and talents in developing these recommendations, and have performed a valuable service to the City;

NOW, THEREFORE BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF TAKOMA PARK MARYLAND THAT the Mayor and Council formally thank members of the Program Year 18 Community Development Block Grant Citizens Advisory Committee, as listed below, and commends them for their service to the City of Takoma Park.

NAME

REPRESENTING

Ira Amstadter
James Martin II

Alfred Martins
Karen Mitchell
Mildred Morrison
Cynthia Dawes
Monroe Stokvis
Bill Valdez

Cavan Capps

Bruce Williams

Between the Creeks
Takoma Park Symphony Orchestra
Society, Inc.
Edinburgh Tenants Association
Park Ritchie Citizens Assoc.
Ritchie Citizens Assoc.
Ritchie Citizens Assoc.
Takoma/Langley, CDA Inc.
Westmoreland Area Community
Organization
Westmoreland Area Community
Organization
S.S. Carroll Neighborhood
Assoc.

Introduced by: Councilmember Prenskey

**RESOLUTION No. 1991- 74
TO SAVE OUR CITIES**

- WHEREAS, *America's cities are vital centers of its industry, culture and population; AND*
- WHEREAS, *America's cities are caught in a web of decaying infrastructure, declining economic resources and increasing economic and social burdens, to the point that they cannot solve their problems solely on their own; AND*
- WHEREAS, *the Federal government in the last decade has reduced aid to America's cities in order to pay for increasing military budgets and deficits resulting from misplaced priorities; AND*
- WHEREAS, *unnecessary and wasteful military spending is draining limited resources from urgently needed programs in America's cities; AND*
- WHEREAS, *the greatest threat to America's security comes not from foreign attack, but from inadequate education, unemployment, homelessness, poverty, and crime; AND*
- WHEREAS, *the Federal government is by far the single source of tangible resources to halt the decline of America's cities; AND*
- WHEREAS, *Baltimore Save Our Cities has initiated a campaign to urge the Federal Government to redirect its resources from the military to our cities.*

NOW THEREFORE BE IT RESOLVED THAT *the City of Takoma Park calls on our Federal government to take action to **SAVE OUR CITIES**; AND*

BE IT FURTHER RESOLVED THAT *the City of Takoma Park calls on the Federal government to appropriate at least \$50 billion immediately to help cities meet their urgent needs for education, employment, housing, economic development, crime prevention, public health, and restoration of the infrastructure and the natural environment; AND*

BE IT FURTHER RESOLVED THAT *the City of Takoma Park calls on the Federal Government to substantially reduce military spending and to eliminate waste, fraud and abuse in all areas of government; AND*

BE IT FURTHER RESOLVED THAT *the City of Takoma Park calls for the raising of new Federal revenues by restoring fairness to the tax system which now overly burdens the poor and working class; AND*

BE IT FURTHER RESOLVED THAT *the City of Takoma Park calls for the repeal of laws which hinder the necessary expansion of domestic Federal spending; AND*

BE IT FURTHER RESOLVED THAT *the City of Takoma Park endorses and supports the Baltimore Save Our Cities campaign which is to take place on October 9-13, 1991, and encourages participation therein by Takoma Park residents.*

Dated this 23rd day of September 1991.

Introduced by: Councilmember Prensky
(Drafted by: P. Jewell)

1st Reading: 9/10/91
2nd Reading: 9/23/91

ORDINANCE #1991-31
TO REGULATE THE USE OF SURPLUS CAMPAIGN FUNDS

- WHEREAS,** the Elections Task Force, established by the City Council in 1990 was charged with addressing various election issues and making recommendations to the Council; AND
- WHEREAS,** the Takoma Park Elections Code adopted on 10/30/89 does not address the use of surplus campaign funds; AND
- WHEREAS,** one of the recommendations of the Task Force was that the City Council allow surplus campaign funds to be used for any community purpose, other than for personal use by the candidate, or for transfer to another candidate or political action committee.

NOW THEREFORE BE IT ORDAINED By the City Council of Takoma Park, Maryland That

SECTION 1: Chapter 4D, "Elections", Article 3 "Fair Elections Practices" is hereby amended by amending Section 4D-2 "Definitions" and adding Section 4D-8.

CHAPTER 4D
ELECTIONS
ARTICLE 1. IN GENERAL

Sec. 4D-2. Definitions.

(k) Surplus Campaign Funds. Funds left in a candidate's campaign account after the election is over and all campaign debts (including all loans) have been paid.

(re-letter remaining definitions)

CHAPTER 4D
ELECTIONS
ARTICLE 3. FAIR ELECTIONS PRACTICES

Sec. 4D-8. Surplus Campaign Funds.

(a) Surplus campaign funds may be used at the discretion of the candidate for any community or political purpose, except:

(1) the personal use of the candidate, the treasurer, or any member of the candidate's campaign staff, or the family members of those individuals (however, use of surplus funds to hold a party for campaign supporters shall be considered a permitted political purpose); or

(2) a transfer to a registered political action committee or a candidate other than the individual for whom the funds were raised.

(b) A violation of this section is a Class B offense.

SECTION 2: That this Ordinance shall take effect upon adoption.

In this Ordinance Underlining is used to show language being added to the Code.

ADOPTED THIS 23rd day of September, 1991 BY ROLL CALL VOTE AS FOLLOWS:

AYE: Douglas, Elrich, Moore, Porter, Prensky

NAY: None

ABSTAINED: None

ABSENT: Hamilton, Leary

Introduced by: Councilmember Prensky
(Drafted by: P. Jewell)

1st Reading: 9/23/91
2nd Reading:

ORDINANCE #1991-35

WHEREAS, a handicapped parking area located at 6901 Woodland Avenue is no longer needed due to a change of home ownership; AND

WHEREAS, a 15-Minute Limit Parking Area, previously located at 7714 Takoma Avenue has been moved due to a location change of the day care operated by Montgomery College; AND

WHEREAS, the City Council deems it desirable to provide short-term parking for the newly located day care center now at Chicago and Philadelphia Avenues.

