

CITY OF TAKOMA PARK, MARYLAND (FINAL 1/24/92)
Regular Meeting and Public Hearing
Monday, January 13, 1992

PROPERTY OF
TAKOMA PARK MD. LIBRARY

CITY OFFICIALS PRESENT:

Mayor Sharp	City Administrator Wilson
Councilmember Elrich	City Clerk Jewell
Councilmember Hamilton	Corp. Counsel Silber
Councilmember Johnson	DHCD Director Grimmer
Councilmember Hamilton	COLTA Ex. Dir. Tracey
Councilmember Leary	Public Works Dir. Knauf
Councilmember Porter	Rents Analyst Baker
Councilmember Prensky	

The City Council convened on Monday, January 13, 1992 at 8:17 a.m. in the Council Chamber at 7500 Maple Avenue, Takoma Park, Maryland. Following the Pledge of Allegiance, Mayor Sharp made his remarks.

COUNCIL COMMENTS

Mr. Prensky announced that the City was seeking additional volunteers to take part in a traffic counting training session sponsored by Prince George's Transportation staff. The volunteers would be needed to help Council understand and set criteria for traffic planning in the City. The training would take place on 1/27/91 at City Hall from 4 p.m. to 6 p.m. Citizens interested should call Jessie Blackburn 270-8466. Mr. Prensky announced that on January 16th, from 6-10 p.m., there would be candlelight vigil in front of the White House to mark the first anniversary of the Persian Gulf War, sponsored locally by the Takoma Park Peace Network.

Mr. Johnson announced that the City would be holding a commemoration celebration in honor of Dr. Martin Luther King on January 20th, beginning at 7:00 p.m. Mr. Johnson noted that this year's commemoration was built around the theme "non-violence resolution of social conflict". Chief Fisher, representatives of the Takoma Park Peace Network, youngsters from Carole Highlands Elementary School, Brightlight Baptist Church Youth Choir, and others would be featured in the program.

Ms. Porter announced that on January 15th at 7:30 p.m., at Carole Highlands Elementary School, parents who are interested in education issues in Prince George's County are meeting with the Area 1 school superintendent to discuss programs that might be created to improve education. Ms. Porter also announced that SOSCA is hosting two candidates forums for the congressional candidates; the Democratic candidates forum is February 12th and the Republicans forum is February 13th; both at 7:30 p.m.

Citizens Comments (not on Council's Agenda)

Gary Lovette, 308 Grant Avenue said he wasn't present during the December 9th, 1992 debates about Cable Television. He said he has seen what he thought was a good television station go down the tubes--i.e., in-fighting taking place between the Cable Board and the Cable Director. He said he put a bulletin board announcement in Spanish that only stayed on the air for 3 days. He commented that there should be only one person in charge of the station, and he questioned whether other groups (e.g., The Dolly Davis Show, the Vietnamese shows, etc.) had to put up money for producing. Mr. Lovette said he would like to see an audit done on the station. He noted that he had other concerns that will be put in writing and submitted to the City Administrator.

Rino Aldrighetti, 7213 Central Avenue, shared an article with the Council that had appeared in a number of papers around the country. The article reminded him that the last council had an opportunity to use a press secretary but the Council chose not to have one. He suggested the Council reconsider having one to help shape Council's image.

Kathy Breckbill, 7014 Woodland Avenue, referenced a 12/18/91 article from the Washington Post regarding the demonstration against Oliver North's book signing appearance at the Potomac Book

Store. She heard a lot of comments from non-residents of Takoma Park about the demonstration and she said that the incident didn't encourage people to take the City seriously. Ms. Breckbill noted that Mr. Prensky's name was mentioned in the article, and said that he could use his position to make a more positive statement.

Mr. Prensky responded that he was attending the demonstration as a private citizen, and as such had every right to point out that he believed Oliver North was a "profiteering pig".

AGENDA

1. Resolution to Reauthorize \$40,000 Loan to 7611 Maple Avenue Tenants Association. Mr. Hamilton recused himself from the discussions and noted that as a resident at 7611 Maple he was on a rental lease, not a homeowner and he therefore would not benefit from any action taken by the Council. Mayor Sharp noted that this was the third time the loan has been reauthorized, and this Resolution would reauthorize the loan until 3/31/92. Mr. Leary moved passage of the Resolution; Ms. Porter seconded.

Mary Grice, President of 7611 Maple Avenue Tenants Association commented that this has been a long process for the tenants and they were as close as they ever have been and hoped to go to settlement by mid February.

Council Comments

Mr. Johnson commented that he would vote to approve the reauthorization but expressed concern and said that he had serious reservations about this. He said his reservations were based on his understanding Article 27, Sec. 22, of the Maryland State Code, specifically prohibits local governments from investing in matters not insured federally. His second concern was whether or not the City should be acting as a bank. Mr. Johnson also said he was concerned that the Council was approaching this issue in a piece meal way. There would be other tenants organizations coming down the pike, and it would be reasonable to assume that they too will be asking the City for loans. He said the Council needs to address a long range solution to this problem. Although he has reservations, he said he would vote in favor of resolution because this was not an initial authorization, but one that has been in the works for a long time.

Mr. Sharp agreed with Mr. Johnson about the need for a long range solution and said that he and other members of the Council have agreed to take a larger look towards finding solutions for affordable housing.

Mr. Johnson stressed that he was not suggesting this issue was anything less than important. He noted that he had to do some research on the matter and he referenced a memo from Corporation Counsel. He did not think that the loan, as important as it was, met the statutory requirement.

Mr. Leary asked if Corporation Counsel wanted to speak on the issue. Sue Silber reassured the public that this matter had been carefully briefed previously. The bottom line was that her opinion was the cause of action was legal.

Citizens Comments

Janet Baldwin, Lancaster Road said she had just learned about this. She questioned if this was not an investment, what was the City doing with City tax money.

Mr. Sharp responded that the Council made a policy decision to try to encourage tenants to own their homes and this loan was a way that the Council could provide an opportunity to do this. The Mayor noted the Tenant Assistance Program provides loans for tenants to do surveys and pre-closing work and when they go to settlement, the City gets the money back. Mr. Sharp noted that this building was not on the City's tax rolls and hasn't been for

the past 6-7 years, but once the building was sold, it would go on the tax rolls at a level in excess of \$30,000 per year.

Paul Lambidakis, 7213 Cedar Avenue asked for a copy of Corporation Counsel's legal opinion. He questioned why her previous memo was classified as confidential. Mr. Sharp said the City could provide information about why the Council action was legal.

The Resolution passed unanimously (Hamilton abstained).

Resolution #1992-1

2. Update by Prince George's County Historic District Citizens Advisory Committee. Bryan Sayer, Chair of the Prince George's County Historic District Citizens Advisory Committee addressed the Council about the Committee's work in support of creating a locally designated historic district on the Prince George's side of the City. The CAC is planning a City wide process to inform and educate residents about the responsibilities and benefits of being in a historic district, and is recommending that the Council provide staff and funding assistance in FY'93 to carry out this plan. Mr. Sayer said the CAC was planning to hold a public forum on 2/5/92 and once the committee assembled the comments of the public, they would prepare and distribute preliminary recommendations to the Council prior to a second forum scheduled sometime this spring.

Mr. Sharp noted that the CAC's request for a staff person to work 15-25 percent of their time on historic preservation issues had not been contemplated previously.

Mr. Prensky noted that the CAC recommended that educational packages would need to be sent to every homeowner in Takoma Park in Prince George's County, and he pointed out that when the City was going through the process on the Montgomery County side, there were no educational materials provided to residents. Mr. Prensky said that he would make every effort during the FY'93 budget process so that every need is addressed.

Ms. Porter reminded everyone that the process on the Montgomery County side was a long and difficult one. She said she hoped the CAC was basing their procedures on what worked on the Montgomery County side of the City.

Mr. Johnson commented that the importance of the CAC's work focused a good deal on education and this would only happen with adequate staff support.

Janet Baldwin, a member of the CAC, reiterated Mr. Sayer's comments. She said there was some rationale for what they were requesting--because there was some controversy and confusion, some people did not understand what was going on. The CAC wants the process to be an open one.

Mr. Sharp noted that this would be part of budget discussions and process.

Rino Aldrighetti commented that he had not seen the CAC's report. He remembered that when the City went through the process for the Montgomery County portion of the City, the Council Chamber was full and the entire process included people from the University of Maryland, citizens in neighborhood, etc. He said that this process needs to be looked at along with the overall choices the Council has.

Mr. Sayer said that the CAC hopes to have a draft report in late March for a second public forum in April. He noted that the CAC's next meeting would be 1/30 7:30 p.m. in the Heffner Park Recreation Center, and the Council was invited to attend.

3. Resolution Appointing City Administrator Selection Committee

Jim Douglas, 18 Sherman Avenue commented that he would be unable to serve on the this Committee because of an upcoming heavy travel schedule. Mr. Hamilton suggested replacing Jim Douglas with Michael Duberstein, who was listed as first alternate. Mr. Leary moved this as an amendment, seconded by Mr. Prensky. The Committee members who will review applications for the position of City Administrator and recommend qualified applicants to the Council were appointed as follows: Rino Aldrighetti, Kathy Breckbill, Ellen Brown, Condie Clayton, Michael Duberstein, Herb Kaufman, Juanita Nunn, Charles Shipp, Carl Smith, Jeff Zellmer, Robin Ziek, and Karin Anderson as alternate.

The Council asked Mr. Hobbs about the timetable the Committee had to work with. Mr. Hobbs reported that there were 80 resumes which would take some time to review.

Council Action: The Resolution passed unanimously.

Resolution #1992-2
(Attached)

4. Resolution To Appoint Members to the City's Personnel Appeal Board - Mr. Sharp noted that the legislation allowing the Mayor to make appointments to the Personnel Appeal Board was archaic and in conflict with the Charter which dictates that the Council made appointments to standing committees. He said that the Council had interviewed two of the original Board members and were seeking an additional member to serve on the Board. Mayor Sharp moved the appointment of Susan Gilbert to a 3-year term and Milford Sprecher to a 2-year term; Mr. Hamilton seconded. The Resolution was unanimously passed.

RESOLUTION #1991-3
(Attached)

5. Resolution Appointing City Representatives to Takoma Park Volunteer Fire Board. Mr. Prensky moved adoption; seconded by Mr. Hamilton. Mr. Sharp said the Council needed to discuss the issue of staff representation; the Board used to have two Council representatives and one staff person. In 1987, the City Administrator's slot was dropped so the volunteer fire chief would have a seat. He proposed an amendment to delete portion of Resolved clause that appoints a staff person to the Board; Mr. Leary seconded. Mr. Hamilton explained the importance of having an ex-officio member, usually a Recreation staff member on the board to handle the day to day workings between the gym and the Fire Board. Mr. Hamilton explained that it was important to have the Recreation Director on board to deal with issues of what would happen with upkeep and maintenance of the gym. He said the Council would not be giving up two of its voting seats.

Mr. Sharp said that he preferred that the Council appoint two members of the Council to serve on the Board in terms of visibility. He said he understood the technical point of having a staff member on the Board, but there was also concern that it created an additional burden to staff. Mr. Hamilton noted that staff was already attending Board meetings.

Ms. Porter commented that she had found the experience of serving on the Board very useful; however she found herself in many instances serving as a conduit for information that might have more usefully gone straight from the Board to the staff person involved - usually a Recreation staff member. Ms. Porter said visibility is a legitimate issue and she would also be concerned that someone should be on the Board who has the interests of the Prince George's County side of the City at heart, but the most important issues were those that concerned the Recreation Department, and she felt

the most important person to serve would be the Recreation Director.

Mr. Leary noted that the Question warranted some discussion, and the Council should discuss in Worksession.

Council Action: The question called on the amendment which passed unanimously. Mr. Prensky moved that Mr. Hamilton be appointed and the Council would reserve its option to make another appointment after the worksession discussion. The resolution passed unanimously.

RESOLUTION #1991-4
(Attached)

6. Public Hearing Re: Review of Expanded Recycling Program: Once-a-week Trash Pick-up

Recycling Coordinator Daryl Braithwaite reported on the expanded recycling program and once a week trash collection and the program's results during the first three months since its inception. In summary, Ms. Braithwaite reported that the program has resulted in significant costs avoidance for the City, and a reduction of the amount of reusable materials that are dumped in landfills. Ms. Braithwaite said that her report submitted outlines on program statistics, the Public Works Department's experience in the implementation of the change, as well as feedback from residents. She said they've seen the most changes in cardboard collection, grass and leaves, and mixed paper. She noted it was important to point out that the program is exceeding expectation; things looked better than staff had predicted. Ms. Braithwaite also noted that there was a significant deviation in the numbers for mixed paper, but that no other programs picked up mixed paper so the expectations were based on estimates. She said she was not sure what the deviation represents, and she will have to reach a conclusion through enhanced education. She noted the transition has been quite smooth as the workload is evenly shared between refuse crews and recycling crews.

Ms. Braithwaite commented on some of the problems of the expanded program and said that some residents were setting bags of recyclables on top of the container at the curb. She said some of the complaints focused around the confusion about holiday collections, but the Department had started mailing postcards to the households affected prior to upcoming holidays.

Ms. Braithwaite addressed the last issue concerning the citizens' concerns about rodent problems. She said this was not a key time of year for rodents, but DHCD had reported no increase in rodent sightings or complaints since the once-a-week pick up began. She said storm drains were also baited which helped decrease rodents, and they will have to see what happens when weather changes.

Citizens Comments:

Tom Anastasio, 32 Columbia Avenue said he was extremely proud of the City and its recycling program. He said it worked amazingly well and was tremendously successful. His experience at home was that they didn't even need once a week collection because they put out about 1/2 can a week. Based on his experience, a large family of about 10 would put out about 2 cans a week. He did express concern that when summer came, there may be some problem with odors, rodents, etc., but he suggested that the City not respond to a hypothetical problem but see how things go this summer. He said the City is saving a lot of money and resources and the Council should not go back to twice a week pick up.

Milford Sprecher, 24 Pine Avenue, congratulated City for the way the recycling program was going. His household of 4 generated one grocery-sized bag of nonrecyclables, one bag of mixed recyclable, etc.

Dick O'Connor, 7110 Maple Avenue said he has served on the Recycling Taskforce for the past 3 years, although he was not speaking in that capacity. He said he has been concerned each time the City has expanded the program, but in the past couple of weeks, he has talked to neighbors and received strong endorsement about the once a week program. The general comment heard was that the cardboard program was onerous. He said more education was needed, and possibly a new vendor with less restrictions, because people felt it was a burden to break down boxes and remove tape, staples, etc. He urged the Council to continue the program; nationally, Takoma Park is one of the leaders.

Jim Douglas, 18 Sherman Avenue first complimented the Council on Council Agenda's new format and noted it was a good idea to mail copies of the Rolling Agenda. He said the Recycling Taskforce and Public Work's staff have done an outstanding job. Mr. Douglas said his household of 3 did not use the second pick up of the week, and found they could get by on less than once a week. He said it was clearly an educational problem regarding getting waste paper out of waste stream. Regarding vermin, he noted that his property backed up on open space, but he had never experienced any problems with raccoons. He urged the Council to figure out a more effective way to collect wastepaper. Mr. Douglas said he was concerned about comments he heard last fall about the importance of twice a week pick up and he was concerned about the cost of this. Last fall it was estimated that it would take an additional \$100,000 to have staff do this and an additional \$100,000 to buy a truck. He noted this was a 4-8 cent tax increase, and he did not want to see his taxes raised for a second trash pick up. As a long term strategy, he said the Council should think about moving towards a user fee structure to provide incentives for citizens to reduce the amount of trash generated. Those who wanted additional pickups would pay for it--those who did not, would not have to pay for it. He said it should be researched how other communities are doing this.

Mr. Douglas referenced a letter that former Councilmember Mike Moore provided regarding changes in the City's trash pick up. Mr. Moore had written that when the decision was made to go to once a week pick up, his opinion then was biased, but since City has done this, he noticed a significant reduction of trash in his household--it was clearly a money saver and the right thing to do. The new program enabled residents to forgo twice a week trash collection and eliminate trash from the landfill.

Jim Benfield, 519 New York Avenue commended the Council and said he hoped the City would stick to once a week pick up.

Eileen Sobeck, 7637 Carroll Avenue voiced support for recycling and once a week pick up. She said she was surprised that this was a big issue as she had participated in similar programs in other jurisdictions.

Sarah Lynch, 7405 Birch Avenue said she supported once a week pick up, and said she has never lived anywhere where there has been twice a week pick up. She said families have to spend a little extra time and space to do this, but its insignificant.

(At 10:00 p.m., Mayor Sharp noted that Mr. Leary left to attend a Silver Spring Traffic Coalition Meeting).

Clarence Boatman, 133 Ritchie Avenue said he supports the once a week trash pick up program, and he questioned what should a citizen do about rags? He noted that some education is still needed in his community about the benefits of recycling. He commented that one problem with the paper bags was when it rained, the bag disintegrated.

Ms. Braithwaite responded that the question regarding the recycling of rags came up during the clothing drive last spring. She said she had not yet found a market for rags.

Paul Lambidakis, 7213 Cedar Avenue commented that he did not understand Ms. Braithwaite's report; it wasn't clear whether people were for the program or against it. He commented that the Council had reduced resident's services and the services have been made worse. He noted that in Athens, Greece, trash pick up was 7 days a week, and that once a week pick up in Takoma Park was asinine and should be reconsidered. He suggested the Council put the issue to a referendum and let the people decide.

Rusty Hur, 7309 Holly Avenue commented that she was happy with the way things have been going, and asked if there was anything that could be done to help with compliance. She suggested that a questionnaire prior to the budget process be done to find out what citizen's problems were, and comments should be solicited to find out how to improve once a week collections. She questioned what happened with recycling on Wednesdays and she questioned what was happening with commercial establishments and apartments participating in the program.

Ms. Braithwaite responded that the crews were picking up large appliance on Wednesdays. Regarding the commercial and apartment building collection, the City was just starting some pilot programs in some apartments. The Task Force was working on surveys for door to door or mailing to commercial establishments to find out which ones are participating in recycling.

Rino Aldrighetti displayed an old tree stand and told the Council that he can't get rid of it. He complimented Ms. Braithwaite and said there were a lot of items that citizens didn't know what to do with, e.g., tree stands. He said education needs to start in the Public Works Department as he has called Public Works and gotten incorrect information about recycling pick ups.

Kathy Breckbill, 7104 Woodland Avenue said she was very pleased with the postcards Public Works sent out to explain holiday pick up, and that continuance of timely communication is very important.

Belle Ziegler, 109 Sherman Avenue, said she was concerned about once a week pick up because she and her neighbors saw an increase in rodents during the fall and the summer. She suggested using containers that have lids so that the mixed paper didn't blow away.

Mr. Lambidakis said that leaves are costly to pick up, and he thought that leaves should be picked up and people should mulch their leaves. Ms. Braithwaite responded that the City has made efforts to get residents to compost leaves in their back yards, and they continue to provide information to citizens regarding composting.

Correspondence was received from the following: 7218 Garland Avenue who reiterated that the recycling program is incredibly reasonable; Ann Schwartz Delbert wrote that she was very satisfied with once a week pick up; from De Fischler Herman, 8011 Maple Avenue in support of once a week trash collection and recycling.

Mr. Sharp noted that the Council will be discussing this issue during the budget process this year so citizens would have a continuing opportunity to make their feelings known.

7. 1st Reading Ordinance Clarifying the Language in Takoma Park's Rent Stabilization Law Regarding Allowable Rent Increases for Comparable Units. Mr. Elrich moved adoption; Mr. Johnson seconded. Mr. Sharp stated that the purpose of this ordinance was to deal with a concern that the definition of "comparable unit" is unclear.

Council Action: The Ordinance was accepted at first reading. (Absent for the Vote: Prensky, Hamilton and Leary).

Ordinance #1992-1
(Attached)

8. 1st Reading Ordinance: Technical Amendments to Article 7 and Article 8; Renumbering of Article 8. Mr. Sharp explained that this ordinance provided several technical amendments remaining from previous discussions of Article 7 as well as some additional concerns raised by staff as a result of the recent review of Article 7.

COLTA Executive Director Tracey explained that the renumbering was necessary because Section 6-80 ends in Article 7 and Section 6-81 began in Article 8. Articles 9 and 10 were also renumbered. Ms. Tracey explained that several technical errors were found throughout the ordinance, and in addition, the Council added several provisions to Article 7 pertaining to the landlord's demonstration of a hardship.

Mr. Elrich referred to the supplemental sheets Ms. Baker provided and asked how she would apply this in real terms for a real building. He questioned how a gross dollar figure of \$1800 for 2% on a \$100,000 dollar mortgage would translate realistically in terms of units.

Using Mr. Elrich's example, Ms. Baker responded that 2 1/2 percent is reasonable and could result in large increases. She noted there was language in Article 7 that prevented increases from being more than 15% a year and that served as a safety net. Ms. Baker said it really depended on how large the mortgage was.

Ms. Tracey reminded the Council that these increases were not permanent, unlike the refinancing pass-on; the increase was due to interest rate changes. She said the landlord has to demonstrate that the interest is still at that level before getting the increase for another year; if interest rates declined, then the rents are changed to represent what they were before. Ms. Baker noted that the economist had recommended a minimum of 3% to cover the jumps Mr. Elrich referred to; although she recommended something a little higher than 3%.

Mr. Elrich said that he was not opposed to the 5% proposal. Mr. Sharp noted that the Council had a proposal for 5%, but he would be interested in going back to Stumberg for his reaction. Ms. Porter suggested putting 5% in the ordinance at first reading. Staff was asked to report back to the Council at the 1/21 worksession on Mr. Stumberg's reaction to the recommended 5 minimum percentage point change in an adjustable rate mortgage.

Council Action: The Ordinance was accepted at first reading.

Ordinance #1992-2
(Attached)

The Council adjourned at 10:40 p.m. to reconvene in Regular Session on January 27, 1992.

Introduced by: Councilmember Leary

Drafted by: V. VinCola
and L. Perlman

Adopted: January 13, 1992

RESOLUTION NO. 1992-1

**A RESOLUTION TO AUTHORIZE A LOAN OF \$40,000 IN
UNAPPROPRIATED RESERVE FUNDS TO THE 7611 MAPLE AVENUE TENANTS
ASSOCIATION, INC TO ASSIST WITH THE ACQUISITION EXPENSES ASSOCIATED
WITH THE TENANT-SPONSORED PURCHASE OF 7611 MAPLE AVENUE**

WHEREAS, a large segment of the population of the City of Takoma Park is tenants; AND

WHEREAS, there is a shortage of decent, sanitary, and safe housing available for purchase in the City which tenants of low and moderate income can afford; AND

WHEREAS, tenant-sponsored purchases of multi-family residential buildings provide tenants of low and moderate income with an opportunity to purchase decent and affordable housing, thus helping to maintain neighborhood stability and economic diversity in the City; AND

WHEREAS, converting multi-family residential buildings in the City to tenant ownership will result in better maintained buildings, less residential turnover, and will reduce the number of absentee landlords and owners; AND

WHEREAS, 7611 Maple Avenue is presently owned by the Housing Opportunities Commission which is exempt from property taxes, and acquisition of such a building by the tenant organization will return that building to the City tax rolls and increase City tax revenues; AND

WHEREAS, the 7611 Maple Avenue Tenants Association is unable to secure all of the necessary financing from private lenders for the acquisition of their building or can only obtain such financing at prohibitive interest rates and on unsatisfactory terms and conditions; AND

WHEREAS, many tenants of low and moderate income lack sufficient income or assets to enable them, without assistance, to purchase units in 7611 Maple Avenue; AND

WHEREAS, the Council supports the efforts of the tenants of 7611 Maple Avenue who have organized to acquire the property and

the Council would like to be able to offer financial assistance to such tenants; AND

WHEREAS, the Council declares that making a loan to the 7611 Maple Avenue Tenants Association from Unappropriated Reserve funds serves a public purpose and promotes the peace, health and general welfare of the City and its citizens.

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

Section 1. The City Administrator or the City Administrator's designee is hereby authorized and empowered to make a loan in the principal sum of \$40,000 for a term of five years and at an interest rate of 7.7 percent per annum from the Unappropriated Reserve of the City of Takoma Park to the 7611 Maple Avenue Tenants Association, Inc ("Borrowers") to be used to acquire the real property known as 7611 Maple Avenue, Takoma Park, Maryland ("Property"). The loan its terms and conditions shall be evidenced by a loan agreement, promissory note, Deed of Trust on the property, and by such other documentation considered necessary by the City Administrator or the City Administrator's designee.

Section 2. The making of this loan to Borrowers is subject to and conditioned upon the following:

- a. State of Maryland tax exempt bond financing a first trust loan to the Borrowers in the amount of \$3.15 million for the Borrowers' acquisition of the property;
- b. Receipt, review, and approval by the City Administrator or the City Administrator's designee, of the Borrowers' projected monthly cash flow statement for the property; and
- c. Receipt, review, and approval by the City Administrator or the City Administrator's designee of Borrowers' plans and specifications and the architect or engineer's inspection report for rehabilitation of the property, and for the conversion of the property to cooperative housing.

BE IT FURTHER RESOLVED THAT the Council hereby directs the City Administrator or the City Administrator's designee to amend the terms of the tenant association's outstanding Tenant Awareness Program (TAP) loan for \$15,000 to provide for an extended term of 5 years from the date of the acquisition settlement, a interest rate of 5 percent

per annum with repayment to be made in monthly installments.

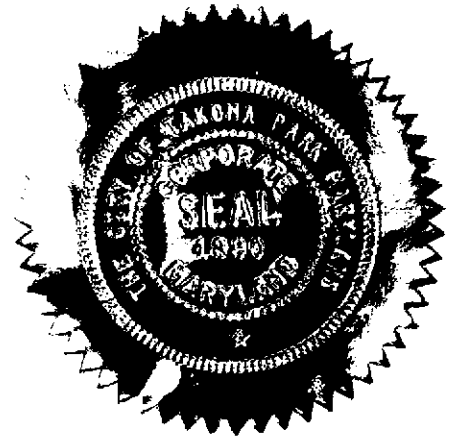
BE IT FURTHER RESOLVED THAT this authorization shall expire on March 31, 1992.

ADOPTED THIS 13th DAY OF January, 1992.

ATTEST:

Paula S. Jewell

Paula S. Jewell, CMC
City Clerk



Introduced by: Councilmember Leary
(Drafted by: T. W. Hobbs)

RESOLUTION NO. 1992-2

APPOINTING MEMBERS TO THE CITY ADMINISTRATOR SELECTION COMMITTEE
AND ADOPTING THE SELECTION COMMITTEE'S MISSION STATEMENT

- WHEREAS,** on October 28, 1991, the City Council adopted Resolution 1991-83 which authorized the creation of a Citizens' Committee to participate in the selection of a new City Administrator; AND
- WHEREAS,** the City Administrator Selection Committee will review applications for the position of City Administrator and recommend to the Council those applicants considered as the most highly qualified; AND
- WHEREAS,** the Selection Committee shall be composed of 11 members and 1 alternate; AND
- WHEREAS,** a number of persons have volunteered to serve on the Committee or have been nominated by the Council.
- NOW, THEREFORE, BE IT RESOLVED THAT** the City Council does hereby appoint the following persons to serve on the City Administrator Selection Committee for such time as is required for the Committee to fulfill its purpose as established in Resolution NO. 1991-83.

<u>Name</u>	<u>Address</u>
1. Rino Aldrighetti	7213 Central Avenue
2. Karin Anderson (Alternate)	7007 Woodland Avenue
3. Kathy Breckbill	7104 Woodland Avenue
4. Ellen Brown	7310 Baltimore Avenue
5. Condie Clayton	7710 Maple Avenue, #807
6. Michael Duberstein	106 Hodges Lane
7. Herb Kaufman	214 Tulip Avenue
8. Juanita Nunn	7777 Maple Avenue
9. Charles Shipp	7401 New Hampshire Avenue, #905

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|------------------|-----------------------|
| 10. Carl Smith | 632 Kennebec Avenue |
| 11. Jeff Zellmer | P.O. Box 3705 |
| 12. Robin Ziek | 6504 Allegheny Avenue |

BE IT THEREFORE FURTHER RESOLVED THAT the Committee is tasked to review the applications of all applicants for the position of City Administrator as set forth in Resolution No. 1991-83 and submit to the Council by February 17, 1992 a list of approximately 5 finalists who are considered by the Committee to be the most highly qualified candidates.

Dated this 13th day of January, 1992.

