

PUBLIC HEARINGS, REGULAR MEETING AND WORKSESSION
OF THE CITY COUNCIL

Monday, March 13, 1995

OFFICIALS PRESENT:

| | |
|-------------------------|-----------------------------------|
| Mayor Sharp | City Administrator Habada |
| Councilmember Chavez | Deputy City Administrator Grimmer |
| Councilmember Davenport | Asst. City Administrator Hobbs |
| Councilmember Elrich | City Clerk Sartoph |
| Councilmember Porter | Asst. Corporation Counsel Perlman |
| Councilmember Rubin | Solid Waste Manager Braithwaite |
| Councilmember Williams | |

The Council convened at 7:36 p.m. on Monday, March 13, 1995, in the Council Chamber at the Municipal Building, 7500 Maple Avenue.

The following remarks were made:

PRESENTATION

Mayoral Proclamation - 75th Anniversary of Parker Memorial Baptist Church.
Mr. Sharp read the proclamation for the record, congratulating the congregation of Parker Memorial Baptist Church on the occasion of their 75th Anniversary. Mr. Sharp and Mr. Davenport presented the proclamation to Pastor Williams, who thanked the Council and staff for their continued support.

Pastor Williams remarked that it has been a privilege to work with the community, and that he wants the church to become more actively involved in the City. He said that the church will be establishing in its a ministry a civic liaison to work more closely with the City.

ADOPTION OF MINUTES

Mr. Williams noted an amendment to the minutes from 2/13/95. He stated that he is vice-Chair of the Metropolitan Washington Council of Governments (COG) "Human Services and Public Safety Committee" (correction to page 2, paragraph #3).

The Council Meeting Minutes from 2/13/95, as amended, and 2/21/95 were adopted unanimously.

ADDITIONAL AGENDA ITEMS

Mr. Sharp proposed that agenda item #14 be moved up from the Worksession agenda into the Regular Meeting agenda. He said that the Council will need to take action on the matter of the Takoma Park Middle School, since the Montgomery County Board of Education is scheduled to vote on its budget Wednesday evening. He commented that several Council members are planning to attend the Board's meeting on Wednesday.

Mr. Rubin noted that if this change is made to the agenda, a call needs to be placed to Howard Kohn who wishes to speak on the matter but is not planning to arrive until 10:00 p.m., the time for which this discussion was originally scheduled.

CITIZEN COMMENTS

Haynes Fraser (Chairperson, "Friends of Rwanda") commented on the work and efforts of the Friends of Rwanda, and asked the Council to consider establishing a sister city relationship with a Rwandan city.

Lawrence (unintelligible) noted that a benefit for Rwandan war victims is scheduled for May 1995, and that entertainers are needed for the event. Interested persons should contact Herman Schwartz at (301) 891-1023.

Randy Boehm, Chair, North Takoma Citizens Association asked the Council to pass a resolution in favor of Maryland General Assembly House Bill 279 regarding expansion of the Takoma Park Campus of Montgomery College.

Mr. Sharp said that he has looked at the planning document associated with the proposed expansion of the campus, and that he is concerned about the residential space outside the City that will be affected. He noted, however, that he supports the bill and is willing to add a resolution in support of H.B. 279 to the Regular Meeting agenda.

Marie Ritzo, Central Avenue (Public Safety CAC) commented on the work of the Public Safety Citizens Advisory Committee. She informed the Council that a background check was run on each member of the committee, and asked that Council direct staff to set criteria for background checks.

Robert Thorpe said that he is a Takoma Park Elementary School volunteer and crossing guard, and that he is also representing the Parent Teachers Association (PTA), this evening. He commented on traffic concerns in the vicinity of the school. The entrance to the school is chaotic. There are no painted cross-walks or painted curbs to prohibit parking (i.e. corner of Hodges Lane and Holly Avenue). He described several near miss accidents he has observed involving motorists and pedestrians. Mr. Thorpe expressed his concern about the absence of a stop sign behind the Municipal Building at the corner of the Police parking lot and the Tool Library (Grant Avenue).

Mr. Sharp asked Ms. Habada to follow-up on the issues raised by Mr. Thorpe.

Ms. Habada responded that staff will check-in with Mr. Thorpe at 8:30 a.m. tomorrow when he arrives at work.

Mr. Rubin requested that Mr. Thorpe also contact Virginia Ripley-Wolf, President, Hodges Heights Citizens' Association, regarding this matter.

Rino Aldrighetti, 7213 Central Avenue (Public Safety CAC) spoke on the issue of background checks. He noted that the Council has responded well since this issue first surfaced, and that the Police Chief, new to his position, has also responded well. Mr. Aldrighetti questioned what will be the effect of the background checks that were conducted on volunteers of the Public Safety CAC. He expressed his concern about people being subject to checks without prior notification, and explained the need to communicate to new staff a vision consistent with the desires of the Takoma Park community.

Michael Israel, 260 Manor Circle suggested that the Nuclear-Free franking message that appears on City mail be changed to a slogan such as, "Beautiful City", "Litter Free" or "Graffiti Free." He further proposed that "Litter Free" signs be erected throughout the City. Mr. Israel described an incident where a neighbor dumped a garbage bag on the street.

Carol Stewart, Central Avenue (Public Safety CAC) emphasized the need for Council to set a policy regarding background checks. She said that she feels strongly that citizens should be made aware of such a policy.

Thomas Gagliardo (Public Safety CAC) supported the comments made by others members of the committee. He said that the committee does not want to see a "we versus they" attitude created between residents and police. Community oriented policing should not mean that the police distrust residents. He stated that he appreciated the Police Chief coming to the Public Safety CAC meeting and the Council coming forward on this matter. Mr. Gagliardo remarked that there needs to be a procedure in place. Checks should not be done without notification to the resident. He described several scenarios of mistaken background checks (e.g. mis-identification, minor offenses, political activist backgrounds, etc.). He questioned what does the result of a background check mean. He asked, more specifically, what criteria make a person ineligible to serve on a committee or to go on a ride-along. Mr. Gagliardo suggested that the Council set a policy, involve citizens in setting such a policy, and pass an ordinance prohibiting unauthorized background checks.

Ms. Porter stated her concern about this matter and proposed that the Council schedule a Worksession discussion of background checks for March 20th.

Mr. Rubin asked that the citizens who have commented on this matter tonight, be present on March 20th for the Council's discussion.

PUBLIC HEARINGS

#1 Special Assessment - Westmoreland Area Storm Drain Project. Opportunity for citizens to comment on the proposed levy of special assessment charges to pay for the costs of storm drainage improvements to be constructed in the upper Westmoreland area.

Ms. Habada noted that the project design drawings are posted on the walls of the Council Chamber. The bid announcement was published in last week's Washington Post and will be in next Sunday's issues, as well.

James Rast, 6811 Eastern Avenue (Lot 13) said that he received the letter of public hearing notification last week. He described his property lot, explaining that any water running onto the lot is quickly absorbed and does not run-off onto neighboring lots. He stated that the only trouble he has had with water running onto his lot is from "up stream" neighbors, but that he built a retaining wall to remedy that problem. Mr. Rast commented that he does not recall there being problems with storm water until the apartment building was built. He questioned why he is being assessed for a problem that he does not contribute to, and a project that he will not benefit from.

John Urciolo commented in support of the project. He said that even though his portion of the assessment is approximately one third of the total assessment, the project is worth the investment.

Arthur Karpas, 6916 Westmoreland Avenue remarked that residents in the Westmoreland Area have been working toward resolving the storm water problem for nine years. He said he supports the project, and commented on the difference between "good" and "real" reasons that persons might oppose the project. However, the project is necessary. It is a reasonable approach that the assessments be based on run-off from individual parcels of land. He remarked that all persons will benefit from the improvements.

John Redman, 6910 Westmoreland Avenue said that he is concerned about equity, and that he supports the notion that assessment should be tied to an ability to pay. He remarked that the storm water is a long standing problem, and that he is quite confident that the project will successfully deal with the run-off water. He explained that there has been damage to the structure of the basement in his home, and added that he is willing to pay the assessment because he will be working to resolve a problem in a cooperative way.

Brad Blauer stated his support for the project. Over the course of the last year, discussions have led to the neighbors compromising to pay an assessment for the cost of the project.

Rick Culvert said he supports the project.

Richard Joy expressed his concern about the potential removal of trees on his lot that are in the path of the project and whether he will be responsible for removing the trees.

Ms. Habada said that it is her understanding that the trees in the path of the improvements, will be taken out as part of the project. Residents will not be saddled with the extra cost of tree removal.

Mr. Joy asked who will maintain the project, and what power do the residents have to enforce maintenance among themselves.

Ms. Habada responded that the residents can file suit against each other to enforce individual maintenance, but that the engineers do not foresee a problem with vegetation entering into the system.

Mr. Joy said that he supports payment based on a person's ability to pay.

John Redman, 6910 Westmoreland Avenue said that there is a fence along the back of his lot that will have to be removed during the course of the project, and that it should be included in the contract that there will be compensation for replacement of the fence.

Ms. Habada remarked that she believes the plans show disturbed areas to be replaced "in kind."

Mr. Sharp added that the contract is available for public inspection.

Ms. Habada commented that the engineers are mindful that residents are paying for the work.

Mr. Blauer asked if the residential work can be done first, before the May plantings.

Ms. Habada confirmed that the residential work is scheduled first, for the early Spring, in the contract.

Mr. Rast stated that he is not against the project, but that his objection to paying a portion of the assessment is a matter of principle.

Ms. Sartoph noted, for the record, that legal notice of the public hearing was mailed to affected residents on 2/22/95 and published in the Journal newspapers and the Takoma Park Newsletter on 2/24/95.

Mr. Sharp closed the public hearing at 9:48 p.m.

#2 Tree Ordinance. Opportunity for citizens to comment on proposed revisions to the Tree Ordinance (Chapter 12. Trees and Vegetation).

There were no citizen comments.

Mr. Sharp closed the public hearing at 9:50 p.m.

#3 Charter Amendment re: Special Elections to Fill Council Vacancies. Opportunity for citizens to comment on a proposed amendment to establish provisions to allow for special elections to fill Council vacancies occurring more than 240 days before the next regularly scheduled City election (amending Charter Article III, Section 307, regarding Filling Vacancies on the Council).

Mr. Sharp remarked that in 1990, on the occasion of Mayor DelGiudice's resignation, the Council discovered that when a Council vacancy occurs, the remaining Council members select a person to fill the vacancy. He explained the proposed amendment.

There were no citizen comments.

Mr. Sharp closed the public hearing at 9:53 p.m.

#4 Charter Amendment re: Recall Elections Provisions. Opportunity for citizens to comment on a proposed amendment to establish provisions to allow for recall elections for the removal of elected officials from office (amending Charter Article VII, by adding Section 710, regarding Recall Elections, and renumbering existing Sections 710 and 711).

Mr. Sharp explained the proposed amendment.

There were no citizen comments.

Mr. Sharp closed the public hearing at 9:56 p.m.

#5 Charter Amendment re: Closing Voter Rolls 30 Days Prior to Special and Recall Elections. Opportunity for citizens to comment on a proposed amendment to require that the voter rolls be closed 30 days prior to special elections, including but not limited to special elections to fill Council vacancies and recall elections (amending Charter Article VII, Section 702, regarding Final Lists of Registered Voters: Certification by Supervisors of Elections for Special Elections).

Mr. Sharp explained the proposed amendment.

Mr. Gagliardo stated his support for the Charter amendments.

Mr. Sharp closed the public hearing at 9:57 p.m.

#6 Charter Amendment re: Emergency Reserve Fund. Opportunity for citizens to comment on a proposed amendment to change the formula for calculating the minimum funding of the Emergency Reserve Fund (amending Charter Article IX, Section 904(a), regarding Provisions for an Emergency Reserve Fund).

Mr. Sharp explained the proposed amendment.

There were no citizen comments.

Mr. Sharp closed the public hearing at 9:59 p.m.

#7 2nd Reading Ordinance re: Payment in Lieu of Taxes (PILOT) Agreement--

Edinburgh House. Mr. Sharp explained the ordinance.

Moved by Mr. Davenport; seconded by Mr. Williams.

Frankie Blackburn, Montgomery Housing Partnership announced that she is present to answer any questions.

There were no citizen comments.

The ordinance was adopted unanimously at second reading, by roll call vote.

ORDINANCE #1995-3
(Attached)

#8 1st Reading Ordinance re: Levy of Special Assessment Charges to Pay for the Costs of Storm Drainage Improvements to be Constructed in the Upper Westmoreland Area.

Mr. Williams made a motion for the Council to sit, simultaneously, as the Storm Water Management Board for the discussion of this item. (seconded by Ms. Porter)

Mr. Williams asked why 6811 Eastern Avenue is not listed in the whereas clause.

Ms. Perlman responded that the omission may be a typographical error. She said that she believes "6817" should have been "6811", and that Lot 52 should have been included in the Class I "Commercial". She noted that there may be some specific changes that need to be made to lot and address classifications before second reading of the ordinance.

Ms. Porter recalled that the Council had discussed looking at the feasibility of assessments based on a person's ability to pay.

Ms. Perlman explained the legal problem with such a pay structure.

Ms. Porter asked if the payment would be deferred as a "hardship" until the sale of the property.

Ms. Perlman emphasized that an assessment structure needs to be equitable, and suggested that a deferment could be handled on the enforcement level.

Mr. Sharp said that he would like to see some way of addressing this matter other than enforcement.

Ms. Porter questioned if a procedure could be put in place where a resident can apply for payment deferral, with interest accruing and with payment due at the time the property is sold.

Ms. Habada responded that she will discuss the payment options with Ms. Perlman over the next week.

Mr. Williams stated that he understands the legal problems but that he does not believe that residents in the area would object if special consideration were given--equitable deferment--to resident(s) for which an assessment would cause a hardship.

Mr. Sharp said that the project should be viewed as private, and not funded by the City.

Mr. Karpas remarked that he knows of one person who would likely be unable to pay the assessment. He recalled that at one point he believes there was mention of State or County assistance. Mr. Karpas asked that the City continue to look for options.

Ms. Porter commented on the State property tax rebate program. She pointed out that the Council raised the question of whether the amount of the assessment could be reduced for persons who are likely to suffer a hardship because of the assessment cost, and that the Council was advised that such persons could not be treated any differently than other persons affected by the assessment.

Mr. Elrich asked if there is a voluntary way for other residents to pick-up the cost of the assessment for less fortunate residents.

Mr. Karpas said that he is willing to pursue this idea.

Mr. Sharp remarked that such an arrangement would have to be private and arranged by the residents.

Mr. Rast suggested that residences that do not contribute or suffer from run-off water be put in a separate "exempt" category.

Ms. Habada noted that the engineers looked at the entire water shed area when the project was designed.

Mr. Karpas commented on how the engineers evaluated the area.

Mr. Rast emphasized that he has never had a problem with run-off water.

(did not state name) said he can show where water runs off of Mr. Rast's property into his yard.

The ordinance was accepted unanimously at first reading.

ORDINANCE #1995-4
(Attached)

#9 1st Reading Ordinance re: Revisions to Tree Ordinance. Moved by Mr. Chavez; seconded by Ms. Porter.

Ms. Porter proposed an amendment to Section 12-29(d) and (e), that would change the application fee for tree removal permits from a proposed fee of \$50 to a fee of \$25. She noted that the current application fee is only \$10, and that the \$50 fee is in the proposed ordinance. Since there is no analysis to indicate the need for an increase from a \$10 to \$50 fee, the increase could attract negative comment to the overall ordinance.

Mr. Davenport recalled asking Solid Waste Manager Braithwaite about the \$50 fee, and noted that an analysis has not been presented to the Council.

Pat Hill, Chair, Tree Commission said that the \$10 fee has been on the books for years, and commented on the proposed increase to \$50. She added that the increased fee is hoped to also have the effects of getting more people's attention and more people taking the tree removal process seriously.

Mr. Rubin asked if the \$50 fee is per tree.

Ms. Hill clarified that the \$50 is an application fee that can be for multiple trees as specified in the application.

Mr. Elrich said that he would never support a fee on the basis of getting people's attention, because in this sense the fee becomes more of a fine. He stated that he does, however, support the fee increase, and that he believes the fee approximates the cost of the process, especially when a tree inspector is needed.

Ms. Porter asked if a tree inspector is needed in all cases.

Ms. Perlman said Ms. Porter's question is difficult to answer since former Arborist Moskowitz may have done much of the inspection work in the past. It is difficult to know the impact without a staff inspector.