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

SECTION 1. THAT the handicapped parking zone at 6901 Woodland Avenue, established by Ordinance #1988-1, is hereby repealed in its entirety.

SECTION 2. THAT Section 2.A.(3) of Ordinance 2395, as amended by Ordinance #2697, is hereby amended to read:

A. OTHER PARKING RESTRICTIONS:

(3) [Takoma Avenue, West side, from Philadelphia Avenue southward] The 7700 block of the southeast side of Chicago Avenue, adjacent to the intersection of Islington Street for a distance sufficient to create three parking spaces: 15 minute parking between 7:00 AM and 5:00 PM, Monday through Friday, with signs reading "Day Care Center Only" affixed to the parking signs.

SECTION 3. THAT the City Administrator is directed to carry out the provisions of this ordinance for removing the signs as directed in Section 1 above and erecting the signs necessary as directed in Section 2 above.

SECTION 4. THAT this Ordinance shall become effective upon adoption.

Adopted by roll call vote this ____ day of _____, 1991 as follows:

AYE:
NAY:
ABSTAINED:
ABSENT:

Introduced By: Councilmember Douglas
(Drafted by: P. Jewell)
(REVISED 9/23/91)

1st Reading: 9/10/91
2nd Reading: 9/23/91
Effective: 9/23/91

ORDINANCE #1991-32

SETTING FORTH THE 1991 TAKOMA PARK CITY ELECTION

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

SECTION 1. THAT the City Clerk shall call a Nominating Caucus of the citizens for the nomination of candidates for Mayor and Councilmembers on Tuesday, October 1, 1991 at 8:00 PM in the Municipal Building, 7500 Maple Avenue, Takoma Park, Maryland; the said Nominating Caucus shall be conducted as follows:

- a. At the beginning of the Caucus, the Secretary of the Caucus shall select by random drawing, ward numbers one through six to determine the order in which Ward nominations are received.
- b. Nominations for Mayor shall immediately follow [precede] all six ward nominations.

SECTION 2. THAT a City Election shall be held at the Municipal Building on Tuesday, November 5, 1991, between the hours of 7:00 AM and 8:00 PM for the purpose of electing a Mayor and six Councilmembers. The Mayor shall be elected at large, and one Councilmember from each ward shall be elected by the voters of that ward only. The election shall be conducted by voting machines and, as nearly as practicable, all laws and regulations governing the use of voting machines in Prince George's County elections shall apply. Absentee voting shall be available as set forth by City Ordinance; AND

SECTION 3. THAT the City Clerk shall arrange with the Supervisors of Elections of Prince George's County for the use of seven voting machines at the said election, with a separate machine for the exclusive use of each of the six wards, and a seventh for the use only in the event of malfunction. The City Clerk shall place the names of the candidates nominated for Councilmember at the Citizens' Meeting on separate ward voting machines, with each machine displaying the names of candidates for one ward only, and shall place the names of persons nominated for the office of Mayor on all voting machines; all of the names of candidates nominated at the Citizens' Meeting shall be so placed, except any who

within three days thereafter may have filed in writing with the City Clerk a declination; AND

SECTION 4. THAT the City Clerk shall arrange for a space on the voting machines for write-in votes [also place] for the names of those qualified persons who have registered with the City Clerk as write-in candidates at least seven (7) days before the election[, on each separate ward voting machine]; AND

SECTION 5. THAT notice of the Citizens' Meeting and the City Election to be inserted at least in the Montgomery County Business Record and the Prince George's Sentinel during the two weeks prior to October 1, 1991. In addition, the Clerk shall have inserted in the Montgomery County Business Record and the Prince George's Sentinel, during the week preceding the election, a facsimile of the arrangements of the names and wards which will appear on the voting machines; AND

SECTION 6. THAT voter authority cards and lists shall be prepared for each ward separately, bearing the names, addresses and election wards of all eligible voters as certified by the Boards of Supervisors of Election for Prince George's and Montgomery Counties, and supplied to the Judges of Election on election day; AND

SECTION 7. THAT the Clerk shall recommend to the City Council the names of persons for designation by the Council as Judges of Election on election day; AND

SECTION 8. THAT the Judges of Election shall meet in the Municipal Building as a Board of Election at 7:00 P.M., Wednesday, November 6, 1991, and shall determine and certify the results of the election, as provided in the City Charter; AND

SECTION 9. THAT the City Council shall meet in Special Session at 8:00 P.M., Wednesday, November 6, 1991, to receive the certification of election from the Judges; AND

SECTION 10. THAT this Ordinance becomes effective upon adoption.

Adopted this 23rd day of September, 1991 by Roll Call Vote as Follows:

AYE: Douglas, Elrich, Moore, Porter, Prensky

NAY: None

ABSTAINED: None

ABSENT: Hamilton, Leary

Introduced by: Councilmember Leary
Drafted by: Robin D. Ziek
Linda Perlman

1st Reading: 9-23-91
2nd Reading:

ORDINANCE NO. 1991-36

An Ordinance to Award a Contract for
the B. Y. Morrison Art Project

- WHEREAS, in January 1990, the Council approved the use of Community Development Block Grant funds for public art in B. Y. Morrison Park; AND
- WHEREAS, in February 1990, the Council passed a Resolution in support of this public art commission and appointed citizens to a committee to pursue the project; AND
- WHEREAS, the Art Selection Committee met from February through October to formulate the program; AND
- WHEREAS, the project was advertised locally and nationally, and 105 artists submitted slides of their work for consideration; AND
- WHEREAS, the Art Selection Committee selected three artists to submit site-specific proposals; AND
- WHEREAS, two artists submitted proposals, and the Art Selection Committee chooses to recommend the painter Jim Colwell for his proposal, with specific reservations about the painting of an exterior frieze, the deletion of which has been communicated to and agreed upon by the artist; AND
- WHEREAS, there is wide-spread community support for this project, as evidenced by public comments collected from July 24 - September 16, 1991, when the projects were on display in the Municipal Building, and by the financial support forthcoming from the community; AND

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

SECTION 1: That, for a fee of \$8,000 the City will commission a work of public art for B. Y. Morrison Park from Mr. James Colwell, of 7325 Takoma Avenue, Takoma Park, Maryland.