Introduced By: Mayor Sharp
(Drafted By: P. Jewell)

RESOLUTION #1992-3
APPOINTING MEMBERS TO THE PERSONNEL APPEAL BOARD

WHEREAS, Section 8B-181 of the Takoma Park City Code, establishes a Personnel Appeal Board composed of three members who are residents of the City, to hear non-union employee appeals; AND

WHEREAS, there are currently three vacancies on the Board as a result of terms which have expired; AND

WHEREAS, two of the three members who initially served on this Board have expressed a desire to be re-appointed, and the Council plans to interview a third person who expressed an interest in serving.

NOW THEREFORE BE IT RESOLVED THAT the following persons are hereby appointed to the Takoma Park Personnel Appeal Board with the terms indicated opposite their names:

<u>NAME</u>	<u>ADDRESS</u>	<u>TERM EXPIRES</u>
1. Susan Gilbert	5 Valleyview Avenue	January 13, 1995
2. Milford Sprecher	24 Pine Avenue	January 13, 1994
3. _____	_____	January 13, 1993

Dated this 13th day of January, 1992

Introduced by: Councilmember Prensky
(Drafted by P. Jewell)

Dated: 1/13/92

RESOLUTION NO. 1992-4

WHEREAS, as a matter of practice, a representative of the Takoma Park City Council has been designated to serve on the Takoma Park Volunteer Fire Department Board of Directors; AND

WHEREAS, on November 5, 1991, the terms of Councilmember Gregory Hamilton (appointed in 1989) and Councilmember Kathy Porter (appointed in 1991) expired; AND

WHEREAS, The City Council desires to re-appoint Mr. Hamilton as the Councilmember to serve on the Board.

NOW THEREFORE BE IT RESOLVED, THAT Councilmember Gregory V. Hamilton shall continue to serve on the Takoma Park Volunteer Fire Department Board, as the Council's representative until his 2-year term expires on November 2, 1993, the City's Election Day.

BE IT FURTHER RESOLVED THAT this appointments is effective immediately.

Dated this 13th day of January, 1992.

Introduced By: Councilmember Elrich

First Reading: 1/13/92

Second Reading:

Effective Date:

ORDINANCE NO. 1992 - 1

(Clarifying the language in Takoma Park's Rent Stabilization law regarding allowable rent increases for comparable units)

WHEREAS, several judges of the District and Circuit Courts have upheld the application of Takoma Park's Rent Stabilization law including the provisions of Section 6-80.17(n)(1)(A) of the Takoma Park Code allowing a landlord to increase the rent on a vacant unit to the level of a comparable unit in the same building; and

WHEREAS, one Circuit Court Judge has recently found the language of Section 6-80.17(n)(1)(A) to be unconstitutionally vague; and

WHEREAS, the City of Takoma Park wishes to clarify and codify its past practice of interpretation and enforcement of this provision.

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

SECTION 1. Section 6-80.17(n)(1)(A) of the Takoma Park Code is amended as follows:

(n) Vacant Rental Units.

(1) The rent for any vacant rental unit shall be established using any one of the following methods as applicable:

(A) For buildings containing comparable rental units, ~~where "comparable" is defined on the basis of square footage, amenities, and whether the rental unit is an efficiency or has one~~ (1), ~~two (2), or three (3), or more bedrooms,~~ the rent for a

comparable rental unit in the same building may be increased to the same rent as the rent of the comparable rental unit. A "comparable rental unit" is defined on the basis of the number of bedrooms, square footage, and substantially similar amenities and meets the following requirements:

i. Only rental units with the same number of bedrooms and the same square footage within 30 square feet will be considered comparable.

ii. There is a presumption that comparable rental units have substantially similar amenities. The term "amenities" includes: equipment and appliances, air conditioning, fireplaces, decks or balconies, and exposure (views, lighting from windows or skylights). A tenant may rebut this presumption by clear and convincing evidence of a significant difference in amenities.

iii. A comparable rental unit must be located in the same building as the vacant rental unit.

SECTION 2. This Ordinance shall be effective retroactive to November 10, 1986.

Adopted by roll call vote on the ____ day of _____, 1992 as follows:

Aye:
Nay:
Absent:
Abstained:

Note: Underlining indicates additions to the current language of the Takoma Park Code.
~~Strikeouts~~ indicate deletions to the current language of the Takoma Park Code.

Karen - get clean blank
and fill in info. Give me one; keep one for 2nd reading
on 1/27

Agenda Item # 3
First Reading: 1/13/92
Second Reading:
Effective Date:

Introduced By: Councilmember Ellich

ORDINANCE NO. 1992 - 1

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Adopted by roll call vote on the ____ day of _____, 1992 as follows:

Aye:
Nay:
Absent:
Abstained:

Note: Underlining indicates additions to the current language of the Takoma Park Code.
~~Strikeouts~~ indicate deletions to the current language of the Takoma Park Code.

Introduced by:

1st Reading: 1/13/92
2nd Reading:
Effective:

ORDINANCE NO. 1992 - 2

LANDLORD-TENANT RELATIONS
(CHAPTER 6, ARTICLE 7 OF THE TAKOMA PARK CODE)

- WHEREAS Ordinance No. 1991-34, Chapter 6, Housing, Article 7, which made a comprehensive revision to Landlord-Tenant Relations, of the Takoma Park Code, was adopted by the Council on November 12, 1991; AND
- WHEREAS after the passage of Ordinance No. 1991-34, errors in the references to certain sections in that ordinance were found and it became apparent that additional changes to the City of Takoma Park's landlord-tenant relations law (hereinafter referred to as "Article 7" were needed to make it clearer and more easily administered; AND
- WHEREAS the City Council desires to add provisions to the rent increase petition section (Section 6-91) of the Article 7 which would allow rent increases when a landlord demonstrates significant refinancing costs or mortgage interest rate increases; AND
- WHEREAS to incorporate these changes, portions of Article 7, as enacted by Ordinance No. 1991-34, needed to be rewritten; AND
- WHEREAS the Council believes that the changes made to Article 7 by this Ordinance further improve the law and its aim of promoting fair and equitable relations between landlords and tenants in the City of Takoma Park; AND
- WHEREAS Ordinance No. 1991-34 enacted Chapter 6, Article 7, Section 6-76 to Section 6-99, while Chapter 6, Article 8, is numbered from 6-81 to 6-100, thus creating separate provisions within Chapter 6 with the same section number; AND
- WHEREAS Chapter 6, Articles 9 and 10, include Section 101 to Section 125 and must be renumbered to avoid duplicate numbers caused by the renumbering of Chapter 6, Article 8; AND
- WHEREAS in the interest of clarity and enforceability, Chapter 6, Article 8, Article 9 and Article 10 must be renumbered as provided below; AND

WHEREAS for the foregoing reasons, the Council hereby adopts this Ordinance revising Chapter 6, Housing, Article 7, Landlord-Tenant Relations of the Takoma Park Code as it was enacted by Ordinance No. 1991-34; AND

WHEREAS the Council adopts, ratifies, and incorporates by reference the purposes and policies for revising the City of Takoma Park's Landlord-Tenant Relations Law set forth in the "Whereas" clauses of Ordinance 1991-34.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Takoma Park, Maryland:

SECTION ONE

Ordinance No. 1991-34 and Chapter 6, Article 7, of the Takoma Park Code are hereby repealed and Chapter 6, Housing, Article 7, Landlord-Tenant Relations, of the Takoma Park Code is reenacted as follows:

January 10, 1992

ARTICLE 7

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Section 6-76. Legislative Findings.

The Council of the City of Takoma Park hereby finds that there is often unequal bargaining power between landlords and tenants, that the common law principles pursuant to which leases are interpreted as grants of right or possession rather than mutual and dependent covenants evolved in an agricultural setting and are ill-suited to the modern residential setting of this urban city; that in order to facilitate fair and equitable arrangements, to foster the development of housing which will meet the necessary minimum standards of the present day and promote the health, safety and welfare of the people as set forth in Article II of Chapter 6 of the Takoma Park Code, it is necessary and appropriate that the City define minimum respective rights and duties of landlords and tenants and provide mechanisms for the resolution of disputes between landlords and tenants.

The Council of the City of Takoma Park finds that rents in the City have increased relative to rent increases in the Washington Metropolitan Region, and that the rent stabilization levels available to landlords in the City from 1981 to the present have kept pace with or exceeded the Consumer Price Index from 1981 to the present. The Council finds that it is necessary and appropriate to continue rent stabilization in the City, and that to approve rent increases above the stabilization level upon a showing of rising costs is fair and equitable to both landlords and tenants in the City.

Section 6-77. Purposes and Policies.

The purpose of this Article is to ensure a safe, sanitary, and suitable living environment, to maintain a stable, ethnically diverse and economically heterogenous community, to preserve the quality of affordable housing, and to provide for the resolution, minimization, and prevention of landlord-tenant disputes.

Section 6-78. Applicability.

To the maximum extent permissible by the Constitution and laws of the United States and the Constitution and laws of the State of Maryland, this Article shall determine and regulate legal rights, remedies, and obligations of the parties and beneficiaries of any lease concerning any rental unit within this City, wherever executed. Any lease shall be unenforceable hereunder insofar as the agreement or any provision thereof conflicts with any provision of this Article. Such unenforceability shall not affect other provisions of the agreement which can be given effect without such unenforceable provision.

Section 6-79. Definitions.

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

(a) *Accessory Apartment* shall mean: (1) in Prince George's County, a second or third dwelling unit either in or added to an existing owner-occupied, one-family dwelling, or located in a separate accessory structure on the same lot as the owner-occupied, one-family dwelling which is located in a single-family zone (R-55); or (2) in Montgomery County, a second dwelling unit either in or added to an existing owner-occupied, one-family dwelling, or located in a separate accessory structure on the same lot as the owner-occupied, one-family dwelling which is located in a single-family zone (R-60). The accessory apartment must be for use as a complete, independent living facility with provisions within the accessory apartment for cooking, eating, sanitation and sleeping. The accessory apartment also must be an accessory use to the one-family dwelling.

(b) *Affected Tenant* shall mean any present, former or bona fide prospective tenant who experiences an illegal rent increase, a defective tenancy, a reduction in services, or retaliatory action.

(c) *Anniversary Date* shall mean the date established for a rent increase on a rental unit, and shall be at least twelve (12) full months from the date of the last rent increase for the rental unit.

(d) *Bona Fide Prospective Tenant* shall mean any person who has actually and affirmatively been seeking rental housing and who, during the course of seeking such rental housing, has received communication from a specific landlord, including but not necessarily limited to communication in the form of advertising, against which landlord he or she wishes to take action to redress an alleged violation of this Article.

(e) *City* shall mean the City of Takoma Park.

(f) *Commission* shall mean the City of Takoma Park Commission on Landlord-Tenant Affairs. The term Commission shall include the Commission members, the Commission's Executive Director and the Commission's Rents Analyst.

(g) *Commission Complaint* shall mean a complaint filed with the Department and assigned a case number by the Department which alleges a violation of Article 7.

(h) *Consumer Price Index* shall mean the Washington Area

Statistical Consumer Price Index for All Urban Consumers - All Items (CPI-U) (1982 - 1984 = 100).

(i) *Defective Tenancy* shall mean any condition in a rental facility which constitutes a violation of the terms of the lease or one or more of the following Sections of this Article: 6-80 (Lease Requirements), 6-80.1 (Lease Term Requirements), 6-80.2 (Leasing Fees), 6-80.3 (Rent Escalator Clauses), 6-80.4 (Occupancy Restrictions), 6-81 (Obligations of Tenants and Landlords), 6-82 (Entry), 6-85 (Utilities Transfer), 6-86 (Notice to Vacate), or 6-87 (Tenant Rights of Association) of this Article.

(j) *Department* shall mean the Department of Housing and Community Development of the City of Takoma Park.

(k) *Dwelling* shall mean a structure which is occupied in whole or in part as a residence for one (1) or more tenants, but shall not be construed to mean any transient facilities such as boarding houses, tourist homes, inns, motels, hotels, school dormitories, hospitals or medical facilities.

(l) *Dwelling Unit* shall mean any room or group of rooms located within a dwelling, forming a single habitable unit and including cooking facilities. See also Section 6-76(y) of this Article, definition of rental unit.

(m) *Executive Director* for the Commission on Landlord-Tenant Affairs (Executive Director) shall mean the City Administrator unless otherwise designated by the City Administrator.

(n) *Housing Inspection* shall mean such examination of a rental facility or of any part thereof for compliance with Article 7 or with the standards of Article II, Chapter 6 of the Takoma Park Code as amended, as the Department deems necessary or appropriate to carry out the purposes of this Article.

(o) *Judgment Rate of Interest* shall be the interest rate set forth in accordance with Section 11-107(a) and (b) of the Courts and Judicial Proceedings Article, Annotated Code of Maryland as amended.

(p) *Landlord* shall mean any person who is the owner, the owner's agent, authorized person, lessor or sublessor of a rental unit or of the rental facility of which it is a part and, in addition, shall mean any person authorized to exercise any aspect of the management of the rental facility, except those persons engaged solely in custodial and maintenance functions.

(q) *Lease* shall mean any agreement, whether written or oral, which establishes or modifies the terms, conditions, rules, regulations or any other provisions concerning the use and occupancy of a rental unit or a dwelling.

(r) *Maximum Allowable Rent* shall mean the highest lawful amount that can be charged for a rental unit covered under the Rent Stabilization Section 6-95.1(b) of this Article.

(s) *Notice*, unless otherwise defined in this Article, or established by Department Regulations or by Commission Rules of Procedure, shall be given in such a manner as is reasonably calculated to provide actual knowledge to the recipient.

(t) *Party* shall mean the complainant(s) or respondent(s) in a Commission complaint; or the petitioner(s) and any tenant(s) whose rent(s) are proposed to be increased in a petition for a rent increase above the Rent Stabilization Allowance.

(u) *Person* shall mean an individual, corporation, partnership, association, joint venture, organization or any other legal entity.

(v) *Petition* shall mean a request by a landlord for rent increases above the Rent Stabilization Allowance.

(w) *Rental Facility* shall mean any dwelling, structure, or combination of related structures and appurtenances, operated as a single entity, in which one (1) or more rental units exists.

(x) *Rent Stabilization Allowance* shall mean the percentage by which the rent for a rental unit may be increased on or after 12 full months from the last rent increase for that rental unit.

(y) *Rental Unit* shall mean either a dwelling unit or a rooming unit which has as its purpose occupancy by one or more tenants. See also Sections 6-79(1) and 6-79(z) of this Article, definitions of dwelling unit and rooming unit.

(z) *Rooming Unit* shall mean a rental unit comprised of any room or group of rooms located within a dwelling and forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking. See also Section 6-769(y) of this Article, definition of rental unit.

(aa) *Security Deposit* shall mean any payment of money, including the payment of the last month's rent in advance of the time it is due, given by a tenant to a landlord against nonpayment of rent or other actual damages the landlord may suffer as a result of a violation of the lease, non-payment of rent, damage to the rental unit, or other tenant obligations as prescribed in this Article.

(bb) *Serious Violation* shall, for the purposes of this Article, mean any violation designated in Section 6-16 of Article II, Chapter 6 of the Takoma Park Code, as amended, as Serious,

which:

(1) poses a clear and imminent danger to health and safety, or a substantial hardship to the tenant; and

(2) the landlord has failed to cure, or make a good faith effort to cure the violation within the twenty-four hours after the landlord learns or should have learned of the violation.

(cc) *Tenant* shall mean any person who lawfully occupies a rental unit or dwelling as a residence and where the tenant or some other person has an obligation to pay rent for such accommodations. Tenant shall not mean any owner occupant of a dwelling or rental unit, or any shareholder occupant of a unit in a cooperative housing corporation.

Section 6-80. Lease Requirements.

(a) All leases or agreements, whether written or oral, shall contain a provision which:

(1) Acknowledges the landlord's responsibility to maintain the premises and incorporates by reference the standards of Article II, Chapter 6 of the Takoma Park Code as amended as a warranty of habitability.

(2) Indicates that the security deposit will be deposited and returned in accordance with the provisions of this Article and of the Real Property Article of the Annotated Code of Maryland, as amended, and informs the tenant of his right to receive from the landlord a written list of all existing damages if the tenant makes a written request of the landlord within fifteen days of the beginning of the tenant's occupancy. See also Section 6-83 of this Article (*Security Deposits*).

(3) Requires written receipts for all cash, or money orders paid by the tenant to the landlord for rent, security deposits, and other payments.

(4) Entitles the tenant to unimpaired use and enjoyment of the premises.

(5) Permits the lease to be terminated by the tenant upon one (1) month's written notice to the landlord prior to the rent due date due to an involuntary change of employment from the Washington, D.C. Standard Metropolitan Statistical Area (as defined by the United States Census Bureau), death of a major wage earner, unemployment or for any other reasonable cause beyond the tenant's control. If death of a major wage earner, unemployment or other reasonable cause

beyond the tenant's control is claimed, the lease may require the tenant to specify the cause(s) in writing to the landlord and include appropriate evidence thereof. In the event of a termination of the lease for reasonable cause beyond the tenant's control, the lease may provide that the tenant shall pay a reasonable termination charge not to exceed one (1) month's rent or the actual monetary damages sustained by the landlord as a result of the termination, whichever is the lesser amount, in addition to rent due and owing through the termination date and during the notice period.

(6) Provides for the reimbursement to the tenant for damage sustained by the tenant as a result of the negligence of the landlord or the landlord's failure to comply with any applicable law.

(7) Informs the tenant:

(a) of the existence of Rent Stabilization in the City;

(b) of the tenant's right to examine the rent reports maintained by the Department of Housing and Community Development; and

(c) of the maximum allowable rent for the rental unit along with the rent being charged for the lease term. This lease provision shall be separately initialled or signed by the tenant.

(b) Leases or agreements, whether written or oral, shall not contain any provision which:

(1) Establishes a penalty for late payment in excess of five percent (5%) of the amount of rent due for the rental period for which payment is delinquent, or which allows for late fees to be charged less than ten (10) days less after the date that rent is due.

(2) Authorizes the landlord to take possession of the rental unit and the tenant's personal property therein unless the lease has been terminated by action of the parties or by operation of law and such personal property has been abandoned by the tenant without the benefit of formal legal process.

(3) Waives the landlord's liability for damages resulting from the landlord's negligence or violation of any applicable law.

Section 6-80.1. Lease Term Requirements.

All leases whether written or oral, unless a reasonable cause exists, shall be offered for an initial term of one (1) year to be accepted at the option of the prospective tenant. The lease or an addendum to the lease must show that an offer of a one-year lease was made to the prospective tenant. This lease provision shall be separately initialled or signed by the tenant.

(a) *One Year Leases.*

(1) One year leases shall contain the following language in the lease or in an addendum to the lease:

The landlord shall offer the tenant the opportunity to renew the lease for a term of one year not more than three (3) months nor fewer than two (2) months prior to the expiration of the term stated herein with substantially the same covenants, terms and conditions, except for any lawful change in rent, except in cases where:

- (A) The lease has been terminated by either party;
or
- (B) Reasonable cause exists for offering a term of less than one year.

(2) At the time the landlord offers the tenant a lease renewal for a term of one year, the offer shall be accompanied by a waiver form which the tenant shall sign in the event that the tenant declines to renew the lease for an additional one-year term. If the offer to renew the lease includes an increase in rent, notice of such increase shall be in the form prescribed by the Department Regulations.

(3) "Reasonable cause" as used in this subsection shall mean those situations which would create undue hardship or expense for a landlord to enter into or to renew a one-year lease, such as the sale of a dwelling or rental facility with settlement to occur within a one year period or a bona fide contract to sell within a one-year period.

(4) When the landlord claims such a reasonable cause, a statement specifying the reasonable cause, and advising the tenant of his or her right to challenge the reasonable cause by filing a complaint with the Commission on Landlord-Tenant Affairs shall be included as an addendum to the lease. Such statement of reasonable cause shall be signed and dated by the landlord and a copy shall be given to the tenant or prospective tenant at or before the commencement of the tenancy or, in the case of a lease renewal, not more than three (3) months nor fewer than two (2) months prior to the expiration of the lease term.

(b) *Leases for Other Than One Year.*

Leases for other than one year may be established
if:

(1) The tenant agrees to a lease term other than
one year; or if

(2) The landlord can establish Reasonable Cause
as defined in Section 6-80.1(a)(3) above.

Section 6-80.2. Leasing Fees.

No landlord may charge leasing fees in excess of the maximum fees established by Department Regulations or the actual costs incurred by the landlord, whichever is the lesser amount. Leasing fees shall include but not be limited to: application fees, key fees, document preparation fees, and credit check fees.

Section 6-80.3. Rent Escalator Clauses.

(a) A landlord may incorporate a rent escalator clause, providing for an increase or escalation in the rent paid at the commencement of the tenancy, into a lease in the following circumstances:

(1) *Occupied Rental Units.* For occupied rental units, the landlord may provide in the lease for an increase in the rent to take effect on or after twelve full months from the date of the last rent increase ("anniversary date") for that unit. Such increase may not exceed the Rent Stabilization Allowance per Section 6-95.1(a) of this Article in effect at the time of execution of the lease.

(2) *Vacant Rental Units.* Where the rental unit falls vacant less than one year after its last rent increase as a result of a termination of the tenancy by the landlord for cause or by the tenant for any reason, the landlord may provide in the lease for a rent increase to take effect on or after the anniversary date of the last rent increase. Such increase may not exceed the Rent Stabilization Allowance per Section 6-95.1(a) of this Article, in effect at the time of execution of the lease.

(b) No such rent increase shall take effect as a result of a rent escalator clause without the landlord having first given the tenant(s) at least one (1) month, but no more than two (2) months written notice of the rent increase prior to the effective

date of the rent increase. Such notice shall be in the form

prescribed by the Department Regulations and shall be provided in addition to any notice of rent increase provided in the lease.

Section 6-80.4. Occupancy Restrictions.

No landlord may refuse to lease any rental unit on the basis of a bona fide prospective tenant's household size, so long as:

(a) The household size would not exceed two (2) tenants for each room used for sleeping purposes,

(b) The household size would not violate the space (square footage) requirements provided as part of the health and safety standards specified in Article II, Chapter 6 of the Takoma Park Code, as amended, and

(c) The household size would not violate the restrictions on household size provided by applicable county zoning regulations.

Section 6-81. Obligations of Tenants and Landlords.

(a) *Obligations of Tenants.*

The obligations of each tenant shall include, but not be limited to:

(1) Keeping that part of the rental facility which the tenant occupies and uses as clean, sanitary and safe as the conditions of the rental facility permit.

(2) Disposing of all rubbish, garbage and other waste from the rental facility in a clean and sanitary manner.

(3) Keeping all plumbing fixtures as clean and sanitary as their condition permits.

(4) Using and operating all electrical and plumbing fixtures properly.

(5) Ensuring that the tenant or any person on the premises with the tenant's permission does not willfully or wantonly destroy, deface, damage, impair or remove any part of the rental facility, rental unit or the facilities, grounds, equipment or appurtenances thereto.

(6) Complying with all written rules which are consented to in writing by the tenant or which become effective after the onset of tenancy and are reasonably necessary for the peaceful enjoyment of other tenants, health, safety and

welfare of people lawfully on the property or the preservation of the property. Any such written rules issued after the beginning of the tenancy shall become effective no sooner than one (1) month after the tenant receives written notice of them from the landlord. Such rules which materially affect the health or safety of people lawfully on the property shall become effective at such date deemed necessary by the landlord.

(7) Providing the landlord with keys to any lock that the tenant installs, or allows to be installed which controls access to any part of the rental unit, or to any other part of the rental facility over which the tenant has exclusive possession.

(8) Permitting any lawful inspection.

(b) *Obligations of Landlords.*

The obligations of each landlord shall include, but not be limited to:

(1) Keeping all areas of the rental facility, grounds, facilities, equipment, and appurtenances in a clean, sanitary and safe condition.

(A) Maintenance of the grounds for a single family dwelling shall be the joint responsibility of the landlord and tenant as determined by the lease.

(2) Making all repairs and arrangements necessary to put and keep the rental unit and the appurtenances thereto in as good condition as they were, or ought by law or agreement to have been, at the commencement of the tenancy.

(3) Maintaining all electrical, plumbing and other facilities and conveniences supplied in good working order.

(4) Providing and maintaining appropriate receptacles and conveniences for the removal of ashes, rubbish and garbage and arranging for the frequent removal of such waste.

(5) Supplying water, hot water and heat as required by the standards prescribed in Article II, Chapter 6 of the Takoma Park Code, as amended.

(6) Painting each vacant rental unit as necessary between tenancies in preparation for re-rental, and repainting all rental units at least once every five (5) years. All paint must be lead-free, as specified by the standards prescribed in Article II, Chapter 6 of the Takoma Park Code.

(7) Maintaining sufficient keys to provide access to every rental unit; requiring that access to spare, master and duplicate keys be restricted; and keeping a log book of all assignments, temporary loans or other possessions of any master or duplicate keys. Said keys must be kept in a locked cabinet or safe.

(8) Re-keying between tenancies every lock on each door which provides access to the rental unit. No key which provides access to a rental unit shall provide access to any other rental unit in the same rental facility except the master key which is maintained by the landlord.

(9) Ensuring that a durable notice is posted in an accessible, conspicuous, and convenient place in a common area in each rental facility (where such a common area exists) and providing for the personal distribution of the notice to all tenants. Such notice shall contain:

(A) Current information, including the name(s), title(s), and responsible representatives of the landlord who individually or combined can be reached at all times in emergency situations.

(B) A statement that the rent of any rental unit may not be increased by more than the Rent Stabilization Allowance (and specifying the Rent Stabilization Allowance in effect as of the date of the notice) without the prior approval of the Commission on Landlord-Tenant Affairs and that rent may only be increased once in a twelve-month period.

Section 6-82. Entry.

(a) *Emergency Entry.* In any case of emergency, the landlord shall make a reasonable attempt to obtain the tenant's consent, which shall not be withheld, before the landlord or other person authorized by the landlord to act on the landlord's behalf may enter the rental unit.

(b) *Routine Entry.* In cases other than emergencies, the landlord or other person authorized by the landlord to act on the landlord's behalf, and the tenant shall have the following responsibilities:

(1) The landlord or authorized person shall only enter the rental unit to inspect the premises, make necessary or agreed upon repairs, decorations, alterations or improvements, supply necessary or agreed upon services, or exhibit the rental unit to prospective or actual purchasers, tenants, mortgagees, workers, or contractors.

(2) The landlord or authorized person shall enter the rental unit only with the tenant's consent. The tenant's requirement that he or she be provided with advance notice of the landlord's intent to enter the rental unit shall be presumed reasonable.

(3) The tenant shall not unreasonably withhold consent to enter. If the tenant has repeatedly and unreasonably withheld consent for the landlord or other person authorized to act on the landlord's behalf to enter the premises during normal business hours, including weekends, for any of the aforementioned purposes, the landlord or other person authorized to enter on the landlord's behalf may enter after forty eight (48) hours written notice. If the landlord or other person authorized to act on the landlord's behalf enters under this forty eight (48) hours notice provision, the landlord or authorized person shall:

(A) Provide the tenant with the Notice of Entry as prescribed below in Section 6-82.(c) of this Article and,

(B) Be present during such entry.

(4) The landlord or authorized person shall afford the tenant the opportunity to be present at such entry. In cases where entry is to be made by some other person authorized to act on the landlord's behalf, the tenant may request the landlord's presence during such entry.

(A) The tenant must respond to the landlord within a reasonable time period, indicating whether the tenant elects to be present at such entry and whether the tenant requires the landlord's presence during such entry.

(B) In cases where the tenant requests that the landlord be present during the entry, the landlord must monitor the activities of those persons authorized by the landlord to enter the rental unit by periodically visiting the rental unit during the period of time that such persons have access to the rental unit.

(c) *Notice of Entry.* If, for any reason, the tenant is not present at the time of entry into the rental unit, the landlord shall be required to leave a written notice in plain view in the rental unit. Such notice shall:

(1) Contain the following information:

- o the date and time of such entry
- o the time of departure

- o the reason for the entry
- o the work performed, if any
- o the names of all individuals who entered the premises
- o the address and telephone number of the Department

(2) Advise the tenant that unauthorized entry into any rental unit is regulated by law.

(3) Advise the tenant of his or her right to file a Commission complaint if the tenant believes that the unauthorized entry was not in conformity with the law regulating such unauthorized entry.

(d) *Lock Boxes.* No lock boxes are permitted which provide access to any individual rental unit.

Section 6-83. Security Deposits.