Mr. Sharp remarked that he is inclined to support Ms. Porter's proposal, but that he would be willing to consider the \$50 fee if staff were to present an analysis justifying the \$10 to \$50.

Ms. Porter said that any cost analysis should be accompanied by a frequency analysis.

Mr. Rubin stated his support for Mr. Sharp's remarks.

Mr. Williams commented that he was prepared to speak on behalf of the \$50 fee, but that he is willing to go along with the reduced \$25 fee, pending any further information from staff.

Ms. Porter questioned whether there is some other provision in the ordinance that addresses people taking tree removal seriously.

Mr. Elrich proposed that the fee removed from the ordinance, and that the

City Administrator be given the authority to set the fee.

Ms. Porter supported keeping a \$25 fee in the ordinance, but said she would be happy to hear the Ms. Habada's response to Mr. Elrich's proposal.

Mr. Elrich suggested that staff report to Council, before second reading of the ordinance, regarding (1) permits issued last year, (2) inspectors used, (3) samples sent for laboratory analysis.

The ordinance as amended was accepted unanimously at first reading.

ORDINANCE #1995-5
(Attached)

#10 1st Reading Charter Amendment Resolution re: Special Elections to Fill Council Vacancies. Mr. Sharp explained the Council's policy of amending the Charter with two-reading resolutions.

Moved by Mr. Rubin; seconded by Mr. Davenport.

Kay Dellinger, Hampshire Towers stated that she supports the amendment, and that she agrees with the percentage level chosen as the requirement for petition signatures.

The resolution was accepted unanimously at first reading.

RESOLUTION #1995-13
(Attached)

#11 1st Reading Charter Amendment Resolution re: Recall Elections Provisions. Moved by Mr. Davenport; seconded by Mr. Williams.

The resolution was accepted unanimously at first reading.

RESOLUTION #1995-14
(Attached)

#12 1st Reading Charter Amendment Resolution re: Closing Voter Rolls 30 Days Prior to Special and Recall Elections. Moved by Mr. Williams; seconded by Ms. Porter.

The resolution was accepted unanimously at first reading.

RESOLUTION #1995-15
(Attached)

#13 1st Reading Charter Amendment Resolution re: Emergency Reserve Fund. Moved by Mr. Williams; seconded by Mr. Chavez.

Mr. Sharp recalled that the Council has discussed changing the \$500,000 minimum. He said that the Emergency Reserve (ER) is a pot of money that is not being fully used, and noted that there is a separate Equipment Replacement Reserve (ERR) of \$700,000+, as required by the Charter.

Deputy City Administrator Grimmer said, more specifically, that the ERR includes items that cost .5% of revenues or more.

Mr. Sharp suggested moving more items, of lesser value (e.g. Festiva automobiles), into the ERR. He proposed that the ER minimum be reduced to \$250,000, and that the excess funds be shifted to the ERR to make equipment purchases, including purchases of lower cost items.

Ms. Grimmer stated that transferring \$500,000 from ER to ERR would not get funding down to the "Festiva level." She said that she would get more concrete numbers by second reading of the ordinance.

Ms. Porter asked whether the resolution needs to be rewritten to indicate where the monies are being transferred, to ensure that future Council's do not eliminate monies over the \$700,000 ERR minimum.

Mr. Sharp explained the importance of not restricting the use of the money in the Charter, and leaving it available for a dual use--equipment purchases or

emergencies.

Ms. Porter questioned how the proposed change to the ER would be viewed by bond insurers. She commented on her belief that the money should be safeguarded in the Charter, and said that it could be written into the ER that "money in the reserve is to be used for equipment unless needed for an emergency."

Mr. Elrich asked what will be the budget implication over five years.

Mr. Sharp remarked that Ms. Porter's proposal is an argument for deleting the ER.

Ms. Porter stated that she is comfortable having at least a small amount held in the ER. She made the following comments about the resolution language: (1) you add "% increase of index" not "index"; (2) either craft index precisely attuned to City services or go with Consumer Price Index (CPI); and (3) need to specify periods. She proposed specific language amendments, deleting the Urban Consumers less shelter (seconded by Mr. Williams).

Mr. Sharp said that he is not a strong supporter of indexing against the CPI.

Ms. Porter commented on the City's structuring of rent stabilization as related to the CPI.

Mr. Elrich stated that he would rather see no change to the CPI, but would agree to the annual ER calculation as related to the CPI being structured the same as rent stabilization.

Mr. Sharp suggested that the Council adopt the amendment at first reading this evening, and continue the discussion at second reading with any additional information that is obtained during the interim.

Mr. Rubin asked for Mr. Sharp's comments on the 70% proposal.

Mr. Sharp stated that there is an argument in favor of the proposal, it being consistent with the rent stabilization formula.

Mr. Elrich commented on the need to evaluate the ER fund each year. The City Administrator can make recommendations to increase the level in future years.

Mr. Sharp reminded the Council that monies in the ER fund are tax dollars not being used, and the proposal is to put some of the monies to use.

Mr. Elrich agreed that the ER fund is not being used, and supported Mr. Sharp's proposal as a possible means of holding the line on taxes.

Mr. Sharp said that he supports the language amendments proposed by Ms. Porter. The amendments carried (NAY: Elrich).

The resolution as amended was accepted unanimously at first reading.

RESOLUTION #1995-16
(Attached)

ADDITIONAL AGENDA ITEM

#14 Resolution re: House Bill 279. Mr. Sharp read the resolution for the record. Moved by Mr. Sharp; seconded by Mr. Rubin.

Mr. Sharp noted that the college has been clear in discussions that they are sensitive to concerns about any expansion into the City. He remarked that there remain some issues to be raised about not reducing residential areas inside and outside the City.

The resolution was adopted unanimously.

RESOLUTION #1995-17
(Attached)

The Council moved into Worksession, and later adjourned for the evening at 10:43 p.m.

NOTE: The discussion of the proposal to close the Takoma Park Middle School was held in Worksession. Council reached a consensus regarding the Mayor's testimony before the Montgomery County Board of Education.

WHEREAS, the Council declares that agreeing to a PILOT in this case serves a public purpose and promotes the peace, health, and general welfare of the City and its citizens by rehabilitating a 44-unit apartment building, preserving 50% of the units for households with low to moderate incomes and contributing to the tax base of the City of Takoma Park.

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

SECTION ONE. The Council hereby approves a payment in lieu of taxes agreement with MHP Edinburgh House, Inc. such that:

1. For the first five years of MHP Edinburgh House, Inc.'s ownership of the property at 7513 Maple Ave, Takoma Park, Maryland, an amount equal to 50% of the amount of City property tax on the property would be paid in lieu of the property tax, and for the next five years, an amount equal to 75% of the amount of City property tax on the property would be paid in lieu of the property tax, and that subsequently, the payment in lieu of taxes agreement would end.
2. The MHP Edinburgh House, Inc. shall preserve 50% of the units of the property at 7513 Maple Ave, Takoma Park, Maryland for households with low or moderate incomes and that if the percentage drops beneath 50%, the PILOT amount shall be adjusted upwards accordingly.
3. The payment in lieu of taxes shall begin with the date the MHP Edinburgh House, Inc. acquires title to 7513 Maple Ave, Takoma Park, Maryland.

SECTION TWO. The City Administrator is authorized and empowered to enter into a PILOT agreement under the provisions of Section 7-503 of the Tax-Property Article of the Annotated Code of Maryland with the MHP Edinburgh House, Inc. for the property at 7513 Maple Ave, Takoma Park, Maryland as set forth in this Ordinance.

ADOPTED THIS _____ DAY OF _____, 1995, BY ROLL CALL VOTE AS FOLLOWS:

AYE:
NAY:
ABSENT:
ABSTAIN:

Introduced by:
Councilmember Williams

First Reading: 3/13/95
Second Reading:

Drafted by:
Linda S. Perlman
Asst. Corporation Counsel
Draft Date: 3/23/95

ORDINANCE NO. 1995 - 4

AN ORDINANCE LEVYING SPECIAL ASSESSMENT CHARGES AGAINST PROPERTIES IN THE UPPER WESTMORELAND AREA OF THE CITY OF TAKOMA PARK FOR THE COSTS OF STORM DRAINAGE IMPROVEMENTS.

WHEREAS, Section 1201 of the Municipal Charter provides for the Council of Takoma Park to be designated the Stormwater Management Board ("Board") for Takoma Park; and

WHEREAS, Section 1216 of the Municipal Charter provides that the Board shall have the power to levy and collect taxes in the form of special assessments upon property in a limited and determinable area for special benefits conferred upon such property by the installation or construction of storm water sewers, curbs, and gutters and to provide for the payment of all or any part of the cost of such projects out of the proceeds of such special assessment; and

WHEREAS, the City is undertaking a storm drainage improvements project in the area defined by Westmoreland Avenue to the north, Eastern Avenue to the south, Laurel Avenue to the west, and Walnut Avenue to the east (this area is hereinafter referred to as "Upper Westmoreland"); and

WHEREAS, in general, the stormwater runoff in the Upper Westmoreland area flows from the west side (the commercial area) to the east side (the residential area) and due to the existing

drainage pattern, the residential lots at the downstream end of the Upper Westmoreland drainage area are saturated; and

WHEREAS, the commercial area, being mostly paving and roofs, releases more water per acre than the residential lots which are mostly grass; and

WHEREAS, the Upper Westmoreland drainage area, in its existing condition, allows a large portion of its runoff to flow uncontrolled to the lots at the downstream end; and

WHEREAS, upstream property owners have a responsibility to manage surface runoff as not to adversely impact or cause damage to downstream property owners; and

WHEREAS, the storm drainage improvements project will mitigate the existing drainage problems in the Upper Westmoreland area, which is in the best long-term interests of the ~~single-~~family residential, apartment, and commercial property owners; and

WHEREAS, these storm drainage improvements will confer a special benefit on the owners of property in the Upper Westmoreland area of the City; and

WHEREAS, the Board finds that there should be an equitable assessment of the costs of the storm drainage improvements to be constructed against the properties in the Upper Westmoreland area and that the properties in the Upper Westmoreland area should be divided into classes based on percentage contribution to the total water drainage problem; and

WHEREAS, on February 21, 1995, the Council, sitting as the Stormwater Management Board for Takoma Park, passed Resolution No. 1995-8 setting a public hearing for March 13, 1995, concerning the proposed storm drainage improvements project and the proposed special assessment; and

WHEREAS, in accordance with Section 1302(d) of the Municipal Charter, the City Administrator caused notice to be given by mail to the owners of record, as shown in the property tax records of the City, of each parcel of property proposed to be assessed concerning the nature and extent of the proposed project, the kind of materials to be used, the estimated cost of the project, the portion of the project cost to be assessed, the number of installments in which the assessment may be paid, the method to be used in apportioning the costs, and the time and place at which all interested persons may appear before the Council and be heard concerning the proposed project and special assessment; and

WHEREAS, such notice also was published on February 24, 1995, in the Prince George's Journal, the Montgomery Journal, and in the March, 1995 issue of the Takoma Park Newsletter, newspapers of general circulation in the City; and

WHEREAS, at the March 13, 1995, public hearing, the City Clerk presented a certificate of publication and of the mailing of copies of the notice; and

WHEREAS, on March 13, 1995, the Council, sitting as the Stormwater Management Board for Takoma Park, held a public hearing concerning the proposed Upper Westmoreland storm drainage

improvements project and the special assessment at which time all persons interested were given the opportunity to appear before the Council and be heard concerning the proposed project and special assessment.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND, SITTING AS THE STORMWATER MANAGEMENT BOARD FOR TAKOMA PARK.

SECTION 1. Levy of Special Assessment; Project Cost; and Method of Apportionment.

The Council, sitting as the Stormwater Management Board for Takoma Park, hereby levies special assessment charges against the properties located at 7009, 7007, 7005, 7003, 7001B, 7001, 6939, 6937, 6935, and 6931 Carroll Ave.; 6929, 6927, 6925 6923, 6921, 6919, 6917, 6915, 6909, and 6901 Laurel Ave.; 6855, 6847 (vacant lot), 6843-45, 6839, 6833A & B, 6815, and ~~6817~~ 6811 Eastern Ave.; 68, 66, 64, 62, 60, 58, and 56, ~~and 54~~ Walnut Ave.; and 6906, 6908, 6910, 6912, 6914, 6916, 7000, 7002, 7004, 7006, 7008, 7010, 7012, 7014, and 7007 Westmoreland Ave., Takoma Park, Maryland 20912, to pay for the costs of storm drainage improvements.

The total estimated project cost is \$56,000.00, which shall be assessed to the owners of the above-listed properties. The total cost of the storm drainage improvements project shall be apportioned according to the percentages of total drainage contributions in the Upper Westmoreland area (as determined by Greenhorne & O'Mara, Inc., engineers), as follows:

Class I, Commercial - Urciolo (Lots 49, 50, and 51, and 52, Block A, Gilbert & Wood subdivision--6929, 6927, 6925, 6923, 6921, 6919, 6917, 6915, and 6909 Laurel Ave.; 6855 Eastern Ave.) 33.59%; or approximately \$19,000.

Class II, Commercial - Carleton (Lots 11, 12, 13, 38, 37, 36, 35, 34, and 33, and ~~52~~, Block A, Gilbert & Wood subdivision--7007, 7014, 7012, 7010, 7008 Westmoreland Ave.; 7009, 7007, 7005, 7003, 7001B, 7001, 6939, 6937, 6935, and 6931 Carroll Ave.) 5.56%; or approximately \$3,200.

Class III, Vacant Lot (Lot 9, Block A, Gilbert & Wood subdivision--6847 Eastern Ave.), 2.51% or approximately \$1,410.

Class IV, Lot with Rear Yard Paved (Impervious Surface) (Lot 7, Block A, Gilbert & Wood subdivision--6839 Eastern Ave.) 6.14%; or approximately \$3,440.

Class V, Apartments (Lots 4, 5, and 6, Block A, Gilbert & Wood subdivision--6833A & B Eastern Ave. [Eastern Gardens]) 16.53% or approximately \$9,260.

Class VI, Remaining ~~Single-Family~~ Residential Area (Lots 22 - 32, Block A, Gilbert & Wood subdivision--68, 66, 64, 62, 60, 58, and 56, and 54 Walnut Ave.; ~~6817~~ 6811 and 6815 Eastern Ave.; Lot 8, Block A, Gilbert & Wood subdivision--6845-6843 Eastern Ave. (duplex); and Lots 39-48, Block A, Gilbert & Wood subdivision--7006, 7004, 7002, 7000, 6916, 6914, 6912, 6910, 6908, and 6906 Westmoreland Ave.) 35.77%, or approximately \$20,031 total or a cost of ~~\$1,002~~ approximately \$954 for each lot.

SECTION 2. Special Assessment Payments; Interest and Penalties; Collections.

The special assessment charges levied by this Ordinance shall be payable in annual installments over a five-year period, with the first installment due and payable on July 1, 1995. Interest will be charged on the unpaid special assessment balance at the rate of 6% per annum. Each special assessment installment shall be overdue six months after the date on which the installment became due and payable. A penalty shall be imposed on overdue special assessment installments at the rate of 1% for each month or fraction of a month that the special assessment installment is overdue. The special assessment charges levied by this Ordinance shall be liens on the property and overdue special assessments shall be collected in the same manner as City property taxes or by suit at law. The special assessment charges shall be billed and collected by the City Treasurer.

THIS ORDINANCE IS ADOPTED THIS _____ DAY OF _____,
1995, BY ROLL CALL VOTE AS FOLLOWS:

Aye:

Nay:

Abstained:

Absent:

NOTE: Shading indicates language added to the Ordinance after the First Reading of the Ordinance on March 13, 1995 and ~~strikeout~~ indicates language deleted from the Ordinance after the First Reading of the Ordinance on March 13, 1995.