SECTION 2: That the City Administrator is hereby directed to enter into a contract with James Colwell for a work of public art to be painted for the B. Y. Morrison park pavilion.

SECTION 3: That the fee for the work of public art will be funded through private donations, City funds from Community Development Block Grant, and from the General Fund.

Adopted this _____ day of _____, 1991.

AYE:

NAY:

ABSTAIN:

ABSENT:

rdz/ordinance.bym

Public Briefing and Public Hearing
Monday, September 30, 1991

CITY OFFICIALS PRESENT:

Mayor Sharp	Asst. City Admin. Habada
Councilmember Douglas	City Clerk Jewell
Councilmember Elrich	Recycling Coor. Braithwaite
Councilmember Hamilton	PW Director Knauf
Councilmember Leary	DHCD Director Grimmer
Councilmember Moore	
Councilmember Porter	
Councilmember Prensky	

The City Council convened on Monday, September 30, 1991 at 7:45 p.m. in the Council Chamber at 7500 Maple Avenue, Takoma Park, Maryland.

Following the Pledge of Allegiance, Mayor Sharp apologized for the meeting starting late and noted that the Council had just met in Executive Session to discuss pending litigation.

1. Public Briefing and Discussion - Recycling Expansion

Daryl Braithwaite, Recycling Coordinator said that there had been some confusion about who was covered by the City's recycling program and the City picked up from 4,086 households in the City of Takoma Park, both in Montgomery County and Prince George's County. She said the City picked up from all single-family households in the City and 31% of the multi-family households in the City. Ms. Braithwaite said that the buildings not served were the large high-rise apartments and the commercial establishments. She said that the program covered 60% of the Takoma Park population so far. Ms. Braithwaite said the program was designed to affect those residents who had City trash service and the initiative of the City was to reduce landfill fees and the first focus was on those places where they were paying for trash collections. She said that there was funding in the budget for the present fiscal year to begin some pilot programs in the high-rise apartments. She continued by saying most of the solid waste was trash, and it was all going to Montgomery and Prince George's landfills at present; \$71 per ton currently to landfill in Montgomery County and \$56 per ton to landfill in Prince George's County, and they were required to deliver the portion of the City in each county to each landfill.

Ms. Braithwaite then went on to describe who Takoma Park's recycling vendors are and what the charges are.

Ms. Braithwaite displayed graphs and charts showing expenses and savings from the recycling program since 1988. She also showed graph comparison of solid waste management costs under the existing program and without recycling. She continued her remarks by saying there were three laws they followed; Maryland law which required all counties to set up a recycling program, and Montgomery and Prince George's Counties ordinances exceeding state requirements.

Mr. Elrich asked if there were any figures to indicate in the first week of experience if there was a change in the trash component that went through Prince George's County.

Ms. Braithwaite responded that they picked up between 12 and 15 tons of mixed paper alone and in addition to that, there were 12 tons of newspaper, 10 tons of glass, aluminum and metal. She said in terms of the trash collection, all trash trucks came in well below their maximum capacity for each day, and the trash from the past few weeks was a result of people having it saved up and there would be more solid number in about a month.

Ms. Porter asked how many tons per day were taken to the two

landfills and questioned what was the City spending in terms of last year's landfill.

Ms. Braithwaite explained that the trucks were loaded with between 40 and 45 thousand pounds to take to the landfill each day--22 and 1/2 tons per day. She said that in FY 91 they spent \$217,570 in landfill fees and were projecting to spend about \$245,000 this year. She also said that in 1990, they spent \$226,000 for 255 tons.

CITIZENS COMMENTS

Joan Nabru, 6920 Prince Georges Avenue asked if the money made on the project got funneled back to the taxpayers.

Mr. Sharp and Ms. Braithwaite explained that the issue was avoiding costs; there was not much of a market for selling recyclables and it was really a matter of avoiding or not spending money on landfill costs. Ms. Braithwaite pointed out to Ms. Nabru where the figures on this cost savings were shown in the handout provided.

Ken Hemphill, 8112 Flower Avenue asked why was there a reduction in tonnage in FY 90 and FY 91.

Ms. Braithwaite explained that it was somewhat of a mystery; they were picking up 50 less households than they used to in 1990; they did not have the total figures indicating how much grass they picked up because the compose site did not have a scale and the weight estimate was based on the load and of trucks. She also said that they also had spoken to both counties who found similar results that when a recycling program was instituted, one could not plan for general waste reduction on the part of the residents who were getting their trash collected and a general drop in trash collection was usually found.

Mr. Hemphill asked how did the 69% of renters who were not covered fit into the legal requirements of the counties.

Ms. Braithwaite replied that both counties required waste reductions to occur county-wide and their programs would affect commercial establishments, all apartment establishments as well as single family residents. She said that Prince George's County passed a law which required all apartment owners to provide an opportunity to recycle for their tenants by 1992; any high-rise apartment building in the City of Takoma Park would be affected by those laws. She said Montgomery County just announced it was establishing requirements for commercial establishments to meet certain goals of waste reduction. Ms. Braithwaite said the City was waiting for the counties to take the lead so they would not get in the way of their regulation for commercial establishments and highrise apartments, because the City did not see it as an immediate cost savings from that part of the population.

Mr. Hemphill suggested the Council consider prohibiting purchases from corporations that packaged their items with excess packaging. He said as a long time supporter of recycling, he noticed there were many packaging materials that did not get recycled and whatever could be done to encourage the whole economy to move to more recyclable materials, would be a benefit.

Mr. Douglas commented that the City could help generate a market for recyclables by purchasing products made from recycled goods.

Mr. Sharp agreed with Mr. Douglas and said he had discussions with officials at the Council of Governments (COG) about this issue; the City purchased paper from COG which put bids out for non-recycled and recycled paper and recycled paper cost 15%-20% more. Mr. Sharp said this focused on a decision the Council would have to make in that regard--should those purchases be made even at higher costs.

Zina Garrett, Sheridan Avenue asked if there were any plans to recycle other materials, e.g., margarine and oil containers, and asked if collection times would be posted because a lot of people missed newspaper collections when it rained.