(a) The provisions of Section 8-203 of the Real Property Article of the Annotated Code of Maryland, as amended, are hereby incorporated by reference and adopted as an ordinance of the City of Takoma Park.

(b) In addition to any other means of enforcement provided by law, the Commission is authorized to enforce the provisions of Subsection (a) above.

(c) Any affected tenant who experiences a violation of this Section may file a Commission complaint, alleging the landlord violated the security deposit laws.

(d) If a landlord materially violates any provision of Section 8-203 of the Real Property Article of the Annotated Code of Maryland, as amended, the Commission or a Commission panel may award the complainant up to threefold the amount of the security deposit which has been withheld plus reasonable attorney's fees. In order to award the tenant an amount in excess of the amount of the security deposit which has been withheld, the Commission or Commission panel must find one or more of the following:

(1) The landlord has unlawfully failed to refund all or part of a security deposit plus accrued interest within forty-five (45) days after the termination of the tenancy and had actual knowledge, either express or implied, of his or her obligations pursuant to this Section or Section 8-203 of the Real Property Article of the Annotated Code of Maryland, as amended.

(2) The landlord has unlawfully failed to refund all or

part of a security deposit plus accrued interest after not having deposited it in an interest bearing account devoted exclusively to security deposits in a bank or savings institution in Maryland, but has instead, kept, deposited, or invested it in a manner either not guaranteed by the State or federal government, subjecting the deposit to undue risk of loss or in a manner where the security deposit is subject to the attachment by creditors.

(3) The landlord has unlawfully failed to return all or part of the security deposit, plus accrued interest, within forty-five (45) days after the termination of the tenancy, and that the list of damages or statement of costs actually incurred that the landlord has offered to justify such withholding is so unreasonable as to have not been made in good faith.

(4) The landlord has unlawfully failed to return all or part of the security deposit, plus accrued interest, within forty-five (45) days after the termination of the tenancy and the landlord has failed to accept the tenant's certified mail notice of his or her intention to move, the date of moving, and his or her new address.

(5) The landlord has unlawfully failed to return all or part of the security deposit, plus accrued interest within forty-five (45) days after termination of the tenancy, and such withholding is in retaliation against the affected tenant for his or her having exercised rights conferred upon the affected tenant by this Article, or for the affected tenant having assisted another tenant or affected tenant in exercising those rights.

(e) If a landlord fails to provide the tenant with a written list of all existing damages when the tenant has made a written request for such written list within fifteen (15) days of the tenant's occupancy, then the Commission or a Commission panel may award the tenant up to threefold the amount of the security deposit, subject to a deduction for any damages and unpaid rent which could reasonably be withheld under the provisions of Section 8-203 of the Real Property Article of the Annotated Code of Maryland, as amended.

Section 6-84 Fees.

(a) Fees charged by the landlord to any tenant for basic utilities or services, including but not limited to, fees for electricity, gas, water, air-conditioning, and trash collection, shall be for the actual amount. At the request of the tenant, the landlord shall provide the tenant with copies of the applicable

bills, invoices, or other documentation from the utility or service provider and an explanation of how the fee to the tenant was computed. If the tenant has requested verification of a utility or service fee, the tenant shall not be obligated to pay such fee until the verification is provided to the tenant.

(b) An additional fee may not be charged to the tenant for capital improvements or additional operating expenses to the rental facility.

Section 6-85. Utilities Transfer.

The following provisions apply to any transfer or conversion of responsibility from the landlord to the tenant of making utility payments to any utility provider, including sub-metering systems.

(a) No landlord may transfer responsibility for utility payments to an existing tenant unless the affected tenant receives written notice thereof at least three (3) months prior to the effective date of the conversion. The date of receipt may not be counted as part of the notice requirement. Written notice may be delivered to the tenant by any reasonable means. However, unless the notice is mailed via the United States Postal Service to the tenant's dwelling unit, delivery is not considered to have been made unless a signed receipt is obtained from the tenant or a representative designated as such by the tenant. If the tenant is notified by mail, the landlord shall certify, by affidavit dated at the time of mailing, that he or she has mailed the notice, and he or she shall retain a copy of said affidavit in his or her records.

(b) The notice of the utility conversion must be accompanied by a notice of reduction in the affected tenant's rent in an amount commensurate with the average monthly utility consumption for the rental unit experienced by the landlord during the previous twenty-four (24) months at the utility rate in effect at the time of the conversion.

(1) If prior to the conversion, rental units were metered individually, the reduction in rent shall be commensurate with the actual utility consumption of the unit for which the utility is to be transferred.

(2) If prior to the conversion, rental units were not individually metered, the reduction in rent shall be commensurate with the average actual utility consumption per unit, less common area/utility expenses or shall be based

upon reasonable factors such as unit size, unit location, and other relevant physical characteristics of the unit, at the reasonable determination of the landlord.

(3) The reduction shall be in the form of a monthly reduction in rent at the beginning of the next succeeding rent payment period.

(c) Leases negotiated during the three (3) months notice period in Section 6-84(a) shall include a written disclosure of the landlord's intent to transfer or convert responsibility for utility payments to the tenant during the term of the lease.

(1) Failure to make this disclosure shall be grounds for termination of the lease by the tenant.

(2) For the purpose of this section, the term "intent" shall be construed to mean having entered into a contract for the installation of sub-meters or individual meters or having applied for electrical permits for such installation.

(d) The date of transfer of financial responsibility for utilities shall be at the beginning of a rent payment period, unless otherwise agreed upon by the utility supplier, the landlord, and the tenant.

(e) This Section shall not be construed to provide a remedy for temporary interruption of service or equipment otherwise maintained by the landlord.

Section 6-86. Notice to Vacate.

(a) *Landlord Rights and Responsibilities.* Under the circumstances specified below, a landlord has the right to give a tenant a notice to vacate. Such notice must be in writing. The date of receipt shall be considered part of the required time period for the notice. The tenant shall vacate the premises no later than the date specified in the notice to vacate.

(1) *Notice to Vacate For Cause.* A landlord wishing to terminate a tenancy and repossess a rental unit because the tenant materially breaches the lease shall give the tenant one-month's written notice to vacate prior to the rent due date. The written notice to vacate must clearly specify the material breach for which the tenancy is being terminated. Whenever the tenant fails to pay the rent when due and payable, it shall be lawful for the landlord to repossess the rental unit, in accordance with the applicable provisions and procedures of Maryland law, and the one month's written notice required hereunder does not apply.

(2) *Notice to Vacate Without Cause.* A landlord wishing to terminate a tenancy without cause and repossess a rental unit in the case of a month-to-month tenancy or any tenancy

for a term of less than one year shall give the tenant, prior to the rent due date, two-month's written notice to vacate.

(3) *Notice to Vacate at End of Lease.* A landlord wishing to terminate a tenancy and repossess a rental unit in the case of a year-to-year tenancy or any tenancy for a term of one year or more shall give the tenant written notice three months before the expiration of the current year of the tenancy. The notice must specify that the tenancy will terminate at the end of the lease term.

(b) *Tenant Rights and Responsibilities.* Under the circumstances specified below, a tenant has the right to give a landlord a notice that the tenant intends to vacate the rental unit. Such notice must be in writing. The date of receipt shall be considered part of the required time period for the notice. The tenant shall vacate the premises no later than the date specified in the notice of intent to vacate.

(1) *Notice to Vacate at End of Term of Tenancy.* A tenant wishing to vacate a rental unit in the case of a month-to-month or year-to-year tenancy shall give a landlord a one-month written notice prior to the rent due date of intent to vacate.

(2) *Notice to Vacate for Reasonable Cause Beyond the Tenant's Control.* A tenant wishing to vacate pursuant to Section 6-80(a)(5) ("Lease Requirements") shall give the landlord a one-month written notice prior to the rent due date of intent to vacate.

Section 6-87. Tenant Rights of Association.

(a) Tenants shall have the right to self-organization; to form, join, meet or assist one another within or without tenant organizations; to meet and confer, by themselves and through representatives of their own choosing with landlords; to engage in other activities for the purpose of mutual aid and protection; and further, tenants shall have the right to refrain from any and all such activities.

(b) Tenants and tenant organizations shall have the right of assembly in the meeting rooms and other areas suitable for meetings within a rental facility during reasonable hours and upon reasonable notice to the landlord for the purpose of conducting tenant organization meetings. The landlord may impose reasonable terms and conditions upon the use of such meeting rooms or common areas.

(c) Tenants and tenant organizations shall have the right to

distribute freely and post in centrally-located areas of a rental facility literature concerning landlord-tenant issues provided the literature is properly identified as to its origin.

(d) Tenant organizations shall have standing to file complaints under any provision of this Article in a representative capacity on behalf of those tenants who have authorized such representation. Nothing herein shall be construed to permit any tenant's organization to represent any tenant or class of tenants unless specifically authorized in writing to do so.

Section 6-88. Department Investigation and Conciliation.

The Department is authorized to investigate and conciliate any alleged or apparent violation of this Article or any complaint filed under this Article. In connection with this authority, all landlords and tenants shall be required to make available to the Department for inspection, at reasonable times, all rental facilities and records necessary for the enforcement of this Article.

Section 6-89. Commission on Landlord-Tenant Affairs.

(a) The City of Takoma Park Commission on Landlord-Tenant Affairs is hereby established. The Commission shall consist of twelve (12) active members nominated by the Mayor and appointed by the Council. The Council shall make every effort to ensure that the Commission has broad representation.

(1) All members shall be residents of the City of Takoma Park,

(A) Except that there may be as many as two (2) members who are not residents of the City of Takoma Park if such members own rental housing in the City of Takoma Park or if such members are engaged as their primary occupation in the management of rental housing located in the City of Takoma Park.

(B) In the event that a Commission member ceases to reside in the City of Takoma Park, that member is ineligible to serve on the Commission, except as provided for in Section 6-89 (a)(1)(A) of this Article, above.

(2) Each member of the Commission shall be appointed for a term of three (3) years, which shall begin on July 1.

(A) The initial term of a Commissioner who is appointed to replace a member who cannot complete his or her term shall be for the remainder of the term of the

member being replaced.

(B) A Commission member who resigns, whose term expires, or who ceases to reside in Takoma Park, at the discretion of the Commission Chairperson, may continue as an inactive member of the Commission to complete work on cases in which he or she participated as an active member of the Commission. This participation may include the approval and signature of Opinion and Orders released by the Commission.

(3) The Council may, by resolution, remove a Commissioner before the Commissioner's term has expired if the Council determines that the Commissioner has become incapacitated or has failed to reasonably perform his or her duties as a Commissioner.

(b) Commission Activities.

(1) The Commission shall elect one (1) of its members as Chairperson, another of its members as Vice Chairperson, and such other officers as it shall desire, each to serve at the pleasure of the Commission.

(2) The Chairperson shall convene the Commission as frequently as required to perform its duties.

(3) At the request of a majority of the active Commissioners, a regular or emergency meeting of the Commission shall be convened.

(A) Written notice shall be given to each active Commissioner at least three (3) days prior to any regular meeting.

(B) Notice of an emergency meeting must be given in writing or orally to all Commissioners no later than twenty-four (24) hours in advance of such emergency meeting.

(c) Powers and Duties of the Commission.

(1) *Official Action.* At least one-half of the active Commissioners shall constitute a quorum for the transaction of business. A majority vote of those present shall be sufficient for any official action taken by the Commission.

(2) *Regulations.* The Commission shall promulgate regulations to accompany Sections 6-89 through 6-93 of this Article.

(3) *Enforcement.* The Commission shall be empowered to enforce the provisions of Sections 6-89 through 6-93 of this Article by any appropriate means, including but not limited to the imposition of an award of monetary damages to a prevailing party to a Commission complaint; the ordering of certain acts pursuant to a Commission decision; and the investigation of any violations of this Article or of any complaints or petitions filed to the Commission.

Section 6-89.1. Commission Jurisdiction

The Commission is empowered to adjudicate and mediate Commission complaints and rule on petitions for rent increases above the Rent Stabilization Allowance.

(a) Complaints

(1) Any present, former, or bona fide prospective tenant or tenants' organization, or any landlord or landlord-representative, may file a Commission complaint giving the particulars of the alleged violation or condition. Any person who has reason to believe that a violation of this Article has occurred may so notify the Department, regardless of whether he or she files a Commission complaint.

(2) The Commission shall have jurisdiction to adjudicate Commission complaints of: defective tenancy, retaliatory action, illegal rent, illegal fee, reduction in services, unlawful withholding of security deposit, and any other violation of Article 7.

(b) Rent Increase Petitions. The Commission shall have jurisdiction to grant, modify or deny petitions for rent increases above the Rent Stabilization Allowance.

(c) Processing. Complaints and Rent Increase Petitions filed with the Commission under this Article shall be processed in accordance with the Commission's Rules of Procedure.

(d) Commission Rules of Procedure. The Commission shall promulgate Commission Rules of Procedure which further regulate the operations of the Commission, in accordance with Chapter 2A, Article 5 of the Takoma Park Code (Administrative Regulations), (Ordinance 1989-32).

Section 6-89.2. Investigation and Conciliation of Commission Complaints.

(a) Upon the filing of any Commission complaint, the Department shall make such investigation as it deems appropriate

to ascertain whether there are reasonable grounds to believe that the allegation of conditions or violations over which the Commission has jurisdiction can be substantiated.

(1) If the Department finds through the investigation that no reasonable grounds exist for the filing of a Commission complaint, or that the Commission does not have jurisdiction over the matter, the Department shall notify the Commission of its findings.

(2) The Commission then may, in its sole discretion and on such terms as it deems appropriate:

(A) Dismiss the complaint;

(B) Afford the party who filed the complaint ten (10) days to respond in writing stating why the complaint should not be dismissed, or to amend the complaint; or

(C) Hold a hearing, where there is a factual dispute, to determine whether or not to dismiss the complaint.

(b) If at any time after a Commission complaint is filed, the Department believes the health, safety, or welfare of a tenant is placed in immediate and present danger, the Department shall be authorized to take immediate action to provide appropriate relief. This may include notification of the Chairperson or Vice-Chairperson of the Commission, who shall determine whether or not an emergency hearing by the Commission is necessary.

(c) The Department's investigation shall when applicable, include review of the records of the Department. The Department may order a general or specific housing inspection of the property by Code Enforcement personnel.

(d) The Department shall, whenever possible, mediate the dispute between the parties, either before or after a Commission complaint is filed. If the Department is unable to resolve the dispute and the complainant wishes to prosecute the complaint, the Department shall refer the complaint to the Commission for a hearing.

Section 6-89.3. Commission Hearings.

(a) *Hearing Process.*

(1) The Chairperson of the Commission is hereby authorized to designate three (3) active members of the Commission to sit as a panel to conduct a hearing on any complaint or petition pending before the Commission. The

Chairperson shall designate one (1) panel member to serve as the Commission panel's presiding Commissioner. The Chairperson of the Commission shall endeavor to rotate panel membership from time to time among active members of the Commission.

(2) All members of the Commission panel must be present to conduct the hearing.

(3) Notice of the hearing, including its time and place shall be provided to the parties and the public in the manner prescribed by the Commission's Rules of Procedure.

(4) The hearing shall be open to the public. In conducting hearings, the Commission panel shall have the power to subpoena witnesses and to subpoena the production of relevant documents and records. Any party to the case may request the issuance of a subpoena, which shall be in a form prescribed by the Commission Rules. Any party may appear before the Commission panel in person, or by a duly authorized representative.

(5) All testimony shall be given under oath or affirmation.

(6) The Commission panel may admit and consider evidence which would be commonly accepted by reasonable and prudent people as having a causal relationship to the matters before the Commission panel. It shall give effect to the rules of privilege recognized by law. It may exclude from evidence irrelevant and repetitious testimony and documents.

(7) The Commission panel may take notice of judicially cognizable facts and in addition may take notice of relevant general, technical or scientific facts. Parties shall be notified either before or during the hearing of the material so noted, and they shall be afforded an opportunity to contest the evidence presented.

(8) An audio recording of the hearing shall be made and shall constitute a record of the hearing. The record of the case shall include the audio recording and any written documents accepted into the case file. The record of the case shall be open to inspection by any person. Upon request by any person, the Commission shall furnish to such person a copy of the record of the case at charges necessary to meet the costs of supplying same.

(b) Hearings on Complaints.

(1) In adjudicating Commission complaints under this

Article, a Commission panel shall hold a fact-finding hearing.

(2) At the fact-finding hearing any party to a Commission complaint shall have the right to call witnesses, present testimony and evidence to substantiate any material point. Each party shall have the right to cross examine opposing witnesses, to submit rebuttal evidence and to present summation and argument. The Commission panel may call its own witnesses and enter its own evidence.

(c) *Hearings on Rent Increase Petitions.*

(1) *Preliminary Administrative Decision.* The Commission shall review the documentation submitted by a landlord who is seeking a rent increase above the Rent Stabilization Allowance. The Commission shall issue an accounting report reviewing the documentation for the rent increase petition, pursuant to Section 6-91 of this Article. The report shall include a finding of the proper rent increase, if any, and shall be issued to ~~all parties, including the landlord and affected tenants, to the petition.~~ This report shall constitute the preliminary administrative decision of the Commission on the rent increase petition. ~~The landlord shall notify the tenants of the rent increase, if any, granted by the preliminary administrative decision, and serve or post copies of the preliminary administrative decision as required in the Regulations.~~

(2) *Objections to Preliminary Administrative Decision.* Any party who objects to matters in the accounting report or any of the findings contained within the preliminary administrative decision may challenge the preliminary administrative decision by filing a written statement or list of objections and supporting reasons or documentation for the objections with the Commission within one month of ~~receipt~~ ~~the date~~ of the preliminary administrative decision. Upon receipt of any written statement or objections to the administrative decision, the Commission shall rule on the objections, or, if requested, hold a hearing on the objections.

(3) If a hearing is held on objections to the preliminary administrative decision in a rent increase petition case the parties shall have the right to call witnesses, present testimony and evidence to substantiate any material point ~~raised in the objections.~~ The Commission panel may call its own witnesses and enter its own evidence.

(4) The Commission panel shall afford the parties opportunities for examination and cross examination of witnesses, as appropriate.

(5) If no objections to the Commission's administrative decision are made within one month the receipt the date of the decision by any party to the petition, or within one month of the date of service or posting of the preliminary administrative decision, the preliminary administrative decision shall become the final decision of the Commission.

Section 6-90. Commission Complaints and Remedies.

Section 6-90.1. Complaints of Imposition or an Attempt to Impose an Illegal Rent Increase or Fee.

(a) *Complaints.* The following parties shall have the right to file a complaint of imposition or attempt to impose an illegal rent increase or illegal fee:

(1) Any affected tenant who occupies or is offered a rental unit, where the rent charged or to be charged by the landlord is in excess of the lawful limits; and

(2) Any affected tenant who receives notice from the landlord of a rent increase, which will increase the rent to an amount in excess of the lawful limits.

(3) Any affected tenant who is charged a fee under Section 6-84 for basic utilities or services which is in excess of the actual amount, or who is charged a leasing fee under Section 6-80.2 which is in excess of the maximum fees established by Department Regulations or the actual costs incurred by the landlord, whichever is less.

(b) *Remedies.* Where the Commission finds that a landlord has imposed or attempted to impose an illegal rent increase or fee, the affected tenant may be entitled to one (1) or more of the following remedies as ordered by the Commission:

(1) A rollback of the rent or fee to the lawful limit, and a refund of excess monies paid, with interest calculated at the judgment rate of interest. The amount of time which a refund of excess rents paid or fees collected may be awarded shall be up to two years before the date of the filing of the complaint, in accordance with Section 6-99(b) of this Article.

(A) The affected tenant may begin paying the lawful rent or fee immediately.

(B) If the landlord fails to refund the excess monies paid to the affected tenant within thirty (30) days of the date of the Commission's Order, the affected tenant may deduct the amount of the refund owed from the

succeeding month or months rent (even if the rent to be paid is reduced to zero.)

(C) If the landlord files an appeal from the Commission's Order, then any party may request: 1) a stay of the Commission's Order in accordance with Rule B6 of the Maryland Rules, as amended; and 2) that any disputed rent or fees be deposited into the Registry of the Court.

(2) An award of damages to be paid by the landlord sustained as a result of the imposition or attempt to impose an illegal rent increase or fee; such damages being determined as the actual damage or loss.

(3) An order to the landlord to perform other remedial action as the Commission deems appropriate.

Section 6-90.2. Complaints of Reduction of Service or Equipment.

(a) *Complaints.* No landlord may reduce or eliminate service or equipment that had been provided during the tenancy.

(b) *Remedies.* Where the Commission finds that the landlord has caused a reduction of service, upon completion of the hearing process, it may award the complainant damages commensurate with the amount of services or equipment lost.

Section 6-90.3. Complaints of Retaliatory Practices.

(a) *Complaints.* No landlord may retaliate, through any act or omission, against any tenant who exercises rights conferred upon him or her by this Article, or against any tenant who assists another tenant in exercising those rights.

(1) For the purposes of this Section, retaliatory actions include eviction, threat of eviction, violation of privacy, harassment, reduction in quality or quantity of repairs, reduction in maintenance or services, unlawful rent increases, failure to return all or part of a security deposit, any form of threat or coercion, or any attempt to prevent a present, former or bona fide prospective tenant from obtaining housing.

(2) Any affected tenant who believes he or she has experienced retaliatory action by the landlord may file a Commission complaint against the landlord alleging such retaliatory action.

(b) *Remedies.* Where the Commission finds that a landlord has

engaged in retaliatory action, the complainant tenant may be entitled to one (1) or more of the following remedies as ordered by the Commission:

(1) Authorization to immediately terminate the lease, and to receive a return of the security deposit, in accordance with Section 6-83 of the Takoma Park Code ("Security Deposits"). Where the tenant so opts to terminate the lease, the rental unit shall be vacated within a reasonable period of time.

(2) An award of damages to be paid by the landlord sustained as a result of the retaliatory action; such damages being determined as the actual damage or loss. Alternatively, if the Commission finds that the landlord has willfully disregarded the tenant's rights under this Section, it may award the tenant a portion of rental monies already paid to the landlord for the period during which the landlord has been found to have engaged in retaliatory action.

(3) An order to the landlord to cease and desist from such retaliatory practices or perform other remedial action as the Commission deems appropriate.

Section 6-90.4. Complaints of Defective Tenancy.

(a) *Tenant Complaints.* If any affected tenant has reason to believe that a defective tenancy exists or has existed in his or her rental unit or in the common areas of the rental facility in which the rental unit is located, after he or she has given the landlord written notice of the defect and the landlord has not rectified the defect or made good faith efforts to do so within one (1) week after the notice was given, the affected tenant may file a Commission Complaint. If the tenant can prove by competent testimony or other evidence that the landlord had actual notice of the defect, it shall not be necessary for the tenant to provide a written notice to the landlord.

(b) *Landlord Complaints.* If any landlord has reason to believe that a defective tenancy has been created or permitted to exist by a tenant, has given the tenant written notice complaining of the defect in that tenant's unit or in the common area(s) of the rental facility in which the rental unit is located, and the tenant has not rectified the defect or made good faith efforts to do so within one (1) week after the notice was given, the landlord may file a Commission complaint.

(c) *Remedies.*

(1) Where the Commission finds that a landlord has caused a defective tenancy, the complainant tenant may be

entitled to one (1) or more of the following remedies as ordered by the Commission:

(A) An award of damages to be paid by the landlord sustained as a result of the defective tenancy; such damages being determined as the actual damage or loss.

(B) An amount to be paid by the landlord equivalent to a reasonable expenditure adequate for the tenant to obtain temporary substitute rental housing in the area.

(C) Correction of the defective tenancy by the landlord.

(D) An order to the landlord to perform other remedial action as the Commission deems appropriate.

(2) Where the Commission finds that a landlord has caused a defective tenancy which constitutes a substantial breach of the lease by the landlord, the Commission may, as appropriate:

(A) Authorize the complainant tenant(s) to immediately terminate the lease and vacate the rental unit within a reasonable period of time, and

(B) Order, upon such termination of the lease and vacating of the rental unit, the return of the security deposit and rental monies already paid to the landlord from the period the landlord was notified of the condition.

(3) Where the Commission finds that a tenant has caused a defective tenancy, the complainant landlord may be entitled to one (1) or more of the following remedies as ordered by the Commission:

(A) An award of damages equivalent to the loss sustained as a result of the defective tenancy to be paid by the tenant to the landlord; such damages being determined as the actual damage or loss.

(B) Correction of the defective tenancy by the tenant.

(C) An order to the tenant to perform other remedial action as the Commission deems appropriate.

(4) Where the Commission finds that a tenant has caused a defective tenancy which has resulted in a substantial breach of the lease by the tenant, the Commission may, in addition to ordering other remedial action as appropriate, authorize

the complainant landlord to immediately terminate the lease and gain possession of the premises in accordance with the Real Property Article of the Annotated Code of Maryland, as amended.

Section 6-91. Rent Increase Petitions.

(a) *Definitions.* In addition to the definitions set forth in Section 6-79 of this Article, the following words and phrases shall have the following meanings:

(1) *Adjusted Net Operating Income* shall mean the net operating income adjusted from the base year to the petition year by a percentage of the Consumer Price Index.

(2) *Base Year Net Operating Income* shall mean the net operating income generated by a rental facility during the base year.

(3) *Base Year* shall mean the year that has been established for the purpose of ~~a rent increase petition.~~ calculating a change in the net operating income.

(4) *Capital Improvement* shall mean materials and/or labor that have been added to a rental facility that ~~is~~ are not annually recurring and that has a useful life of more than one year.

(5) *Capital Improvement Petition* shall mean a petition filed by a landlord in order to request a rent increase pursuant to a past or planned capital improvement.

(6) *Hardship Petition* shall mean a petition filed by a landlord in order to maintain a the rental facility's net operating income. ~~or gain an adequate rate of return.~~

(7) *Net Operating Income* shall mean the rental income generated by a property less the operating expenses incurred pursuant to Section 6-91 of this Article, during a base or petition year.

(8) *Operating Expenses* shall mean all expenses incurred during a base or petition year, except for those expenses excluded by Section 6-91 of this Article.

(9) *Petition Year* shall mean the calendar year, or a fiscal year consisting of a consecutive 12-month period occurring within the 15 months preceding the date of the filing of the petition.

(10) *Rent Increase Petition* shall mean a petition by a

landlord to raise rents above the rent stabilization allowance and includes both hardship petitions and capital improvement petitions.

(11) *Rental Income* shall mean the total—~~collected~~ ~~collectable~~ income from the rental facility from all sources, less the allowable vacancy loss established in Section 6-91 (c) (5) (F) (i).

(b) Whenever a landlord proposes a rent increase of more than the amount permitted by the rent stabilization allowance established in Section 6-95.1, the landlord shall file a petition using the form provided by the Commission.

(1) *Notice of a Rent Increase Pursuant to a Rent Increase 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 rent ~~increases~~ requested, upon each affected tenant within one ~~month~~ ~~week~~ after the filing date of the petition.

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

(c) *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, after adjusting for inflation pursuant to Section 6-91 (c) ~~(10)~~ ~~(9)~~, than the net operating income in the petition year.

(2) *Net Operating Income.* The net operating income for a rental facility 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 6-91 (c) (5).

(3) A hardship petition shall include justification for the rent increases proposed based on increases in operating expenses which have risen faster than rental income.

(A) The increases in operating expenses 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.

(B) 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.

(C) The base year net operating income shall be adjusted by the Commission if the landlord shows by competent evidence that the base year net operating income was exceptionally high or low in comparison to other years the rental facility was in operation. In such instances, the Commission may make adjustments to reflect average expenses for the rental facility over a reasonable period of time. A landlord who demonstrates to the Commission that rents were not increased by the full rent stabilization allowance in order to protect existing tenants shall have the net operating income adjusted to reflect full possible income available to the landlord had the full rent stabilization allowance been taken.

(D) The landlord may choose to have the base year net operating income computed from a year during which rents in the rental facility were not controlled by rent stabilization. If so, the Commission shall establish a base year of 1979, and the landlord shall provide the Commission with data for income and expenses from 1979. For those buildings containing four (4) or fewer rental units, the pre-rent stabilization base year shall be 1987, and the landlord shall provide the Commission with data for income and expenses for 1987.

(E) At the landlord's option, the base year net operating income may be established by subtracting 60 percent of the landlord's base date rental income so that the net operating income is 40 percent of rental income.

(F) At the landlord's option, the base year net operating income may be established pursuant to a previous petition adjudicated by the Commission, provided that the net operating income of the rental facility is apparent on the decision.