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Introduced by: Councilmember Chavez

First Reading: 3/13/95
Second Reading:

Drafted By:
Marty Moskowitz, City Arborist
Linda S. Perlman,
Assistant Corporation Counsel

Draft Date: March 24, 1995

Effective Date:

ORDINANCE NO. 1995 - 5

(REVISION OF CHAPTER 12, TREES AND VEGETATION,
OF TAKOMA PARK CODE)

WHEREAS, the City of Takoma Park has the authority to make and administer laws and regulations to protect the public's health and safety, and to protect the environment; and

WHEREAS, the City has the authority under Section 5-427 of the Natural Resources Article of the Annotated Code of Maryland to implement a local urban and community forestry program; and

WHEREAS, trees and other plants provide significant public benefits in terms of air, noise, and visual pollution control, control water run-off and support the biologic and hydrologic integrity of watersheds and ecosystems, and have significant aesthetic value affecting property values and the quality of life in the City; and

WHEREAS, the protection and proper care of the trees and vegetation within the City of Takoma Park enhances the level of public benefits they produce; and

WHEREAS, as part of its effort to preserve and protect the trees and vegetation in the City of Takoma Park, the City intends to develop and update, regularly, an urban forestry plan which describes the urban forestry activities to be undertaken by the

City, such as a tree inventory, planting projects, and educational projects; and

WHEREAS the Council desires that reports on the number of trees removed and replaced in the City and on current and proposed urban forestry activities by the City be included as part of the annual budget process; and

WHEREAS, the Council has determined that certain provisions of Chapter 12, Trees and Vegetation, of the Takoma Park Code need to be revised and, accordingly, adopts this Ordinance repealing and reenacting with changes Chapter 12 of the Takoma Park Code.

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

SECTION ONE. Chapter 12, Trees and Vegetation, of the Takoma Park Code is repealed in its entirety and replaced with the following:

CHAPTER 12. TREES AND VEGETATION.

ARTICLE 1. GENERAL PROVISIONS.

Sec. 12-1. Definitions.

Sec. 12-2. Interpretation.

Sec. 12-3. Authority of City Administrator to adopt regulations.

Sec. 12-4. Interference prohibited.

Sec. 12-5. Enforcement; stop work orders.

Sec. 12-6. Procedure to be followed in case of infractions.

Sec. 12-7. Charges for City taking corrective action.

Sec. 12-8. City Administrator to have decision-making authority for all trees on City property.

Sec. 12-9. Inspection for insects and disease; taking of specimens.

Sec. 12-10. Permission required to prune, spray, plant or remove from City property.

Sec. 12-11. Requirement for supervision by a tree expert.

Secs. 12-12 through 12-15 Reserved.

ARTICLE 2. PROHIBITIONS ON MAINTAINING UNDESIRABLE VEGETATION.

Sec. 12-16. Infected or infested woody vegetation on private property.

Sec. 12-17. Fallen or dangerous trees on private property.

Sec. 12-18. Vegetation not to obscure intersection.

Sec. 12-19. Vegetation not to obstruct sidewalks or traffic.

Sec. 12-20. Noxious growths.

Sec. 12-21. Uncontrolled growth of vegetation on vacant lots.

Sec. 12-22. Uncontrolled growth of lawns on private property.

Sec. 12-23 through 12-25. Reserved.

ARTICLE 3. URBAN FOREST.

Sec. 12-26. Legislative Findings.

Sec. 12-27. Urban forest trees.

Sec. 12-28. Tree permit required.

Sec. 12-29. Tree permit applications; waivers.

Sec. 12-30. Tree replacement required.

Sec. 12-31. Appeals from permit decisions.

Sec. 12-32. Criteria for permit decisions.

Sec. 12-33. Violations and penalties; enforcement.

CHAPTER 12. TREES AND VEGETATION.

ARTICLE 1. GENERAL PROVISIONS.

Sec. 12-1. Definitions.

As used in this Chapter:

(a) "Basal area" means the area of a tree trunk's cross section, measured outside the bark.

(b) "Caliper" means the diameter measurement of the trunk of nursery stock trees, taken at caliper height.

(c) "Caliper height" means 6 inches above the ground, except that in the case of a tree that is 4 or more inches in diameter, "caliper height" means 12 inches above the ground. The diameter measurement of the tree is taken at 6 inches above the ground.

(d) "Canopy" means the combined crowns of all trees on a tract of land.

(e) "City Administrator" means the City Administrator appointed under Section 2-20 or his or her designee.

(f) "City property" means City rights-of-way, City parks, median strips, and other City-owned property.

(g) "Crown" means the volume defined by the spread of the branches and foliage of a tree.

(h) "Department" means the City Department of Public Works.

(i) "Diameter at Breast Height" or "DBH" of a tree means the measurement of the average diameter of the tree taken at 4½ feet above the ground.

(j) "Drip Line" means an imaginary line on the ground

directly below the outer edge of a tree's crown.

(k) "Hazardous," in relation to a tree or tree part, means defective, diseased or dead, and posing a high risk of failure or fracture with the potential to cause injury to people or damage to property.

(l) "Nursery stock tree" means a tree which meets the standards established by the American Standard for Nursery Stock published by the American Association of Nurserymen (Publication No. ANSI Z60.1-1990), as revised and amended from time to time.

(m) "Person" has the meaning in Section 1-2 and does not include the City.

(n) "Tree Commission" means the Tree Commission established under Section 2-141.

(o) "Tree cover" means area covered by canopy, expressed in square feet or as a percentage of the area of a tract of land.

(p) "Tree Protection Plan" means a site plan that delineates tree save areas and details measures to be taken to ensure survivability of trees to be saved prior to and during construction.

(q) "Woody Vegetation" means vegetation with stems of wood (other than vines) and includes trees and bushes.

(r) See Section 1-2 for definitions of the terms "City", "Owner", and "Street".

Section 12-2. Interpretation.

This Chapter is intended to supplement and not to contradict or supersede any applicable provisions of the law and

regulations of the State of Maryland, and is to be interpreted as such.

Sec. 12-3. Authority of City Administrator to adopt regulations.

The City Administrator may adopt regulations to implement this Chapter, in accordance with the provisions of Chapter 2, Article 5, Administrative Regulations.

Sec. 12-4. Interference prohibited.

A person who prevents, delays, or interferes with the City Administrator while he or she is carrying out the provisions of this Chapter in or upon any public highway or public space commits a Class C municipal infraction.

Sec. 12-5. Enforcement; stop work orders.

(a) The Department has primary responsibility for the administration and enforcement of this Chapter.

(b) Representatives of the Department and City Code Enforcement Officers of the Department of Housing and Community Development may serve as the City Administrator's designee, with full authority to enforce all municipal infraction provisions of this Chapter.

(c) In addition to all other means of enforcement provided for by law and in this Chapter, the City Administrator, City Code Enforcement Officers or police officers may issue a "stop work order" to any person who violates any provision of this Chapter. A stop work order also may be issued on the basis of an affidavit received setting forth the facts of the alleged violation.

(1) Any person who receives such a stop work order

shall immediately cease the activity which constitutes the violation. The person shall comply with all terms and conditions imposed by the person issuing the order before the activity may resume.

(2) A person who receives a stop work order may appeal the issuance of the stop work order to the Tree Commission pursuant to Section 12-31 within 15 days after the issuance of the stop work order, as if the issuance were a denial of a tree permit.

Sec. 12-6. Procedure to be followed in case of infractions.

(a) In the case of violations of this Chapter, the City may issue a warning notice in accordance with Section 1-18, giving the person an appropriate period of time to correct a violation before a municipal infraction citation is issued. No additional warning notices shall be issued for subsequent violations for which a warning notice was issued.

(b) Failure to abate a violation for which a municipal infraction citation has been issued by the due date of the fine, as set forth on the municipal infraction citation, causes subsequent violations to be treated as repeat offenses.

(c) In addition to the fine for a municipal infraction, as set forth in Section 1-19, the City may obtain a court order for the owner to abate the violation or for the City to abate the violation at the expense of the owner.

Sec. 12-7. Charges for City taking corrective action.

(a) Where the City has taken corrective action to bring a

property into compliance with this Chapter, the City Administrator shall send the owner a bill for the cost of the corrective action. The bill shall be sent by regular mail to the owner's last-known address or delivered by any other means reasonably calculated to bring the bill to such person's attention. If the owner does not pay the bill within one month after it is presented, the City Administrator may certify the cost of such corrective action to the City Treasurer.

(b) The City Treasurer shall send a bill for the costs of such corrective action to the owner of the real property, as listed in the City property tax records. The City Treasurer also may send a copy of the bill for the costs of the corrective action to a lender under a mortgage or deed of trust made by the owner and secured by the real property, as listed in the City property tax records. The bill shall be sent by regular mail to the last-known address of the owner or lender or delivered by any other means reasonably calculated to bring the bill to such person's attention. If the bill is not paid within one month after it is presented, then the cost becomes a lien against the real property which may be collected and enforced in the same manner as are taxes, special assessments, and other liens against real property or collected by a law suit against the owner.

Sec. 12-8. City Administrator to have decision-making authority for all trees on City property.

(a) The City Administrator has authority over the disposition of all trees located on City property and has the

power to plant, maintain, or remove trees on City property, subject to the provisions of this Chapter.

(b) The City Administrator may order the removal of any tree or part of a tree on City property that --

(1) poses a threat to safety;

(2) may cause damage to sewers or other public improvements;

(3) is diseased or infested and poses a danger to other healthy trees; or

(4) impairs the appearance of City property.

Sec. 12-9. Inspection for insects and disease; taking of specimens.

(a) The City Administrator is authorized to inspect any woody vegetation that appears to be or is reported to be infected with a fungus, virus, bacterium, or other pathogen or infested with insects or other parasites which, due to such infection or infestation, may cause damage to other woody vegetation or other property, and may take specimens from the woody vegetation if necessary to determine the existence of such infection or infestation.

(b) If the City Administrator cannot determine with certainty the existence of infection or infestation in any woody vegetation, the City Administrator shall send any such specimens for examination, diagnosis and report to the Cooperative Extension Service, Home and Garden Information Center, University of Maryland or other laboratory, and shall base further action on

such extension service or other laboratory report.

Sec. 12-10. Permission required to prune, spray, plant or remove from City property.

(a) Except as provided in subsection (b), a person who sprays, prunes, cuts, removes, or plants any vegetation on City property, without obtaining prior written permission from the Department, commits a Class B municipal infraction.

(b) Permission is not required to plant or maintain non-woody vegetation on planting strips or City rights-of-way located adjacent to the person's property (i.e., between the front yard or the sidewalk and the street), unless the City Administrator informs the person of the City Administrator's objection to the planting or maintenance.

Sec. 12-11. Requirement for supervision by a tree expert.

(a) No person shall perform tree trimming, tree removal or other tree work for hire without supervision, involving a site visit, by a Tree Expert licensed by the Maryland Department of Natural Resources.

(b) A violation of this section is a Class C municipal infraction.

Secs. 12-12 to 12-15. Reserved.

ARTICLE 2. PROHIBITIONS ON MAINTAINING UNDESIRABLE VEGETATION

Sec. 12-16. Infected or infested woody vegetation on private property.

A person who maintains on private property woody vegetation

found to be infected with a fungus, virus, bacterium, or other pathogen or found to be infested with insects or other parasites which, due to such infection or infestation, may cause damage to other woody vegetation or may pose a threat to persons or the property of others commits a Class C municipal infraction.

Sec. 12-17. Fallen or dangerous trees on private property.

(a) No person shall permit a tree or tree part, dead or alive (including a stump displaced from the ground), to stand on private property if it is a menace to public safety, or endangers any building, public improvement or other property.

(b) No person shall maintain a fallen tree, brushwood, or part of a fallen tree on private property that constitutes a harborage place for rodents or other pests.

(c) A violation of this section is a Class C municipal infraction.

Sec. 12-18. Vegetation not to obscure intersection.

(a) Vegetation taller than 3 feet above a street surface, except an Urban Forest Tree, is not permitted within 20 feet of the corner of a property located at an intersection of two streets. If the vegetation is located on top of a retaining wall, the retaining wall shall be considered part of the 3 feet.

(b) A violation of this section is a Class D municipal infraction.

Sec. 12-19. Vegetation not to obstruct sidewalks or traffic.

A person who permits any vegetation on private property to encroach on or to overhang within 8 feet above any street,

sidewalk, or traffic control device commits a Class D municipal infraction.

Sec. 12-20. Noxious growths.

(a) A person who --

(1) maintains on private property poison ivy (*Rhus radicans* or *Toxicodendron radicans*), poison oak (*Rhus toxicodendron* or *Toxicodendron quercifolium* or *Toxicodendron diversilobum*), poison sumac (*Rhus vernix* or *Toxicodendron vernix*), ragweed (*Amrosia artemisiifolis*) or similar vegetation; or

(2) fails to control the growth of kudzu-vine (*Pueraria lobata*), honeysuckle, wisteria, or other vine that is causing a threat to public safety or damage to trees on the property or to trees or structures on adjacent properties, commits a Class D municipal infraction.

Sec. 12-21. Uncontrolled growth of vegetation on vacant lots.

(a) The owner of a vacant lot that does not have at least 60% tree cover is required to keep the natural non-woody vegetation on the lot to within 10 inches of the ground.

(b) A violation of this section is a Class D municipal infraction.

Sec. 12-22. Uncontrolled growth of lawns on private property.

A person who allows 30% or more of a lawn to reach or exceed the height of 10 inches commits a Class D municipal infraction.

Secs. 12-23 to 12-25. Reserved.

ARTICLE 3. URBAN FOREST.

Sec. 12-26. Legislative findings.

The Council of the City of Takoma Park hereby finds that it is in the interest of the citizens of the City to protect, preserve, and promote the City's urban forest. The City's urban forest is part of a larger ecosystem and contributes significantly to air, noise, and visual pollution control. The existence of shade providing trees moderates climatic extremes and promotes sound energy conservation. The City's urban forest is part of the watershed of Long Branch and Sligo Creeks and therefore plays an important role in controlling water run-off and supports the biologic and hydrologic integrity of these watersheds. The urban forest has significant aesthetic value which affects property values and the quality of life necessary to a community. Regulation of actions affecting the urban forest provides mutual benefits to City residents and property owners.

Sec. 12-27. Urban forest trees.

An urban forest tree is a tree in the City which --

(a) measures more than 24 inches in circumference at 4½ feet above ground level or more than 7 and 5/8 inches diameter at breast height;

(b) is required to be planted or maintained, pursuant to governmental order, agreement, stipulation, covenant or easement, a Tree Protection Plan, or as a condition of issuance of a tree permit; or

(c) is planted with government funding or under a government

program.

Sec. 12-28. Tree permit required.

(a) Except as provided in subsection (b) or (c), a tree permit is required for -

(1) the removal, relocation, destruction, topping, pruning of limbs with significant diameter in relation to the size of the tree, or other action which would significantly and permanently detract from an urban forest tree's health or growth; or

(2) activity within the drip line of an urban forest tree which may destroy a significant portion of the roots of a tree or endanger the water supply to the roots. These activities may include excavation, depositing of fill dirt or other materials, construction of a structure, or paving of a significant area.

(b) No tree permit is required -

(1) where a tree permit waiver is obtained under Section 12-29; or

(2) for action required on an emergency basis (with no time to apply for a tree permit or a tree permit waiver) to prevent harm to life or property.

(c) The removal, destruction, cutting or trimming of an urban forest tree that has branches or roots which obstruct or interfere with utility pipes, lines, and wires shall not require either a tree permit or a tree permit waiver when such tree removal or destruction is performed by or at the written request

of a utility company such as PEPCO, Bell Atlantic, WSSC or Washington Gas.

Sec. 12-29. Tree permit applications; waivers.

(a) An owner may apply for a tree permit or tree permit waiver covering action relating to an urban forest tree or trees on the owner's property. The application shall be made under procedures specified by the City Administrator.

(b) Upon receipt of an application for a tree permit waiver, the City Administrator may issue a written determination (referred to as a tree permit waiver), waiving the requirement to obtain a tree permit for the action described in the waiver application:

(1) in the case of a proposed removal or destruction of an urban forest tree if the City Administrator determines that the tree is dead, in a severe state of decline, diseased beyond recovery, or hazardous;

(2) in the case of proposed activity relating to an urban forest tree, if the City Administrator determines that the activity will not pose a substantial danger to the health of the tree; or

(3) in the case of the proposed removal of part of an urban forest tree, if the City Administrator determines that the tree part is dead, in a severe state of decline, diseased beyond recovery, or hazardous.

(c) Upon issuance of a tree permit waiver, the City Administrator shall inform the applicant that the City encourages

the planting of replacement trees on a voluntary basis.

(d) An applicant for a tree permit shall pay a processing fee of ~~fifty dollars (\$50.00)~~ ~~twenty five dollars (\$25.00)~~ to the City with the application. No fee shall be charged by the City for a tree permit waiver application.

(e) If a tree permit waiver is denied, an owner may apply for a tree permit covering the proposed action by paying the ~~fifty dollars (\$50.00)~~ ~~twenty five dollars (\$25.00)~~ processing fee to the City and completing a tree permit application.

(f) The City Administrator shall --

(1) make a copy of each application for a tree permit or tree permit waiver available for public inspection; and

(2) provide an at-cost copy of an application to any person requesting one.