Ms. Braithwaite said that each phase of recycling had come as a result of markets that have opened up in this area and, to some degree, vendors knowing the City was into recycling and responding to the City's bids. She noted that the plastics industry was working hard at adding additional types of material and Montgomery County's recycling center feel they may be able to take additional plastics in about a year. Ms. Braithwaite said that recyclables and trash should be put out the evening before collection; wet mixed paper and newspaper was not a problem to the City to pick it up or for the recycling vendors.

In response to Ms. Garrett's comment about cardboard recycling, Ms. Braithwaite said cardboard needed to be tied because it was difficult to get into the truck, and it was difficult to keep from blowing out of the truck if it was not tied.

Mr. Douglas commented that cardboard was the biggest problem and he hoped that they would look at how they could make the cardboard recycling program work.

Mr. Elrich asked Ms. Braithwaite to explain how the buckets could be obtained.

Ms. Braithwaite explained that they had two different types of buckets available; a 7 gallon round container and the 14 gallon rectangular box and both were available at Public Works at no cost. She said that the buckets would be delivered to the handicapped and to residents who did not have vehicles or those who were homebound.

David Prosten, 6625 Eastern Avenue asked that in the absence of composting, should solid waste, e.g., melon rinds be going into a garbage bag or the garbage disposal. Mr. Prosten said one could waste a lot of water rinsing out certain jars, e.g., peanut butter containers, and he asked at what point did one stop rinsing out bottles.

Ms. Braithwaite said she talked with WSSC officials who said that the sludge which came from the wastewater treatment process was composted and it was an environmentally sound option to put such materials into the garbage disposal. Ms. Braithwaite said residents were just asked to do their best in cleaning out containers; the vendors ask the City to deliver to them clean containers to avoid problems with odors and insects.

Mr. Prosten asked what instructions the crews had about the handling of garbage cans, lids, and the containers.

Ms. Braithwaite said that the employees were instructed to put the cans back on the curb and not throw them onto lawns. She said it was important for the cans to be left in some way different than it was before in order for the trash truck to know that it had been collected.

Michael Clinansmith, 7610 Maple Avenue said the greatest problem was within the multi-family units apartment buildings and the unavailability or inability to collect recyclable material from those buildings. He noted in the report that 31% of multi-family residences were being served and said he would like to put his building on the recycling program, but the problem was with getting the landlord's permission.

Ms. Braithwaite explained that the multi-family buildings currently involved in the program were 2 to 12 unit buildings, and these were based on the apartment owner's choice as to whether or not they wanted private trash service or City trash service. She said using

the City's trash service required the owners to use trash cans because the City did not provide a dumpster service.

Mr. Clinansmith asked if there was a possibility that the City could make it possible for tenants to participate by providing recycling igloos.

Ms. Braithwaite replied that they were hoping to approach this idea with the pilot programs and whatever they did would be based on the interest they received from the tenants, the apartment owners, and the building managers to make it happen.

Rusty Herr, 7309 Holly Avenue asked what the process would be to evaluate the recycling program.

Ms. Braithwaite said it was her understanding after this meeting, the Council would take a look at setting up a public hearing in the near future to take a look at how people were finding the program before the budget process next year.

Mr. Leary agreed and said he had talked with the Public Works Director about keeping a record of complaints received on this issue between now and the public hearing. He also said he was confident that the Public Works Department and the recycling coordinator would be responsive to any and all complaints on the program.

Ms. Herr commented that she was concerned for the safety of the trash collectors; she said the workers did not wear gloves or goggles and if any of the workers were seriously injured, citizens would end up losing a lot of their savings.

Ms. Braithwaite said that no injuries had occurred as of yet with flying glass and she agreed that the sanitation workers should be wearing protective eye gear. Ms. Braithwaite said after the week that she spent on the truck, she made that recommendation to the sanitation supervisor.

COUNCIL COMMENTS

Mr. Leary suggested the Council announce they would schedule the first public hearing in March and said this would be an appropriate time in terms of making any budget decisions which would be required. He also said no major alterations could be made to the program which had been put into effect this month except through next year's budget process and major changes could be made at that time if warranted. Mr. Leary said 6 months from now would be a reasonable test of how the program had worked and allow the Council to take into account what they had learned. He expressed a concern about what would happen during the summer months when the garbage may sit for a week, and he urged the recycling coordinator to give some thought to that issue. He asked the Council to think about having twice a week garbage pickup during the summer months.

Mr. Elrich said his thought had been was to have the first public hearing earlier because it was important that people be heard and not wait until the budget process. He said during the second week of December or early January, there could be a public hearing and it would give the department a chance to do any corrections that were necessary. He said when the budget process came around, they would not only have the experience, but also an opportunity to listen to citizen input and make any corrections.

Mr. Leary said he was open to suggestions and there was no reason why there could not be two public hearings on the subject. He said as Council was beginning to think budget, it was the time to face issues like this; there was a tendency in May to forget comments heard in the middle of January.

Ms. Porter said having two hearings was a good idea and if there were individual problems people were having, she assumed that they

would let their Councilmembers know before January.

2. Public Hearing on Proposed Charter Amendment Permitting Non-U.S. Citizens To Vote in City Elections

Mr. Sharp said the proposal that residents of Takoma Park who were not citizens of the United States be permitted to vote in Takoma Park's elections had been suggested to the Council by the Elections Task Force (ETF).

George Leventhal, member of the Elections Task Force, 8200 Flower Avenue said he wanted to emphasize that the proposal to allow all residents of Takoma Park to vote regardless of their citizenship status in the United States, was a logical outcome of lengthy discussion by the ETF whose members were residents of Takoma Park. He said the Task Force spent many weeks carefully reviewing the census data of each block in the City of Takoma Park, and as the primary charge to redraw the map by which ward boundaries were determined, it was realized that certain neighborhoods in the City would likely have substantially larger numbers of voters than others, given that certain wards in the City would have a substantially large proportion of U.S. citizens. He said as this became clear, they thought allowing everyone to vote could not be done because it would not be constitutional, but they kept discussing the issue and with the discussion, every objection that was raised was addressed.