(G) All petitions adjudicated under this Section shall form the base year for hardship petitions filed subsequent to a landlord's first filing under this Section.

(4) The following information shall be included on the hardship 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, 1990, during which the landlord seeks to have the base date established. This period shall be considered the base year.

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

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

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

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

(F) The dates that the proposed rent increases are to go into effect; the effective dates of the proposed rent increases shall not be more than ~~12-14~~ 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;

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

(ii) Landlords who manage their own properties may deduct up to 6 percent of maximum rental income for ~~administrative expenses.~~ ~~management fees.~~ 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 by the Commission's Regulations. If the landlord wishes 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;

(i) Vacancy losses shall not be more than five percent (5%) of the maximum rental income, unless good cause can be shown why the vacancy rate is higher than five 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.

(i) Depreciation shall be calculated using the City of Takoma Park Amortization Schedule, established in the Commission Regulations.

(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 tenants 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 facility.

(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, as amended.

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

(M) Facts represented in the hardship 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) 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 twelve (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 reviewing 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, re-open the record and allow all parties to respond in writing and submit additional documentation within one month of the close of the review.

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

(8) 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 fifty (50%) percent 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 a net operating income equal to the adjusted base year net operating income. Landlords who have paid no mortgage expenses from the base year to the petition year shall receive an upward adjustment of the base year net operating income by one hundred (100%) percent of the Consumer Price Index.

(9) *Rollback of Rents if Hardship Not Demonstrated.*
If, upon consideration of a landlord's hardship petition the Commission finds that the landlords' adjusted base year net operating income is less than his actual petition year net

operating income, and that the landlord's hardship petition was filed in bad faith, the Commission may require the landlord to roll back the rents charged on the rental units covered by the petition to result in a net operating income equal to the adjusted base year net operating income.

(A) *Purpose of Rollbacks.* The purpose of the rollback provision in this Section is to ensure that hardship petitions are filed in good faith, that the landlord reviews the records of the rental property for which rent increases are sought to ensure that a rent increase is justified under this Section, and to balance both the tenant and the landlord interests in each petition to increase rents above the rent stabilization allowance.

(B) Bad faith can be found, but is not limited to, instances in which the landlord:

(i) Is found to have listed expenses for repairs or services never performed;

(ii) Is found to have intentionally padded expenses with items clearly disallowed by ~~statute~~ Section 6-91 of this Article;

(iii) Is found to have materially misrepresented expenses claimed;

(iv) Is found to have knowingly filed a false rent report, in whole or in part; or

(v) Is found to have acted in some other manner which is a clear abuse of the petition process.

(C) The following shall not constitute bad faith under this provision:

(i) Miscalculations and simple mathematical errors;

(ii) Claims for expenses or other items which are not specifically addressed in Section 6-91 and which the Commission disallowed, but which could plausibly have fallen within Section 6-91 of this Article.

(D) The Commission shall verify the information upon which it makes its findings of bad faith and shall issue a decision clearly stating the basis for its finding. The landlords shall be required to notify all

tenants affected by the rent rollback and, if the landlord was permitted to increase rents by the rent stabilization allowance pending a decision on the hardship petition, all rent increases so collected shall be refunded to the affected tenants within thirty (30) days. If the landlord fails to rollback the rents or fails to refund the rent increases collected, the affected tenants may begin paying the rolled back rent or may deduct any rent refunds or rollbacks owed the tenants in accordance with Section 6-90.1(b)(1) of this Article.

(d) *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 6-95.1 in order to recover the costs of capital improvements. These costs 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 rental unit or rental facility, 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 levels for a rental unit or rental facility shall be raised to reflect the amortized costs of planned or completed capital improvements to the rental unit or property, where such capital improvements:

(A) Are necessary to bring the rental unit or rental facility 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 rental unit or rental facility in good physical condition and to maintain services provided to tenants. ~~or~~

(4) *Amortized Cost.* The annual amortized cost of a capital improvement shall be calculated according to the

following formula: the reasonable cost of the capital improvement, plus the cost of financing, divided by the appropriate amortization period for that improvement. The annual amortized cost shall then be divided by twelve (12) to calculate the monthly cost to the affected units, then divided among the units in a manner consistent with the amenities or improvements made to each unit.

(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 or 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 the prime rate in effect at the time of construction or installation of the capital improvement, plus two percent (2%), 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 Commission shall determine a reasonable amortization period. The amortization period for a capital improvement shall begin at the time a rent increase granted by the Commission goes into effect, or upon completion of the capital improvement, whichever occurs later. 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, a rent increase granted under this Section shall be adjusted downward per the amortization schedule by the amount of any prior upward rent adjustment attributable to a capital improvement granted under this Section after the end of the time period over which the cost of that prior 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). 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 Commission.

(10) The following information shall be included in the

petition for a rent increase pursuant to capital improvements:

(A) A list of each rental unit to be affected by the improvements, and the square footage and number of bedrooms contained in each affected unit.

(B) For capital improvements that have been completed, all receipts showing monies spent on the improvement up to the filing date of the petition.

(C) If the landlord has acquired a loan to pay for the capital improvements, copies of loan agreements showing the interest payable on the loan, and the amount paid by the date of the petition, if any.

(D) If the landlord has spent his own labor installing or maintaining the improvements, a list of times spent and amounts billed for the labor.

(11) *Filing Dates.* A petition for a rent increase for capital improvements may only be filed with the Commission six (6) months before the capital improvements are expected to be installed in the rental facility, or within six (6) months after the capital improvements are installed in the rental facility. Landlords who file rent increase petitions more than six months before or after the capital improvements are installed may file—include the annual amortized amount in a hardship petition, pursuant to Section 6-91(c) of this Article.

(e) Petitions for Rent Increases Due to Refinancing Costs or Interest Rate Changes.

(1) Landlords shall be permitted to petition for a rent increase to pass on the cost of refinancing a loan secured by the rental facility in a hardship petition when the refinancing is required due to the terms and conditions of the original loan or due to business necessity outside of the control of the owner(s). The cost of refinancing shall be calculated in the same manner as specified in Section 6-91(d) (Petitions for Rent Increases for Capital Improvements) and in the accompanying Regulations. The landlord shall use the Capital Improvement Petition form provided in the Commission's Regulations in order to petition for a rent increase under this Section.

(A) The cost of refinancing shall include loan fees, document preparation fees, and recording fees. The Commission shall determine whether other appropriate refinancing expenses shall be included in the cost of refinancing.

(B) Landlords shall not be permitted to petition for a rent increase due to the cost of refinancing a loan secured for the rental facility when the principal amount of the loan has increased, except where the increase in principal is due to the refinancing costs.

(C) Landlords shall not be permitted to petition for a rent increase due to the cost of refinancing a loan secured for the rental facility when the total of the principal, refinancing costs, other loan costs, and interest payable over the life of the new loan is less than the total of the principal, loan costs, and interest that would have been payable over the life of the former loan.

(2) Interest Rate Increases. If a landlord demonstrates in a hardship petition that the interest expense from a loan secured for the rental facility has increased by "X" percentage points from the base year to the petition year, the Commission shall increase the rents for the rental facility by an amount equal to the difference between the landlord's interest expense from the base year to the petition year. The landlord shall use the Hardship Petition Form provided in the Commission's Regulations in order to petition for a rent increase due to interest rate increases.

(A) The Commission shall not grant a rent increase due to an increase in the principal amount of the loan.

(B) A rent increase granted under this Section shall be for a one-year period only, and shall be extended annually only when a landlord demonstrates that the interest expense has not fallen below "X" percentage points above the interest rate paid during the base year.

(C) Notwithstanding the base year that has been established to calculate a hardship petition for the rental facility pursuant to Section 6-91(c), the base year for the purposes of calculating a rent increase due to interest rate increases from the base year to the petition year shall be 1990.

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

(1) The Commission shall, in good faith, endeavor to issue its ~~opinion and order~~ preliminary administrative decision ruling on the request within ninety (90) days of the review or hearing on the petition.

(2) The landlord may begin charging additional rent, not

to exceed the rent stabilization rate in effect, on the effective dates of the increase.

(3) If, after the Commission's calculations, rent increases greater than fifteen percent (15%) are necessary to result in the increases approved by the Commission pursuant to Sections 6-91(c) or (d), above, the necessary increases shall be phased-in over a term of more than one (1) year until the full increases awarded by the Commission have been taken.

(A) If a landlord's required rent increase is phased-in over the term of more than one (1) year, the subsequent rent increases may be in addition to and increase within the rent stabilization allowance in effect in subsequent years.

(4) If the Commission determines that a rental unit requiring an increase of more than fifteen percent (15%) is vacant, or if the unit becomes vacant before the required rent increase has been taken in full, then the Commission may, in its discretion, allow the required increase for that unit to 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.

(5) When serious outstanding Housing or Zoning Code violations affecting health, safety, or welfare are present at the rental facility, 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 then take the rent increases prospectively only.

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

(7) No rent increase shall be authorized by the Commission because of the landlord's mortgage or deed of trust interest or other expenses resulting from the purchase of the property, except as otherwise provided in this Article, if at the time the landlord acquired the property the landlord could have reasonably foreseen that such expenses would not be covered by the rent schedule then in effect. ~~This requirement shall only apply to rental units acquired after the date of adoption of the Ordinance.~~

(8) No rent increase shall be authorized when the landlord has petitioned for rent increases, under either the hardship petition section or the capital improvement petition section, for the property within the last twelve (12) months

preceding the date on the petition.

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

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

(2) 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; ~~or~~

(3) 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; provided that the Commission may, at its discretion, waive the above requirement for good cause shown;

(4) When the landlord has unpaid city taxes with regard to any rental unit owned by the landlord in the City of Takoma Park; ~~or~~

(5) 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. 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.

(h) Upon its determination of the rent increase to be granted to the landlord, the Commission shall issue a decision in accordance with Section 6-92 of this Article and furnish copies of the decision to the landlord. The landlord shall then be required to notify all affected tenants of the decision on the rent increase petition in accordance with the Commission's Regulations.

Section 6-92 Decision (Opinion and Order) of the Commission.

After the hearing on a complaint, the Commission panel shall state its findings of fact and conclusions of law in a written Opinion and issue it with a written Order, which shall constitute the final Opinion and Order of the Commission. The administrative decision on a rent increase petition and the Commission's rulings on any objections to the preliminary administrative decision of the Commission shall constitute the final Order of the Commission. The decision of the Commission panel may be made by a majority of the panel, but if a panel member dissents, the complaint or petition shall be decided in accordance with Section 6-92.3. The burden of proof by the complainant or the petitioner shall be a preponderance of the evidence.

Section 6-92.1. Decision (Opinion and Order) of the Commission Concerning a Complaint.

(a) An Opinion and Order of the Commission concerning a complaint may require:

(1) Either the complainant or the respondent or both to cease and desist from such unlawful conduct and to take such appropriate actions as will effectuate the purpose of this Article, including, but not necessarily limited to, the payment of damages, where appropriate.

(2) Interest to be paid upon any award of damages, calculated at the judgment rate of interest, from the date payment of the award is due until payment is made in full.

(b) An Order of the Commission concerning a complaint may specify the date by which compliance must take place.

(c) In addition to the enforcement provisions under applicable laws, any award of damages not paid when due may be enforced by the party to whom the award was granted in a court of competent jurisdiction, and the court is authorized to grant judgment for such damages plus interest from the date payment was due.

Section 6-92.2. Interim Order.

In cases where the Commission, after a hearing on a complaint, finds that actual or constructive eviction would likely occur before the issuance of a final Opinion and Order, the Commission may issue an Interim Order requiring or prohibiting specific action by one or more of the parties, so as to prevent such actual or constructive eviction.

(a) Such Interim Order shall require the assent of a majority of the panel members and shall be in writing.

(b) Subsequent to the issuance of an Interim Order, a final Opinion and Order of the Commission shall be issued in the manner and form prescribed by this Article.

(1) A final Opinion and Order of the Commission may affirm, modify or reverse the Interim Order.

Section 6-92.3. Commission Consideration.

If a member of a Commission panel dissents from the decision on a complaint or petition for rent increase proposed by the panel majority, or if a panel is unable to reach a decision concerning a complaint or petition as a result of no two panel members joining in a decision, such complaint or petition shall be referred to the full Commission. The Commission shall convene and decide the matter based upon the record created before the Commission panel, by a preponderance of the evidence. The Commission shall state its findings of fact and conclusions of law in a written Opinion and issue it with a written Order, which shall constitute the final Opinion and Order of the Commission. The full Commission decision may be made by a majority vote of those present at any meeting at which there is a quorum.

Section 6-93. Reconsideration and Appeals.

(a) *Appeals.* Any person aggrieved by a final Opinion and Order of the Commission on a complaint or the final Order of the Commission on a petition (hereinafter jointly referred to as "Opinion and Order") may file an Order for Appeal with the Clerk of the Circuit Court of the appropriate county. The procedures for an appeal from the Opinion and Order of the Commission shall be governed by Subtitle B (Administrative Agencies - Appeal From) of the Maryland Rules, as amended.

(1) *Time for Filing.* An Order for Appeal shall be filed within thirty (30) calendar days from the date of the Opinion and Order. If the Opinion and Order is served by mail, then the appeal deadline shall be extended an additional three (3) calendar days. Upon application of a person authorized to appeal, and for sufficient cause shown, the Circuit Court may extend the time for filing an order for appeal.

(2) *Service on the Commission.* Prior to filing an Order for Appeal with the Circuit Court, the person shall serve a copy thereof on the Commission.

(3) *Decision.* The Circuit Court shall affirm the Opinion and Order of the Commission if it finds that the factual conclusion of the Commission was based upon substantial evidence in the record.

(b) *Reconsideration.*

(1) *Motion to Clarify, Reconsider or Amend an Opinion and Order.* On motion of any party filed within ten (10) days of the date of an Opinion and Order of the Commission or, at any time for a compelling reason at the request of a governmental agency or court of competent jurisdiction, the Commission may open the Opinion and Order to receive additional evidence, may amend its findings or its statement

of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the Order, or may enter a new Order. A motion to alter or amend an Opinion and Order shall stay the time for filing an appeal until the Commission rules on the motion.

(2) *Newly Discovered Evidence.* On motion of any party filed within thirty days after the date of an Opinion and Order of the Commission, the Commission may grant a new hearing or issue a new administrative decision on the ground of newly-discovered evidence that could not have been discovered by due diligence before the hearing or administrative decision.

(3) *Fraud, Mistake, Irregularity.* On motion of any party filed at any time, the Commission may take any action that it could have taken under ~~§ 6-92~~ Section 6-93 (b)(1) in case of fraud, mistake or irregularity.

(4) *Clerical Mistakes.* Clerical mistakes in the Opinion and Order or other parts of the record may be corrected by the Commission at any time on its own initiative, or on motion of any party after such notice, if any, as the Commission orders. During the pendency of an appeal, such mistakes may be so corrected with leave of the Court.

Section 6-94. Reporting Requirements.

(a) On or before September 30 of each year, each landlord shall complete and submit to the Department a Rent Report for the twelve month period ending on the preceding June 30 on a form provided by, and in the manner prescribed by Department Regulations.

(b) Failure to file a complete or accurate rent report by September 30 of each year shall constitute a violation of this Article, unless an extension of time for good cause is granted by the Department.

(c) A landlord who deliberately, willfully, or knowingly submits a rent report which is false or inaccurate in whole or in part shall be charged with a Class A misdemeanor offense.

Section 6-95. Review of Rent Stabilization.

The Council shall conduct a review of the Rent Stabilization provisions of this Article every three years. Such review shall include any analysis and recommendations of the Department on whether there is a shortage of affordable housing adversely affecting the City. Subsequent to such review, Council shall

determine whether Rent Stabilization should continue in the City.

Section 6-95.1. Rent Stabilization Allowance.

(a) An annual Rent Stabilization Allowance shall be established, effective on July 1st of each year. This Rent Stabilization Allowance shall equal seventy percent (70%) of the Consumer Price Index, as specified in the Department's Regulations.

(b) The Rent Stabilization Allowance and all provisions pertaining to Rent Stabilization in this Article are applicable to all rental units, except the following:

(1) Any establishments which have as their primary purpose the diagnosis, cure, mitigation and treatment of illnesses.

(2) Any accessory apartment.

(3) Any single family dwelling provided that the landlord owns no more than one rental facility in the City.

Section 6-96. Increases in Rent.

(a) Annual Rent Increases

(1) The rent for any rental unit may be increased only once within a twelve month period.

(2) An annual rent increase shall be no higher than the Rent Stabilization Allowance in effect at the time that notice is given to the tenant.

(b) Allowable Additional Rent Increases

(1) Notwithstanding the provisions of Section 6-96(a) if a rental unit becomes vacant as a result of a termination of the tenancy by the tenant or a termination of the tenancy by the landlord for cause, a landlord may increase the rent for such rental unit by the actual dollar amount of any annual Rent Stabilization Allowances which were not charged to the tenant vacating the rental unit. This rent increase may be in addition to any Rent Stabilization Allowance increase which the landlord may impose on or after twelve (12) months from the date of the last Rent Stabilization Allowance increase for that rental unit.

(2) During the pendency of a hardship petition or capital improvement petition to increase rents above the Rent Stabilization Allowance, rent increases up to the Rent

Stabilization Allowance may be taken on the rental units which are the subject of the petition on or after the anniversary date of the last rent increase. If an additional rent increase pursuant to a petition is subsequently approved by the Commission, it may be taken pursuant to the terms and the conditions of the administrative decision and final Order and may be retroactive to the date indicated in the notices of rent increases to the tenants.

(c) Notice of Annual Rent Increases A landlord shall not increase or attempt to increase the rent for any rental unit without having first given the tenant(s) living therein at least two months written notice of the increase, except in such a case where a rent escalator clause is contained within the lease.

(1) The notice of rent increase shall be in the form and manner prescribed by Department Regulations.

(2) If, during the pendency of a notice called for in this Section, the Rent Stabilization Allowance is raised or lowered by the Council, a landlord may charge rent up to the Rent Stabilization Allowance in effect on the date the notice was given.

(3) In any case where a rent escalator clause is contained within the lease, a notice of the increase in rent of not less than one month nor more than two months must be given, in accordance with Section 6-80.3 (b) of this Article.

(d) It shall be unlawful for any landlord to increase or attempt to increase the rent for any rental unit if any of the following conditions exist at the time the notice of rent increase is given. Furthermore, a rent increase shall not take effect if any of the following conditions exist at any time during the pendency of such notice of rent increase:

(1) The common area(s), exterior structure(s), and common facility(s) of the rental facility in which the rental unit is located or the rental unit itself have any serious violations at the time the notice of the rent increase is given to the tenant.

(2) The rental unit has any violations of the standards prescribed in Article 2, Chapter 6 of the Takoma Park Code, as amended, for which notice has been served on the landlord by the Department prior to the notice of the rent increase, and for which violations the time allowed for their correction has lapsed.

(3) The landlord has unpaid City taxes, fees, or fines with regard to the rental facility.

(4) The landlord does not hold a current and valid City rental license for the rental facility.

(5) When the landlord has not filed required rent reports for the three (3) years prior to the effective date of the rent increase.

(6) When the landlord has failed to comply with a final Order of the Commission concerning any rental unit owned by the landlord in the City of Takoma Park, unless the Order has been appealed to the Circuit Court and no decision has been rendered on the appeal.

(e) Once the conditions stated in Section 6-96(d)(1)-(6) above have been corrected, a landlord may increase the rent pursuant to Section 6-95.1 of this Article. However, it shall be unlawful for a landlord to charge a retroactive rent increase for those months the landlord was unable to collect a rent increase due to the conditions described in ~~(e) above~~ **this Section.**

Section 6-97. Violations.

(a) The following shall be municipal infractions:

(1) Any violation of the following Sections of this Article:

6-80	Lease Requirements,
6-80.1	Lease Term Requirements,
6-80.2	Leasing Fees,
6-80.4	Occupancy Restrictions,
6-81	Obligations of Tenants and Landlords,
6-82	Entry,
6-84	Fees,
6-85	Utilities Transfer,
6-88	Department Investigation and Conciliation,
6-95.1	Rent Stabilization Allowance, and
6-96	Increases in Rent.

(2) Any failure to obey a lawful Order of the Commission.

(3) Any interference or obstruction or attempt to interfere with or obstruct the Commission or the Department or anyone acting on behalf of either agency in the discharge of its functions under this Article.

(4) Failure to file a Rent Report or failure to file a complete Rent Report in accordance with Section 6-94(a) of this Article.

(b) Each day a violation exists shall be considered a separate violation, constituting a municipal infraction.

(c) An illegal rent increase is a separate violation constituting a municipal infraction for each day that it is imposed or attempted to be imposed, not merely on the day that the landlord seeks to collect it.

(d) The imposition or attempted imposition of a rent increase above the Rent Stabilization Allowance without the prior approval of the Commission except as provided in Section 6-96(b)(1) of this Article shall be considered a separate violation constituting a municipal infraction, for each rental unit affected.

(e) The imposition or attempted imposition of a rent increase without substantial compliance with the notice provisions in this Article shall be considered a separate violation constituting a municipal infraction for each rental unit affected.

Section 6-98. Enforcement Authority and Penalties.

(a) The Department is authorized to enforce the provisions of this Article by any appropriate means. This shall include but not be limited to the promulgation of regulations by the Department.

(b) Unless otherwise provided for, and in addition to any other penalties provided by law, any violation of this Article which is designated in Section 6-97(a)(1) of this Article to be a municipal infraction, shall be a Class C offense, unless the violation poses or has posed a clear and imminent danger to the health and safety of the tenant, or poses or has posed substantial hardship upon the landlord or the tenant. Such exceptional violation shall be a Class A offense, which carries the highest civil penalty permitted by law. See also Section 1-19 of the Takoma Park Code, (Municipal Infractions).

(c) A landlord who fails to file a Rent Report or fails to file a complete Rent Report in accordance with 6-94 of this Article may be issued a municipal infraction citation for a Class A offense. See also Section 1-19 of the Takoma Park Code, (Municipal Infractions)

(d) A landlord who deliberately, willfully, or knowingly submits a Rent Report which is false or inaccurate in whole or in part may shall be charged with a Class A misdemeanor.

(e) Any party who fails to comply with a Commission Order may be issued a municipal infraction citation for a Class A offense, which carries the highest civil penalty permitted by law. See also Section 1-19 of the Takoma Park Code, (Municipal Infractions). In addition to any penalty provided herein, compliance with a Commission Order may be effectuated by any appropriate action in any court of competent jurisdiction.

(f) Any person who fails to comply with a subpoena issued pursuant to this Article may be issued a municipal infraction citation for a Class C offense. See also Section 1-19 of the Takoma Park Code, (Municipal Infractions).

(g) Without limitation or election of any other available remedy, the City may apply to a court of competent jurisdiction for an injunction enjoining any person from violating this Article. The court may award attorney's fees and costs to the City when it obtains an injunction hereunder.

(h) In the event that a landlord or anyone acting on behalf of a landlord brings an action for failure to pay rent or for possession of the rental unit based on the tenant's failure to pay rent or fees that are found by the Commission on Landlord-Tenant Affairs to be unlawful, the court shall dismiss the action against the tenant and may award to the tenant his or her attorney's fees and costs incurred in defending against the landlord's action.

Section 6-99. Statute of Limitations.

(a) Any action, other than a Commission complaint for unlawful imposition or collection of rent, sought to be maintained under this Article shall be brought within one (1) year of the time the person bringing the action would reasonably be expected to have notice or knowledge of its occurrence, unless otherwise expressly provided for.

(b) Any Commission complaint for unlawful imposition or collection of rent, sought to be maintained under this Article shall be brought within two (2) years of the time the affected tenant would reasonably be expected to have notice or knowledge of its occurrence. Each collection of rent that the Commission determines to be unlawful shall constitute a new violation of this Article.

(c) This Statute of Limitations shall not run during the pendency of an action before the Commission, or an appeal therefrom. Nothing contained herein shall be interpreted as limiting the time in which an action may be brought under some other law for which there is a longer statute of limitations.

SECTION TWO:

Chapter 6, Housing, Article 8, Tenant Opportunity to Purchase, of the Takoma Park Code, is hereby amended as follows:

- Section 6-81 becomes Section 6-100
- Section 6-82 becomes Section 6-101
- Section 6-83 becomes Section 6-102
- Section 6-84 becomes Section 6-103
- Section 6-85 becomes Section 6-104
- Section 6-86 becomes Section 6-105
- Section 6-87 becomes Section 6-106
- Section 6-88 becomes Section 6-107
- Section 6-89 becomes Section 6-108
- Section 6-90 becomes Section 6-109
- Section 6-91 becomes Section 6-110
- Section 6-92 becomes Section 6-111
- Section 6-93 becomes Section 6-112
- Section 6-94 becomes Section 6-113
- Section 6-95 becomes Section 6-114
- Section 6-96 becomes Section 6-115
- Section 6-97 becomes Section 6-116
- Section 6-98 becomes Section 6-117
- Section 6-99 becomes Section 6-118
- Section 6-100 becomes Section 6-119

Chapter 6, Housing, Article 9, Licensing of Rental Units, of the Takoma Park Code, is hereby amended as follows:

- Section 6-101 becomes Section 6-120
- Section 6-102 becomes Section 6-121
- Section 6-103 becomes Section 6-122

Section 6-104 becomes Section 6-123
Section 6-105 becomes Section 6-124
Section 6-106 becomes Section 6-125
Section 6-107 becomes Section 6-126
Section 6-108 becomes Section 6-127
Section 6-109 becomes Section 6-128
Section 6-110 becomes Section 6-129
Section 6-111 becomes Section 6-130
Section 6-112 becomes Section 6-131
Section 6-113 becomes Section 6-132
Section 6-114 becomes Section 6-133
Section 6-115 becomes Section 6-134
Section 6-116 becomes Section 6-135
Section 6-117 becomes Section 6-136
Section 6-118 becomes Section 6-137
Section 6-119 becomes Section 6-138

Chapter 6, Housing, Article 10, Institutions, of the Takoma Park Code, is hereby amended as follows:

Section 6-120 becomes Section 6-139
Section 6-121 becomes Section 6-140
Section 6-122 becomes Section 6-141
Section 6-123 becomes Section 6-142
Section 6-124 becomes Section 6-143
Section 6-125 becomes Section 6-144

SECTION THREE:

A) This Ordinance shall become effective on February 1, 1992, at which time the City of Takoma Park's Department of Housing and Community Development and the Commission on Landlord-Tenant Affairs shall have promulgated regulations in accordance with Chapter 2, Article 5 of the Takoma Park Code (Administrative Regulations Ordinance), to carry out the provisions of this Ordinance.

B) No Petition to Increase Rents in excess of the 4% Rent Stabilization Allowance pursuant to 6-80.17(g - i) of the Takoma Park Code shall be accepted for filing from the date of adoption of this Ordinance through January 31, 1992. Beginning February 1, 1992, Rent Increase Petitions shall be governed by the provisions of Section 6-91 of this Ordinance.

Adopted by Roll Call Vote on this _____ day of _____, 1992 as follows:

- Aye:
- Nay:
- Absent:
- Abstain:

CITY OF TAKOMA PARK, MARYLAND (FINAL 2/6/92)

Regular Meeting and Public Hearing
Monday, January 27, 1992

CITY OFFICIALS PRESENT:

Mayor Sharp	Dep. City Admin. Habada
Councilmember Elrich	City Clerk Jewell
Councilmember Hamilton	DHCD Director Grimmer
Councilmember Johnson	Corp. Counsel Silber
Councilmember Leary	
Councilmember Porter	
Councilmember Prensky	

The City Council convened on Monday, January 27, 1992 at 8:06 p.m. in the Council Chamber at 7500 Maple Avenue, Takoma Park, Maryland. Following the Pledge of Allegiance, the Council made the following remarks.

MAYOR/COUNCIL COMMENTS:

Mr. Sharp announced that on Monday, January 20th, the City held a very successful celebration honoring Dr. Martin Luther King. He noted for the first time, there would be efforts growing out of the ideas of the Martin Luther King Commemoration Committee that would deal with issues of violence and nonviolence to carry Dr. King's memory over throughout the year. Mr. Sharp congratulated the committee and the Chair, Councilmember Johnson, for a good program that was put on in a short period of time.