(g) If the City Administrator determines that the applicant is entitled to a tree permit, the City Administrator shall notify the applicant that the City has granted preliminary approval for a tree permit. Within two working days of this notification, the Department shall post notice of the preliminary approval, on the property in question, in plain view from the public right-of-way. A copy of the notice shall be posted on a bulletin board at the Municipal Building. The notice must describe the procedure and time limit for filing an appeal from the preliminary approval for a tree permit. If no appeal is filed within 15 days after the notice has been posted, the City Administrator shall issue the tree permit. If an appeal from the preliminary approval for a

tree permit is filed in accordance with Section 12-31, then no tree permit shall be issued until the appeal has been decided.

Sec. 12-30. Tree replacement required.

(a) Tree replacement as specified in this section is required in the following cases:

(1) The applicant's agreement to replace removed urban forest trees shall be required as a condition of issuance of a permit to remove a tree under Section 12-28, and may be required as a condition of issuance of a permit for other actions under Section 12-28 that are likely to lead to destruction of a tree.

(2) Applicants are required to replace trees originally indicated and intended to be saved when such trees are excessively damaged or removed in violation of an approved tree protection plan.

(3) Any person who removes or excessively damages a tree in violation of Section 12-28 is required to replace the tree.

(b) Replacement trees shall be equal or superior to the removed trees in terms of species quality, shade potential, and other characteristics. Replacement trees shall be nursery stock trees with a minimum size of 2½ inches in caliper for deciduous trees, or 10 feet in height for evergreen trees and guaranteed for one (1) year.

(c) (1) Except as provided in paragraphs (2) and (3), the basal area of the replacement trees, measured at caliper height, must be no less than a percentage of the total basal area of the

tree to be removed, measured at 4½ feet above the ground. The percentage shall be determined, using the following health quality analysis rating scale.

| CRITERION | VALUE | | | RATING |
|----------------------|----------------------------------|-------------------------------------|-------------------------------------|--------|
| | 5 or 4 | 3 or 2 | 1 | |
| Trunk | Sound and solid | Sections of bark missing | Extensive bark loss and hollow | _____ |
| Growth/Rate per year | More than 6-inch twig elongation | 2 to 6-inch twig elongation | Less than 2-inch twig elongation | _____ |
| Structure | Sound | 1 major or several minor limbs dead | 2 or more major limbs dead | _____ |
| Insects/Diseases | No pests present | 1 pest present | 2 or more pests present | _____ |
| Crown/Development | Full and balanced | Full but unbalanced | Unbalanced and lacking a full crown | _____ |
| Life Expectancy | Over 30 years | 15 to 20 years | Less than 5 years | _____ |
| | | | Total Rating | _____ |

Using the above scale, trees are to be replaced according to the following formula:

| Total Rating of Tree To Be Removed | Percentage of Basal Area To Be Replaced |
|------------------------------------|---|
| 6-15 | 1% |
| 16-24 | 2% |
| 25-30 | 3% |

(2) For trees removed or excessively damaged in

violation of this Chapter or an approved Tree Protection Plan, the total basal area of the replacement tree at caliper height must be no less than 10% of the basal area at 4½ feet above the ground of the tree removed or damaged.

(3) In the case of an applicant's removing trees for the purpose of developing property, the replacement trees must be adequate to insure that the extent of tree cover at the time of development will be achieved by newly planted trees on or off site within 25 years.

(d) Where it is not feasible or desirable to replace trees on site, the replacement requirement may be satisfied by planting trees at another location within the City or by a contribution equivalent to the installed market value of the required replacement trees to the City's tree planting fund.

Sec. 12-31. Appeals from permit decisions.

(a) The permit applicant or any resident of the City or owner of property in the City may appeal the preliminary approval of a tree removal permit within the 15 day posting period. If a notice of appeal is filed during such 15 day posting period, then no tree removal permit shall be issued until the Tree Commission has conducted a fact-finding hearing and has issued its final decision on the appeal.

(b) The permit applicant also may appeal the denial of a permit within 15 days after the date that the City Administrator notifies the applicant of the denial of a permit for the removal or destruction of a tree covered by this Article.

(c) There shall be no appeal from the issuance of a tree permit waiver by the City Administrator.

(d) A notice of appeal shall be in writing, shall state the reasons for the appeal, and the nature of the interest of the person filing the appeal. Appeal notices shall be filed with the City Administrator who shall forward the notice to the Tree Commission.

(e) The Tree Commission shall conduct a fact-finding hearing on an appeal from a permit decision or issuance of a stop work order after giving reasonable notice of the hearing to all interested parties in accordance with the Tree Commission's rules. At the hearing, any interested party may present testimony and evidence to substantiate any material point. All testimony shall be given under oath or by affirmation. The parties may also cross-examine opposing witnesses presenting testimony at the hearing. A verbatim record of the hearing shall be made. The record shall be open to inspection by any person and, upon request, the Tree Commission shall furnish such person with an at-cost copy of the hearing record. After due consideration of the evidence and testimony and the criteria for permit decisions set forth in Section 12-32, the Tree Commission shall issue its decision on the appeal and shall give notice to all interested parties.

(f) Within 30 days of the date of the issuance of a decision of the Tree Commission, a person who was a party to the proceedings before the Tree Commission and who is aggrieved by

the decision may seek judicial review of the decision ~~of the Tree Commission~~ by filing a petition for judicial review in accordance with Title 7, Chapter 200, Judicial Review of Administrative Agency Decisions, of the Maryland Rules of Procedure, or any subsequent amendments thereto.

Sec. 12-32. Criteria for permit decisions.

(a) The City Administrator or, upon appeal, the Tree Commission shall approve an application for a permit if so indicated by the factors set forth in subsection (b). Upon appeal, the Tree Commission shall, taking into account the factors set forth in subsection (b), approve the permit, disapprove the permit, or approve the permit with modifications.

(b) The following factors, and any other relevant information, shall be taken into account:

(1) The extent to which tree clearing is necessary to achieve proposed development or land use, and, when appropriate, the ameliorating effects of any tree protection plan which has been submitted or approved.

(2) The number and type of replacement trees, and, if appropriate, any reforestation plan proposed as mitigation for the tree or trees to be removed.

(3) Any hardship which the applicant will suffer from a modification or rejection of the permit application.

(4) The desirability of preserving any tree by reason of its age, size or outstanding quality.

(5) The extent to which the area would be subject to

environmental degradation due to removal of the tree or trees.

(6) The impact of the reduction in tree cover on adjacent properties, the surrounding neighborhood and the property on which the tree or trees are located.

(7) Whether sound urban forest management practices indicate the tree or trees should be removed.

(8) The general health and condition of the tree or trees.

(9) The desirability of the tree species as a permanent part of the City's urban forest.

(10) The placement of the tree or trees in relation to utilities, structures and the use of the property.

(11) Whether the tree or trees are diseased beyond recovery.

(12) Whether the tree or trees are injured beyond restoration.

(13) Whether the tree or trees are in a severe state of decline.

(14) Whether the tree or trees are hazardous.

(15) The need to remove the tree or trees for the purpose of installing, repairing, replacing or maintaining essential public or private utility services.

Sec. 12-33. Violations and penalties; enforcement.

(a) Municipal infractions.

(1) Any of the following shall be a Class AA municipal infraction:

(A) Doing any of the acts prohibited in Section 12-28 without applying for a permit, after an application for a permit has been denied, or after applying for a permit but before a permit has been issued, unless a permit waiver covering the act has been issued or the act is described in Section 12-28 (b) or (c).

(B) Failure to fulfill the requirements of Section 12-30.

(C) Any violation of a decision or order of the Tree Commission, including but not limited to the violation or nonperformance of conditions imposed in connection with the issuance of a permit.

(b) Misdemeanors.

(1) It shall be a Class A misdemeanor to do any of the following:

(A) To do any of the acts specified in subsection (a) in relation to 3 or more urban forest trees, whether or not such urban forest trees are located on the same property, within a 3 month period.

(B) To do any of the acts specified in subsection (a) in relation to any urban forest tree which has been designated by the Tree Commission or the City as having special botanical, ecological or historical significance or as a landmark.

(C) To do any of the acts specified in subsection (a) in relation to any tree which is more than 33 inches in

circumference at 4½ feet above ground level.

(D) To willfully or repeatedly violate this Chapter or an order of the Tree Commission.

(E) To violate a stop work order issued pursuant to Section 12-5(c).

(c) Each urban forest tree that is damaged or destroyed as a result of act(s) taken in violation of any provision of this Chapter is considered a separate violation of the appropriate section(s).

(d) In cases where a person has hired an individual or organization to perform tree work that is in violation of any provision of this Chapter, both the hired and the hirer may be subject to the penalties set forth in this Chapter.

(e) Any person or organization that performs tree trimming or tree removal for hire within the City of Takoma Park and who violates any provision of this Chapter may be barred from contracting with or performing work for the City of Takoma Park.

(f) A civil action for damages may be brought against any person or persons who violate the provisions of this Article by any person or persons who suffer personal injury, property damage or financial loss as a result of such violation.

SECTION TWO. This Ordinance shall be effective immediately. This Ordinance shall not apply to tree permit applications filed before this Ordinance becomes effective.

Adopted this _____ day of _____, 1995 by roll call
vote as follows:

Aye:

Nay:

Abstained:

Absent:

**MAYORAL PROCLAMATION #1995 - 2
IN HONOR OF THE SEVENTY-FIFTH
ANNIVERSARY OF PARKER MEMORIAL BAPTIST
CHURCH**

WHEREAS, Parker Memorial Baptist Church is celebrating the seventy-fifth anniversary of its founding as a Sunday School Union and Mission Service by Reverend William A. Parker in November, 1920, which, collectively, later were to become known as "First Baptist Church of Takoma Park;" AND

WHEREAS, in 1956, it was voted to change the name of First Baptist Church to "Parker Memorial Baptist Church" in honor of its founder, who departed this life in 1929; AND


WHEREAS, during its seventy-five years, the Congregation has been led, guided, and trained in the work of the ministry and the development of personal spiritual growth; AND

WHEREAS, in 1990, the Church was reorganized, and ministries in athletics, outreach, audio-visual methods, and marketing were implemented; AND

WHEREAS, in 1991, more ministries were propagated by the Church, including Interpretive Praise, Missions, and the Singles Ministry.

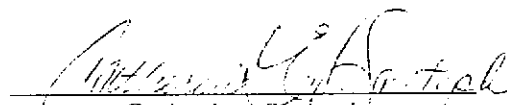
NOW, THEREFORE, I, EDWARD F. SHARP, MAYOR OF THE CITY OF TAKOMA PARK, MARYLAND, on behalf of the Citizens, Council, and Staff of the City of Takoma Park, do hereby extend our appreciation of the great contributions of Parker Memorial Baptist Church to the spiritual life of the Community, and offer congratulations and sincere best wishes to Parker Memorial Baptist Church on the occasion of the Church's seventy-fifth anniversary.

Dated this 13th day of March, 1995.



Edward F. Sharp
Mayor

ATTEST:



Catherine Sartoph
City Clerk

Introduced by: Councilmember Rubin
(Drafted by: C. Sartoph)
DRAFT DATE: 3/8/95

1st Reading: 3/13/95
2nd Reading:
Posted:
*Effective:

*Unless a petition meeting the requirements of Sec.602 of the City Charter is received by 5/8/95.

CHARTER AMENDMENT RESOLUTION #1995 - 13

AMENDING THE MUNICIPAL CHARTER ARTICLE III, SECTION 307
REGARDING FILLING VACANCIES ON THE COUNCIL

WHEREAS, Section 307 of the Takoma Park Charter of 1989, as amended, prescribes that in the event of a vacancy on the Council, the Council shall appoint a person to fill the vacancy for the remainder of the unexpired term;
AND

WHEREAS, by adoption of Resolution #1994-42, the Council established a City Elections Committee to make recommendations to the Council concerning the filling of Council vacancies and recall provisions; AND

WHEREAS, taking into consideration the recommendations made by the Elections Committee and examples of provisions found in other municipal charters, a provision to allow for special elections to fill Council vacancies under certain circumstances has been discussed by the Council.

SECTION 1. NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF TAKOMA PARK, MARYLAND, THAT, pursuant to Article XI-E of the Constitution of the State of Maryland and Article 23A of the Annotated Code of Maryland (1994 replacement volume), title: "Corporations - Municipal," that Section 307 of the Municipal Charter of the City of Takoma Park is hereby amended as follows:

ARTICLE III - THE COUNCIL

Section 307. Vacancies on the Council.

~~In the event of a vacancy on the Council for any reason, the Council by a majority vote shall within sixty (60) days appoint some person, qualified in accordance with Section 302, to fill such vacancy for the remainder of the unexpired term.~~

(a) Method of Filling Vacancies. Should a vacancy on the Council occur more than two hundred and forty (240) days before the next regularly scheduled City election, a special election shall be held to fill the vacancy. If the vacancy occurs less than two hundred and forty (240) days before the next regularly scheduled City election, the remaining members of the Council by a majority vote shall, within sixty (60) days, appoint a person who is qualified in accordance with Section 302 or Section 402, as applicable, to fill such vacancy for the remainder of the unexpired term.

(b) Special Election. If a vacancy is to be filled by special election, the remaining members of the Council shall, by resolution, establish a date for the special election which shall be not less than forty-five (45) days nor more than sixty (60) days from the date of the vacancy.

(c) Ballot. If the requirements of Section 302 or Section 402, as applicable, are met, a person may have his/her name listed on the special election ballot as a candidate to fill a vacancy on the Council by submitting a petition to the City Clerk with a sufficient number of valid signatures at least fifteen (15) days prior to the date scheduled for the special election.

(d) Petition. The petition must clearly state that its purpose is to place a specific person's name on the ballot at a special election to fill a vacancy on the Council of the City of Takoma Park, the office and/or ward that the election is being held to fill, and the date of the special election.

(1) For a Mayoral vacancy, a person must have the signatures of at least 30 qualified voters of the City in order to be listed on the special election ballot as a candidate.

(2) For a Councilmember vacancy, a person must have the signatures of at least 10 qualified voters of the ward in which there is a vacancy in order to be listed on the special election ballot as a candidate.

(3) A qualified voter may sign the petition of more than one person to fill a vacancy on the Council. Each qualified voter shall print his/her name under the signature and shall include his/her address and the date of his/her signature on the petition.

(4) Before listing a person's name on a special election ballot as a candidate to fill a vacancy on the Council, the City Clerk shall verify that sufficient signatures on a petition are from qualified voters of the City and for a Councilmember vacancy of the ward in which there is a vacancy. The invalidation of one signature on a petition shall not serve to invalidate any other signatures on a petition.

(e) Voting. For a Mayoral vacancy, all qualified voters of the City may vote in the special election to fill a vacancy on the Council. For a Councilmember vacancy, only qualified voters of the ward in which there is a vacancy may vote in the special election to fill a vacancy on the Council.

(f) Write-Ins Permitted. A qualified voter also may write in the name of a candidate on the special election ballot to fill a vacancy on the Council.

(g) Results of Special Election. The candidate who meets the qualifications for office as specified in Section 302 or Section 402, as applicable, and who receives the largest number of votes in the special election to fill a vacancy on the Council shall be the winner and shall serve on the Council for the remainder of the unexpired term for which his/her predecessor was elected.

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 _____ and the amendment of Section 307 of the Municipal Charter of the City of Takoma Park hereby enacted shall become effective on _____ unless a proper petition for referendum hereon shall be filed as permitted by the Annotated Code of Maryland, Article 23A, Section 16, provided that a complete and exact copy of this Resolution shall be continuously posted on the bulletin board of the Municipal Building until _____ and provided further that a 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 directed 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 fair summary of the Charter 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 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 _____, _____ 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 _____.

Adopted this _____ day of _____, by Roll Call vote as follow:

- AYE:
- NAY:
- ABSTAINED:
- ABSENT:

EXPLANATORY NOTE: In this Resolution, ~~strikethrough~~ denotes language to be deleted and underlining denotes language to be added to the current City Charter.

COUNCILMEMBERS OF THE CITY OF TAKOMA PARK

Edward F. Sharp, Mayor

Larry Rubin, Councilmember, Ward 1

Kathy Porter, Councilmember, Ward 2

Bruce Williams, Councilmember, Ward 3

Anthony Davenport, Councilmember, Ward 4

Marc Elrich, Councilmember, Ward 5

Reggie Chavez, Councilmember, Ward 6

ATTEST:

City Clerk

Date

c:\wp51\resol\article.iii

Introduced by: Councilmember Davenport
(Drafted by: C. Sartoph)
DRAFT DATE: 3/8/95

1st Reading: 3/13/95
2nd Reading:
Posted:
*Effective:

*Unless a petition meeting the requirements of Sec.602 of the City Charter is received by 5/8/95.