Mr. Leventhal said he was convinced that it would be administrable and it would be feasible for the City to do it in a reasonable way at small and reasonable costs to the City. He said in terms of constitutionality and legality, one of the members of the Task Force, Jamie Raskin, was a law professor at American University and he reviewed in detail the legal questions involved and discovered that Somerset, another Maryland town in Montgomery County, already allowed all of its residents to vote, including non-U.S. citizens. Mr. Leventhal also said that since the proposal had surfaced, members of the State Board of Elections and some leading experts on elections law in the State of Maryland, had agreed that it was absolutely legal and constitutional for a home rule City in the State of Maryland to determine the composition of its own voting rolls. He said that this was a good idea because everyone who owned a home in Takoma Park had an interest in the decisions that the Council made, and therefore, he believed, should have an equal opportunity to influence those decisions, and whether a person was born in the U.S. or if they were a citizen of the U.S. if they were a resident of Takoma Park, they had an interest in the decisions made by the Council. He said large numbers of residents of Takoma Park had no ability to influence by their vote the decisions that the Council made.

He continued by saying that he believed that it was reasonable and not wrong to allow everyone who lived in the City to have a vote for the Mayor and their Councilmember; the proposal would not empower a non-U.S. citizen to vote for the President of the United States, nor the U.S. Congress, where trade decisions were made and where treaties were ratified. Mr. Leventhal said the Congress and the President were involved in making foreign policy, which could be said to be a conflict of interest, but when it came to recycling and garbage collection, maintenance of parks and streets, etc., he had an equal stake in those issues as someone who lived next door to him who was not a U.S. citizen or someone who lived in his home who was not a U.S. citizen. Mr. Leventhal said that some of the objections that had been made to the proposal were individuals who felt fiercely proud of their American citizenship, and he respected their concern and he felt that way too. He said to be a citizen of the United States was a wonderful thing; he had travelled to other parts of the world but he was always glad to come home many times and glad to have the freedom to come home. Mr. Leventhal said he felt proud of the United States because of the broad democratic participation that was enjoyed in the United States, and the

proposal was consistent with broad democratic participation, and this was a Country that had historically been open to immigrants and tolerant of diversity.

Mr. Leventhal said as one looked at the changing composition of the United States work force and the composition of those who lived in this Country and the community, it needed to be recognized that every generation faced a civil rights struggle unique to itself. He brought up an incident with the Washington Post which spoke of some of the people who had been leaders in the Afro-American Civil Rights Movement in the 1960's and who had been negotiating with the Latino activist who was involved in the activity in the Adams Morgan/Mt. Pleasant earlier this year. He said that Afro-Americans were saying exactly the same things 20 years ago; they are demanding the same rights, political participation and economic participation. Mr. Leventhal said integrating the immigrant population into our society was the civil rights challenge of this decade and this coming century. He also said that every generation had its own class of people who were somehow invisible and in different periods of time in American history, that class had changed. He said that the proposal recognized the neighbors who may not be thought of as full participating citizens of the community; those who were not citizens of the U.S. were in the community, they were our neighbors and he believed that if you lived in Takoma Park, you ought to have the opportunity to participate in the Takoma Park elections.

Mr. Leary commented that it was his understanding that the Task Force discussed the question of whether it would be advisable to put the question to an advisory referendum, and he asked Mr. Leventhal to explain.

Mr. Leventhal explained that the recommendation of the ETF was that the question be put on the ballot this November as an advisory referendum and since that time the City Council had adopted the Charter Amendment on first reading and there appeared to be movement on the part of the Council towards adopting it without a referendum.

Mr. Sharp said the issue was still open; the Charter Amendment resolution had been passed at first reading, providing an opportunity for further comment on whether there should be a referendum on the issue or whether the Council should deal with it at second reading. Mr. Sharp explained that Mr. Leventhal was representing the Elections Task Force and was given additional time to speak. He asked that speakers try to keep their comments to three minutes since there were so many people signed up to speak and he explained that he was particularly interested in hearing from people who lived in Takoma Park. He would give preference to the citizens of Takoma Park and, if time permitted, the Council would take comments from others.

Margie Garey, 7018 Poplar Avenue said that she was a descendent of Daniel Delaney who helped established this great Country and she would hate to try to explain to him why the City of Takoma Park gave the privilege of voting in a City election to non-U.S. citizens. She said she felt that the elected City officials did not represent her anymore because they were considering giving away a fundamental privilege which her ancestors fought for. She said if a person wanted the privilege of voting in her Country, they should become a citizen and abide by all its laws. Ms. Garey said giving voting privileges to non-U.S. citizens marred those who had fought to gain the status as a citizen--our ancestors who were lucky enough to inherit it. She indicated that she would do anything within her power to defeat the Council if they continued along this vein.

Devona Garey, 7018 Poplar Avenue read the preamble to the Constitution of the United States and said she had been a citizen of Takoma Park for all her life but recently found herself ashamed

to admit that she was a citizen of Takoma Park because she felt the City Council no longer represented her. Ms. Garey said that the Country was founded on the principal of representative government; representative to the citizens - not the non-citizens. She also said that anyone could become a U.S. citizen if they would like to, and she reminded the Council of the words of Abraham Lincoln, that this is a government of the people, by the people, and for the people. Ms. Garey said that the people gave the Council their jobs and they could be taken away just as easily.

Soria Leventhal, 8200 Flower Avenue said even though she was not a citizen, she paid taxes on a house and out of her paycheck and she felt she had the right to vote to decide who was going to represent her and the rest of America.

Rose Bulow, 7607 Hammond Avenue suggested that since the Community seeking voting rights were not U.S. citizens, the matter be decided by public referendum. She said she interviewed Afro-Americans who were non-citizens to seek how they felt on this matter because as an African-American herself who had been deprived all of her life and she was concerned that there still some fundamental rights that she felt she should have. She also said that she was troubled by some of the reasons non-U.S. citizens were citing in defense of their right to vote. Ms. Bulow said she interviewed a Jamaican who said he was not a U.S. citizen and who said he did not feel he should have the right to vote because he loved his country and questioned why he should be allowed to participate in creating a plan for us to live by, when he can leave the Country whenever he choose to do so and others are left with that plan and can't leave.