Mr. Sharp announced that on February 12th and 13th, there would be a candidates forum for the Fourth Congressional District candidates, to be held in the Council Chamber at 7:30 p.m. on each night. He noted that there were 13 Democrats and, at this point, 7 Republican candidates. This would be an opportunity for people to see the candidates in the Congressional race and ask them questions. The event was being organized by the South Of Sligo Citizens Association. The Mayor noted that to date, 3 Republicans and 7 Democrats had confirmed their attendance.

Ms. Porter announced that on January 29th, at 7:30 p.m., there would be a meeting with the parents at Carole Highlands Elementary School and Lois Hobbs, the superintendent of schools for that area. Ms. Porter noted that this was the second meeting with Mrs. Hobbs and she encouraged anyone who was concerned about their local school to attend.

Mr. Johnson said it had been stated at the outset that this celebration was not intended to be a "feel good" celebration. He said the Committee tried to draw attention to the fact that four Takoma Park residents had lost their lives in the past year as a result of violence. Mr. Johnson said that while the death rate has fallen in this country, the death rate of young black males between 18 and 25 years of age has continued to rise in epidemic proportions. He said he looked forward to the City playing a leadership role in addressing this issue in a creative way in the years ahead. Mr. Johnson said this was what non-violence was about, was what Dr. King stood for, and what he hoped this City stood for as well.

Adoption of Minutes from December 9, 1991, December 16, 1991 and January 13, 1992

Mr. Sharp noted that at his request, the City Clerk did not put forth the November 12th Minutes for Council consideration until some additional corrections he had given her could be incorporated. Mr. Hamilton moved adoption of the 12/9/91, 12/16/91 and 1/13/92 Minutes; seconded by Mr. Prensky and the Minutes were adopted unanimously.

Citizens Comments (those directed at items not on Council's Agenda):

Hank Cox commented that he had read an article in the National Journal about the Peace Agreement in El Salvador which stated that Santa Marta was in the center of communist territory. He said he has followed this issue for a couple of years, and at no time did people promoting the relationship in Santa Marta indicate that the City was reaching out to embrace the seat of the communist movement there. He asked the Council if they were aware of this information when they reached out to adopt Santa Marta as the Companion City, and he questioned if there was never a debate on the basis that this is the seat of the communist movement in El Salvador.

Mr. Elrich said the fact that they met in Santa Marta did not make it the head of the communist movement of El Salvador. Mr. Elrich said talking about these people as communists was a gross overstatement--most were genuine nationalists. He said it never appeared to him that this was somehow a haven for the communist party of El Salvador.

Mr. Prensky said he has visited Santa Marta as an official representative of City, and in the 10 days he spent in that country, he met no one who talked about communist revolution or who identified themselves as a communist. The people of Santa Marta did not want to support the army and the rebels; they wanted to support peace. He said peace will now be possible in El Salvador through the efforts of a lot of people, including a Takoma Park resident, Mr. Bernard Aronson of the State Department. He said this is a result that everyone could be pleased with and the characterization of ideological proportions are incorrect based on his observations in Santa Marta and his knowledge of the entire history of the conflict.

Mr. Johnson said that he never visited Santa Marta, but he always thought that the evil empire was our friend and if the comments he heard meant that City could take credit for having effective international policy by bringing peace to that war-ravaged country, we should accept that.

Mr. Leary said he agreed with Mr. Prensky that we should be thankful for the recent peace accord. The most important contribution that Takoma Park made towards this very positive outcome was the work of Bernie Aronson, a Takoma Park citizen who probably did more to bring peace to El Salvador than any other American.

AGENDA

Mr. Sharp noted that there was an error in the agenda that was mailed out regarding the description of agenda items #3 and #4; the descriptions for each item were mixed.

1. Public Hearing on Proposed Charter Amendment Regarding Non U.S. Citizens Voting in Takoma Park Elections. Mr. Sharp noted that one of the recommendations received from the 1991 Elections Task Force was the consideration of this issue. He said that the Council decided to put the issue up as an advisory referendum in the November 1991 City election and the question had been passed favorably by Takoma Park voters.

Citizen Comments

Rick Lohmeyer, 7409 Flower Avenue noted that his earliest ancestor came to the United States in 1740; other ancestors followed in 1840, and others just prior to World War I, and he, 10 years ago, married a woman from Peru and he has helped bring her family here. Mr. Lohmeyer said we need the kind of people who came here in the 18th and 19th centuries for their beliefs in democracy and their hard work. He said he supports the initiative that all residents have a voice in local government whether they are a citizen or not

and Americans should not send people away who are fleeing for their lives.

Dick O'Connor, 7110 Maple Avenue, said he supported the Charter amendment; it was the right thing to do and it was being done at the right time. Mr. O'Connor cited Article 7, Section 701(a) of the Charter Amendment resolution and said he thought it was unusual that due to the transient nature of this jurisdiction that residents could register to vote after only residing here 30 days. He asked the Council to consider extending the requirement to 6 months and said he believed that the residency requirement was as essential as giving the right of enfranchisement to an individual. He said a person should be an integral part of the community first.

Margie Garey, 7018 Poplar Avenue noted that 368 residents had abstained from voting on the November 5th referendum; saying that some did not understand it; others said it did not make a difference since most Councilmembers said they would be voting how they felt without regard to the meaning of the non binding resolution. Ms. Garey said she has been intimidated and hurt by others in the City because she has a conflicting view. She did not object to any naturalized citizen participating in the City's voting process and she noted that after 5 years of residency in the U.S., an eligible alien may apply for citizenship and could make a conscience commitment to join in the political and social life of their community. She said this legislation would give political power to persons who have made no commitment or legal ties to this Country or to the community. Ms. Garey said it was strange that the Council used the Constitution when they wanted certain rights preserved and said that they should not be hypocritical--they should stand by the Constitution and encourage those who wished to vote to become citizens and preserve our Country.

James Jeffas, 7600 Hammond Avenue said that the first thing his relatives did upon coming to this country, was to become citizens. Mr. Jeffas said he has even helped people to become citizens. He said it was a small effort to become a citizen; if a person wanted to live in the United States, swear allegiance to the U.S., not to some other country. He asked the Council not to amend the Charter.

Richard Csarney, 1101 Holton Lane noted that when we pledge allegiance to the flag we must remember we're pledging ourselves to the good of the Country and to the Constitution of the U.S. He said the issue was not simply about exercising rights, it was about a reciprocal relationship of rights and obligations. He said the resolution fundamentally weakened that relationship and he questioned what the resolution sought to solve and what discussion took place to insure that this solution is a solution to the problem that is seen. He said the City should not weaken the fundamental reciprocity of citizenship rights and obligations without a truly proportional reason. He encouraged the Council to do more education on the people of Takoma Park and look to see if the proposed solution was the real solution.

Odessa Burnett, 1110 Jackson Avenue said she was opposed to the Charter change.

Rein Parris, 7620 Maple Avenue said he was in support of allowing non citizens to vote. He said he and his father worked on the Panama Canal for many years for the United States government, and he was never recognized as a Civil Service worker until the 1950s. He said his five sons served in the armed forces for this country, and when he came to the States in the 1970s, he had a chip on his shoulder until he met many residents in Takoma Park, such as Karen Mitchell, who made him feel Takoma Park was an example for the entire United States. Mr. Parris said he has volunteered on many community efforts and there were many others like him, and he questioned why a person wasn't considered a resident until they applied for permission to live here.

George Leventhal, 8200 Flower Avenue, said that he was one of the organizers of the Share the Vote Campaign, and he thanked the Mayor and Council for considering this issue. Mr. Leventhal said the only issue before the Council was whether to allow non residents to vote and the amendment of the Charter. He urged the Council to adopt the Charter Amendment, as the voters on November 5, 1991 suggested that they do. Mr. Leventhal said that there had been a shattering of the stereotypes that existed about who the non citizens really were. He said they were hard working neighbors who participated in their community. Mr. Leventhal thanked City Clerk Paula Jewell for her work on this issue and for the work that she will be expected to do if this initiative was passed. Mr. Leventhal then offered a new preamble to the Charter Amendment resolution.

Lissa Martinez, 7103 Cedar Avenue read testimony from Rudy Arredondo at 7105 Woodland Avenue who urged the Council to support the Charter amendment resolution on behalf of the disenfranchised Hispanic community and other ethnic communities which had to maintain their anonymity due to their undocumented situation.

Ms. Martinez, in her own testimony said she was pleased that Takoma Park citizens voted to accept this Charter amendment, and she thanked all Takoma Park citizens, the Election candidates, and the citizen associations who raised the non citizens voting referendum in various public forums. She said the public's support spoke well to Takoma Park's commitment to open process. Ms. Martinez urged the City Council to accept the idea that immigration is federal business and not local business.

Saul Schneiderman, 306 Lincoln Avenue spoke in support of the referendum and said Takoma Park was about sharing and extending participation in our City government on the basis of the fact that people who live here have knowledge, experience and the right to determine the future of their own neighborhoods. He said he worked with a woman from El Salvador who was very aware of what goes on in her neighborhood and wanted to partake in it, and this was how you started off when you come to this Country. He said the proposal is to incorporate people, not to separate them.

Leah Parrish, Director of CASA de Maryland, a non profit organization in Takoma Park serving the Salvadoran and Guatemalan community, spoke to the issue as it served the Salvadoran and Guatemalan communities and cited the City's sanctuary law which welcomed these groups to Takoma Park. Ms. Parrish urged the Council to take the step to incorporate these refugees and all other Takoma Park residents.

Brian Hughes, 7107 Cedar Avenue said he has been a taxpaying, home-owning Canadian since 1975, and that his wife, Lissa Martinez, as an Elections Task Force member, first raised the question of allowing non citizens to vote. Mr. Hughes thanked the last City Council for allowing the advisory question and he urged the present Council to amend the Charter.

Larry Drake, 7428 Carroll Avenue, said he wondered where Dr. Martin Luther King would stand on this issue, but he thinks that Dr. King would have supported this. Mr. Drake said that allowing non citizens to vote would enrich and enhance life in Takoma Park and he hoped the Council would support the amendment.

Joan Jacobs, 7428 Carroll Avenue said she was in favor of the proposed Charter amendment and the Task Force that came up with the proposal was very visionary and in touch with the tradition of Takoma Park. Ms. Jacobs said it was ironic that the City provided a sanctuary but hadn't provided standing to the people in our community to participate in the decision.

Julie Matthews, 605 Hudson Avenue said while serving as a poll watcher at the November Election, she met and spent time with a

woman named Maggie who came to U.S. in the 60s and who had accompanied an American friend to City Hall on Election Day so she could see how the election process worked. Because Maggie was not a U.S. citizen, she could not vote, but thanks to the cooperation of the Election Judges, she was able to observe how the entire process worked. Ms. Matthews said that Maggie was very excited and asked that everything be done to allow her to be able to vote. Ms. Matthews said that Maggie and the rest of the non citizens deserved to have a say in the running of Takoma Park and she asked the Council to amend the Charter.

Tom Anastasio, 32 Columbia Avenue said that although he was very much in support of this issue, he originally asked the Council to vote on this without a referendum, but he was glad there was an advisory referendum. He urged the Council to not stipulate whether those allowed to vote should have legal or illegal status. He said the Council would get some pretty terrific people who would be voting in Takoma Park and he urged the Council to adopt the Charter amendment.

Carol Thomas, 7409 Flower Avenue said she taught in Canada prior to coming here, and there were french Canadians who didn't see themselves as citizens of Canada who struggled to break off from the rest of Canada and become their own Country. Ms. Thomas said the concept of the separateness and difference made her feel uncomfortable. She said our Country has prided itself on being a great melting pot and the ultimate action in becoming one with the Country was becoming a citizen. She said she was concerned about people who have not become citizens for one reason or another. She reminded earlier speakers who spoke about their ancestors coming to this Country, that everyone other than American Indians were non-native people here. Ms. Thomas urged the Council to vote against allowing non citizens making policy in this community.

Condie Clayton 7710 Maple Avenue, said that while he was campaigning, he talked to a number of people on this issue and found there was a lot of emotion associated with this. He said the right to vote was a very basic and fundamental right and that each of us should have the opportunity to participate in.

Jamie Raskin, said that the debate in November made him very proud to be a resident of Takoma Park; the issue was debated intelligently and thoroughly and the community made up its mind in November. He said early in history, some of the original states allowed non citizens to vote. Responding to earlier arguments, Mr. Raskin said while the U.S. Constitution was silent on this issue, it neither forbids it or compels it. Mr. Raskin also referred to two issues that have come up since the Election: (1) the question of whether the Charter should specify that only lawfully present residents be allowed to vote. Mr. Raskin said this would be a bad idea as it would deter from the ballot box the people you would want to attract. He said as an example, persons here on student visas who later obtained work visas and arrived several weeks later were technically not present, and it would not be in the City's best interest to keep track of everyone's immigration status. (2) Regarding the question of the potential danger to undocumented workers, he said there was no serious risk of those workers mistaking a Takoma Park voter registration card for an INS green card and he offered a suggestion for language on the registration form: "Registering to vote in Takoma Park is for the purposes of participating in local government. It effects no change in the registrant's immigration status and does not confer U.S. citizenship on those who do not have it."

Ligia Becker, Columbia citizen and resident of Takoma Park for twelve years, thanked the Council for giving residents of Takoma Park the opportunity at a chance to vote.

Kay Dellinger, Hampshire Towers said she supported extending the right to vote to non-citizens in Takoma Park and said she

campaigned for the referendum last November. Commenting on the process, Ms. Dellinger said the resolution should have been printed in the Newsletter before the public hearing. She said all of the Council should follow the entire City's vote on the referendum and not what was voted per ward.

Michael Clinansmith, 7710 Maple Avenue said that everyone was an immigrant and a creation of our past--not one single group could claim to be native Americans. Mr. Clinansmith said that racism that may be the reason why there are people who fear allowing new people in.

Enid Aleman, 7118 Woodland Avenue said that she has represented a lot of people in deportation proceedings, and said that the City could not discern who is and who isn't in the legal category--even immigration law has trouble with the issue. She recommended the Council not distinguish which categories should be allowed to vote. Ms. Aleman said that the new immigration law that went into effect in October was an attempt to bring business into the U.S.

Henry Quintero, the Hispanic Alliance of Montgomery County commented that his organization supported the prompt implementation of the referendum so that a registration system could be established to allow every resident of Takoma Park, regardless of status, the right to vote. He said the Hispanic community has been criticized for not participating in the life of the City and the implementation of this law would provide an opportunity to begin civic education programs and help to make Hispanics an integral part of the political process and a participating sector of the community.

Dan Robinson, 120 Grant Avenue said that he and his wife have supported the efforts of an employee of theirs who is from El Salvador, to become a citizen, and that this initiative would help not only her but all the citizens of El Salvador.

Michael Heffner, read a letter from Robert Callahan, President of the Prince George's Civic Federation, who opposed the proposal in the past and continues to do so. Mr. Heffner said that the voters in the Prince George's County wards of the City voted against the referendum in the majority. Mr. Heffner spoke against enfranchising non U.S. citizens, regardless of their legal or illegal status. He noted the numbers of those abstaining from voting on the question and said these can be looked at as either voting against or abstaining on the issue. Mr. Heffner said that next week, a vote was scheduled to be taken in the Maryland State House of Delegates, on a bill introduced by Delegate John Morgan, to remove the loophole for allowing municipalities to make their own choices regarding citizenship requirements for voting and said this will necessitate a binding referendum in November. Mr. Heffner asked the Council to consider the consequences of passing this legislation.

2. 1st Reading Resolution Amending City Charter to Allow Takoma Park Residents Who Are Not U.S. Citizens The Right To Vote In City Elections. The Resolution as proposed was moved by Mr. Sharp and seconded by Mr. Prensky. Mr. Sharp noted that his motion would include the complete substitution of the Whereas clauses with the Preambles proposed by George Leventhal.

Council Comments

Mr. Sharp directing his remarks to speaker, Margie Garey, said that people do not have a right to engage in abusive action; he said it reduced the willingness of others to participate in democracy. He expressed regrets that this happened to Ms. Garey just because she expressed an opposing view. Mr. Sharp also said he was not aware that candidates said they would vote their own views regardless of how the vote came out. He said he had stated that he supported the proposal strongly but would respect the outcome of the vote. With regard to the loophole issue, if the law was silent this did not

mean there was a loophole. It just meant that the legislative body who passed the law in the first place didn't see fit to legislate the issue of allowing local governments to make their own choices. Mr. Sharp said the Council ought to accept the broadest reading of what was mandated in the City Election: it did not provide limitations on who may vote.

Mr. Prensky moved a clarifying amendment to Section 703(a) so that it would read: "Any resident of Takoma Park who is a United States citizen may register to vote at the board of election supervisors for the various counties". Mr. Prensky said he would not want to encourage United States citizens who wished to avoid the Counties' jury systems to take advantage of this separate registration process.

Mr. Johnson said that the Resolution would not have his support and as he had indicated during the Election, that he would be bound by the voters' decision in his ward, and his ward voted against it three to one. Mr. Johnson said he did not feel this City should get involved in national immigration policies. He said that to compare the situation with blacks, women and others who were at one time disenfranchised; those conditions existed with people who were born in this Country. Mr. Johnson said he was not suggesting that the participation of others was not a rich and valuable one because it was; however he said we must value the citizenship of those who have already gone through so much. He said he would hope that his vote was not misinterpreted as his being "anti" any group. Mr. Johnson said that there were many who gave their lives so that all citizens of this Country should vote and for that reason citizenship carried a commitment to this Country.

Mr. Hamilton said he would support the Resolution because it was one of the campaign promises he made. He said in Ward 4, there are a lot of residents who volunteer in a number of activities. He said the Council does not need to live on the mistakes others made 400 years ago. No one in his ward called him and expressed their opposition to this. He said this amendment was very critical to the people in this community and in Ward 4 which has become an international community. Mr. Hamilton said it was important to also realize that this amendment would give non U.S. citizens the right to run and be elected to the Council; and he said he did not have any problems with this.

Ms. Porter commented that this was a very important issue and she was proud of the way the community was handling it. She said she was sorry to hear Mrs. Garey had received abuse on this issue. She commented that sometimes in dealing with certain issues, the Council has to struggle to hear exactly what it is the community wants but here the Council had a clear mandate. Ms. Porter said that Councilmembers wear two hats: they have to represent their wards and as a body, the entire City of Takoma Park. She said that when she campaigned, she told people she would support whatever way the question went; she didn't anticipate that her ward would vote one way and the City would go the other, and she has had to think a lot about who she represented on this issue. Ms. Porter said this was a City-wide issue that affected the votes of the people City-wide and that she would support this and follow the majority of voters in the City. She said she hoped the City would put into place procedures that would prevent people from registering under this separate process just to avoid jury duty. Ms. Porter also said she hoped the Council would not consider a longer residency requirement because she was sure that people could make an informed choice in a 30-day period of time.

Mr. Elrich said he supported the resolution in its current form without any restrictions. He said there were people who were not born here who made a considerable contribution to this community and the right to vote should be extended to them. Mr. Elrich said he was sympathetic with the broader issue of citizenship, but that was not the real issue. He said the real issue was that the people

who lived here should help shape the community.

Mr. Leary said he urged his constituents to vote in favor of this question on the November 5th ballot and said he would vote in favor of the resolution now. He said his only misgiving was the potential symbolic message sent in taking this action; he said he was not intending or encouraging illegal immigration, and he did not feel that this action would do that. Mr. Leary said that Brian Hughe's and Jamie Raskin's suggestions to add statements to the voter registration form should be considered by the Council.

Mr. Sharp noted the receipt of two letters: Jim Douglas, 18 Sherman Avenue, said he was in support of the resolution; and Bernice Westbern, 7132 Carroll Avenue, said she was opposed to the resolution.

Mr. Prensky said he was honored to be associated with Share The Vote Campaign and he would be honored to cast his vote in favor of the Resolution. He congratulated everyone living in Takoma Park on the sanity and seriousness in which the debate was taken, and he too apologized to Ms. Garey for the inappropriate behavior of others. He said the large number of abstentions of this particular ballot could be explained, and said that some residents said they did not see the referendum question on the voting machine ballot. Mr. Prensky said that the Declaration of Independence stipulated that government justly derived its powers from the consent of the government; he said it didn't give anyone the right to propose new laws based on who had certain status. Mr. Prensky said if people had to live by the laws that the government passed, then the government's power was derived by the people's consent and that it would be a significant and broader consent if everyone who lived here and were qualified to vote told the government what they thought. Mr. Prensky commented that on any night when people come to speak to the Council, no one was questioned as to their citizenship status.

Citizens Comments on Resolution

Brian Hughes said that he is a citizen here in this Country and he lived here with his wife and they have given this country two children, and all he was asking for was the right to vote for the mayor and councilmembers of this city and not on a national level.

Mrs. Garey thanked the Council for their apologies and asked the Council to continue to stand by the laws of this country by not voting in favor of the referendum.

Ms. Dellinger said that in Ward 6, the vast majority of the residents did not vote because they could not vote; she said there were large numbers of non citizens in Ward 6 who could not vote, and so the people of Takoma Park voted for them. She said that Mr. Johnson specifically said he would vote the way the referendum came out and she said it was not a Ward 6 referendum. She said the people of Takoma Park voted this up.

Council Comments

Mr. Johnson said his position as indicated by Ms. Dellinger had been misstated. He said clearly he indicated during the Election that he would be bound by the collective wisdom of the voters in Ward 6 and to suggest that he said anything else is simply not true.

Ms. Porter offered an amendment to the last Whereas clause in the new preamble which stated that the majority of Takoma Park voters voted to allow residents.... Ms. Porter said that, technically they can't vote to allow residents, they voted a non binding referendum to allow residents..., but in order to be clear, she suggested that the language read "... the majority of voters voted on November 5th in a non binding referendum to ..."

Council Action: The Resolution, as amended, was accepted at first reading by roll call vote as follows: AYE: Sharp, Elrich, Hamilton, Leary, Porter and Prenskey; NAY: Johnson.

RESOLUTION #1992-5
(Attached)

3. 2nd Reading Ordinance: Technical Amendments to Article 7 and Article 8; Renumbering of Article 8. (Mayor Pro Tem Leary presiding).

COLTA Executive Director Liz Tracey explained that this version of Article 7 was essentially the same that passed at first reading except for the areas shaded.

Michael Clinansmith - said the issues presented in Article 7 were of some concern to the people he represented in his tenants association. He said that his understanding of technical amendments were that they were minor; however, the issues regarding variable rate mortgages were not considered technical but substantive.

Corporation Counsel Sue Silber explained that many of the amendments were correction only, and that in the section regarding interest rates, there were some substantive changes made, but these had all been discussed at length by citizens and the Council earlier on.

Mr. Clinansmith asked what the substantive amendments were that were going to be changed from the Ordinance that was adopted in November.

Ms. Tracey explained that pursuant to the advice they hired to review the City's model, the Council decided to allow for an increase of interest rate expenses of 3 percentage points or higher, rather than 5 percentage points, for one year and then the landlord would have to prove that the interest rate had not changed in order to continue to get that increase in subsequent years. Ms. Tracey said there was another change in the refinancing pass through provisions that provided for rent increases amortized over the remaining length of a loan if the landlord was forced due to circumstances beyond his control to refinance his mortgage particularly when a balloon payment was due.

Mr. Elrich raised a substantive question on the nature of this point and asked if everything the Council was doing made complete sense regarding the interest rate petition. He said the Council acknowledged interest rates may bounce up and then down and by setting the trigger rate of 3 percent over the base year, seemed to indicate that if it was 2 percent over the base year it was a livable amount of change that fell in line with the Council's notions of up and down movements of the rents. Mr. Elrich said that in looking at the legislation, it seemed that if it hit 3 percent, then the full cost of the interest difference at 3 percent was going to be borne by the tenants; however when it was 2 percent, it was assumed the landlord could bear this. Mr. Elrich said the application of this may not be what was intended.

Mayor Sharp suggested that the Council not discuss this issue tonight. Mr. Elrich suggested going forward with adoption of everything in the Ordinance up to Section 6-91(e) and discussion the implications of Section 6-91(e) at the February 3rd worksession; the motion was duly seconded.

Council Action: The ordinance, as amended to remove and reserve aside Section 6-91(e), was adopted unanimously at second reading.

ORDINANCE #1992-2
(Attached)

4. 2nd Reading Ordinance Clarifying Language in Takoma Park's Rent Stabilization Law Regarding Allowable Rent. Mr. Hamilton moved adoption at second reading; Mr. Elrich seconded. Mayor Sharp explained that the Ordinance specified what a comparable unit meant and noted that this amendment clarified the current law. Mr. Hamilton asked if an expiration date was needed for this Ordinance. Mr. Elrich moved an amendment; seconded by Ms. Porter, to Section 1 of the Ordinance: ... to the Takoma Park Code in effect as of 1/31/92.... The amendment carried unanimously.

Council Action: The ordinance, as amended, was adopted unanimously at second reading.

ORDINANCE #1992-1
(Attached)

6. Consent Agenda - Mayor Sharp moved adoption of the Consent Agenda; Mr. Hamilton seconded the motion and the Consent Agenda passed unanimously.

(a) Resolution #1992-6, Appointing Recreation Department Director Sharon Ellis to the Takoma Park Volunteer Fire Board (Attached)

(b) Resolution #1992-7, Acknowledging Two Takoma Park Volunteer Fire Department Employees on their retirements from service. (Attached)

5. Discussion and Possible Action on Parking Enforcement Vehicle Procurement.

Referencing the memo from Public Works Director Dick Knauf, Deputy City Administrator Habada said that this purchase would be under \$10,000 and that no council action was required unless the Council consented to the purchase of two vehicles. Ms. Habada said that Staff's recommendation was to buy one Ford Festiva vehicle now.

Mr. Prenskey said he preferred to put this issue up for discussion at the Council's next worksession and not go forward with any procurement at this time. He said the Council had not agreed to go forward with the purchase of Festivas, Hyundais or any other cars and the choice to purchase any car needed to be discussed in the overall context of the vehicle replacement schedule.

Mr. Hamilton said he would not have any problems with going forward with the purchase of this one vehicle since the Council had already dealt with this issue.

Ms. Porter said the Council had a discussion about the vehicle replacement policy but it had not come to any conclusion but the Council was to take it up again and it needed to be resolved before the next budget cycle begins, but now she would support going forward with this purchase because it did not make good use of taxpayer's money to have two parking enforcement officers using one car.

Mr. Elrich said he was willing to wait until the discussion on February 3rd and then letting staff come forward a recommendation on this purchase but his concern was if the Council approved the two Ford Festivas, were they making an effective fleet policy decision about what the small vehicles meant to be in the rest of the fleet.

Mr. Leary said staff has, by way of the memo, told the Council what the options and recommendations were and these were consistent with

the decisions made by the Council thus far. Mr. Leary moved to authorize the City Administrator to go forward with the purchase of one Ford Festiva; Ms. Porter seconded the motion.

Mr. Prenskey moved to table this discussion to the February 3rd worksession; Mr. Elrich seconded it. The Motion failed 2 to 5. The Motion to authorize City Administrator to purchase one Ford Festiva passed by a 5 to 2 vote.

Upon motion, the Council adjourned at 11:25 p.m. to reconvene in Regular Session on February 10, 1992.

Introduced By: Councilmember Elrich

First Reading: 1/13/92

Second Reading: 1/27/92

Effective Date: 10/10/86

ORDINANCE NO. 1992 - 1

(Clarifying the language in Takoma Park's Rent Stabilization law regarding allowable rent increases for comparable units)

WHEREAS, several judges of the District and Circuit Courts have upheld the application of Takoma Park's Rent Stabilization law including the provisions of Section 6-80.17(n)(1)(A) of the Takoma Park Code allowing a landlord to increase the rent on a vacant unit to the level of a comparable unit in the same building; and

WHEREAS, one Circuit Court Judge has recently found the language of Section 6-80.17(n)(1)(A) to be unconstitutionally vague; and

WHEREAS, the City of Takoma Park wishes to clarify and codify its past practice of interpretation and enforcement of this provision.

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

SECTION 1. Section 6-80.17(n)(1)(A) of the Takoma Park Code in effect on January 13, 1992 is amended as follows:

(n) Vacant Rental Units.

(1) The rent for any vacant rental unit shall be established using any one of the following methods as applicable:

(A) For buildings containing comparable rental units, ~~where "comparable" is defined on the basis of square footage, amenities, and whether the rental unit is an efficiency or has one~~ (1), ~~two (2), or three (3), or more bedrooms,~~ the rent for a

comparable rental unit in the same building may be increased to the same rent as the rent of the comparable rental unit. A "comparable rental unit" is defined on the basis of the number of bedrooms, square footage, and substantially similar amenities and meets the following requirements:

i. Only rental units with the same number of bedrooms and the same square footage within 30 square feet will be considered comparable.

ii. There is a presumption that comparable rental units have substantially similar amenities. The term "amenities" includes: equipment and appliances, air conditioning, fireplaces, decks or balconies, and exposure (views, lighting from windows or skylights). A tenant may rebut this presumption by clear and convincing evidence of a significant difference in amenities.

iii. A comparable rental unit must be located in the same building as the vacant rental unit.