CHARTER AMENDMENT RESOLUTION #1995 - 14

AMENDING THE MUNICIPAL CHARTER ARTICLE VII, BY ADDING SECTION 710 REGARDING RECALL ELECTIONS, AND RENUMBERING EXISTING SECTIONS 710 AND 711

WHEREAS, Article VII, "Registrations, Nominations and Elections," of the Takoma Park Charter of 1989, as amended, does not include provisions for recall elections; AND

WHEREAS, by adoption of Resolution #1994-42, the Council established a City Elections Committee to make recommendations to the Council concerning the filling of Council vacancies and recall provisions; AND

WHEREAS, taking into consideration the recommendations made by the Elections Committee and examples of provisions found in other municipal charters, a provision to allow for recall elections has been discussed by the Council.

SECTION 1. NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF TAKOMA PARK, MARYLAND, THAT, pursuant to Article XI-E of the Constitution of the State of Maryland and Article 23A of the Annotated Code of Maryland (1994 replacement volume), title: "Corporations - Municipal," that Section 710 of the Municipal Charter of the City of Takoma Park is hereby amended as follows:

ARTICLE VII - REGISTRATION, NOMINATIONS, AND ELECTIONS

Section 710. Recall Elections.

(a) Removal of Elected Officials. The Mayor and any Councilmember of the City of Takoma Park may be removed from office by the affirmative vote of a majority of those voting in a special recall election.

(b) Recall Petition. A petition for the removal of the Mayor or any Councilmember from office (a "recall petition") shall state the name, office, and/or ward of the elected official whose recall is sought and that its purpose is to require a special recall election to vote on whether that elected official should be removed from office. A recall petition may, but does not have to, state a reason or reasons for the recall.

(1) A recall petition for the Mayor must have the signatures of at least 1,500 qualified voters of the City of Takoma Park or at least 20% of the qualified voters of the City, whichever is greater.

(2) A recall petition for a Councilmember must have the signatures of at least 100 qualified voters of the ward the Councilmember represents or at least 20% of the qualified voters of that ward, whichever is greater.

(3) A qualified voter of the City may sign a recall petition for the removal of more than one elected official. Each qualified voter shall print his/her name under the signature and shall include his/her address and the date of his/her signature on the recall petition.

(c) Recall Election. A special recall election shall be held not less than thirty (30) days and not more than forty-five (45) days from the date the City Clerk determines that a valid recall petition containing a sufficient number of signatures from qualified voters has been submitted. The Council shall establish the date for the recall election by resolution. If the elected official who is sought to be removed is a Councilmember, then only qualified voters of that Councilmember's ward may vote in the recall election.

(d) Form of Question on Ballot. The ballot for a special recall election shall have the following question: "Should [name of elected official] be removed from the office of [name of office]? Vote 'yes' or 'no'."

(e) Results of Recall Election. If a majority of those voting in the special recall election vote "yes," the elected official shall be removed from office immediately without the necessity of further Council action and the office shall be considered vacant. The resulting vacancy on the Council shall be filled in accordance with Section 307. An elected official who has been removed from the Council in a recall election may apply for reappointment to the Council or may petition to be listed as a candidate on a special election ballot to fill a vacancy on the Council. In the event the number of "yes" and "no" votes in the special recall election are the same, or a majority of those voting in the recall election vote "no," then the recall shall fail and the elected official shall remain in office.

Section ~~710~~ 711. Regulation and Control by Council.

* * * *

Section ~~711~~ 712. Penalties.

* * * *

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 _____ and the amendment of Section 710 of the Municipal Charter of the City of Takoma Park hereby enacted shall become effective on _____ unless a proper petition for referendum hereon shall be filed as permitted by the Annotated Code of Maryland, Article 23A, Section 16, provided that a complete and exact copy of this Resolution shall be continuously posted on the bulletin board of the Municipal Building until _____ and provided further that a 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 directed 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 fair summary of the Charter 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 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 _____, _____ 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 _____.

Adopted this _____ day of _____, by Roll Call vote as follow:

- AYE:
- NAY:
- ABSTAINED: ---
- ABSENT:

EXPLANATORY NOTE: In this Resolution, ~~striketrough~~ denotes language to be deleted and underlining denotes language to be added to the current City Charter. * * * * indicates language from Sections of the Charter that will remain unchanged.

COUNCILMEMBERS OF THE CITY OF TAKOMA PARK

Edward F. Sharp, Mayor

Larry Rubin, Councilmember, Ward 1

Kathy Porter, Councilmember, Ward 2

Bruce Williams, Councilmember, Ward 3

Anthony Davenport, Councilmember, Ward 4

Marc Elrich, Councilmember, Ward 5

Reggie Chavez, Councilmember, Ward 6

ATTEST:

City Clerk

Date

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Introduced by: Councilmember Williams
(Drafted by: C. Sartoph)
DRAFT DATE: 3/8/95

1st Reading: 3/13/95
2nd Reading:
Posted:
*Effective:

*Unless a petition meeting the requirements of Sec.602 of the City Charter is received by 5/8/95.

CHARTER AMENDMENT RESOLUTION #1995 - 15

AMENDING THE MUNICIPAL, CHARTER ARTICLE VII, SECTION 702, REGARDING THE TIME OF REQUESTING LISTS OF REGISTERED VOTERS FROM THE BOARDS OF ELECTION SUPERVISORS FOR SPECIAL ELECTIONS

WHEREAS, Section 702 of the Municipal Charter of the City of Takoma Park sets forth the procedure for obtaining preliminary and final, certified lists of persons residing in the City and registered to vote, from the respective boards of elections supervisors for Montgomery and Prince George's Counties, prior to the City's biennial elections; AND

WHEREAS, the lists of non-U.S. citizens who reside in the City and are registered to vote, are certified by the City Clerk in accordance with the same timing as applies to obtaining the voter lists from Montgomery and Prince George's Counties; AND

WHEREAS, preliminary lists of registered voters are primarily used for verifying whether persons nominating or seconding candidates during the Nominating Caucus (Section 704(b)) are "qualified voters of the City" (Section 701(a)); AND

WHEREAS, the deadline for voter registration, when final lists of registered voters must later be requested, is no less than 30 days prior to the biennial elections; AND

WHEREAS, the Council desires that all special elections shall be conducted in the same manner, as far as practicable, as the City's biennial elections; AND

WHEREAS, in the event of a special election, a Nominating Caucus will not be held and it will only be necessary to obtain the certified lists of persons residing in the City and registered to vote, from the respective boards of election supervisors of Montgomery and Prince George's Counties, once--30 days prior to the special election.

SECTION 1. NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF TAKOMA PARK, MARYLAND, THAT, pursuant to Article XI-E of the Constitution of the State of Maryland and Article 23A of the Annotated Code of Maryland (1994 replacement volume), title: "Corporations - Municipal," that Section 702 of the Municipal Charter of the City of Takoma Park is hereby amended as follows:

ARTICLE VII - REGISTRATION, NOMINATIONS, AND ELECTIONS

Section 702. Lists of Registered Voters: Certification by Supervisors of Elections.

(e) In the event of a special election, including but not limited to special elections to fill Council vacancies and recall elections, at least thirty (30) days prior to the date of the election, the City Clerk shall request from the boards of election supervisors for Montgomery and Prince George's Counties, respectively, certified, alphabetical lists of the names and addresses of those people residing in the City and registered to vote. The certified lists shall be handled in accordance with the provisions of Section 702(b).

~~(e)~~ (f) * * * * *

~~(f)~~ (g) * * * * *

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 _____ and the amendment of Section 702 of the Municipal Charter of the City of Takoma Park hereby enacted shall become effective on _____ unless a proper petition for referendum hereon shall be filed as permitted by the Annotated Code of Maryland, Article 23A, Section 16, provided that a complete and exact copy of this Resolution shall be continuously posted on the bulletin board of the Municipal Building until _____ and provided further that a 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 directed 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 fair summary of the Charter 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 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 _____, _____ 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 _____.

Adopted this _____ day of _____,
by Roll Call vote as follow:

AYE:
NAY:
ABSTAINED:
ABSENT:

EXPLANATORY NOTE: In this Resolution, ~~strikethrough~~ denotes language to be deleted, underlining denotes language to be added, and * * * * * denotes text of subsections to remain unchanged, in the City Charter.

COUNCILMEMBERS OF THE CITY OF TAKOMA PARK

Edward F. Sharp, Mayor

Larry Rubin, Councilmember, Ward 1

Kathy Porter, Councilmember, Ward 2

Bruce Williams, Councilmember, Ward 3

Anthony Davenport, Councilmember, Ward 4

Marc Elrich, Councilmember, Ward 5

Reggie Chavez, Councilmember, Ward 6

ATTEST:

City Clerk

Date

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Introduced by: Councilmember Williams
(Drafted by: N. Grimmer)
DRAFT DATE: 3/10/95

1st Reading: 3/13/95
2nd Reading:
Posted:
*Effective:

*Unless a petition meeting the requirements of Sec.602 of the City Charter is received by May 8.

CHARTER AMENDMENT RESOLUTION #1995 - 16

AMENDING THE MUNICIPAL CHARTER, ARTICLE IX, SECTION 904(A),
REGARDING THE MINIMUM LEVEL OF FUNDING FOR AN EMERGENCY RESERVE
FUND

WHEREAS, Section 904(a) of the Takoma Park Charter of 1989, as amended, prescribes that an Emergency Reserve Fund be established for the sole purpose of meeting emergency expenditures necessary for the health, safety or welfare of persons or for actions necessary to perform essential government functions; AND

WHEREAS, this Fund is to be maintained and budgeted for at no less than 8.5% of total budget revenues; AND

WHEREAS, taking into consideration the insurance coverage carried by the City to protect against emergency expenditures; the growth in the level of budget appropriation necessary to fund this each year because it is based on a percentage of revenues; and the City's lack of any draw-downs on this fund at any time since the Fund was established, the Council has determined it is in the best interest of the City to change the minimum level of funding from a percentage driven by escalating revenues to a minimum funding of \$500,000.

SECTION 1. NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF TAKOMA PARK, MARYLAND, THAT, pursuant to Article XI-E of the Constitution of the State of Maryland and Article 23A of the Annotated Code of Maryland (1994 replacement volume), title: "Corporations - Municipal," that Section 904(a) of the Municipal Charter of the City of Takoma Park is hereby amended as follows:

ARTICLE IX - Finance

Section 904 Reserve Provisions

(a) Emergency Reserve. A separate reserve shall be established to be used exclusively for emergency expenditures necessary for the health, safety or welfare of persons, or actions necessary to perform essential governmental functions, as determined and authorized by the Council by Specific ordinance. Such Emergency Reserve shall be no less than ~~eight and one half percent (8.5%) of total budget revenues \$500,000 for Fiscal Year 1996, and each fiscal year thereafter shall~~ INCREASE BY A PERCENTAGE EQUAL TO THE PERCENTAGE INCREASE IN THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS (CPI-U) FROM DECEMBER OF THE SECOND PREVIOUS YEAR TO DECEMBER OF THE PRIOR YEAR. ~~add 100% of the Consumer Price Index for All Urban Consumers (CPI-U), less shelter, as of December 31 of the prior year.~~ The budget for each fiscal year shall include an amount necessary to maintain the Emergency Reserve at not less than ~~eight and one half percent (8.5%) of the total budgeted revenue \$500,000 for Fiscal Year 1996, PLUS A PERCENTAGE INCREASE EACH YEAR EQUAL TO THE PERCENTAGE INCREASE IN THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS (CPI-U) FROM DECEMBER OF THE SECOND PREVIOUS YEAR TO DECEMBER OF THE PRIOR YEAR.~~ ~~and each fiscal year thereafter shall add 100% of the Consumer Price Index for all Urban Consumers (CPI-U), less shelter, as of December 31 of the prior year.~~

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 _____ and the amendment of Section 307 of the Municipal Charter of the City of Takoma Park hereby enacted shall become effective on _____ unless a proper petition for referendum hereon shall be filed as permitted by the Annotated Code of Maryland, Article 23A, Section 16, provided that a complete and exact copy of this Resolution shall be continuously posted on the bulletin board of the Municipal Building until _____ and provided further that a 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 directed 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 fair summary of the

Charter 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 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 _____, _____ 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 _____.

Adopted this _____ day of _____, by Roll Call vote as follow:

AYE:
NAY:
ABSTAINED:
ABSENT:

EXPLANATORY NOTE: In this Resolution, ~~strikethrough~~ denotes language to be deleted and underlining denotes language to be added to the current City Charter. First reading March 13, 1995.

ALL CAPITAL LETTERS indicate language added and ~~strike-outs~~ combined with underlining indicate language deleted in the March 13, draft resolution (i.e., new changes)

COUNCILMEMBERS OF THE CITY OF TAKOMA PARK

Edward F. Sharp, Mayor

Larry Rubin, Councilmember, Ward 1

Kathy Porter, Councilmember, Ward 2

Bruce Williams, Councilmember, Ward 3

Anthony Davenport, Councilmember, Ward 4

Marc Elrich, Councilmember, Ward 5

Reggie Chavez, Councilmember, Ward 6

ATTEST:

City Clerk

Date

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Introduced by: Mayor Sharp

RESOLUTION #1995-17

***Support for House Bill 279, Study of
Expansion of the Takoma Park Campus of Montgomery College .***

WHEREAS, the Takoma Park campus of Montgomery College serves vital educational functions in our community; AND

WHEREAS, the Takoma Park campus of Montgomery College has been striving toward educational excellence despite crowded facilities that lack auditorium space and space for many essential activities; AND

WHEREAS, Delegates Sheila Hixson, Peter Franchot and Dana Dembrow have introduced House Bill 279 in the Maryland House of Delegates to study issues relating to the viability of expanding the Takoma park campus of Montgomery College into an area near the existing campus in South Silver Spring.

NOW, THEREFORE, BE IT RESOLVED THAT THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND, URGES THE ADOPTION OF HOUSE BILL 279.

Adopted this 13th day of March, 1995.

REGULAR MEETING AND WORKSESSION
OF THE CITY COUNCIL

Monday, March 27, 1995

OFFICIALS PRESENT:

| | |
|-------------------------|------------------------------------|
| Mayor Sharp | City Administrator Habada |
| Councilmember Chavez | Deputy City Administrator Grimmer |
| Councilmember Davenport | City Clerk Sartoph |
| Councilmember Elrich | Corporation Counsel Silber |
| Councilmember Porter | Asst. Dir. Special Projects Ludlow |
| Councilmember Rubin | Police Chief Phillips |
| Councilmember Williams | Asst. Corporation Counsel Perlman |

The Council convened at 7:37 p.m. on Monday, March 27, 1995, in the Council Chamber at the Municipal Building, 7500 Maple Avenue.

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

MAYOR AND COUNCIL COMMENTS

Mr. Sharp recognized the visitors from Santa Marta, here of on behalf of the Companion Cities Project in Santa Marta, and invited Nancy Chisholm to introduce the visitors.

Ms. Chisholm introduced Alfredo Leiva, Director of the Santa Marta School, and Julio Alejandro, a consultant to the School, and noted that the companionship was begun with Santa Marta in March 1988.

With the help of an interpreter, Mr. Leiva conveyed greetings from the Santa Marta Community Council. He thanked the Council for the warm welcome they have received this evening and for the support the City has provided Santa Marta as a companion city. Mr. Leiva presented the Council with a picture of Santa Marta teachers at work.

Ms. Chisholm made some remarks about the work of the Companion Cities Group, and noted that quite a few of the persons present this evening are members of the group. She commented about a plaque that was dedicated in Santa Marta, in memory of Jonah.

The translator related comments from Mr. Alejandro. He said the women in Santa Marta who are involved in the dairy cow project, send their greetings and solidarity to the parents of Jonah and citizens of Takoma Park.

Mr. Sharp thanked them for attending the meeting this evening.

Mr. Rubin said that he visited Santa Marta a few years ago, and that throughout El Salvador, people know of Santa Marta, and the miracles that they are bringing about to try to rebuild their country in a state of peace. He commented that it is not just Takoma Park helping Santa Marta, but that Santa Marta has helped us understand the world and the problems that people can face and overcome together.