Joffrion Tower, 7777 Maple Avenue cited a situation in the apartment that he lived in regarding a Nigerian student who lived there first with several other Nigerian students, then with her family. He said it would probably be a matter of months when she and her family would return to their Country, yet they still would be able to vote on issues that his taxes paid. He said that was just one example of the circumstances that existed in Takoma Park. He said the majority of the City's population were tenants and the non-U.S. citizens who lived in the apartments were a transient society who were in the U.S. to go to school. Mr. Tower questioned whether the administrative procedures on this process could be effectively implemented by the City Clerk by the November 5th election.

Mr. Sharp said that the Council had decided that if the proposal was approved, the process would not be implemented for this upcoming election.

Lloyd Johnson, speaking for Dave Cruse said the issue was too important to be decided by the Council and he urged the Council to submit the matter to a referendum.

Kathy Breckbill, Woodland Avenue urged the Council not to make the decision themselves but to put the question to a referendum. She also said the idea of the Council making a decision to broaden the voting base without giving that decision to the voters, was ludicrous. She said there had not been a referendum in Takoma Park since 1985 and she wondered what votes were being given away if there were no referendum.

Sarah Raskin, 7209 Holly Avenue read a statement from her husband, Jamie Raskin who was not able to speak because of an injury. Mr. Raskin served as a member of the ETF and had researched the issue. His letter noted that in addition to the several Maryland municipalities found to have a policy which granted non-citizens the right to vote, he came across a reference in an 1874 Supreme Court case called "Miner vs. Happerset" where the Supreme Court pointed out that in Missouri, persons of foreign birth who were not American citizens, may vote in State elections under certain circumstances. The same provision was to be found in the

constitutions of Alabama, Arkansas, Florida, Georgia, Indiana, Kansas, Minnesota and Texas. Mr. Raskin's memo urged the Council to support extending the right to vote to all Takoma Park resident non citizens, regardless of legal status.

Rudy Arredondo, 7105 Woodland Avenue thanked the Task Force and Council on behalf of the Latino community that had struggled for a long time. He said he was President of the League of United Latin American Citizens of Montgomery County which was founded in Takoma Park in 1986. He said that everyone here had forefathers who were immigrants. Mr. Arredondo said he supported the process of the referendum and he looked forward to a lively discussion and a positive result.

Lissa Martinez, 7107 Cedar Avenue said she was married to Brian Hughes who was not a U.S. citizen, and noted that she was a U.S. citizen by birth as were her two sons. Ms. Martinez, who served as a volunteer member of the ETF, said she supported the proposal to extend the vote to non-U.S. citizens of Takoma Park. She said the proposal which had been brought forward for consideration by the Council and the residents of Takoma Park had been drafted after a series of discussions and investigations conducted over the course of the Spring of 1991 by the Task Force. She said there were many non-U.S. citizens residing in Takoma Park who must abide by the rules, regulations, ordinances, and charters produced by the Council and they also paid City fees and taxes. They relied on the same police and fire protection and other City services and there was no strong reason to exclude those people from the vote in local matters. She said that when the Task Force redrew the ward boundaries they were obliged by the Voting Rights Act to create numerical equality across the City, by making each new ward as close to the same size, numerically as possible. She said the purpose of the Act was to insure a more equal representation of voters at each election, yet the census numbers they relied on to establish the political jurisdictions did not show who was a U.S. citizen nor who was a voting U.S. citizen. Even though they used that data to work toward equal size political districts for Takoma Park, the method revealed nothing about whether and where there were genuine voters. She urged the Council to extend the vote to non-U.S. citizens and she agreed the question should be put to a referendum. Ms. Martinez then read a memo from her husband, Brian Hughes, who noted his tax payer status and his own involvement in the community and urging the Council to consider the measure.

Martha Feldman, 6907 Prince George's Avenue expressed sentiments that she said were expressed at a recent meeting in her neighborhood--they would like to have a referendum and have the citizens decide on the issue.

Robert Smith, 308 Grant Avenue said the question dealt as much with the definition of citizenship as the right to vote. He said at one time only white male landowners were able to vote; then all white man; then all men of any color; and finally and sadly too long in coming - women. Mr. Smith said that the U.S. Congress determined the criteria for U.S. citizenship; however local governments determined the criteria for local citizenship. He also said that he had lived in seven different states and he exercised his citizenship rights--rights that came to him whether he paid taxes; was born there, how long he lived there, or if he spoke with the local accent. He concluded by saying if the non-U.S. citizen experienced democracy in Takoma Park and returned to his/her land of origin, perhaps they would profit from that experience and spread it wide.

Colin Norman, 7204 Spruce Avenue said he had lived in the community for 15 years, paid taxes for 15 years, participated in the political life of the community and campaigned for some of the members of the Council. He said that his daughter went to the public school in Takoma Park and he and his wife had a very strong feeling for the community and a very strong need to be represented.

Mr. Norman said the only thing that he could not do was vote because he was a British citizen. He pointed out that there were at least a half dozen communities in Maryland who were already allowing this as well as many other countries in the world that had been for decades; particularly Sweden. He said that his brother was a resident alien and had been able to vote in local elections two years after he got into that community.

Mr. Douglas asked Mr. Norman if people in his position risked losing citizenship of their own country if they voted in our election.

Mr. Norman responded that when one applied for a citizenship of this country, you had to forswear allegiance to foreign powers. He also said that technically, the American government did not recognize your nationality from any other country and therefore he would forswear his British citizenship if he became a citizen of the United States.

Maurice Balanger, 7421 Cedar Avenue said he was in favor of the Task Force's recommendation and if people were being taxed they should have representation. He said that the first speaker who pointed out that her ancestors fought in a war which was started over taxation without representation, and then argued that non-citizens should continue to be taxed without representation, did not make sense.