SECTION 2. This Ordinance shall be effective retroactive to November 10, 1986.

Adopted by roll call vote on the 27th day of January, 1992 as follows:

Aye: Sharp, Elrich, Hamilton, Johnson, Leary, Porter, Prensky
Nay: None
Absent: None
Abstained: None

Note: Underlining indicates additions to the current language of the Takoma Park Code.
~~Strikeouts~~ indicate deletions to the current language of the Takoma Park Code.

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Introduced by: Mayor Sharp
(Drafted by: P. Jewell)

RESOLUTION #1992-6

**APPOINTING A CITY STAFF REPRESENTATIVE TO SERVE ON THE
TAKOMA PARK VOLUNTEER FIRE DEPARTMENT BOARD OF DIRECTORS**

WHEREAS, as a matter of practice, two representatives from the City of Takoma Park have served on the Takoma Park Volunteer Fire Department (TPVFD) Board of Directors; AND

WHEREAS, on January 13, 1992, the City Council appointed Councilmember Gregory Hamilton to serve on the Board as the Council's representative until November 2, 1993; AND

WHEREAS, the City Council desires to appoint a City staff member to serve as the second City representative on the TPVFD Board.

NOW THEREFOR, BE IT RESOLVED THAT the City Council hereby appoints the Recreation Department's Director, Sharon Ellis, to serve as the City Staff representative member on the Takoma Park Volunteer Fire Department Board of Directors.

Dated this 27th day of January, 1992.

Introduced by: Councilmember Elrich

1st Reading: 1/13/92

2nd Reading: 1/27/92

Effective: 2/1/92

ORDINANCE NO. 1992 - 2

LANDLORD-TENANT RELATIONS
(CHAPTER 6, ARTICLE 7 OF THE TAKOMA PARK CODE)

- WHEREAS Ordinance No. 1991-34, Chapter 6, Housing, Article 7, which made a comprehensive revision to Landlord-Tenant Relations, of the Takoma Park Code, was adopted by the Council on November 12, 1991; AND
- WHEREAS after the passage of Ordinance No. 1991-34, errors in the references to certain sections in that ordinance were found and it became apparent that additional changes to the City of Takoma Park's landlord-tenant relations law (hereinafter referred to as "Article 7" were needed to make it clearer and more easily administered; AND
- WHEREAS the City Council desires to add provisions to the rent increase petition section (Section 6-91) of the Article 7 which would allow rent increases when a landlord demonstrates significant refinancing costs or mortgage interest rate increases; AND
- WHEREAS to incorporate these changes, portions of Article 7, as enacted by Ordinance No. 1991-34, needed to be rewritten; AND
- WHEREAS the Council believes that the changes made to Article 7 by this Ordinance further improve the law and its aim of promoting fair and equitable relations between landlords and tenants in the City of Takoma Park; AND
- WHEREAS Ordinance No. 1991-34 enacted Chapter 6, Article 7, Section 6-76 to Section 6-99, while Chapter 6, Article 8, is numbered from 6-81 to 6-100, thus creating separate provisions within Chapter 6 with the same section number; AND
- WHEREAS Chapter 6, Articles 9 and 10, include Section 101 to Section 125 and must be renumbered to avoid duplicate numbers caused by the renumbering of Chapter 6, Article 8; AND
- WHEREAS in the interest of clarity and enforceability, Chapter 6, Article 8, Article 9 and Article 10 must be renumbered as provided below; AND
- WHEREAS for the foregoing reasons, the Council hereby adopts this Ordinance revising Chapter 6, Housing, Article 7,

Landlord-Tenant Relations of the Takoma Park Code as it was enacted by Ordinance No. 1991-34; AND

WHEREAS the Council adopts, ratifies, and incorporates by reference the purposes and policies for revising the City of Takoma Park's Landlord-Tenant Relations Law set forth in the "Whereas" clauses of Ordinance 1991-34.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Takoma Park, Maryland:

SECTION ONE

Ordinance No. 1991-34 and Chapter 6, Article 7, of the Takoma Park Code are hereby repealed and Chapter 6, Housing, Article 7, Landlord-Tenant Relations, of the Takoma Park Code is reenacted as follows:

SECTION TWO:

Chapter 6, Housing, Article 8, Tenant Opportunity to Purchase, of the Takoma Park Code, is hereby amended as follows:

- Section 6-81 becomes Section 6-100
- Section 6-82 becomes Section 6-101
- Section 6-83 becomes Section 6-102
- Section 6-84 becomes Section 6-103
- Section 6-85 becomes Section 6-104
- Section 6-86 becomes Section 6-105
- Section 6-87 becomes Section 6-106
- Section 6-88 becomes Section 6-107
- Section 6-89 becomes Section 6-108
- Section 6-90 becomes Section 6-109
- Section 6-91 becomes Section 6-110
- Section 6-92 becomes Section 6-111
- Section 6-93 becomes Section 6-112
- Section 6-94 becomes Section 6-113
- Section 6-95 becomes Section 6-114
- Section 6-96 becomes Section 6-115
- Section 6-97 becomes Section 6-116
- Section 6-98 becomes Section 6-117
- Section 6-99 becomes Section 6-118
- Section 6-100 becomes Section 6-119

Chapter 6, Housing, Article 9, Licensing of Rental Units, of the Takoma Park Code, is hereby amended as follows:

- Section 6-101 becomes Section 6-120
- Section 6-102 becomes Section 6-121
- Section 6-103 becomes Section 6-122

Section 6-104 becomes Section 6-123
Section 6-105 becomes Section 6-124
Section 6-106 becomes Section 6-125
Section 6-107 becomes Section 6-126
Section 6-108 becomes Section 6-127
Section 6-109 becomes Section 6-128
Section 6-110 becomes Section 6-129
Section 6-111 becomes Section 6-130
Section 6-112 becomes Section 6-131
Section 6-113 becomes Section 6-132
Section 6-114 becomes Section 6-133
Section 6-115 becomes Section 6-134
Section 6-116 becomes Section 6-135
Section 6-117 becomes Section 6-136
Section 6-118 becomes Section 6-137
Section 6-119 becomes Section 6-138

Chapter 6, Housing, Article 10, Institutions, of the Takoma Park Code, is hereby amended as follows:

Section 6-120 becomes Section 6-139
Section 6-121 becomes Section 6-140
Section 6-122 becomes Section 6-141
Section 6-123 becomes Section 6-142
Section 6-124 becomes Section 6-143
Section 6-125 becomes Section 6-144

SECTION THREE:

A) This Ordinance shall become effective on February 1, 1992, at which time the City of Takoma Park's Department of Housing and Community Development and the Commission on Landlord-Tenant Affairs shall have promulgated regulations in accordance with Chapter 2, Article 5 of the Takoma Park Code (Administrative Regulations Ordinance), to carry out the provisions of this Ordinance.

B) No Petition to Increase Rents in excess of the 4% Rent Stabilization Allowance pursuant to 6-80.17(g - i) of the Takoma Park Code shall be accepted for filing from the date of adoption of this Ordinance through January 31, 1992. Beginning February 1, 1992, Rent Increase Petitions shall be governed by the provisions of Section 6-91 of this Ordinance.

Adopted by Roll Call Vote on this 27th day of January, 1992 as follows:

Aye: Sharp, Elrich, Hamilton, Johnson, Leary, Porter, Prensky
Nay: None
Absent: None
Abstain: None

January 31, 1992

ARTICLE 7

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Section 6-76. Legislative Findings.

The Council of the City of Takoma Park hereby finds that there is often unequal bargaining power between landlords and tenants, that the common law principles pursuant to which leases are interpreted as grants of right or possession rather than mutual and dependent covenants evolved in an agricultural setting and are ill-suited to the modern residential setting of this urban city; that in order to facilitate fair and equitable arrangements, to foster the development of housing which will meet the necessary minimum standards of the present day and promote the health, safety and welfare of the people as set forth in Article II of Chapter 6 of the Takoma Park Code, it is necessary and appropriate that the City define minimum respective rights and duties of landlords and tenants and provide mechanisms for the resolution of disputes between landlords and tenants.

The Council of the City of Takoma Park finds that rents in the City have increased relative to rent increases in the Washington Metropolitan Region, and that the rent stabilization levels available to landlords in the City from 1981 to the present have kept pace with or exceeded the Consumer Price Index from 1981 to the present. The Council finds that it is necessary and appropriate to continue rent stabilization in the City, and that to approve rent increases above the stabilization level upon a showing of rising costs is fair and equitable to both landlords and tenants in the City.

Section 6-77. Purposes and Policies.

The purpose of this Article is to ensure a safe, sanitary, and suitable living environment, to maintain a stable, ethnically diverse and economically heterogenous community, to preserve the quality of affordable housing, and to provide for the resolution, minimization, and prevention of landlord-tenant disputes.

Section 6-78. Applicability.

To the maximum extent permissible by the Constitution and laws of the United States and the Constitution and laws of the State of Maryland, this Article shall determine and regulate legal rights, remedies, and obligations of the parties and beneficiaries of any lease concerning any rental unit within this City, wherever executed. Any lease shall be unenforceable hereunder insofar as the agreement or any provision thereof conflicts with any provision of this Article. Such unenforceability shall not affect other provisions of the agreement which can be given effect without such unenforceable provision.

Section 6-79. Definitions.

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

(a) **Accessory Apartment** shall mean: (1) in Prince George's County, a second or third dwelling unit either in or added to an existing owner-occupied, one-family dwelling, or located in a separate accessory structure on the same lot as the owner-occupied, one-family dwelling which is located in a single-family zone (R-55); or (2) in Montgomery County, a second dwelling unit either in or added to an existing owner-occupied, one-family dwelling, or located in a separate accessory structure on the same lot as the owner-occupied, one-family dwelling which is located in a single-family zone (R-60). The accessory apartment must be for use as a complete, independent living facility with provisions within the accessory apartment for cooking, eating, sanitation and sleeping. The accessory apartment also must be an accessory use to the one-family dwelling.

(b) **Affected Tenant** shall mean any present, former or bona fide prospective tenant who experiences an illegal rent increase, a defective tenancy, a reduction in services, or retaliatory action.

(c) **Anniversary Date** shall mean the date established for a rent increase on a rental unit, and shall be at least twelve (12) full months from the date of the last rent increase for the rental unit.

(d) **Bona Fide Prospective Tenant** shall mean any person who has actually and affirmatively been seeking rental housing and who, during the course of seeking such rental housing, has received communication from a specific landlord, including but not necessarily limited to communication in the form of advertising, against which landlord he or she wishes to take action to redress an alleged violation of this Article.

(e) **City** shall mean the City of Takoma Park.

(f) **Commission** shall mean the City of Takoma Park Commission on Landlord-Tenant Affairs. The term Commission shall include the Commission members, the Commission's Executive Director and the Commission's Rents Analyst.

(g) **Commission Complaint** shall mean a complaint filed with the Department and assigned a case number by the Department which alleges a violation of Article 7.

(h) **Consumer Price Index** shall mean the Washington Area Statistical Consumer Price Index for All Urban Consumers - All Items (CPI-U) (1982 - 1984 = 100).

(i) **Defective Tenancy** shall mean any condition in a rental facility which constitutes a violation of the terms of the lease or one or more of the following Sections of this Article: 6-80 (Lease Requirements), 6-80.1 (Lease Term Requirements), 6-80.2 (Leasing Fees), 6-80.3 (Rent Escalator Clauses), 6-80.4 (Occupancy Restrictions), 6-81 (Obligations of Tenants and Landlords), 6-82 (Entry), 6-85 (Utilities Transfer), 6-86 (Notice to Vacate), or 6-87 (Tenant Rights of Association) of this Article.

(j) **Department** shall mean the Department of Housing and Community Development of the City of Takoma Park.

(k) **Dwelling** shall mean a structure which is occupied in whole or in part as a residence for one (1) or more tenants, but shall not be construed to mean any transient facilities such as boarding houses, tourist homes, inns, motels, hotels, school dormitories, hospitals or medical facilities.

(l) **Dwelling Unit** shall mean any room or group of rooms located within a dwelling, forming a single habitable unit and including cooking facilities. See also Section 6-76(y) of this Article, definition of rental unit.

(m) **Executive Director** for the Commission on Landlord-Tenant Affairs (Executive Director) shall mean the City Administrator unless otherwise designated by the City Administrator.

(n) **Housing Inspection** shall mean such examination of a rental facility or of any part thereof for compliance with Article 7 or with the standards of Article II, Chapter 6 of the Takoma Park Code as amended, as the Department deems necessary or appropriate to carry out the purposes of this Article.

(o) **Judgment Rate of Interest** shall be the interest rate set forth in accordance with Section 11-107(a) and (b) of the Courts and Judicial Proceedings Article, Annotated Code of Maryland as amended.

(p) **Landlord** shall mean any person who is the owner, the owner's agent, authorized person, lessor or sublessor of a rental unit or of the rental facility of which it is a part and, in addition, shall mean any person authorized to exercise any aspect of the management of the rental facility, except those persons engaged solely in custodial and maintenance functions.

(q) **Lease** shall mean any agreement, whether written or oral, which establishes or modifies the terms, conditions, rules,

regulations or any other provisions concerning the use and occupancy of a rental unit or a dwelling.

(r) **Maximum Allowable Rent** shall mean the highest lawful amount that can be charged for a rental unit covered under the Rent Stabilization Section 6-95.1(b) of this Article.

(s) **Notice**, unless otherwise defined in this Article, or established by Department Regulations or by Commission Rules of Procedure, shall be given in such a manner as is reasonably calculated to provide actual knowledge to the recipient.

(t) **Party** shall mean the complainant(s) or respondent(s) in a Commission complaint; or the petitioner(s) and any tenant(s) whose rent(s) are proposed to be increased in a petition for a rent increase above the Rent Stabilization Allowance.

(u) **Person** shall mean an individual, corporation, partnership, association, joint venture, organization or any other legal entity.

(v) **Petition** shall mean a request by a landlord for rent increases above the Rent Stabilization Allowance.

(w) **Rental Facility** shall mean any dwelling, structure, or combination of related structures and appurtenances, operated as a single entity, in which one (1) or more rental units exists.

(x) **Rent Stabilization Allowance** shall mean the percentage by which the rent for a rental unit may be increased on or after 12 full months from the last rent increase for that rental unit.

(y) **Rental Unit** shall mean either a dwelling unit or a rooming unit which has as its purpose occupancy by one or more tenants. See also Sections 6-79(1) and 6-79(z) of this Article, definitions of dwelling unit and rooming unit.

(z) **Rooming Unit** shall mean a rental unit comprised of any room or group of rooms located within a dwelling and forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking. See also Section 6-79(y) of this Article, definition of rental unit.

(aa) **Security Deposit** shall mean any payment of money, including the payment of the last month's rent in advance of the time it is due, given by a tenant to a landlord against nonpayment of rent or other actual damages the landlord may suffer as a result of a violation of the lease, non-payment of rent, damage to the rental unit, or other tenant obligations as prescribed in this Article.

(bb) *Serious Violation* shall, for the purposes of this Article, mean any violation designated in Section 6-16 of Article II, Chapter 6 of the Takoma Park Code, as amended, as *Serious*, which:

(1) poses a clear and imminent danger to health and safety, or a substantial hardship to the tenant; and

(2) the landlord has failed to cure, or make a good faith effort to cure the violation within the twenty-four hours after the landlord learns or should have learned of the violation.

(cc) *Tenant* shall mean any person who lawfully occupies a rental unit or dwelling as a residence and where the tenant or some other person has an obligation to pay rent for such accommodations. *Tenant* shall not mean any owner occupant of a dwelling or rental unit, or any shareholder occupant of a unit in a cooperative housing corporation.

Section 6-80. Lease Requirements.

(a) All leases or agreements, whether written or oral, shall contain a provision which:

(1) Acknowledges the landlord's responsibility to maintain the premises and incorporates by reference the standards of Article II, Chapter 6 of the Takoma Park Code as amended as a warranty of habitability.

(2) Indicates that the security deposit will be deposited and returned in accordance with the provisions of this Article and of the Real Property Article of the Annotated Code of Maryland, as amended, and informs the tenant of his right to receive from the landlord a written list of all existing damages if the tenant makes a written request of the landlord within fifteen days of the beginning of the tenant's occupancy. See also Section 6-83 of this Article (*Security Deposits*).

(3) Requires written receipts for all cash, or money orders paid by the tenant to the landlord for rent, security deposits, and other payments.

(4) Entitles the tenant to unimpaired use and enjoyment of the premises.

(5) Permits the lease to be terminated by the tenant upon one (1) month's written notice to the landlord prior to the rent due date due to an involuntary change of employment from the Washington, D.C. Standard Metropolitan Statistical

Area (as defined by the United States Census Bureau), death of a major wage earner, unemployment or for any other reasonable cause beyond the tenant's control. If death of a major wage earner, unemployment or other reasonable cause beyond the tenant's control is claimed, the lease may require the tenant to specify the cause(s) in writing to the landlord and include appropriate evidence thereof. In the event of a termination of the lease for reasonable cause beyond the tenant's control, the lease may provide that the tenant shall pay a reasonable termination charge not to exceed one (1) month's rent or the actual monetary damages sustained by the landlord as a result of the termination, whichever is the lesser amount, in addition to rent due and owing through the termination date and during the notice period.

(6) Provides for the reimbursement to the tenant for damage sustained by the tenant as a result of the negligence of the landlord or the landlord's failure to comply with any applicable law.

(7) Informs the tenant:

(a) of the existence of Rent Stabilization in the City;

(b) of the tenant's right to examine the rent reports maintained by the Department of Housing and Community Development; and

(c) of the maximum allowable rent for the rental unit along with the rent being charged for the lease term. This lease provision shall be separately initialled or signed by the tenant.

(b) Leases or agreements, whether written or oral, shall not contain any provision which:

(1) Establishes a penalty for late payment in excess of five percent (5%) of the amount of rent due for the rental period for which payment is delinquent, or which allows for late fees to be charged less than ten (10) days less after the date that rent is due.

(2) Authorizes the landlord to take possession of the rental unit and the tenant's personal property therein unless the lease has been terminated by action of the parties or by operation of law and such personal property has been abandoned by the tenant without the benefit of formal legal process.

(3) Waives the landlord's liability for damages resulting from the landlord's negligence or violation of any applicable law.

Section 6-80.1. Lease Term Requirements.

All leases whether written or oral, unless a reasonable cause exists, shall be offered for an initial term of one (1) year to be accepted at the option of the prospective tenant. The lease or an addendum to the lease must show that an offer of a one-year lease was made to the prospective tenant. This lease provision shall be separately initialled or signed by the tenant.

(a) One Year Leases.

(1) One year leases shall contain the following language in the lease or in an addendum to the lease:

The landlord shall offer the tenant the opportunity to renew the lease for a term of one year not more than three (3) months nor fewer than two (2) months prior to the expiration of the term stated herein with substantially the same covenants, terms and conditions, except for any lawful change in rent, except in cases where:

(A) The lease has been terminated by either party;
or

(B) Reasonable cause exists for offering a term of less than one year.

(2) At the time the landlord offers the tenant a lease renewal for a term of one year, the offer shall be accompanied by a waiver form which the tenant shall sign in the event that the tenant declines to renew the lease for an additional one-year term. If the offer to renew the lease includes an increase in rent, notice of such increase shall be in the form prescribed by the Department Regulations.

(3) "Reasonable cause" as used in this subsection shall mean those situations which would create undue hardship or expense for a landlord to enter into or to renew a one-year lease, such as the sale of a dwelling or rental facility with settlement to occur within a one year period or a bona fide contract to sell within a one-year period.

(4) When the landlord claims such a reasonable cause, a statement specifying the reasonable cause, and advising the tenant of his or her right to challenge the reasonable cause by filing a complaint with the Commission on Landlord-Tenant Affairs shall be included as an addendum to the lease. Such statement of reasonable cause shall be signed and dated by the landlord and a copy shall be given to the tenant or prospective tenant at or before the commencement of the

tenancy or, in the case of a lease renewal, not more than three (3) months nor fewer than two (2) months prior to the expiration of the lease term.

(b) Leases for Other Than One Year.

Leases for other than one year may be established if:

(1) The tenant agrees to a lease term other than one year; or if

(2) The landlord can establish Reasonable Cause as defined in Section 6-80.1(a)(3) above.

Section 6-80.2. Leasing Fees.

No landlord may charge leasing fees in excess of the maximum fees established by Department Regulations or the actual costs incurred by the landlord, whichever is the lesser amount. Leasing fees shall include but not be limited to: application fees, key fees, document preparation fees, and credit check fees.

Section 6-80.3. Rent Escalator Clauses.

(a) A landlord may incorporate a rent escalator clause, providing for an increase or escalation in the rent paid at the commencement of the tenancy, into a lease in the following circumstances:

(1) *Occupied Rental Units.* For occupied rental units, the landlord may provide in the lease for an increase in the rent to take effect on or after twelve full months from the date of the last rent increase ("anniversary date") for that unit. Such increase may not exceed the Rent Stabilization Allowance per Section 6-95.1(a) of this Article in effect at the time of execution of the lease.

(2) *Vacant Rental Units.* Where the rental unit falls vacant less than one year after its last rent increase as a result of a termination of the tenancy by the landlord for cause or by the tenant for any reason, the landlord may provide in the lease for a rent increase to take effect on or after the anniversary date of the last rent increase. Such increase may not exceed the Rent Stabilization Allowance per Section 6-95.1(a) of this Article, in effect at the time of execution of the lease.

(b) No such rent increase shall take effect as a result of a rent escalator clause without the landlord having first given the tenant(s) at least one (1) month, but no more than two (2)

months written notice of the rent increase prior to the effective date of the rent increase. Such notice shall be in the form prescribed by the Department Regulations and shall be provided in addition to any notice of rent increase provided in the lease.

Section 6-80.4. Occupancy Restrictions.

No landlord may refuse to lease any rental unit on the basis of a bona fide prospective tenant's household size, so long as:

(a) The household size would not exceed two (2) tenants for each room used for sleeping purposes,

(b) The household size would not violate the space (square footage) requirements provided as part of the health and safety standards specified in Article II, Chapter 6 of the Takoma Park Code, as amended, and

(c) The household size would not violate the restrictions on household size provided by applicable county zoning regulations.

Section 6-81. Obligations of Tenants and Landlords.

(a) *Obligations of Tenants.*

The obligations of each tenant shall include, but not be limited to:

(1) Keeping that part of the rental facility which the tenant occupies and uses as clean, sanitary and safe as the conditions of the rental facility permit.

(2) Disposing of all rubbish, garbage and other waste from the rental facility in a clean and sanitary manner.

(3) Keeping all plumbing fixtures as clean and sanitary as their condition permits.

(4) Using and operating all electrical and plumbing fixtures properly.

(5) Ensuring that the tenant or any person on the premises with the tenant's permission does not willfully or wantonly destroy, deface, damage, impair or remove any part of the rental facility, rental unit or the facilities, grounds, equipment or appurtenances thereto.

(6) Complying with all written rules which are consented to in writing by the tenant or which become effective after the onset of tenancy and are reasonably necessary for the

peaceful enjoyment of other tenants, health, safety and welfare of people lawfully on the property or the preservation of the property. Any such written rules issued after the beginning of the tenancy shall become effective no sooner than one (1) month after the tenant receives written notice of them from the landlord. Such rules which materially affect the health or safety of people lawfully on the property shall become effective at such date deemed necessary by the landlord.

(7) Providing the landlord with keys to any lock that the tenant installs, or allows to be installed which controls access to any part of the rental unit, or to any other part of the rental facility over which the tenant has exclusive possession.

(8) Permitting any lawful inspection.

(b) *Obligations of Landlords.*

The obligations of each landlord shall include, but not be limited to:

(1) Keeping all areas of the rental facility, grounds, facilities, equipment, and appurtenances in a clean, sanitary and safe condition.

(A) Maintenance of the grounds for a single family dwelling shall be the joint responsibility of the landlord and tenant as determined by the lease.

(2) Making all repairs and arrangements necessary to put and keep the rental unit and the appurtenances thereto in as good condition as they were, or ought by law or agreement to have been, at the commencement of the tenancy.

(3) Maintaining all electrical, plumbing and other facilities and conveniences supplied in good working order.

(4) Providing and maintaining appropriate receptacles and conveniences for the removal of ashes, rubbish and garbage and arranging for the frequent removal of such waste.

(5) Supplying water, hot water and heat as required by the standards prescribed in Article II, Chapter 6 of the Takoma Park Code, as amended.

(6) Painting each vacant rental unit as necessary between tenancies in preparation for re-rental, and repainting all rental units at least once every five (5) years. All paint must be lead-free, as specified by the standards prescribed in Article II, Chapter 6 of the Takoma Park Code.

(7) Maintaining sufficient keys to provide access to every rental unit; requiring that access to spare, master and duplicate keys be restricted; and keeping a log book of all assignments, temporary loans or other possessions of any master or duplicate keys. Said keys must be kept in a locked cabinet or safe.

(8) Re-keying between tenancies every lock on each door which provides access to the rental unit. No key which provides access to a rental unit shall provide access to any other rental unit in the same rental facility except the master key which is maintained by the landlord.

(9) Ensuring that a durable notice is posted in an accessible, conspicuous, and convenient place in a common area in each rental facility (where such a common area exists) and providing for the personal distribution of the notice to all tenants. Such notice shall contain:

(A) Current information, including the name(s), title(s), and responsible representatives of the landlord who individually or combined can be reached at all times in emergency situations.

(B) A statement that the rent of any rental unit may not be increased by more than the Rent Stabilization Allowance (and specifying the Rent Stabilization Allowance in effect as of the date of the notice) without the prior approval of the Commission on Landlord-Tenant Affairs and that rent may only be increased once in a twelve-month period.

Section 6-82. Entry.

(a) *Emergency Entry.* In any case of emergency, the landlord shall make a reasonable attempt to obtain the tenant's consent, which shall not be withheld, before the landlord or other person authorized by the landlord to act on the landlord's behalf may enter the rental unit.

(b) *Routine Entry.* In cases other than emergencies, the landlord or other person authorized by the landlord to act on the landlord's behalf, and the tenant shall have the following responsibilities:

(1) The landlord or authorized person shall only enter the rental unit to inspect the premises, make necessary or agreed upon repairs, decorations, alterations or improvements, supply necessary or agreed upon services, or exhibit the rental unit to prospective or actual purchasers, tenants, mortgagees, workers, or contractors.

(2) The landlord or authorized person shall enter the rental unit only with the tenant's consent. The tenant's requirement that he or she be provided with advance notice of the landlord's intent to enter the rental unit shall be presumed reasonable.

(3) The tenant shall not unreasonably withhold consent to enter. If the tenant has repeatedly and unreasonably withheld consent for the landlord or other person authorized to act on the landlord's behalf to enter the premises during normal business hours, including weekends, for any of the aforementioned purposes, the landlord or other person authorized to enter on the landlord's behalf may enter after forty eight (48) hours written notice. If the landlord or other person authorized to act on the landlord's behalf enters under this forty eight (48) hours notice provision, the landlord or authorized person shall:

(A) Provide the tenant with the Notice of Entry as prescribed below in Section 6-82.(c) of this Article and,

(B) Be present during such entry.

(4) The landlord or authorized person shall afford the tenant the opportunity to be present at such entry. In cases where entry is to be made by some other person authorized to act on the landlord's behalf, the tenant may request the landlord's presence during such entry.

(A) The tenant must respond to the landlord within a reasonable time period, indicating whether the tenant elects to be present at such entry and whether the tenant requires the landlord's presence during such entry.

(B) In cases where the tenant requests that the landlord be present during the entry, the landlord must monitor the activities of those persons authorized by the landlord to enter the rental unit by periodically visiting the rental unit during the period of time that such persons have access to the rental unit.

(c) *Notice of Entry.* If, for any reason, the tenant is not present at the time of entry into the rental unit, the landlord shall be required to leave a written notice in plain view in the rental unit. Such notice shall:

(1) Contain the following information:

- o the date and time of such entry
- o the time of departure

- o the reason for the entry
- o the work performed, if any
- o the names of all individuals who entered the premises
- o the address and telephone number of the Department

(2) Advise the tenant that unauthorized entry into any rental unit is regulated by law.