COMMENTS AND PRESENTATIONS

Mr. Davenport remarked about the vandalism that has been occurring in Ward 4, and encouraged parents to be mindful of what young people are doing. He asked for volunteers to take part in the "Positive Images" program, and urged interested persons to contact him at 891-0720.

ADOPTION OF MINUTES

The Council Meeting Minutes from 2/27/95 were adopted unanimously.

REGULAR MEETING

#1 Resolution re: Arbor Day and Earth Month. Mr. Sharp commented on the activities that will be taking place in celebration of Arbor Day on April 8th and throughout April--Earth Month.

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

The resolution was adopted unanimously.

RESOLUTION #1995-18
(Attached)

#2 Resolution re: Use of Lawn Care Equipment. Moved by Mr. Rubin; seconded by Mr. Williams.

Ms. Porter said that she does not have any amendments to this resolution, but that she will most likely be bringing forth another resolution on the more general matter of air quality preservation, in the near future.

The resolution was adopted unanimously.

RESOLUTION #1995-19
(Attached)

#3 2nd Reading Ordinance re: Levy of Special Assessment. Mr. Sharp suggested that the ordinance be postponed until later in the meeting, since the agenda item was scheduled for 8:10 p.m. and the meeting is running ahead of schedule.

There were no Council objections. The Council moved on to other agenda items.

#5 2nd Reading Charter Amendment Resolution re: Special Elections to Fill Council Vacancies. Mr. Sharp explained the proposed Charter amendment.

Moved by Mr. Rubin; seconded by Mr. Chavez.

The resolution was adopted unanimously, by roll call vote.

RESOLUTION #1995-13
(Attached)

#6 2nd Reading Charter Amendment Resolution re: Recall Elections Provisions. Mr. Sharp explained the proposed Charter amendment.

Moved by Mr. Elrich; seconded by Mr. Chavez.

The resolution was adopted unanimously, by roll call vote.

RESOLUTION #1995-14
(Attached)

#7 2nd Reading Charter Amendment Resolution re: Closing Voter Rolls 30 Days Prior to Special and Recall Elections. Mr. Sharp explained the proposed Charter amendment.

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

The resolution was adopted unanimously, by roll call vote.

RESOLUTION #1995-15
(Attached)

#8 2nd Reading Charter Amendment Resolution re: Emergency Reserve Fund. Mr. Sharp noted the changes to the resolution since first reading. He remarked that the Council had a more general discussion about the Emergency Reserve (ER) in Worksession on March 20th.

Mr. Sharp proposed that the minimum \$500,000 be lowered to \$250,000 (seconded: Elrich). He stated that as a policy matter, the remaining \$570,000 from the current ER balance should be transferred to the Equipment Replacement Reserve Fund (ERR). There will be approximately 1.2 million in the ERR if this change is made. Should there be an emergency, there will be funds available in the ERR to cover the emergency. At the same time, there will be more funds available in the ERR for equipment replacements.

Mr. Elrich asked for more information regarding what the maximum draw out of the ERR would be annually.

Ms. Grimmer said that she is still working on these numbers.

Ms. Porter said that the ERR reserves funds for 100% of the cost of the equipment replacements.

Mr. Sharp noted that the ERR also holds the interest earned on the ERR balance. He commented that the fund could, therefore, be over funded as accrued interest is added to the balance. Mr. Sharp urged the Council to look at the hard numbers. He said that in regards to the question he asked Ms. Grimmer, the information does not have an effect on whether the Council can vote on the resolution this evening.

Mr. Elrich said that his question was attempting to look at the long-term picture of how this amendment will affect the budget.

Ms. Grimmer remarked that she will continue to work on getting more information.

Ms. Porter said that she does not have a problem with what is being proposed in "effect", but that she does have a concern about the need for the intended use of the transferred monies to be written into law. As written, the law does not reflect where the money is being transferred or how it is meant to be used--equipment replacements or emergencies. She stated that she is worried about what might happen in the future, if the intent of the Council's action this evening is not understood. She recalled her question about what a bond agency would think of what the city is doing here.

Ms. Porter suggested rewording the amendment to say that there is \$500,000 in the ER, with half of that fund available to the ERR.

Mr. Elrich said that he trusts the wisdom of future Councils and staff to give advice and make decisions appropriate to maintain reserve funds.

Ms. Porter commented that Mr. Elrich's remark would seem to be an argument to eliminate the ER altogether and transfer the money into the ERR.

Mr. Sharp said that he is not comfortable with eliminating the ER altogether. He suggested that the discussion be continued later in the meeting. (Council did not reach a consensus to defer the discussion until a later date.)

Mr. Sharp restated his proposed amendment to reduce the \$500,000 to \$250,000.

Ms. Porter again asked what a financial rating institution would think of the minimum \$250,000 ER level.

Ms. Grimmer responded that one response to this question was that a dual purpose fund would be acceptable.

Ms. Porter asked if the "dual purpose" would need to be set in law.

Ms. Grimmer said that this point was not raised, specifically. The discussion was in terms of thresholds.

The amendment to reduce the minimum level of funding for the ER from \$500,000 to \$250,000 carried (OPPOSED: Porter).

Mr. Sharp raised a question about the annual ER fund level increase measured against the Consumer Price Index (CPI), and proposed that it be amended such that the increase not exceed the interest being earned on the fund. He asked for Council's reaction to this proposal.

Mr. Williams said that he can understand the reason behind Mr. Sharp's proposal, but that he does not feel the "increase" number is high enough to be concerned with.

Ms. Porter remarked that if the concern is to keep this fund at a certain level over time, then the fund needs to increase with the CPI.

Mr. Rubin asked that with in regards to this proposal, does the Mayor agree that we are talking about \$2,000-3,000.

Mr. Sharp confirmed this remark.

Mr. Elrich said that generally, the interest rate rises with the CPI.

Mr. Rubin commented that the formula involving the CPI as related to the ER should be left as it is currently written.

There was no consensus to amend the resolution regarding the link between the annual monies accrued from the interest rate on the ER fund and the CPI adjustment.

The resolution, as amended, was adopted unanimously, by roll call vote.

RESOLUTION #1995-16
(Attached)

3 2nd Reading Ordinance re: Levy of Special Assessment Charges to Pay for the Costs of Storm Drainage Improvements to be Constructed in the Upper Westmoreland Area. Mr. Williams moved that the Council convene simultaneously, as the Storm Water Management Board (seconded: Porter).

Mr. Sharp briefly explained the ordinance.

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

Ms. Habada noted the amendments to the ordinance since first reading.

Mr. Sharp asked if the provision for deferral of special assessment payments needs to be included in the ordinance.

Ms. Perlman responded in the affirmative, noting the proposal to add "Section 3" to the ordinance as explained in her memorandum.

Ms. Porter thanked Corporation Counsel for working out this option for to enable the deferment of assessment payments. She asked for clarification regarding "interest penalties".

Ms. Perlman explained.

Ms. Porter suggested that the language be made more clear.

Ms. Perlman proposed some language (Section 3(b)) "...the due date of each installment, as if there were no deferral, until..."

Ms. Habada asked if it would be better to leave out Section 3(a)(3).

Ms. Perlman suggested that the maximum income be such that a person be eligible for a "homeowners tax credit".

Mr. Elrich said that 65 years of age should not be an assumption about a person's income.

Ms. Porter moved to amend Section 3 as discussed.

Ms. Perlman explained the amendments to Section 3 that have been proposed by Council up to this point.

There was Council discussion about whether a person has to be covered by the homeowners tax credit versus simply being qualified for the program.

Ms. Porter said that if a person were to qualify for the homeowners tax credit last year, then the person would be eligible for the deferral this year.

Mr. Sharp stated that the payment deferrals would occur over several years. He clarified that Ms. Perlman's intention by Section 3 is that subsequent payments would continue to be deferred. He questioned what would happen if a person's eligibility changes over the years. Mr. Sharp commented that he agrees with Mr. Elrich about deleting the age requirement.

Ms. Perlman stated that she did not envision the City checking an individual's status each year of the assessment period, and suggested, therefore, that from the time a person is found to be eligible for deferment of the assessment cost, the person would remain eligible for the duration of the assessment period.

Mr. Sharp returned to the matter of a person's age being a criteria for deferment, and said that the citizens who have spoken on the matter of the special assessment are concerned about a person's "ability to pay" not "age."

Ms. Perlman recalled that Mr. Elrich has proposed that age be deleted from the eligibility requirements.

Ms. Habada stated then that a person who was not under the Homeowners Tax Credit program last year would not be eligible for the deferral this year.

Ms. Perlman commented that a person must have only been qualified for the program last year, not necessarily participating in the program.

Motion previously made by Ms. Porter; seconded by Mr. Williams. Section 3, as amended, was on the table for further discussion.

Mr. Elrich proposed to delete Section 3(a)(2). Seconded by Mr. Chavez. The amendment carried unanimously.

Mr. Elrich proposed that in regards to Section 3(a)(1) the deferral should only be valid for as long as the residence is occupied. If the residence becomes a rental property then the deferral ends.

Ms. Porter proposed that Section 3(a)(1) be amended to require that the person continue to reside in the residential property for the duration of the deferral.

Ms. Perlman said that this is a term of eligibility, noting that it would be difficult to know whether a person is going to remain a resident of the property for the duration of the deferral at the time a person applies for eligibility.

Mr. Williams explained that there may not be available monies to pay the deferred costs at the time a property is converted into a rental property, unless the property is sold.

Mr. Elrich suggested tying his proposal to the "payment due date," and moved that a condition be added to the payment due date, that the payment becomes due 6 months after the property becomes a rental property (seconded by Mr. Davenport).

Ms. Porter clarified that the situation the Council is discussing is that of a person living at a property for a period of years who may have to leave their property for a reason beyond their control. There is the possibility that a family member might then move in and the property would be converted to a rental property. This does not mean that the property owner would be

any more able to pay the assessment at the time, beyond the person's control, the property becomes a rental property. She said that this is a fairly unique situation.

Mr. Sharp asked about the likely number of persons currently eligible for the deferral. He questioned whether a person could qualify years later during the period of the assessment, if that person is not eligible at this time.

The Council agreed this would be possible.

Ms. Porter noted the one year "gap" between qualifying for the Homeowners Tax Credit and eligibility for the deferral of the special assessment payments. A person would have to be in this situation for a fairly long time before being eligible for the deferral.

Mr. Elrich commented about people not being eligible for deferrals until out years, and questioned then, should eligibility be examined each year.

Mr. Williams supported Ms. Porter's comments about not adding Mr. Elrich's proposal regarding rental units.

The proposed amendment failed (AYE: Elrich).

Mr. Elrich said that qualifications for deferral should be reviewed annually.

Mr. Sharp said that he is not convinced that Section 3(a)(3) does not require the City to make the analysis each year.

Ms. Porter asked how difficult it would be for the City to do this analysis each year.

Ms. Habada asked if a person would have to apply for the deferral, or if the City Administration would have to proactively pursue persons eligible to apply.

Mr. Sharp said that a person would have to apply to the City for the deferral.

Ms. Habada said that she does not believe it would be too onerous to check the eligibility of persons covered by the deferral program, annually. She recognized, however, that a policy would need to be put in place.

Ms. Perlman stated that she does not believe that Section 3(a)(3) requires the City to review eligibility each year.

Mr. Sharp suggested that the language be made more clear.

Mr. Elrich proposed that the deferral be granted for annual periods.

Ms. Perlman asked if a person is eligible for year #1 payment deferral, but not for year #2, would the year #1 payment be deferred until the property is sold. She admitted that it is awkward, but that she believes that year #1 payment would be deferred until the time of sale.

Mr. Sharp asked if Ms. Habada has a problem with staff doing the annual analysis of eligibility.

Ms. Habada requested that the policy language be written very clearly to indicate how the review will be done each year, and how deferrals will be tracked over the years, especially in regards to eligibility status changing over the years.

Ms. Porter said that it would make sense to record the deferral on the property deed.

The Council consented to Ms. Porter's comment, but after continued discussion concurred that yearly analyses of eligibility would not be necessary.

Mr. Sharp restated the amendments to Section 3.

| Arthur Karpas asked what is the Council's decision on how to handle a person's eligibility over the years.

Mr. Sharp responded that the Council has reached a consensus that eligibility will not be reviewed annually.

The amendments to Section 3, and inclusion of Section 3 as part of the ordinance, were unanimously accepted.

Mr. Williams moved the amendments to the ordinance (shaded in the text) since the first reading (seconded by Mr. Elrich).

Mr. Sharp noted each of the amendments.

| Arthur Karpas asked for clarification about the upper Westmoreland Avenue area (pg.4, odd numbered address).

Ms. Perlman said that 7007 Westmoreland Avenue is the Metaphysical Chapel.

(name not stated) commented on the deferral terms.

The shaded amendments to the ordinance were unanimously accepted.

Mr. Sharp announced that the amended ordinance is before the Council, and the floor is open for citizens' comments.

James Rast, 6811 Eastern Avenue said that he still opposes the special assessment, and that he has talked to an attorney since the public hearing. He stated that his attorney thinks he has a case, and that the residential properties should be divided into two classes--those on the slope that have run off, and the properties that are level and contribute nothing to the drainage problem. Properties that do not contribute to the problem stand nothing to gain from the improvements. He commented about the fresh water spring that is on the back of his property. Mr. Rast reiterated his belief that there should be two categories for residential properties.

Mr. Williams asked that the engineer respond to Mr. Rast's comment.

Mr. Rast said that he has spoken with the engineer and Ms. Habada. He stated | that he does not understand the calculation of the special assessments.

Mr. Spuler of Greenhorne & O'Mara said that his firm did the design for the project over the past year. Specifically, the answer to Mr. Rast's question is that the firm tried to be impartial in its calculation of the assessment. | The firm looked at the project in terms of the drainage area itself, and computed the drainage contribution over 10 years. The percentages were outlined in the drainage study submitted to the city.

Mr. Sharp questioned whether there are properties that contribute nothing to the problem, and asked if it possible to make those types of distinctions, easily.

Mr. Spuler said that when the study was done, all of the lots in the area were determined to both contribute to the problem and stand to benefit from the project. Each lot may not contribute the exact same percentage, but all lots clearly contribute to the problem.

(name not stated) suggested that the Council go forward with the ordinance.

Mr. Rast said that he understands the point being made, but that this is a matter of importance to him. He said that there was never a problem until after the apartments were built in the 60's.

Arthur Karpas, 6916 Westmoreland Avenue remarked that this is not true. He said that since the time he moved in, there has always been a problem with storm water in the area.

Mr. Sharp confirmed that the bid opening is scheduled for tomorrow, and that the exact costs of the project will be made available after the bid.

The ordinance, as amended, was unanimously adopted at second reading, by roll call vote.

ORDINANCE #1995-4
(Attached)

#4 2nd Reading Ordinance re: Revisions to Tree Ordinance. Ms. Habada noted the memo from staff in response to Council's questions.

Mr. Sharp noted the amendments on page 16.

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

Mr. Rubin commented that this process has had deep roots in the community.

Ms. Porter said that this legislation is the product of a number of people-- Tree Commission, Committee on the Environment, and others--who worked long and hard on the issue.

The ordinance was unanimously adopted, by roll call vote.

ORDINANCE #1995-5
(Attached)

WORKSESSION

The Council moved into Worksession, and later adjourned for the evening at 10:27 p.m.

Resolution #1995 - 18

RESOLUTION IN SUPPORT OF ARBOR DAY AND EARTH MONTH CELEBRATIONS IN TAKOMA PARK

WHEREAS, the environment is important to the residents of Takoma Park; AND

WHEREAS, the Committee on the Environment, a City Council appointed body of City residents who advise the City on developing programs and administrative practices that are environmentally responsible, have organized several special events to celebrate Arbor Day and Earth Month; AND

WHEREAS, these events encourage the local community to participate, AND

WHEREAS, Arbor Day will be celebrated Saturday, April 8th at the Takoma Park Library from 10 AM to 4 PM, and will include the distribution of free tree saplings celebrating the memory of our former Park Specialist Marty Moskowitz, answers to tree questions provided by Tree Doctors and a special visit from Woodsy Owl; AND

WHEREAS, the City of Mt. Rainier will also give away free tree saplings to celebrate Marty Moskowitz, a former resident and Tree Commissioner of Mt. Rainier, AND

WHEREAS, Earth Month will be celebrated throughout the month of April, with several events including an Earth Festival April 30, with live entertainment, food, Earth-friendly products, children's activities and more.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of Takoma Park supports the local environmental celebration of Arbor Day on Saturday, April 8th, and Earth Month throughout the month of April, presented by the Committee On The Environment, and encourages all residents to participate.