Enid Alemar, 7118 Woodland addressing the false assumptions she heard tonight said it had been suggested that only citizens should vote because they were the ones who had to obey all of the laws, but if anything, there were laws that applied to non-citizens that did not apply to citizens. She said a representative government entailed representation of citizens; citizenship was a criteria that served to determine or delimit a voter group, and the idea of representation went beyond that. Ms. Alemar said that representatives meant that if you were affected by the decisions of the people that you elect, you should be represented. She said that a misconception was that Takoma Park should not set a bad precedent and that Takoma Park was unique. Ms. Alemar said that the Elections Task Force looked at the question very responsibly as a response to a practical problem that Takoma Park had that not necessarily other communities had.

Ligia Becker, 7106 Maple Avenue said she would appreciate it if she could vote because she had lived in Takoma Park for eleven years, paid taxes, worked as a teacher and was the mother of a fifteen year old.

Thomas Morris, 308 Grant Avenue said he found it inconsistent for people to speak about their ancestors having fought for the right to vote and then use this as an argument to deny others that same right.

Michael Clinansmith, 7610 Maple Avenue cited a trip he took to Philadelphia where a Park Ranger did a simple exercise: he asked all who were registered to vote to raise their hands; all women to lower their hands; all Black people to lower their hands; people without 1,000 acres of property to lower their hands, and that now it was obvious how many people would have voted in 1790 when the Constitution was established. Mr. Clinansmith asked why deny democracy to anyone.

Tom Anastasio, 32 Columbia Avenue said for over two years, he had been assisting Latino Takoma Park residents as an English teacher. He said there was a great deal of interest amongst those people about what was going on; not only nationally, but local issues also. He said he felt if those residents of Takoma Park were given the right to vote in the elections, they would be terrific voters and from what he had seen they understood what was going on, they were vitally interested in what was going on and they would be

extremely responsible. He continued that the minimum that he would ask of Council would be that they bring the issue to a referendum and he would prefer to see them take a vote on it. He also said that Council should consider having another public hearing with them voting on the issue and he hoped that they would vote positively.

Ken Hemphill, 8112 Flower Avenue indicated that he had a letter from Lynne Bradley supporting the idea. He said that he supported the vote and so did his wife but he opposed the idea of a referendum because non-citizens would not be allowed to vote in it.

Brian Hughes, 7107 Cedar Avenue said that he preferred to think of himself as a non-U.S. citizen because everyone was a citizen of one place or another. He said that he hoped the Council would do the right thing and he believed they would. He said the City was at a turning point and everyone should have the right to vote for the governments that affected them directly.

Frank Barley, 7317 Wildwood Drive said he had listened to dubious arguments on both sides of the question and he found some of the arguments disturbing and angry. He also said he believed in democracy and one of the ways to demonstrate democracy was to have a referendum on the issue; it was divisive and there could not be a true picture at the hearings because there were too many disruptions which did not represent what a lot of people felt who were not in attendance.

Kay Dellinger, lives at Hampshire Towers said it puzzled her how people could attribute such magnificent qualities to the accidental place where they were born and she would be the same person of value as everyone else of value if she had been born in China or Africa. She said a previous City Council showed courage when they made Takoma Park a sanctuary city for political refugees. Ms. Dellinger said if there was going to be a referendum, the Council should have informed the people of Takoma Park months ago, and if there were to be a referendum, most citizens were not registered voters and most people who could vote did not register.

Andrew Busby, speaking for the Tenant League said that the League felt that the issue should be passed as a matter of political courage; if the other side wanted to bring it to a referendum, let them get the signatures together and it could be voted on the next time around since it would not get on the ballot this election; he said then everybody could vote on it including the foreigners who wanted to vote.

Henry Quintero, Hispanic Alliance of Montgomery County said the Alliance was an organization which sought to coordinate and assist individual Hispanic groups in promoting the legitimate rights of Hispanics in the economic, social, and political fields in Montgomery County and they applauded the City Council's progressive position when in 1985 it decreed Takoma Park a refuge for immigrants fleeing persecution, wars and atrocities and welcomed them to the City. He said the Council was making a positive and logical second step by extending the voting franchise to those who sought that safe haven here. He said there were precedents in the County for granting the vote in local elections to non-U.S. citizens, the communities of Barnesville, and Somerset and the villages of Chevy Chase, Sections III and IV and Martins Addition near the district line, did not require their voters to be U.S. citizens. Mr. Quintero said the Alliance hoped that Takoma Park would once again demonstrate its democratic tradition by giving non citizens the right to vote.

Cameron Whitman, representing the Federation For American Immigration Reform (FAIR) said she had been contacted by many members in Maryland and was urged to make a statement on this issue. She asked why the people who lived in Takoma Park for so

long had not taken the opportunity to become citizens. She said that as a country based on law and with respect for law which was the cornerstone of our system for most democracies, it was the concern of the members of FAIR and many people in Maryland, that there be some serious consideration given to whether to give the vote to people who had chosen to break the laws on their initial act of entering this Country. She explained that she was not referring to legal residents, but to the other people who were in the U.S. in defiance of the law of the land. Ms. Whitman said that FAIR encouraged the Council to put the issue to a referendum to allow the citizens of Takoma Park to make that decision.

Robert Callahan, 6004 Westchester Park Drive he said he did not live in Takoma Park but he saw from previous actions that non-residents of Takoma Park were treated with worse respect than non-U.S. citizens who lived in the City. He said if a person could not become a legal member of a country they had no right to participate in its government. Mr. Callahan read a letter from the Prince George's County Civic Federation which voted unanimously at its meeting on September 5, 1991 to oppose the efforts of any municipality within Prince George's County to allow non-U.S. citizens the legal right to vote in municipal elections. He said the Federation urged the Council to put the question to voter referendum and let citizens decide for themselves whether the right to vote in municipal elections should be extended to non-U.S. citizens.

Eunice Coxon, 9R Research Road, Greenbelt, Maryland said she was a 34-year resident of Prince George's County and a civic activist whose only agenda had been excellence in government and she found the issue very scary on all levels. She said that she did not feel that the present speakers were representative of the body of citizens in Takoma Park and she hoped that there would be a referendum.