(3) Advise the tenant of his or her right to file a Commission complaint if the tenant believes that the unauthorized entry was not in conformity with the law regulating such unauthorized entry.

(d) *Lock Boxes.* No lock boxes are permitted which provide access to any individual rental unit.

Section 6-83. Security Deposits.

(a) The provisions of Section 8-203 of the Real Property Article of the Annotated Code of Maryland, as amended, are hereby incorporated by reference and adopted as an ordinance of the City of Takoma Park.

(b) In addition to any other means of enforcement provided by law, the Commission is authorized to enforce the provisions of Subsection (a) above.

(c) Any affected tenant who experiences a violation of this Section may file a Commission complaint, alleging the landlord violated the security deposit laws.

(d) If a landlord materially violates any provision of Section 8-203 of the Real Property Article of the Annotated Code of Maryland, as amended, the Commission or a Commission panel may award the complainant up to threefold the amount of the security deposit which has been withheld plus reasonable attorney's fees. In order to award the tenant an amount in excess of the amount of the security deposit which has been withheld, the Commission or Commission panel must find one or more of the following:

(1) The landlord has unlawfully failed to refund all or part of a security deposit plus accrued interest within forty-five (45) days after the termination of the tenancy and had actual knowledge, either express or implied, of his or her obligations pursuant to this Section or Section 8-203 of the Real Property Article of the Annotated Code of Maryland, as amended.

(2) The landlord has unlawfully failed to refund all or part of a security deposit plus accrued interest after not having deposited it in an interest bearing account devoted exclusively to security deposits in a bank or savings institution in Maryland, but has instead, kept, deposited, or invested it in a manner either not guaranteed by the State or federal government, subjecting the deposit to undue risk of loss or in a manner where the security deposit is subject to the attachment by creditors.

(3) The landlord has unlawfully failed to return all or part of the security deposit, plus accrued interest, within forty-five (45) days after the termination of the tenancy, and that the list of damages or statement of costs actually incurred that the landlord has offered to justify such withholding is so unreasonable as to have not been made in good faith.

(4) The landlord has unlawfully failed to return all or part of the security deposit, plus accrued interest, within forty-five (45) days after the termination of the tenancy and the landlord has failed to accept the tenant's certified mail notice of his or her intention to move, the date of moving, and his or her new address.

(5) The landlord has unlawfully failed to return all or part of the security deposit, plus accrued interest within forty-five (45) days after termination of the tenancy, and such withholding is in retaliation against the affected tenant for his or her having exercised rights conferred upon the affected tenant by this Article, or for the affected tenant having assisted another tenant or affected tenant in exercising those rights.

(e) If a landlord fails to provide the tenant with a written list of all existing damages when the tenant has made a written request for such written list within fifteen (15) days of the tenant's occupancy, then the Commission or a Commission panel may award the tenant up to threefold the amount of the security deposit, subject to a deduction for any damages and unpaid rent which could reasonably be withheld under the provisions of Section 8-203 of the Real Property Article of the Annotated Code of Maryland, as amended.

Section 6-84 Fees.

(a) Fees charged by the landlord to any tenant for basic utilities or services, including but not limited to, fees for electricity, gas, water, air-conditioning, and trash collection, shall be for the actual amount. At the request of the tenant, the landlord shall provide the tenant with copies of the applicable

bills, invoices, or other documentation from the utility or service provider and an explanation of how the fee to the tenant was computed. If the tenant has requested verification of a utility or service fee, the tenant shall not be obligated to pay such fee until the verification is provided to the tenant.

(b) An additional fee may not be charged to the tenant for capital improvements or additional operating expenses to the rental facility.

Section 6-85. Utilities Transfer.

The following provisions apply to any transfer or conversion of responsibility from the landlord to the tenant of making utility payments to any utility provider, including sub-metering systems.

(a) No landlord may transfer responsibility for utility payments to an existing tenant unless the affected tenant receives written notice thereof at least three (3) months prior to the effective date of the conversion. The date of receipt may not be counted as part of the notice requirement. Written notice may be delivered to the tenant by any reasonable means. However, unless the notice is mailed via the United States Postal Service to the tenant's dwelling unit, delivery is not considered to have been made unless a signed receipt is obtained from the tenant or a representative designated as such by the tenant. If the tenant is notified by mail, the landlord shall certify, by affidavit dated at the time of mailing, that he or she has mailed the notice, and he or she shall retain a copy of said affidavit in his or her records.

(b) The notice of the utility conversion must be accompanied by a notice of reduction in the affected tenant's rent in an amount commensurate with the average monthly utility consumption for the rental unit experienced by the landlord during the previous twenty-four (24) months at the utility rate in effect at the time of the conversion.

(1) If prior to the conversion, rental units were metered individually, the reduction in rent shall be commensurate with the actual utility consumption of the unit for which the utility is to be transferred.

(2) If prior to the conversion, rental units were not individually metered, the reduction in rent shall be commensurate with the average actual utility consumption per unit, less common area/utility expenses or shall be based upon reasonable factors such as unit size, unit location, and other relevant physical characteristics of the unit, at the reasonable determination of the landlord.

(3) The reduction shall be in the form of a monthly reduction in rent at the beginning of the next succeeding rent payment period.

(c) Leases negotiated during the three (3) months notice period in Section 6-84(a) shall include a written disclosure of the landlord's intent to transfer or convert responsibility for utility payments to the tenant during the term of the lease.

(1) Failure to make this disclosure shall be grounds for termination of the lease by the tenant.

(2) For the purpose of this section, the term "intent" shall be construed to mean having entered into a contract for the installation of sub-meters or individual meters or having applied for electrical permits for such installation.

(d) The date of transfer of financial responsibility for utilities shall be at the beginning of a rent payment period, unless otherwise agreed upon by the utility supplier, the landlord, and the tenant.

(e) This Section shall not be construed to provide a remedy for temporary interruption of service or equipment otherwise maintained by the landlord.

Section 6-86. Notice to Vacate.

(a) *Landlord Rights and Responsibilities.* Under the circumstances specified below, a landlord has the right to give a tenant a notice to vacate. Such notice must be in writing. The date of receipt shall be considered part of the required time period for the notice. The tenant shall vacate the premises no later than the date specified in the notice to vacate.

(1) *Notice to Vacate For Cause.* A landlord wishing to terminate a tenancy and repossess a rental unit because the tenant materially breaches the lease shall give the tenant one-month's written notice to vacate prior to the rent due date. The written notice to vacate must clearly specify the material breach for which the tenancy is being terminated. Whenever the tenant fails to pay the rent when due and payable, it shall be lawful for the landlord to repossess the rental unit, in accordance with the applicable provisions and procedures of Maryland law, and the one month's written notice required hereunder does not apply.

(2) *Notice to Vacate Without Cause.* A landlord wishing to terminate a tenancy without cause and repossess a rental unit in the case of a month-to-month tenancy or any tenancy

for a term of less than one year shall give the tenant, prior to the rent due date, two-month's written notice to vacate.

(3) *Notice to Vacate at End of Lease.* A landlord wishing to terminate a tenancy and repossess a rental unit in the case of a year-to-year tenancy or any tenancy for a term of one year or more shall give the tenant written notice three months before the expiration of the current year of the tenancy. The notice must specify that the tenancy will terminate at the end of the lease term.

(b) *Tenant Rights and Responsibilities.* Under the circumstances specified below, a tenant has the right to give a landlord a notice that the tenant intends to vacate the rental unit. Such notice must be in writing. The date of receipt shall be considered part of the required time period for the notice. The tenant shall vacate the premises no later than the date specified in the notice of intent to vacate.

(1) *Notice to Vacate at End of Term of Tenancy.* A tenant wishing to vacate a rental unit in the case of a month-to-month or year-to-year tenancy shall give a landlord a one-month written notice prior to the rent due date of intent to vacate.

(2) *Notice to Vacate for Reasonable Cause Beyond the Tenant's Control.* A tenant wishing to vacate pursuant to Section 6-80(a)(5) ("Lease Requirements") shall give the landlord a one-month written notice prior to the rent due date of intent to vacate.

Section 6-87. Tenant Rights of Association.

(a) Tenants shall have the right to self-organization; to form, join, meet or assist one another within or without tenant organizations; to meet and confer, by themselves and through representatives of their own choosing with landlords; to engage in other activities for the purpose of mutual aid and protection; and further, tenants shall have the right to refrain from any and all such activities.

(b) Tenants and tenant organizations shall have the right of assembly in the meeting rooms and other areas suitable for meetings within a rental facility during reasonable hours and upon reasonable notice to the landlord for the purpose of conducting

tenant organization meetings. The landlord may impose reasonable terms and conditions upon the use of such meeting rooms or common areas.

(c) Tenants and tenant organizations shall have the right to distribute freely and post in centrally-located areas of a rental facility literature concerning landlord-tenant issues provided the literature is properly identified as to its origin.

(d) Tenant organizations shall have standing to file complaints under any provision of this Article in a representative capacity on behalf of those tenants who have authorized such representation. Nothing herein shall be construed to permit any tenant's organization to represent any tenant or class of tenants unless specifically authorized in writing to do so.

Section 6-88. Department Investigation and Conciliation.

The Department is authorized to investigate and conciliate any alleged or apparent violation of this Article or any complaints filed under this Article. In connection with this authority, all landlords and tenants shall be required to make available to the Department for inspection, at reasonable times, all rental facilities and records necessary for the enforcement of this Article.

Section 6-89. Commission on Landlord-Tenant Affairs.

(a) The City of Takoma Park Commission on Landlord-Tenant Affairs is hereby established. The Commission shall consist of twelve (12) active members nominated by the Mayor and appointed by the Council. The Council shall make every effort to ensure that the Commission has broad representation.

(1) All members shall be residents of the City of Takoma Park,

(A) Except that there may be as many as two (2) members who are not residents of the City of Takoma Park if such members own rental housing in the City of Takoma Park or if such members are engaged as their primary occupation in the management of rental housing located in the City of Takoma Park.

(B) In the event that a Commission member ceases to reside in the City of Takoma Park, that member is ineligible to serve on the Commission, except as provided for in Section 6-89 (a)(1)(A) of this Article, above.

(2) Each member of the Commission shall be appointed for a term of three (3) years, which shall begin on July 1.

(A) The initial term of a Commissioner who is appointed to replace a member who cannot complete his or

her term shall be for the remainder of the term of the member being replaced.

(B) A Commission member who resigns, whose term expires, or who ceases to reside in Takoma Park, at the discretion of the Commission Chairperson, may continue as an inactive member of the Commission to complete work on cases in which he or she participated as an active member of the Commission. This participation may include the approval and signature of Opinion and Orders released by the Commission.

(3) The Council may, by resolution, remove a Commissioner before the Commissioner's term has expired if the Council determines that the Commissioner has become incapacitated or has failed to reasonably perform his or her duties as a Commissioner.

(b) *Commission Activities.*

(1) The Commission shall elect one (1) of its members as Chairperson, another of its members as Vice Chairperson, and such other officers as it shall desire, each to serve at the pleasure of the Commission.

(2) The Chairperson shall convene the Commission as frequently as required to perform its duties.

(3) At the request of a majority of the active Commissioners, a regular or emergency meeting of the Commission shall be convened.

(A) Written notice shall be given to each active Commissioner at least three (3) days prior to any regular meeting.

(B) Notice of an emergency meeting must be given in writing or orally to all Commissioners no later than twenty-four (24) hours in advance of such emergency meeting.

(c) *Powers and Duties of the Commission.*

(1) *Official Action.* At least one-half of the active Commissioners shall constitute a quorum for the transaction of business. A majority vote of those present shall be sufficient for any official action taken by the Commission.

(2) *Regulations.* The Commission shall promulgate regulations to accompany Sections 6-89 through 6-93 of this Article.

(3) *Enforcement.* The Commission shall be empowered to enforce the provisions of Sections 6-89 through 6-93 of this Article by any appropriate means, including but not limited to the imposition of an award of monetary damages to a prevailing party to a Commission complaint; the ordering of certain acts pursuant to a Commission decision; and the investigation of any violations of this Article or of any complaints or petitions filed to the Commission.

Section 6-89.1. Commission Jurisdiction

The Commission is empowered to adjudicate and mediate Commission complaints and rule on petitions for rent increases above the Rent Stabilization Allowance.

(a) Complaints

(1) Any present, former, or bona fide prospective tenant or tenants' organization, or any landlord or landlord-representative, may file a Commission complaint giving the particulars of the alleged violation or condition. Any person who has reason to believe that a violation of this Article has occurred may so notify the Department, regardless of whether he or she files a Commission complaint.

(2) The Commission shall have jurisdiction to adjudicate Commission complaints of: defective tenancy, retaliatory action, illegal rent, illegal fee, reduction in services, unlawful withholding of security deposit, and any other violation of Article 7.

(b) Rent Increase Petitions. The Commission shall have jurisdiction to grant, modify or deny petitions for rent increases above the Rent Stabilization Allowance.

(c) Processing. Complaints and Rent Increase Petitions filed with the Commission under this Article shall be processed in accordance with the Commission's Rules of Procedure.

(d) Commission Rules of Procedure. The Commission shall promulgate Commission Rules of Procedure which further regulate the operations of the Commission, in accordance with Chapter 2A, Article 5 of the Takoma Park Code (Administrative Regulations), (Ordinance 1989-32).

Section 6-89.2. Investigation and Conciliation of Commission Complaints.

(a) Upon the filing of any Commission complaint, the Department shall make such investigation as it deems appropriate to ascertain whether there are reasonable grounds to believe that the allegation of conditions or violations over which the Commission has jurisdiction can be substantiated.

(1) If the Department finds through the investigation that no reasonable grounds exist for the filing of a Commission complaint, or that the Commission does not have jurisdiction over the matter, the Department shall notify the Commission of its findings.

(2) The Commission then may, in its sole discretion and on such terms as it deems appropriate:

(A) Dismiss the complaint;

(B) Afford the party who filed the complaint ten (10) days to respond in writing stating why the complaint should not be dismissed, or to amend the complaint; or

(C) Hold a hearing, where there is a factual dispute, to determine whether or not to dismiss the complaint.

(b) If at any time after a Commission complaint is filed, the Department believes the health, safety, or welfare of a tenant is placed in immediate and present danger, the Department shall be authorized to take immediate action to provide appropriate relief. This may include notification of the Chairperson or Vice-Chairperson of the Commission, who shall determine whether or not an emergency hearing by the Commission is necessary.

(c) The Department's investigation shall when applicable, include review of the records of the Department. The Department may order a general or specific housing inspection of the property by Code Enforcement personnel.

(d) The Department shall, whenever possible, mediate the dispute between the parties, either before or after a Commission complaint is filed. If the Department is unable to resolve the dispute and the complainant wishes to prosecute the complaint, the Department shall refer the complaint to the Commission for a hearing.

Section 6-89.3. Commission Hearings.

(a) *Hearing Process.*

(1) The Chairperson of the Commission is hereby authorized to designate three (3) active members of the Commission to sit as a panel to conduct a hearing on any complaint or petition pending before the Commission. The Chairperson shall designate one (1) panel member to serve as the Commission panel's presiding Commissioner. The Chairperson of the Commission shall endeavor to rotate panel membership from time to time among active members of the Commission.

(2) All members of the Commission panel must be present to conduct the hearing.

(3) Notice of the hearing, including its time and place shall be provided to the parties and the public in the manner prescribed by the Commission's Rules of Procedure.

(4) The hearing shall be open to the public. In conducting hearings, the Commission panel shall have the power to subpoena witnesses and to subpoena the production of relevant documents and records. Any party to the case may request the issuance of a subpoena, which shall be in a form prescribed by the Commission Rules. Any party may appear before the Commission panel in person, or by a duly authorized representative.

(5) All testimony shall be given under oath or affirmation.

(6) The Commission panel may admit and consider evidence which would be commonly accepted by reasonable and prudent people as having a causal relationship to the matters before the Commission panel. It shall give effect to the rules of privilege recognized by law. It may exclude from evidence irrelevant and repetitious testimony and documents.

(7) The Commission panel may take notice of judicially cognizable facts and in addition may take notice of relevant general, technical or scientific facts. Parties shall be notified either before or during the hearing of the material so noted, and they shall be afforded an opportunity to contest the evidence presented.

(8) An audio recording of the hearing shall be made and shall constitute a record of the hearing. The record of the case shall include the audio recording and any written documents accepted into the case file. The record of the case

shall be open to inspection by any person. Upon request by any person, the Commission shall furnish to such person a copy of the record of the case at charges necessary to meet the costs of supplying same.

(b) Hearings on Complaints.

(1) In adjudicating Commission complaints under this Article, a Commission panel shall hold a fact-finding hearing.

(2) At the fact-finding hearing any party to a Commission complaint shall have the right to call witnesses, present testimony and evidence to substantiate any material point. Each party shall have the right to cross examine opposing witnesses, to submit rebuttal evidence and to present summation and argument. The Commission panel may call its own witnesses and enter its own evidence.

(c) Hearings on Rent Increase Petitions.

(1) *Preliminary Administrative Decision.* The Commission shall review the documentation submitted by a landlord who is seeking a rent increase above the Rent Stabilization Allowance. The Commission shall issue an accounting report reviewing the documentation for the rent increase petition, pursuant to Section 6-91 of this Article. The report shall include a finding of the proper rent increase, if any, and shall be issued to the landlord. This report shall constitute the preliminary administrative decision of the Commission on the rent increase petition. The landlord shall notify the tenants of the rent increase, if any, granted by the preliminary administrative decision, and serve or post copies of the preliminary administrative decision as required in the Regulations.

(2) *Objections to Preliminary Administrative Decision.* Any party who objects to matters in the accounting report or any of the findings contained within the preliminary administrative decision may challenge the preliminary administrative decision by filing a written statement or list of objections and supporting reasons or documentation for the objections with the Commission within one month of the date of the preliminary administrative decision. Upon receipt of any written statement or objections to the administrative decision, the Commission shall rule on the objections, or, if requested, hold a hearing on the objections.

(3) If a hearing is held on objections to the preliminary administrative decision in a rent increase petition case the parties shall have the right to call witnesses, present testimony and evidence to substantiate any

material point raised in the objections. The Commission panel may call its own witnesses and enter its own evidence.

(4) The Commission panel shall afford the parties opportunities for examination and cross examination of witnesses, as appropriate.

(5) If no objections to the Commission's administrative decision are made within one month of the date of the decision, or within one month of the date of service or posting of the preliminary administrative decision, the preliminary administrative decision shall become the final decision of the Commission.

Section 6-90. Commission Complaints and Remedies.

Section 6-90.1. Complaints of Imposition or an Attempt to Impose an Illegal Rent Increase or Fee.

(a) *Complaints.* The following parties shall have the right to file a complaint of imposition or attempt to impose an illegal rent increase or illegal fee:

(1) Any affected tenant who occupies or is offered a rental unit, where the rent charged or to be charged by the landlord is in excess of the lawful limits; and

(2) Any affected tenant who receives notice from the landlord of a rent increase, which will increase the rent to an amount in excess of the lawful limits.

(3) Any affected tenant who is charged a fee under Section 6-84 for basic utilities or services which is in excess of the actual amount, or who is charged a leasing fee under Section 6-80.2 which is in excess of the maximum fees established by Department Regulations or the actual costs incurred by the landlord, whichever is less.

(b) *Remedies.* Where the Commission finds that a landlord has imposed or attempted to impose an illegal rent increase or fee, the affected tenant may be entitled to one (1) or more of the following remedies as ordered by the Commission:

(1) A rollback of the rent or fee to the lawful limit, and a refund of excess monies paid, with interest calculated at the judgment rate of interest. The amount of time which a refund of excess rents paid or fees collected may be awarded shall be up to two years before the date of the filing of the complaint, in accordance with Section 6-99(b) of this Article.

(A) The affected tenant may begin paying the lawful rent or fee immediately.

(B) If the landlord fails to refund the excess monies paid to the affected tenant within thirty (30) days of the date of the Commission's Order, the affected

tenant may deduct the amount of the refund owed from the succeeding month or months rent (even if the rent to be paid is reduced to zero.)

(C) If the landlord files an appeal from the Commission's Order, then any party may request: 1) a stay of the Commission's Order in accordance with Rule B6 of the Maryland Rules, as amended; and 2) that any disputed rent or fees be deposited into the Registry of the Court.

(2) An award of damages to be paid by the landlord sustained as a result of the imposition or attempt to impose an illegal rent increase or fee; such damages being determined as the actual damage or loss.

(3) An order to the landlord to perform other remedial action as the Commission deems appropriate.

Section 6-90.2. Complaints of Reduction of Service or Equipment.

(a) *Complaints.* No landlord may reduce or eliminate service or equipment that had been provided during the tenancy.

(b) *Remedies.* Where the Commission finds that the landlord has caused a reduction of service, upon completion of the hearing process, it may award the complainant damages commensurate with the amount of services or equipment lost.

Section 6-90.3. Complaints of Retaliatory Practices.

(a) *Complaints.* No landlord may retaliate, through any act or omission, against any tenant who exercises rights conferred upon him or her by this Article, or against any tenant who assists another tenant in exercising those rights.

(1) For the purposes of this Section, retaliatory actions include eviction, threat of eviction, violation of privacy, harassment, reduction in quality or quantity of repairs, reduction in maintenance or services, unlawful rent increases, failure to return all or part of a security deposit, any form of threat or coercion, or any attempt to

prevent a present, former or bona fide prospective tenant from obtaining housing.

(2) Any affected tenant who believes he or she has experienced retaliatory action by the landlord may file a Commission complaint against the landlord alleging such retaliatory action.

(b) *Remedies.* Where the Commission finds that a landlord has engaged in retaliatory action, the complainant tenant may be entitled to one (1) or more of the following remedies as ordered by the Commission:

(1) Authorization to immediately terminate the lease, and to receive a return of the security deposit, in accordance with Section 6-83 of the Takoma Park Code ("Security Deposits"). Where the tenant so opts to terminate the lease, the rental unit shall be vacated within a reasonable period of time.

(2) An award of damages to be paid by the landlord sustained as a result of the retaliatory action; such damages being determined as the actual damage or loss. Alternatively, if the Commission finds that the landlord has willfully disregarded the tenant's rights under this Section, it may award the tenant a portion of rental monies already paid to the landlord for the period during which the landlord has been found to have engaged in retaliatory action.

(3) An order to the landlord to cease and desist from such retaliatory practices or perform other remedial action as the Commission deems appropriate.

Section 6-90.4. Complaints of Defective Tenancy.

(a) *Tenant Complaints.* If any affected tenant has reason to believe that a defective tenancy exists or has existed in his or her rental unit or in the common areas of the rental facility in which the rental unit is located, after he or she has given the landlord written notice of the defect and the landlord has not rectified the defect or made good faith efforts to do so within one (1) week after the notice was given, the affected tenant may file a Commission Complaint. If the tenant can prove by competent testimony or other evidence that the landlord had actual notice of the defect, it shall not be necessary for the tenant to provide a written notice to the landlord.

(b) *Landlord Complaints.* If any landlord has reason to believe that a defective tenancy has been created or permitted to exist by a tenant, has given the tenant written notice complaining of the defect in that tenant's unit or in the common area(s) of the

rental facility in which the rental unit is located, and the tenant has not rectified the defect or made good faith efforts to do so within one (1) week after the notice was given, the landlord may file a Commission complaint.

(c) *Remedies.*

(1) Where the Commission finds that a landlord has caused a defective tenancy, the complainant tenant may be entitled to one (1) or more of the following remedies as ordered by the Commission:

(A) An award of damages to be paid by the landlord sustained as a result of the defective tenancy; such damages being determined as the actual damage or loss.

(B) An amount to be paid by the landlord equivalent to a reasonable expenditure adequate for the tenant to obtain temporary substitute rental housing in the area.

(C) Correction of the defective tenancy by the landlord.

(D) An order to the landlord to perform other remedial action as the Commission deems appropriate.

(2) Where the Commission finds that a landlord has caused a defective tenancy which constitutes a substantial breach of the lease by the landlord, the Commission may, as appropriate:

(A) Authorize the complainant tenant(s) to immediately terminate the lease and vacate the rental unit within a reasonable period of time, and

(B) Order, upon such termination of the lease and vacating of the rental unit, the return of the security deposit and rental monies already paid to the landlord from the period the landlord was notified of the condition.

(3) Where the Commission finds that a tenant has caused a defective tenancy, the complainant landlord may be entitled to one (1) or more of the following remedies as ordered by the Commission:

(A) An award of damages equivalent to the loss sustained as a result of the defective tenancy to be paid by the tenant to the landlord; such damages being determined as the actual damage or loss.

(B) Correction of the defective tenancy by the tenant.

(C) An order to the tenant to perform other remedial action as the Commission deems appropriate.

(4) Where the Commission finds that a tenant has caused a defective tenancy which has resulted in a substantial breach of the lease by the tenant, the Commission may, in addition to ordering other remedial action as appropriate, authorize the complainant landlord to immediately terminate the lease and gain possession of the premises in accordance with the Real Property Article of the Annotated Code of Maryland, as amended.

Section 6-91. Rent Increase Petitions.

(a) *Definitions.* In addition to the definitions set forth in Section 6-79 of this Article, the following words and phrases shall have the following meanings:

(1) *Adjusted Net Operating Income* shall mean the net operating income adjusted from the base year to the petition year by a percentage of the Consumer Price Index.

(2) *Base Year Net Operating Income* shall mean the net operating income generated by a rental facility during the base year.

(3) *Base Year* shall mean the year that has been established for the purpose of calculating a change in the net operating income.

(4) *Capital Improvement* shall mean materials and/or labor that have been added to a rental facility that are not annually recurring and that have a useful life of more than one year.

(5) *Capital Improvement Petition* shall mean a petition filed by a landlord in order to request a rent increase pursuant to a past or planned capital improvement.

(6) *Hardship Petition* shall mean a petition filed by a landlord in order to maintain the rental facility's net operating income.

(7) *Net Operating Income* shall mean the rental income generated by a property less the operating expenses incurred pursuant to Section 6-91 of this Article, during a base or petition year.

(8) *Operating Expenses* shall mean all expenses incurred during a base or petition year, except for those expenses excluded by Section 6-91 of this Article.

(9) *Petition Year* shall mean the calendar year, or a fiscal year consisting of a consecutive 12-month period occurring within the 15 months preceding the date of the filing of the petition.

(10) *Rent Increase Petition* shall mean a petition by a landlord to raise rents above the rent stabilization allowance and includes both hardship petitions and capital improvement petitions.

(11) *Rental Income* shall mean the total collectable income from the rental facility from all sources, less the allowable vacancy loss established in Section 6-91 (c) (5) (F) (i).

(b) Whenever a landlord proposes a rent increase of more than the amount permitted by the rent stabilization allowance established in Section 6-95.1, the landlord shall file a petition using the form provided by the Commission.

(1) *Notice of a Rent Increase Pursuant to a Rent Increase 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 rent increases requested, upon each affected tenant within one week after the filing date of the petition.

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

(c) *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, after adjusting for inflation pursuant to Section 6-91 (c) (9), than the net operating income in the petition year.

(2) *Net Operating Income.* The net operating income for a rental facility 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 6-91 (c)(5).

(3) A hardship petition shall include justification for the rent increases proposed based on increases in operating expenses which have risen faster than rental income.

(A) The increases in operating expenses 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.

(B) 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.

(C) The base year net operating income shall be adjusted by the Commission if the landlord shows by competent evidence that the base year net operating income was exceptionally high or low in comparison to other years the rental facility was in operation. In such instances, the Commission may make adjustments to reflect average expenses for the rental facility over a reasonable period of time. A landlord who demonstrates to the Commission that rents were not increased by the full rent stabilization allowance in order to protect existing tenants shall have the net operating income adjusted to reflect full possible income available to the landlord had the full rent stabilization allowance been taken.

(D) The landlord may choose to have the base year net operating income computed from a year during which rents in the rental facility were not controlled by rent stabilization. If so, the Commission shall establish a base year of 1979, and the landlord shall provide the Commission with data for income and expenses from 1979. For those buildings containing four (4) or fewer rental units, the pre-rent stabilization base year shall be 1987, and the landlord shall provide the Commission with data for income and expenses for 1987.

(E) At the landlord's option, the base year net operating income may be established by subtracting 60 percent of the landlord's base date rental income so that the net operating income is 40 percent of rental income.

(F) At the landlord's option, the base year net operating income may be established pursuant to a previous petition adjudicated by the Commission, provided that the net operating income of the rental facility is apparent on the decision.