Adopted this 27th day of March, 1995

ATTEST:



Catherine Sartoph, City Clerk

Introduced by: Councilmember Rubin

RESOLUTION #1995-19

**SUPPORTING METROPOLITAN WASHINGTON AIR QUALITY COMMITTEE
RECOMMENDATIONS ON USE OF LAWN CARE EQUIPMENT**

WHEREAS, *the United States Environmental Protection Agency has reported that the Washington metropolitan area suffers from a high degree of air pollution; AND*

WHEREAS, *the quality of the air in the metropolitan area is too hazardous to meet the standards set by the Clean Air Act; AND*

WHEREAS, *the Metropolitan Washington Air Quality Committee (MWAQC) estimates that during summer months seven percent of the air pollution in the Washington metropolitan area is caused by gasoline-powered off-road lawn and garden care equipment; AND*

WHEREAS, *the Environmental Protection Agency has proposed stricter emission standards for gasoline-powered lawn and garden care equipment manufacture beginning in 1996; AND*

WHEREAS, *MWAQC has requested that area governments refrain from using gasoline-powered off-road lawn and garden equipment on days it identifies as "high pollution" days.*

NOW, THEREFORE, BE IT RESOLVED THAT *the City of Takoma Park, Maryland, supports, and will honor, the request of the MWAQC and encourages residents to do so; AND*

BE IT FURTHER RESOLVED THAT *the City of Takoma Park encourages residents to switch from using gasoline-powered lawn and garden care equipment to using more environmentally-friendly equipment and practices such as the use of alternative ground covers, push reel or electric mowers; AND*

BE IT FURTHER RESOLVED THAT *the City of Takoma Park supports the recently proposed Environmental Protection Agency emission standards for gasoline-powered lawn and garden care equipment manufacture beginning in 1996 and encourages even more vigorous standards for 1999.*

Adopted this 27th day of March, 1995.

Introduced by: Councilmember Rubin
(Drafted by: C. Sartoph)
DRAFT DATE: 3/8/95

1st Reading: 3/13/95
2nd Reading: 3/27/95
Posted: 3/28/95
*Effective: 5/16/95

*Unless a petition meeting the requirements of Sec.602 of the City Charter is received by 5/8/95.

CHARTER AMENDMENT RESOLUTION #1995 - 13

AMENDING THE MUNICIPAL CHARTER ARTICLE III, SECTION 307
REGARDING FILLING VACANCIES ON THE COUNCIL

WHEREAS, Section 307 of the Takoma Park Charter of 1989, as amended, prescribes that in the event of a vacancy on the Council, the Council shall appoint a person to fill the vacancy for the remainder of the unexpired term;
AND

WHEREAS, by adoption of Resolution #1994-42, the Council established a City Elections Committee to make recommendations to the Council concerning the filling of Council vacancies and recall provisions; AND

WHEREAS, taking into consideration the recommendations made by the Elections Committee and examples of provisions found in other municipal charters, a provision to allow for special elections to fill Council vacancies under certain circumstances has been discussed by the Council.

SECTION 1. NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF TAKOMA PARK, MARYLAND, THAT, pursuant to Article XI-E of the Constitution of the State of Maryland and Article 23A of the Annotated Code of Maryland (1994 replacement volume), title: "Corporations - Municipal," that Section 307 of the Municipal Charter of the City of Takoma Park is hereby amended as follows:

ARTICLE III - THE COUNCIL

Section 307. Vacancies on the Council.

~~In the event of a vacancy on the Council for any reason, the Council by a majority vote shall within sixty (60) days appoint some person, qualified in accordance with Section 302, to fill such vacancy for the remainder of the unexpired term.~~

(a) Method of Filling Vacancies. Should a vacancy on the Council occur more than two hundred and forty (240) days before the next regularly scheduled City election, a special election shall be held to fill the vacancy. If the vacancy occurs less than two hundred and forty (240) days before the next regularly scheduled City election, the remaining members of the Council by a majority vote shall, within sixty (60) days, appoint a person who is qualified in accordance with Section 302 or Section 402, as applicable, to fill such vacancy for the remainder of the unexpired term.

(b) Special Election. If a vacancy is to be filled by special election, the remaining members of the Council shall, by resolution, establish a date for the special election which shall be not less than forty-five (45) days nor more than sixty (60) days from the date of the vacancy.

(c) Ballot. If the requirements of Section 302 or Section 402, as applicable, are met, a person may have his/her name listed on the special election ballot as a candidate to fill a vacancy on the Council by submitting a petition to the City Clerk with a sufficient number of valid signatures at least fifteen (15) days prior to the date scheduled for the special election.

(d) Petition. The petition must clearly state that its purpose is to place a specific person's name on the ballot at a special election to fill a vacancy on the Council of the City of Takoma Park, the office and/or ward that the election is being held to fill, and the date of the special election.

(1) For a Mayoral vacancy, a person must have the signatures of at least 30 qualified voters of the City in order to be listed on the special election ballot as a candidate.

(2) For a Councilmember vacancy, a person must have the signatures of at least 10 qualified voters of the ward in which there is a vacancy in order to be listed on the special election ballot as a candidate.

(3) A qualified voter may sign the petition of more than one person to fill a vacancy on the Council. Each qualified voter shall print his/her name under the signature and shall include his/her address and the date of his/her signature on the petition.

(4) Before listing a person's name on a special election ballot as a candidate to fill a vacancy on the Council, the City Clerk shall verify that sufficient signatures on a petition are from qualified voters of the City and for a Councilmember vacancy of the ward in which there is a vacancy. The invalidation of one signature on a petition shall not serve to invalidate any other signatures on a petition.

(e) Voting. For a Mayoral vacancy, all qualified voters of the City may vote in the special election to fill a vacancy on the Council. For a Councilmember vacancy, only qualified voters of the ward in which there is a vacancy may vote in the special election to fill a vacancy on the Council.

(f) Write-Ins Permitted. A qualified voter also may write in the name of a candidate on the special election ballot to fill a vacancy on the Council.

(g) Results of Special Election. The candidate who meets the qualifications for office as specified in Section 302 or Section 402, as applicable, and who receives the largest number of votes in the special election to fill a vacancy on the Council shall be the winner and shall serve on the Council for the remainder of the unexpired term for which his/her predecessor was elected.

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 March 27, 1995, and the amendment of Section 307 of the Municipal Charter of the City of Takoma Park hereby enacted shall become effective on May 16, 1995, unless a proper petition for referendum hereon shall be filed as permitted by the Annotated Code of Maryland, Article 23A, Section 16, provided that a complete and exact copy of this Resolution shall be continuously posted on the bulletin board of the Municipal Building until May 6, 1995, and provided further that a 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 directed 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 fair summary of the Charter 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 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 March 27, 1995, seven members of the City Council voting in the affirmative, no members of the City Council voting in the negative, no members of the City Council abstaining, and no members of the City Council absent, and the said Resolution becomes effective in accordance with law on the 16th day of May, 1995.

Adopted this 27th day of March, 1995, by Roll Call vote as follows: ...

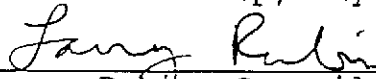
AYE: Sharp, Chavez, Davenport, Elrich, Porter, Rubin, Williams
NAY: None
ABSTAINED: None
ABSENT: None

EXPLANATORY NOTE: In this Resolution, ~~striketrough~~ denotes language to be deleted and underlining denotes language to be added to the current City Charter.

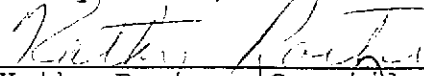
COUNCILMEMBERS OF THE CITY OF TAKOMA PARK



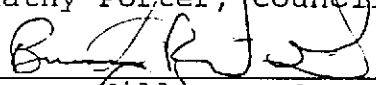
Edward F. Sharp, Mayor



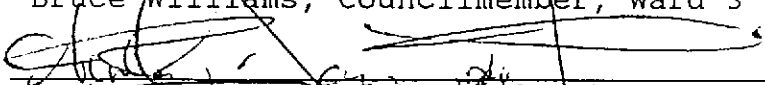
Larry Rubin, Councilmember, Ward 1



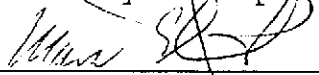
Kathy Porter, Councilmember, Ward 2



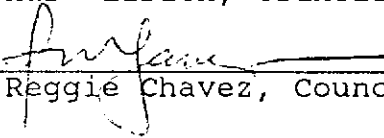
Bruce Williams, Councilmember, Ward 3



Anthony Davenport, Councilmember, Ward 4



Marc Elrich, Councilmember, Ward 5



Reggie Chavez, Councilmember, Ward 6

ATTEST:

City Clerk

Date

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Introduced by: Councilmember Davenport
(Drafted by: C. Sartoph)
DRAFT DATE: 3/8/95

1st Reading: 3/13/95
2nd Reading: 3/27/95
Posted: 3/28/95
*Effective: 5/16/95

*Unless a petition meeting the requirements of Sec.602 of the City Charter is received by 5/8/95.

CHARTER AMENDMENT RESOLUTION #1995 - 14

AMENDING THE MUNICIPAL CHARTER ARTICLE VII, BY ADDING SECTION 710 REGARDING RECALL ELECTIONS, AND RENUMBERING EXISTING SECTIONS 710 AND 711

WHEREAS, Article VII, "Registrations, Nominations and Elections," of the Takoma Park Charter of 1989, as amended, does not include provisions for recall elections; AND

WHEREAS, by adoption of Resolution #1994-42, the Council established a City Elections Committee to make recommendations to the Council concerning the filling of Council vacancies and recall provisions; AND

WHEREAS, taking into consideration the recommendations made by the Elections Committee and examples of provisions found in other municipal charters, a provision to allow for recall elections has been discussed by the Council.

SECTION 1. NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF TAKOMA PARK, MARYLAND, THAT, pursuant to Article XI-E of the Constitution of the State of Maryland and Article 23A of the Annotated Code of Maryland (1994 replacement volume), title: "Corporations - Municipal," that Section 710 of the Municipal Charter of the City of Takoma Park is hereby amended as follows:

ARTICLE VII - REGISTRATION, NOMINATIONS, AND ELECTIONS

Section 710. Recall Elections.

(a) Removal of Elected Officials. The Mayor and any Councilmember of the City of Takoma Park may be removed from office by the affirmative vote of a majority of those voting in a special recall election.

(b) Recall Petition. A petition for the removal of the Mayor or any Councilmember from office (a "recall petition") shall state the name, office, and/or ward of the elected official whose recall is sought and that its purpose is to require a special recall election to vote on whether that elected official should be removed from office. A recall petition may, but does not have to, state a reason or reasons for the recall.

(1) A recall petition for the Mayor must have the signatures of at least 1,500 qualified voters of the City of Takoma Park or at least 20% of the qualified voters of the City, whichever is greater.

(2) A recall petition for a Councilmember must have the signatures of at least 100 qualified voters of the ward the Councilmember represents or at least 20% of the qualified voters of that ward, whichever is greater.

(3) A qualified voter of the City may sign a recall petition for the removal of more than one elected official. Each qualified voter shall print his/her name under the signature and shall include his/her address and the date of his/her signature on the recall petition.

(c) Recall Election. A special recall election shall be held not less than thirty (30) days and not more than forty-five (45) days from the date the City Clerk determines that a valid recall petition containing a sufficient number of signatures from qualified voters has been submitted. The Council shall establish the date for the recall election by resolution. If the elected official who is sought to be removed is a Councilmember, then only qualified voters of that Councilmember's ward may vote in the recall election.

(d) Form of Question on Ballot. The ballot for a special recall election shall have the following question: "Should [name of elected official] be removed from the office of [name of office]? Vote 'yes' or 'no'."

(e) Results of Recall Election. If a majority of those voting in the special recall election vote "yes," the elected official shall be removed from office immediately without the necessity of further Council action and the office shall be considered vacant. The resulting vacancy on the Council shall be filled in accordance with Section 307. An elected official who has been removed from the Council in a recall election may apply for reappointment to the Council or may petition to be listed as a candidate on a special election ballot to fill a vacancy on the Council. In the event the number of "yes" and "no" votes in the special recall election are the same, or a majority of those voting in the recall election vote "no," then the recall shall fail and the elected official shall remain in office.

Section ~~710~~ 711. Regulation and Control by Council.

* * * *

Section ~~711~~ 712. Penalties.

* * * *

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 March 27, 1995, and the amendment of Section 710 of the Municipal Charter of the City of Takoma Park hereby enacted shall become effective on May 16, 1995, unless a proper petition for referendum hereon shall be filed as permitted by the Annotated Code of Maryland, Article 23A, Section 16, provided that a complete and exact copy of this Resolution shall be continuously posted on the bulletin board of the Municipal Building until May 6, 1995, and provided further that a 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 directed 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 fair summary of the Charter 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 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 March, 27, 1995, seven members of the City Council voting in the affirmative, no members of the City Council voting in the negative, no members of the City Council abstaining, and no members of the City Council absent, and the said Resolution becomes effective in accordance with law on the 16th day of May, 1995.

Adopted this 27th day of March, 1995, by Roll Call vote as follows:

AYE: Sharp, Chavez, Davenport, Elrich, Porter, Rubin, Williams


NAY: None


ABSTAINED: None

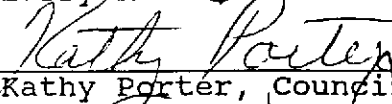
ABSENT: None

EXPLANATORY NOTE: In this Resolution, ~~striketrough~~ denotes language to be deleted and underlining denotes language to be added to the current City Charter. * * * * indicates language from Sections of the Charter that will remain unchanged.

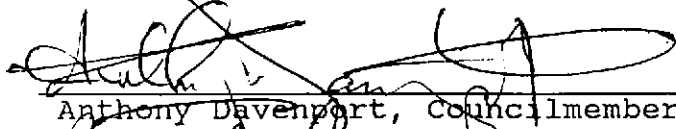
COUNCILMEMBERS OF THE CITY OF TAKOMA PARK

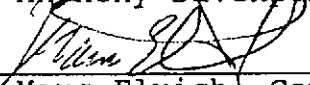

Edward F. Sharp, Mayor



Larry Rubin, Councilmember, Ward 1


Kathy Porter, Councilmember, Ward 2


Bruce Williams, Councilmember, Ward 3


Anthony Davenport, Councilmember, Ward 4


Marc Elrich, Councilmember, Ward 5


Reggie Chavez, Councilmember, Ward 6

ATTEST:

City Clerk

Date

c:\wp51\article.vii

Introduced by: Councilmember Williams
(Drafted by: C. Sartoph)
DRAFT DATE: 3/8/95

1st Reading: 3/13/95
2nd Reading: 3/27/95
Posted: 3/28/95
*Effective: 5/16/95

*Unless a petition meeting the requirements of Sec.602 of the City Charter is received by 5/8/95.

CHARTER AMENDMENT RESOLUTION #1995 - 15

AMENDING THE MUNICIPAL, CHARTER ARTICLE VII, SECTION 702, REGARDING THE TIME OF REQUESTING LISTS OF REGISTERED VOTERS FROM THE BOARDS OF ELECTION SUPERVISORS FOR SPECIAL ELECTIONS

- WHEREAS, Section 702 of the Municipal Charter of the City of Takoma Park sets forth the procedure for obtaining preliminary and final, certified lists of persons residing in the City and registered to vote, from the respective boards of elections supervisors for Montgomery and Prince George's Counties, prior to the City's biennial elections; AND
- WHEREAS, the lists of non-U.S. citizens who reside in the City and are registered to vote, are certified by the City Clerk in accordance with the same timing as applies to obtaining the voter lists from Montgomery and Prince George's Counties; AND
- WHEREAS, preliminary lists of registered voters are primarily used for verifying whether persons nominating or seconding candidates during the Nominating Caucus (Section 704(b)) are "qualified voters of the City" (Section 701(a)); AND
- WHEREAS, the deadline for voter registration, when final lists of registered voters must later be requested, is no less than 30 days prior to the biennial elections; AND
- WHEREAS, the Council desires that all special elections shall be conducted in the same manner, as far as practicable, as the City's biennial elections; AND
- WHEREAS, in the event of a special election, a Nominating Caucus will not be held and it will only be necessary to obtain the certified lists of persons residing in the City and registered to vote, from the respective boards of election supervisors of Montgomery and Prince George's Counties, once--30 days prior to the special election.