Ana Sol Gutierrez, 3317 Turner Lane, Chevy Chase, Maryland, member of Montgomery County Board of Education said she was active in the community and was aware of the statistics in the schools and how diverse the county had become. Ms. Gutierrez said that she was from El Salvador; she came to the U.S. when she was three years old; was a diplomat's daughter; studied in Maryland when she was on an international visa; became a professional and obtained a residency and was also a property owner, and all that time, was not a U.S. citizen. She said in reference to the question why were aliens here so long and had not become citizens, she explained that to decide to become U.S. citizens was a major decision for many; it was a clear commitment and a real cutting-away from a country to which you identified for and with your culture and roots. She said that when she did become a citizen, her decision was based on the reality that most of what was happening in El Salvador was being decided in the United States, and she could be more effective with one single vote in the U.S.

Michael Hethmon, 5304 Tecumseh Place urged the Council to put the issue to a referendum and said he was confident that American citizens of Takoma Park would do the right thing. He also said that the issue would give non-citizens a minuscule of the right of what American citizenship was all about and he felt that was a point which had been overlooked.

Mr. Sharp called the Public Hearing to a close.

3. Council Consideration On Proposed Charter Amendment

Mr. Leary moved that an advisory referendum question be put on the ballot in November which would state "should the Takoma Park City charter be changed to permit citizens of Takoma Park who were not U.S. citizens to vote in Takoma Park City elections?" The motion was duly seconded.

Mr. Leary said that an advisory referendum made sense on the

particular issue because the change in City election procedures could not take place until November 1993, regardless of what action was taken at present. He also said to have a referendum on the issue in November cost nothing and there was time to authorize and advertise it appropriately in the newspapers and to stimulate a constructive debate on the issue between now and the election. Mr. Leary said that it also made sense because the Elections Task Force had studied the issue and voted unanimously to recommend to put the question to a referendum. He said to have this on the ballot would stimulate a useful educational process and it was clear that citizens on both sides of the issue felt that this was an appropriate matter to allow the citizens of Takoma Park to decide. He also said it would put to rest the inevitable claims that this was a decision crammed down the throats of the majority by a few activists.

Mr. Moore said that he agreed that it was correct to put the question to a referendum and there could be nothing more appropriate as a subject matter for a referendum. He said the issue on a referendum had several benefits 1) it would let the next Council know what the people really wanted; 2) it would have an educational aspect; it would spark a dialogue throughout the elections process of debating the issue among neighbors, with city officials and with other interested parties which would help enlighten everybody and perhaps change some minds; 3) it would let residents of Takoma Park know that it was what their neighbors wanted and it was a direct form of people deciding for themselves. Mr. Moore said he would personally urge his friends and his constituents to vote in favor of the proposal.

Mr. Prenskey said he spoke with D.C. Councilmember Frank Smith when he had invited him to attend a meeting on a special task force on the D.C. elections. He said that Mr. Smith was intrigued with the possibility of further enfranchising non-U.S. citizens in his ward which encompassed Adams Morgan/Mt. Pleasant. Mr. Prenskey said that it was also explained to him that this was an issue alive in front of the U.S. Conference of Mayors; an issue of fairness across the population of the entire United States; the fact that redistricting and political power was distributed on the basis of population did not escape the notice of elected officials all across the country. He said he was inclined to favor the suggestion to schedule a second public hearing on October 28th, after which time the Council would take a stand and vote on the issue. He also said that the issue was a critical one which should be debated in the election season and he would vote in support of the resolution that placed the advisory question on the ballot at the election on November 5th, but he deferred to what appeared to be a desire for a larger debate and a personal and secret decision in the ballot box for the people who wanted to vote on the issue.

Mr. Douglas said that he was not a great supporter of referendums, because there were too many complexities in some issues, but this issue was suitable for referenda. Mr. Douglas also said that he found it ironic that Council who had the franchise talked about expanding the franchise, and it was a right for the people who were part of the community to pay taxes; who participated in the community life at all levels to participate in their own local government. He continued by saying that he personally would have been privileged and honored in his last two elections to have the non-citizens to support him in the electoral process and he regretted it that he would not sit on Council next year when the next Council would take the appropriate step to amend the Charter. Mr. Douglas said that he resented the animosity from the people who did not live in Takoma Park who spoke. Those who challenged the Council's motives and credibility acted in an uncalled for and ill-advised manner and he could not understand why those people were at the meeting. He concluded by saying that he hoped when the issue was put on the ballot, that it would be a Takoma Park-only issue and not see any advice or support on the issue coming from the outside; it was for Takoma Park to determine its destiny and it

ought to be allowed to do so. He urged Takoma Park residents to participate in the referendum and support it as he would.

Mr. Sharp said that he supported and would vote in favor of non-U.S. citizens voting in Takoma Park elections. He also said he was certain that groups opposing this measure would not break Takoma Park's laws and if they involved themselves in the elections, they would indicate who they were.

COUNCIL ACTION: Mr. Sharp noted that Resolution language proposed by Mr. Leary would be put on the voting machines on November 5th and would be on the ballot in the November 5th election. The question was called and the Resolution passed unanimously.

RESOLUTION #1992-75

Upon motion duly made and seconded, Council convened at 11:30 p.m. to reconvene on Monday, October 14, 1991.

Introduced by: Councilmember Leary
(Drafted by : P. Jewell)

RESOLUTION #1991-75

WHEREAS, the City Council wishes to gauge the support of Takoma Park's citizens on the question of non-United States citizens voting in Takoma Park City elections.

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

SECTION 1. That the following advisory referendum question shall be placed on the ballot of the November 5, 1991 City Election:

For all Takoma Park Voters, the question shall read.

QUESTION 1. SHOULD the Takoma Park City Charter be changed to permit residents of Takoma Park who are not United States Citizens to vote in Takoma Park City elections?

[] FOR [] AGAINST

Beneath this question, voting levers shall be labelled "FOR" and "AGAINST"

SECTION 2. THAT NOTICE of the above shall appear in two newspapers of general circulation in the City of Takoma Park during the Weeks of October 7th and October 21st 1991.

Adopted this 30th day of September, 1991.