(G) All petitions adjudicated under this Section shall form the base year for hardship petitions filed subsequent to a landlord's first filing under this Section.

(4) The following information shall be included on the hardship 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, 1990, during which the landlord seeks to have the base date established. This period shall be considered the base year.

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

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

(E) The total number of rental units in the rental facility. If the landlord is requesting rent increases for fewer than one hundred percent (100%) of the rental units, the amounts for income and expenses, shall be pro-rated for those units included on the petition.

(F) The dates that the proposed rent increases are to go into effect; the effective dates of the proposed rent increases shall not be more than 14 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;

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

(ii) Landlords who manage their own properties may deduct up to 6 percent of maximum rental income for management fees. 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 by the Commission's Regulations. If the landlord wishes 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;

(i) Vacancy losses shall not be more than five percent (5%) of the maximum rental income, unless good cause can be shown why the vacancy rate is higher than five 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.

(i) Depreciation shall be calculated using the City of Takoma Park Amortization Schedule, established in the Commission Regulations.

(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 tenants 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 facility.

(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, as amended. This provision shall apply unless the landlord has prevailed in such an action brought by the City.

(M) Facts represented in the hardship 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) 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 twelve (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 reviewing 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, re-open the record and allow all parties to respond in writing and submit additional documentation within one month of the close of the review.

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

(8) 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 fifty (50%) percent 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 a net operating income equal to the adjusted base year net operating income. Landlords who

have paid no mortgage expenses from the base year to the petition year shall receive an upward adjustment of the base year net operating income by one hundred (100%) percent of the Consumer Price Index.

(9) *Rollback of Rents if Hardship Not Demonstrated.*

If, upon consideration of a landlord's hardship petition the Commission finds that the landlords' adjusted base year net operating income is less than his actual petition year net operating income, and that the landlord's hardship petition was filed in bad faith, the Commission may require the landlord to roll back the rents charged on the rental units covered by the petition to result in a net operating income equal to the adjusted base year net operating income.

(A) *Purpose of Rollbacks.* The purpose of the rollback provision in this Section is to ensure that hardship petitions are filed in good faith, that the landlord reviews the records of the rental property for which rent increases are sought to ensure that a rent increase is justified under this Section, and to balance both the tenant and the landlord interests in each petition to increase rents above the rent stabilization allowance.

(B) Bad faith can be found, but is not limited to, instances in which the landlord:

(i) Is found to have listed expenses for repairs or services never performed;

(ii) Is found to have intentionally padded expenses with items clearly disallowed by Section 6-91 of this Article;

(iii) Is found to have materially misrepresented expenses claimed;

(iv) Is found to have knowingly filed a false rent report, in whole or in part; or

(v) Is found to have acted in some other manner which is a clear abuse of the petition process.

(C) The following shall not constitute bad faith under this provision:

(i) Miscalculations and simple mathematical errors;

(ii) Claims for expenses or other items which are not specifically addressed in Section 6-91 and which the Commission disallowed, but which could plausibly have fallen within Section 6-91 of this Article.

(D) The Commission shall verify the information upon which it makes its findings of bad faith and shall issue a decision clearly stating the basis for its finding. The landlords shall be required to notify all tenants affected by the rent rollback and, if the landlord was permitted to increase rents by the rent stabilization allowance pending a decision on the hardship petition, all rent increases so collected shall be refunded to the affected tenants within thirty (30) days. If the landlord fails to rollback the rents or fails to refund the rent increases collected, the affected tenants may begin paying the rolled back rent or may deduct any rent refunds or rollbacks owed the tenants in accordance with Section 6-90.1(b)(1) of this Article.

(d) 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 6-95.1 in order to recover the costs of capital improvements. These costs 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 rental unit or rental facility, 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 levels for a rental unit or rental facility shall be raised to reflect the amortized costs of planned or completed capital improvements to the rental unit or property, where such capital improvements:

(A) Are necessary to bring the rental unit or rental facility 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 rental unit or rental facility in good physical condition and to maintain services provided to tenants.

(4) *Amortized Cost.* The annual amortized cost of a capital improvement shall be calculated according to the following formula: the reasonable cost of the capital improvement, plus the cost of financing, divided by the appropriate amortization period for that improvement. The annual amortized cost shall then be divided by twelve (12) to calculate the monthly cost to the affected units, then divided among the units in a manner consistent with the amenities or improvements made to each unit.

(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 or 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 the prime rate in effect at the time of construction or installation of the capital improvement, plus two percent (2%), 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 Commission shall determine a reasonable amortization period. The amortization period for a capital improvement shall begin at the time a rent increase granted by the Commission goes into effect, or upon completion of the capital improvement, whichever occurs later. 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, a rent increase granted under this Section shall be adjusted downward per the amortization schedule by the amount of any prior upward rent adjustment attributable to a capital improvement granted under this Section after the end of the time period over which the cost of that prior 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). 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 Commission.

(10) The following information shall be included in the petition for a rent increase pursuant to capital improvements:

(A) A list of each rental unit to be affected by the improvements, and the square footage and number of bedrooms contained in each affected unit.

(B) For capital improvements that have been completed, all receipts showing monies spent on the improvement up to the filing date of the petition.

(C) If the landlord has acquired a loan to pay for the capital improvements, copies of loan agreements showing the interest payable on the loan, and the amount paid by the date of the petition, if any.

(D) If the landlord has spent his own labor installing or maintaining the improvements, a list of times spent and amounts billed for the labor.

(11) *Filing Dates.* A petition for a rent increase for capital improvements may only be filed with the Commission six (6) months before the capital improvements are expected to be installed in the rental facility, or within six (6) months after the capital improvements are installed in the rental facility. Landlords who file rent increase petitions more than six months before or after the capital improvements are installed may include the annual amortized amount in a hardship petition, pursuant to Section 6-91(c) of this Article.

(e) (Reserved)

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

(1) The Commission shall, in good faith, endeavor to issue its preliminary administrative decision ruling on the request within ninety (90) days of the review or hearing on the petition.

(2) The landlord may begin charging additional rent, not

to exceed the rent stabilization rate in effect, on the effective dates of the increase.

(3) If, after the Commission's calculations, rent increases greater than fifteen percent (15%) are necessary to result in the increases approved by the Commission pursuant to Sections 6-91(c) or (d), above, the necessary increases shall be phased-in over a term of more than one (1) year until the full increases awarded by the Commission have been taken. If a landlord's required rent increase is phased-in over the term of more than one (1) year, the subsequent rent increases may be in addition to an increase within the rent stabilization allowance in effect in subsequent years.

(4) If the Commission determines that a rental unit requiring an increase of more than fifteen percent (15%) is vacant, or if the unit becomes vacant before the required rent increase has been taken in full, then the Commission may, in its discretion, allow the required increase for that unit to 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.

(5) When serious outstanding Housing or Zoning Code violations affecting health, safety, or welfare are present at the rental facility, 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 then take the rent increases prospectively only.

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

(7) No rent increase shall be authorized by the Commission because of the landlord's mortgage or deed of trust interest or other expenses resulting from the purchase of the property, except as otherwise provided in this Article, if at the time the landlord acquired the property the landlord could have reasonably foreseen that such expenses would not be covered by the rent schedule then in effect.

(8) No rent increase shall be authorized when the landlord has petitioned for rent increases, under either the hardship petition section or the capital improvement petition section, for the property within the last twelve (12) months preceding the date on the petition.

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

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

(2) 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; or

(3) 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; provided that the Commission may, at its discretion, waive the above requirement for good cause shown;

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

(5) 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. 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.

(h) Upon its determination of the rent increase to be granted to the landlord, the Commission shall issue a decision in accordance with Section 6-92 of this Article and furnish copies of the decision to the landlord. The landlord shall then be required to notify all affected tenants of the decision on the rent increase petition in accordance with the Commission's Regulations.

Section 6-92 Decision (Opinion and Order) of the Commission.

After the hearing on a complaint, the Commission panel shall state its findings of fact and conclusions of law in a written Opinion and issue it with a written Order, which shall constitute the final Opinion and Order of the Commission. The administrative decision on a rent increase petition and the Commission's rulings on any objections to the preliminary administrative decision of the Commission shall constitute the final Order of the Commission. The decision of the Commission panel may be made by a majority of the panel, but if a panel member dissents, the complaint or petition shall be decided in accordance with Section 6-92.3. The burden of proof by the complainant or the petitioner shall be a preponderance of the evidence.

Section 6-92.1. Decision (Opinion and Order) of the Commission Concerning a Complaint.

(a) An Opinion and Order of the Commission concerning a complaint may require:

(1) Either the complainant or the respondent or both to cease and desist from such unlawful conduct and to take such appropriate actions as will effectuate the purpose of this Article, including, but not necessarily limited to, the payment of damages, where appropriate.

(2) Interest to be paid upon any award of damages, calculated at the judgment rate of interest, from the date payment of the award is due until payment is made in full.

(b) An Order of the Commission concerning a complaint may specify the date by which compliance must take place.

(c) In addition to the enforcement provisions under applicable laws, any award of damages not paid when due may be enforced by the party to whom the award was granted in a court of competent jurisdiction, and the court is authorized to grant judgment for such damages plus interest from the date payment was due.

Section 6-92.2. Interim Order.

In cases where the Commission, after a hearing on a complaint, finds that actual or constructive eviction would likely occur before the issuance of a final Opinion and Order, the Commission may issue an Interim Order requiring or prohibiting specific action by one or more of the parties, so as to prevent such actual or constructive eviction.

(a) Such Interim Order shall require the assent of a majority of the panel members and shall be in writing.

(b) Subsequent to the issuance of an Interim Order, a final Opinion and Order of the Commission shall be issued in the manner and form prescribed by this Article. A final Opinion and Order of the Commission may affirm, modify or reverse the Interim Order.

Section 6-92.3. Commission Consideration.

If a member of a Commission panel dissents from the decision on a complaint or petition for rent increase proposed by the panel majority, or if a panel is unable to reach a decision concerning a complaint or petition as a result of no two panel members joining

in a decision, such complaint or petition shall be referred to the full Commission. The Commission shall convene and decide the matter based upon the record created before the Commission panel, by a preponderance of the evidence. The Commission shall state its findings of fact and conclusions of law in a written Opinion and issue it with a written Order, which shall constitute the final Opinion and Order of the Commission. The full Commission decision may be made by a majority vote of those present at any meeting at which there is a quorum.

Section 6-93. Reconsideration and Appeals.

(a) *Appeals.* Any person aggrieved by a final Opinion and Order of the Commission on a complaint or the final Order of the Commission on a petition (hereinafter jointly referred to as "Opinion and Order") may file an Order for Appeal with the Clerk of the Circuit Court of the appropriate county. The procedures for an appeal from the Opinion and Order of the Commission shall be governed by Subtitle B (Administrative Agencies - Appeal From) of the Maryland Rules, as amended.

(1) *Time for Filing.* An Order for Appeal shall be filed within thirty (30) calendar days from the date of the Opinion and Order. If the Opinion and Order is served by mail, then the appeal deadline shall be extended an additional three (3) calendar days. Upon application of a person authorized to appeal, and for sufficient cause shown, the Circuit Court may extend the time for filing an order for appeal.

(2) *Service on the Commission.* Prior to filing an Order for Appeal with the Circuit Court, the person shall serve a copy thereof on the Commission.

(3) *Decision.* The Circuit Court shall affirm the Opinion and Order of the Commission if it finds that the factual conclusion of the Commission was based upon substantial evidence in the record.

(b) *Reconsideration.*

(1) *Motion to Clarify, Reconsider or Amend an Opinion and Order.* On motion of any party filed within ten (10) days of the date of an Opinion and Order of the Commission or, at any time for a compelling reason at the request of a governmental agency or court of competent jurisdiction, the Commission may open the Opinion and Order to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the Order, or may enter a new Order. A motion to alter or amend an Opinion and Order shall stay the time for filing an

appeal until the Commission rules on the motion.

(2) *Newly Discovered Evidence.* On motion of any party filed within thirty days after the date of an Opinion and Order of the Commission, the Commission may grant a new hearing or issue a new administrative decision on the ground of newly-discovered evidence that could not have been discovered by due diligence before the hearing or administrative decision.

(3) *Fraud, Mistake, Irregularity.* On motion of any party filed at any time, the Commission may take any action that it could have taken under Section 6-93 (b)(1) in case of fraud, mistake or irregularity.

(4) *Clerical Mistakes.* Clerical mistakes in the Opinion and Order or other parts of the record may be corrected by the Commission at any time on its own initiative, or on motion of any party after such notice, if any, as the Commission orders. During the pendency of an appeal, such mistakes may be so corrected with leave of the Court.

Section 6-94. Reporting Requirements.

(a) On or before September 30 of each year, each landlord shall complete and submit to the Department a Rent Report for the twelve month period ending on the preceding June 30 on a form provided by, and in the manner prescribed by Department Regulations.

(b) Failure to file a complete or accurate rent report by September 30 of each year shall constitute a violation of this Article, unless an extension of time for good cause is granted by the Department.

(c) A landlord who deliberately, willfully, or knowingly submits a rent report which is false or inaccurate in whole or in part shall be charged with a Class A misdemeanor offense.

Section 6-95. Review of Rent Stabilization.

The Council shall conduct a review of the Rent Stabilization provisions of this Article every three years. Such review shall include any analysis and recommendations of the Department on whether there is a shortage of affordable housing adversely affecting the City. Subsequent to such review, Council shall determine whether Rent Stabilization should continue in the City.

Section 6-95.1. Rent Stabilization Allowance.

(a) An annual Rent Stabilization Allowance shall be established, effective on July 1st of each year. This Rent Stabilization Allowance shall equal seventy percent (70%) of the Consumer Price Index, as specified in the Department's Regulations.

(b) The Rent Stabilization Allowance and all provisions pertaining to Rent Stabilization in this Article are applicable to all rental units, except the following:

(1) Any establishments which have as their primary purpose the diagnosis, cure, mitigation and treatment of illnesses.

(2) Any accessory apartment.

(3) Any single family dwelling provided that the landlord owns no more than one rental facility in the City.

Section 6-96. Increases in Rent.

(a) Annual Rent Increases

(1) The rent for any rental unit may be increased only once within a twelve month period.

(2) An annual rent increase shall be no higher than the Rent Stabilization Allowance in effect at the time that notice is given to the tenant.

(b) Allowable Additional Rent Increases

(1) Notwithstanding the provisions of Section 6-96(a) if a rental unit becomes vacant as a result of a termination of the tenancy by the tenant or a termination of the tenancy by the landlord for cause, a landlord may increase the rent for such rental unit by the actual dollar amount of any annual Rent Stabilization Allowances which were not charged to the tenant vacating the rental unit. This rent increase may be in addition to any Rent Stabilization Allowance increase which the landlord may impose on or after twelve (12) months from the date of the last Rent Stabilization Allowance increase for that rental unit.

(2) During the pendency of a hardship petition or capital improvement petition to increase rents above the Rent Stabilization Allowance, rent increases up to the Rent Stabilization Allowance may be taken on the rental units which are the subject of the petition on or after the anniversary date of the last rent increase. If an additional rent

increase pursuant to a petition is subsequently approved by the Commission, it may be taken pursuant to the terms and the conditions of the administrative decision and final Order and may be retroactive to the date indicated in the notices of rent increases to the tenants.

(c) Notice of Annual Rent Increases A landlord shall not increase or attempt to increase the rent for any rental unit without having first given the tenant(s) living therein at least two months written notice of the increase, except in such a case where a rent escalator clause is contained within the lease.

(1) The notice of rent increase shall be in the form and manner prescribed by Department Regulations.

(2) If, during the pendency of a notice called for in this Section, the Rent Stabilization Allowance is raised or lowered by the Council, a landlord may charge rent up to the Rent Stabilization Allowance in effect on the date the notice was given.

(3) In any case where a rent escalator clause is contained within the lease, a notice of the increase in rent of not less than one month nor more than two months must be given, in accordance with Section 6-80.3 (b) of this Article.

(d) It shall be unlawful for any landlord to increase or attempt to increase the rent for any rental unit if any of the following conditions exist at the time the notice of rent increase is given. Furthermore, a rent increase shall not take effect if any of the following conditions exist at any time during the pendency of such notice of rent increase:

(1) The common area(s), exterior structure(s), and common facility(s) of the rental facility in which the rental unit is located or the rental unit itself have any serious violations at the time the notice of the rent increase is given to the tenant.

(2) The rental unit has any violations of the standards prescribed in Article 2, Chapter 6 of the Takoma Park Code, as amended, for which notice has been served on the landlord by the Department prior to the notice of the rent increase, and for which violations the time allowed for their correction has lapsed.

(3) The landlord has unpaid City taxes, fees, or fines with regard to the rental facility.

(4) The landlord does not hold a current and valid City rental license for the rental facility.

(5) When the landlord has not filed required rent reports for the three (3) years prior to the effective date of the rent increase.

(6) When the landlord has failed to comply with a final Order of the Commission concerning any rental unit owned by the landlord in the City of Takoma Park, unless the Order has been appealed to the Circuit Court and no decision has been rendered on the appeal.

(e) Once the conditions stated in Section 6-96(d)(1)-(6) above have been corrected, a landlord may increase the rent pursuant to Section 6-95.1 of this Article. However, it shall be unlawful for a landlord to charge a retroactive rent increase for those months the landlord was unable to collect a rent increase due to the conditions described in this Section.

Section 6-97. Violations.

(a) The following shall be municipal infractions:

(1) Any violation of the following Sections of this Article:

6-80	Lease Requirements,
6-80.1	Lease Term Requirements,
6-80.2	Leasing Fees,
6-80.4	Occupancy Restrictions,
6-81	Obligations of Tenants and Landlords,
6-82	Entry,
6-84	Fees,
6-85	Utilities Transfer,
6-88	Department Investigation and Conciliation,
6-95.1	Rent Stabilization Allowance, and
6-96	Increases in Rent.

(2) Any failure to obey a lawful Order of the Commission.

(3) Any interference or obstruction or attempt to interfere with or obstruct the Commission or the Department or anyone acting on behalf of either agency in the discharge of its functions under this Article.

(4) Failure to file a Rent Report or failure to file a complete Rent Report in accordance with Section 6-94(a) of this Article.

(b) Each day a violation exists shall be considered a separate violation, constituting a municipal infraction.

(c) An illegal rent increase is a separate violation constituting a municipal infraction for each day that it is imposed or attempted to be imposed, not merely on the day that the landlord seeks to collect it.

(d) The imposition or attempted imposition of a rent increase above the Rent Stabilization Allowance without the prior approval of the Commission except as provided in Section 6-96(b)(1) of this Article shall be considered a separate violation constituting a municipal infraction, for each rental unit affected.

(e) The imposition or attempted imposition of a rent increase without substantial compliance with the notice provisions in this Article shall be considered a separate violation constituting a municipal infraction for each rental unit affected.

Section 6-98. Enforcement Authority and Penalties.

(a) The Department is authorized to enforce the provisions of this Article by any appropriate means. This shall include but not be limited to the promulgation of regulations by the Department.

(b) Unless otherwise provided for, and in addition to any other penalties provided by law, any violation of this Article which is designated in Section 6-97(a)(1) of this Article to be a municipal infraction, shall be a Class C offense, unless the violation poses or has posed a clear and imminent danger to the health and safety of the tenant, or poses or has posed substantial hardship upon the landlord or the tenant. Such exceptional violation shall be a Class A offense, which carries the highest civil penalty permitted by law. See also Section 1-19 of the Takoma Park Code, (Municipal Infractions).

(c) A landlord who fails to file a Rent Report or fails to file a complete Rent Report in accordance with 6-94 of this Article may be issued a municipal infraction citation for a Class A offense. See also Section 1-19 of the Takoma Park Code, (Municipal Infractions)

(d) A landlord who deliberately, willfully, or knowingly submits a Rent Report which is false or inaccurate in whole or in part may shall be charged with a Class A misdemeanor.

(e) Any party who fails to comply with a Commission Order may be issued a municipal infraction citation for a Class A offense, which carries the highest civil penalty permitted by law. See also Section 1-19 of the Takoma Park Code, (Municipal Infractions). In addition to any penalty provided herein, compliance with a Commission Order may be effectuated by any appropriate action in any court of competent jurisdiction.

(f) Any person who fails to comply with a subpoena issued pursuant to this Article may be issued a municipal infraction

citation for a Class C offense. See also Section 1-19 of the Takoma Park Code, (Municipal Infractions).

(g) Without limitation or election of any other available remedy, the City may apply to a court of competent jurisdiction for an injunction enjoining any person from violating this Article. The court may award attorney's fees and costs to the City when it obtains an injunction hereunder.

(h) In the event that a landlord or anyone acting on behalf of a landlord brings an action for failure to pay rent or for possession of the rental unit based on the tenant's failure to pay rent or fees that are found by the Commission on Landlord-Tenant Affairs to be unlawful, the court shall dismiss the action against the tenant and may award to the tenant his or her attorney's fees and costs incurred in defending against the landlord's action.

Section 6-99. Statute of Limitations.

(a) Any action, other than a Commission complaint for unlawful imposition or collection of rent, sought to be maintained under this Article shall be brought within one (1) year of the time the person bringing the action would reasonably be expected to have notice or knowledge of its occurrence, unless otherwise expressly provided for.

(b) Any Commission complaint for unlawful imposition or collection of rent, sought to be maintained under this Article shall be brought within two (2) years of the time the affected tenant would reasonably be expected to have notice or knowledge of its occurrence. Each collection of rent that the Commission determines to be unlawful shall constitute a new violation of this Article.

(c) This Statute of Limitations shall not run during the pendency of an action before the Commission, or an appeal therefrom. Nothing contained herein shall be interpreted as limiting the time in which an action may be brought under some other law for which there is a longer statute of limitations.

Introduced by: Mayor Sharp
(Drafted by: P. Jewell)
(Revised 1/27/92)

1st Reading: 1/27/92
2nd Reading:
Posted:
Effective:

CHARTER AMENDMENT RESOLUTION #1992-5
AMENDING CHARTER ARTICLE VII, SECTION 701(a) REGARDING
"QUALIFICATIONS OF VOTERS" AND SECTION 703 REGARDING REGISTRATION
CERTIFICATION BY SUPERVISORS OF ELECTION

WHEREAS, Takoma Park is a diverse community including people of many different nationalities, races and economic circumstances; AND

WHEREAS, Takoma Park welcomes the full participation in City affairs of all those who have chosen to make the City their home; AND

WHEREAS, the Mayor and City Council of Takoma Park recognize that all residents of the City have an equal interest in issues before City government, and deserve an equal opportunity to influence decisions that directly affect their lives; AND

WHEREAS, a majority of Takoma Park voters voted on November 5, 1991 in a non binding referendum to allow residents of Takoma Park who are not citizens of the United States to vote in City elections.

SECTION 1: NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, THAT pursuant to Article XI-E of the Constitution of the State of Maryland and Article 23A of the Annotated Code of Maryland (1957 edition, as amended), title: "Corporations - Municipal," that Sections 701 (a) and Section 703 of the Charter of the City of Takoma Park are hereby amended as follows:

ARTICLE VII - REGISTRATION, NOMINATIONS, AND ELECTIONS
SECTION 701 Qualifications of Voters

(a) Every person who (1) is a resident of Takoma Park [citizen of the United States], (2) is at least eighteen years of age, (3) has resided within the corporate limits of the City for 30 days next preceding the City election, and (4) is registered in accordance with the provisions of this charter, is a qualified

voter of the City. Every qualified voter of the City is entitled to vote in all City elections.

(b) Clerks Note: Remains as is as amended by Ordinance #1991-21

SECTION 703 - REGISTRATION

(a) Any Resident of Takoma Park who is a United States citizen may register to vote at the boards of election supervisors for Montgomery and Prince George's Counties, respectively, any time these offices are open for business or by mail. Registration shall be permanent unless such registration shall be cancelled as provided by state law. No person is entitled to vote unless properly registered.

(b) Any resident of Takoma Park who is not a United States citizen may register with the City Clerk, who shall maintain a separate voter roll from the existing voter rolls generated by the Montgomery County and Prince George's County Boards of Election, to include the names of those non United States Citizens.

SECTION 2: AND BE IT FURTHER RESOLVED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, THAT the date of adoption of this Resolution is scheduled for February 10, 1992, and the amendment of Section 701(a) and Section 703 of the Charter of the City of Takoma Park hereby enacted shall become effective on March 31, 1992, unless a proper petition for referendum hereon shall be filed as permitted by Article 23A of the Annotated Code of Maryland, Section 16, provided a complete and exact copy of this Resolution shall be continuously posted on the bulletin board of the Municipal Building until March 21, 1992, and provided further that a copy of the fair summary of this Charter Resolution shall be published in a newspaper of general circulation in the City of Takoma Park, once a week for four weeks.

SECTION 3: AND BE IT FURTHER RESOLVED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, THAT the City Clerk is hereby specifically commanded to carry out the provisions of Section 2 hereof, and, as evidence of such compliance, the City Clerk shall cause to be maintained appropriate certificates of publication of the newspaper in which the title of the Resolution shall have been published. If a favorable referendum is held on the proposed amendment, the Council shall proclaim the proposed

amendment hereby enacted to have been approved by the voters and the Charter amendment shall become effective on the date provided by law.

SECTION 4: AND BE IT FURTHER RESOLVED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, THAT as soon as the Charter Amendment hereby enacted shall become effective, either as provided herein or following a referendum, the City Clerk shall send by registered mail, to the Department of Legislative Reference of Maryland, a clear certified copy of this Resolution showing the number of Councilmembers voting for and against it and report on the votes cast for or against the amendment hereby enacted at any referendum thereon and the date of such referendum.

SECTION 5: The above Charter Amendment was enacted by the foregoing Resolution which was passed at a Regular Meeting of the Council of the City of Takoma Park on Monday, _____, 1992, _____ members of the City Council voting in the affirmative, _____ members of the City Council voting in the negative, _____ members of the City Council abstaining and _____ members of the City Council absent, and the said Resolution becomes effective in accordance with law on the _____ day of _____, 1992.

SECTION 6: In this ordinance, **[brackets]** shall denote language to be deleted from the current City Charter and **underlining** shall denote language to be added.

Adopted this _____ day of _____, 1992 by Roll Call Vote as follows:

AYE:
NAY:
ABSTAINED:
ABSENT:

COUNCILMEMBERS OF THE CITY OF TAKOMA PARK

Mayor

Councilmember, Ward 1

Councilmember, Ward 2

Councilmember, Ward 3

Councilmember, Ward 4

Councilmember, Ward 5

Councilmember, Ward 6

ATTEST:

City Clerk

Date

Introduced by: Mayor Sharp

RESOLUTION #1992-7

ACKNOWLEDGING THE RETIREMENTS OF TAKOMA PARK VOLUNTEER FIRE DEPARTMENT EMPLOYEES, RAYMOND CARTER AND MARY PAT WAIGAND,

WHEREAS, on July 1, 1990, Raymond Carter, officially retired from active service with the Takoma Park Volunteer Fire Department after 32 years; AND

WHEREAS, Raymond began employment as a Firefighter with the Takoma Park Fire Department in 1946, and was eventually promoted to Sergeant and Lieutenant before being promoted to Fire Chief for which he served 5 years until his resignation in 1958; AND

WHEREAS, in 1970, Raymond was rehired by the City of Takoma Park when the fire department was still a municipal operation, and served as the City's Mechanic/Firefighter, riding and repairing fire apparatus until he dedicated his work to only repairing the apparatus in the 1980's; AND

WHEREAS, on January 1, 1992, Mary Pat Waigand officially retired from the Takoma Park Volunteer Fire Department after 23 years of service; AND

WHEREAS, Mary Pat began her employment with the Takoma Park Fire Department when it was still a municipal operation and was one of the first females to be affiliated with a male oriented fire department, and became the first female member of the International Association of Firefighters Union-Local 1664; AND

WHEREAS, Mary Pat Waigand has served under five fire chiefs, and when the department's administration was taken over by the Takoma Park Volunteer Corporation, under five different Presidents and Boards of Directors; AND

NOW THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF TAKOMA PARK, MARYLAND, hereby congratulates RAYMOND CARTER and MARY PAT WAIGAND on their retirement from the Takoma Park Volunteer Fire Department and expresses sincere appreciation for their many years of dedicated service to the Takoma Park Community.

Dated this 27th day of January, 1992.

Edward F. Sharp
Edward F. Sharp
Mayor

ATTEST:

Paula S. Jewell
Paula S. Jewell, CMC/City Clerk