SECTION 1. NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF TAKOMA PARK, MARYLAND, THAT, pursuant to Article XI-E of the Constitution of the State of Maryland and Article 23A of the Annotated Code of Maryland (1994 replacement volume), title: "Corporations - Municipal," that Section 702 of the Municipal Charter of the City of Takoma Park is hereby amended as follows:

ARTICLE VII - REGISTRATION, NOMINATIONS, AND ELECTIONS

Section 702. Lists of Registered Voters: Certification by Supervisors of Elections.

(e) In the event of a special election, including but not limited to special elections to fill Council vacancies and recall elections, at least thirty (30) days prior to the date of the election, the City Clerk shall request from the boards of election supervisors for Montgomery and Prince George's Counties, respectively, certified, alphabetical lists of the names and addresses of those people residing in the City and registered to vote. The certified lists shall be handled in accordance with the provisions of Section 702(b).

~~(e)~~ (f) * * * * *

~~(f)~~ (g) * * * * *

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 March 27, 1995, and the amendment of Section 702 of the Municipal Charter of the City of Takoma Park hereby enacted shall become effective on May 16, 1995, unless a proper petition for referendum hereon shall be filed as permitted by the Annotated Code of Maryland, Article 23A, Section 16, provided that a complete and exact copy of this Resolution shall be continuously posted on the bulletin board of the Municipal Building until May 6, 1995, and provided further that a 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 directed 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 fair summary of the Charter 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 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 March 27, 1995, seven members of the City Council voting in the affirmative, no members of the City Council voting in the negative, no members of the City Council abstaining, and no members of the City Council absent, and the said Resolution becomes effective in accordance with law on the 16th day of May, 1995.

Adopted this 27th day of March, 1995, by Roll Call vote as follow:

AYE: Sharp, Chavez, Davenport, Elrich, Porter, Rubin, Williams

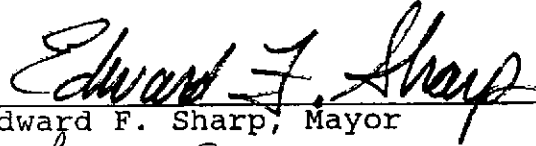
NAY: None

ABSTAINED: None

ABSENT: None

EXPLANATORY NOTE: In this Resolution, ~~strikethrough~~ denotes language to be deleted, underlining denotes language to be added, and * * * * * denotes text of subsections to remain unchanged, in the City Charter.

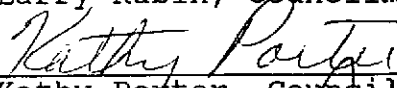
COUNCILMEMBERS OF THE CITY OF TAKOMA PARK



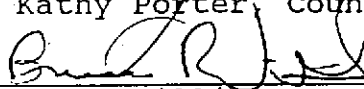
Edward F. Sharp, Mayor



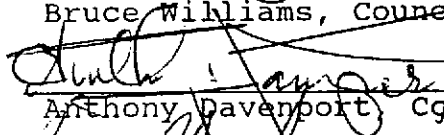
Larry Rubin, Councilmember, Ward 1



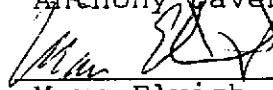
Kathy Porter, Councilmember, Ward 2



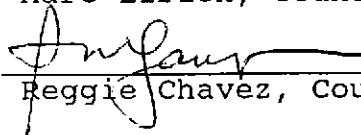
Bruce Williams, Councilmember, Ward 3



Anthony Davenport, Councilmember, Ward 4



Marc Elrich, Councilmember, Ward 5



Reggie Chavez, Councilmember, Ward 6

ATTEST:

City Clerk

Date

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Introduced by: Councilmember Williams
(Drafted by: N. Grimmer)
DRAFT DATE: 3/10/95

1st Reading: 3/13/95
2nd Reading: 3/27/95
Posted: 3/28/95
*Effective: 5/16/95

*Unless a petition meeting the requirements of Sec.602 of the City Charter is received by May 8.

CHARTER AMENDMENT RESOLUTION #1995 - 16

**AMENDING THE MUNICIPAL CHARTER, ARTICLE IX, SECTION 904(A),
REGARDING THE MINIMUM LEVEL OF FUNDING FOR AN EMERGENCY RESERVE
FUND**

- WHEREAS, Section 904(a) of the Takoma Park Charter of 1989, as amended, prescribes that an Emergency Reserve Fund be established for the sole purpose of meeting emergency expenditures necessary for the health, safety or welfare of persons or for actions necessary to perform essential government functions; AND
- WHEREAS, this Fund is to be maintained and budgeted for at no less than 8.5% of total budget revenues; AND
- WHEREAS, taking into consideration the insurance coverage carried by the City to protect against emergency expenditures; the growth in the level of budget appropriation necessary to fund this each year because it is based on a percentage of revenues; and the City's lack of any draw-downs on this fund at any time since the Fund was established, the Council has determined it is in the best interest of the City to change the minimum level of funding from a percentage driven by escalating revenues to a minimum funding of \$250,000 for Fiscal Year 1996, plus a percentage increase each year equal to the percentage increase in the Consumer Price Index for all Urban Consumers (CPI-U) from December of the second previous year to December of the prior year.
- SECTION 1. NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF TAKOMA PARK, MARYLAND, THAT, pursuant to Article XI-E of the Constitution of the State of Maryland and Article 23A of the Annotated Code of Maryland (1994 replacement volume), title:

"Corporations - Municipal," that Section 904(a) of the Municipal Charter of the City of Takoma Park is hereby amended as follows:

ARTICLE IX - Finance

Section 904 Reserve Provisions

(a) Emergency Reserve. A separate reserve shall be established to be used exclusively for emergency expenditures necessary for the health, safety or welfare of persons, or actions necessary to perform essential governmental functions, as determined and authorized by the Council by Specific ordinance. Such Emergency Reserve shall be no less than \$250,000 for Fiscal Year 1996, and each fiscal year thereafter shall increase by a percentage equal to the percentage increase in the Consumer Price Index for all Urban Consumers (CPI-U) from December of the second previous year to December of the prior year. The budget for each fiscal year shall include an amount necessary to maintain the Emergency Reserve at not less than \$250,000 for Fiscal Year 1996, plus a percentage increase each year equal to the percentage increase in the Consumer Price Index for all Urban Consumers (CPI-U) from December of the second previous year to December of the prior year.

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 March 27, 1995, and the amendment of Section 307 of the Municipal Charter of the City of Takoma Park hereby enacted shall become effective on May 16, 1995 unless a proper petition for referendum hereon shall be filed as permitted by the Annotated Code of Maryland, Article 23A, Section 16, provided that a complete and exact copy of this Resolution shall be continuously posted on the bulletin board of the Municipal Building until May 6, 1995 and provided further that a 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 directed 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 fair summary of the Charter 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 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 March 27, 1995, seven members of the City Council voting in the affirmative, no members of the City Council voting in the negative, no members of the City Council abstaining, and no members of the City Council absent, and the said Resolution becomes effective in accordance with law on the 16th day of May 1995.

Adopted this 27th day of March 1995, by Roll Call vote as follow:

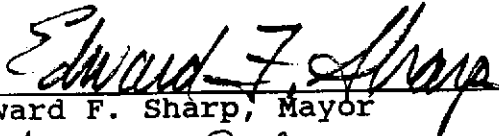
AYE: Sharp, Chavez, Davenport, Elrich, Porter, Rubin, Williams.

NAY: None


ABSTAINED: None

ABSENT: None

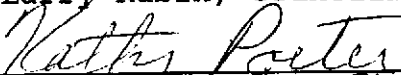
COUNCILMEMBERS OF THE CITY OF TAKOMA PARK




Edward F. Sharp, Mayor



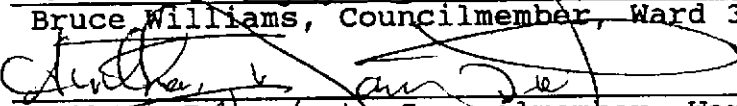
Larry Rubin, Councilmember, Ward 1




Kathy Porter, Councilmember, Ward 2



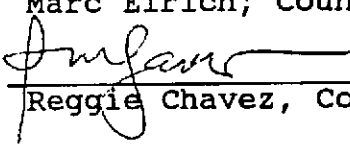
Bruce Williams, Councilmember, Ward 3



Anthony Davenport, Councilmember, Ward 4



Marc Elrich, Councilmember, Ward 5



Reggie Chavez, Councilmember, Ward 6

ATTEST:

City Clerk

Date

Introduced by:
Councilmember Williams

First Reading: 3/13/95
Second Reading: 3/27/95

ORDINANCE NO. 1995 - 4

AN ORDINANCE LEVYING SPECIAL ASSESSMENT CHARGES AGAINST PROPERTIES IN THE UPPER WESTMORELAND AREA OF THE CITY OF TAKOMA PARK FOR THE COSTS OF STORM DRAINAGE IMPROVEMENTS.

WHEREAS, Section 1201 of the Municipal Charter provides for the Council of Takoma Park to be designated the Stormwater Management Board ("Board") for Takoma Park; and

WHEREAS, Section 1216 of the Municipal Charter provides that the Board shall have the power to levy and collect taxes in the form of special assessments upon property in a limited and determinable area for special benefits conferred upon such property by the installation or construction of storm water sewers, curbs, and gutters and to provide for the payment of all or any part of the cost of such projects out of the proceeds of such special assessment; and

WHEREAS, the City is undertaking a storm drainage improvements project in the area defined by Westmoreland Avenue to the north, Eastern Avenue to the south, Laurel Avenue to the west, and Walnut Avenue to the east (this area is hereinafter referred to as "Upper Westmoreland"); and

WHEREAS, in general, the stormwater runoff in the Upper Westmoreland area flows from the west side (the commercial area) to the east side (the residential area) and due to the existing drainage pattern, the residential lots at the downstream end of the Upper Westmoreland drainage area are saturated; and

WHEREAS, the commercial area, being mostly paving and roofs, releases more water per acre than the residential lots which are mostly grass; and

WHEREAS, the Upper Westmoreland drainage area, in its existing condition, allows a large portion of its runoff to flow uncontrolled to the lots at the downstream end; and

WHEREAS, upstream property owners have a responsibility to manage surface runoff as not to adversely impact or cause damage to downstream property owners; and

WHEREAS, the storm drainage improvements project will mitigate the existing drainage problems in the Upper Westmoreland area, which is in the best long-term interests of the residential, apartment, and commercial property owners; and

WHEREAS, these storm drainage improvements will confer a special benefit on the owners of property in the Upper Westmoreland area of the City; and

WHEREAS, the Board finds that there should be an equitable assessment of the costs of the storm drainage improvements to be constructed against the properties in the Upper Westmoreland area and that the properties in the Upper Westmoreland area should be divided into classes based on percentage contribution to the total water drainage problem; and

WHEREAS, on February 21, 1995, the Council, sitting as the Stormwater Management Board for Takoma Park, passed Resolution No. 1995-8 setting a public hearing for March 13, 1995,

concerning the proposed storm drainage improvements project and the proposed special assessment; and

WHEREAS, in accordance with Section 1302(d) of the Municipal Charter, the City Administrator caused notice to be given by mail to the owners of record, as shown in the property tax records of the City, of each parcel of property proposed to be assessed concerning the nature and extent of the proposed project, the kind of materials to be used, the estimated cost of the project, the portion of the project cost to be assessed, the number of installments in which the assessment may be paid, the method to be used in apportioning the costs, and the time and place at which all interested persons may appear before the Council and be heard concerning the proposed project and special assessment; and

WHEREAS, such notice also was published on February 24, 1995, in the Prince George's Journal, the Montgomery Journal, and in the March, 1995 issue of the Takoma Park Newsletter, newspapers of general circulation in the City; and

WHEREAS, at the March 13, 1995, public hearing, the City Clerk presented a certificate of publication and of the mailing of copies of the notice; and

WHEREAS, on March 13, 1995, the Council, sitting as the Stormwater Management Board for Takoma Park, held a public hearing concerning the proposed Upper Westmoreland storm drainage improvements project and the special assessment at which time all persons interested were given the opportunity to appear before

the Council and be heard concerning the proposed project and special assessment.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND, SITTING AS THE STORMWATER MANAGEMENT BOARD FOR TAKOMA PARK.

SECTION 1. Levy of Special Assessment; Project Cost; and Method of Apportionment.

The Council, sitting as the Stormwater Management Board for Takoma Park, hereby levies special assessment charges against the properties located at 7009, 7007, 7005, 7003, 7001B, 7001, 6939, 6937, 6935, and 6931 Carroll Ave.; 6929, 6927, 6925 6923, 6921, 6919, 6917, 6915, 6909, and 6901 Laurel Ave.; 6855, 6847 (vacant lot); 6843-45, 6839, 6833A & B, 6815, and 6811 Eastern Ave.; 68, 66, 64, 62, 60, 58, 56, and 54 Walnut Ave.; and 6906, 6908, 6910, 6912, 6914, 6916, 7000, 7002, 7004, 7006, 7008, 7010, 7012, 7014, and 7007 Westmoreland Ave., Takoma Park, Maryland 20912, to pay for the costs of storm drainage improvements.

The total estimated project cost is \$56,000.00, which shall be assessed to the owners of the above-listed properties. The total cost of the storm drainage improvements project shall be apportioned according to the percentages of total drainage contributions in the Upper Westmoreland area (as determined by Greenhorne & O'Mara, Inc., engineers), as follows:

Class I, Commercial - Urciolo (Lots 49, 50, 51, and 52, Block A, Gilbert & Wood subdivision--6929, 6927, 6925, 6923,

6921, 6919, 6917, 6915, and 6909 Laurel Ave.; 6855 Eastern Ave.) 33.59%; or approximately \$19,000.

Class II, Commercial - Carleton (Lots 11, 12, 13, 38, 37, 36, 35, 34, and 33, Block A, Gilbert & Wood subdivision--7007, 7014, 7012, 7010, 7008 Westmoreland Ave.; 7009, 7007, 7005, 7003, 7001B, 7001, 6939, 6937, 6935, and 6931 Carroll Ave.) 5.56%; or approximately \$3,200.

Class III, Vacant Lot (Lot 9, Block A, Gilbert & Wood subdivision--6847 Eastern Ave.), 2.51% or approximately \$1,410.

Class IV, Lot with Rear Yard Paved (Impervious Surface) (Lot 7, Block A, Gilbert & Wood subdivision--6839 Eastern Ave.) 6.14%; or approximately \$3,440.

Class V, Apartments (Lots 4, 5, and 6, Block A, Gilbert & Wood subdivision--6833A & B Eastern Ave. [Eastern Gardens]) 16.53% or approximately \$9,260.

Class VI, Remaining Residential Area (Lots 22 - 32, Block A, Gilbert & Wood subdivision--68, 66, 64, 62, 60, 58, 56, and 54 Walnut Ave.; 6811 and 6815 Eastern Ave.; Lot 8, Block A, Gilbert & Wood subdivision--6845-6843 Eastern Ave. (duplex); and Lots 39-48, Block A, Gilbert & Wood subdivision--7006, 7004, 7002, 7000, 6916, 6914, 6912, 6910, 6908, and 6906 Westmoreland Ave.) 35.77%, or approximately \$20,031 total or a cost of approximately \$954 for each lot.

SECTION 2. Special Assessment Payments; Interest and Penalties; Collections.

The special assessment charges levied by this Ordinance shall be payable in annual installments over a five-year period, with the first installment due and payable on July 1, 1995. Interest will be charged on the unpaid special assessment balance at the rate of 6% per annum. Each special assessment installment shall be overdue six months after the date on which the installment became due and payable. A penalty shall be imposed on overdue special assessment installments at the rate of 1% for each month or fraction of a month that the special assessment installment is overdue. The special assessment charges levied by this Ordinance shall be liens on the property and overdue special assessments shall be collected in the same manner as City property taxes or by suit at law. The special assessment charges shall be billed and collected by the City Treasurer.

SECTION 3. Deferral of Special Assessment Payments.

(a) Eligibility. A property owner in Class VI, Remaining Residential Area, is eligible for a payment deferral of the special assessment charges levied by this Ordinance if the property owner or at least one of the property owners:

(1) has resided in the residential property for a period of at least five consecutive years; and

(2) qualifies for the homeowner's property tax credit under Section 9-104 of the Tax-Property Article of the Annotated

Code of Maryland for the calendar year immediately preceding the application for a payment deferral under this section.

(b) Interest, penalties. Interest shall be payable on the special assessment charges from the due date of each installment as if there were no deferral until the date that the special assessment charges are paid in full. Penalties shall not be charged during the period of the deferral of any special assessment charges.

(c) Payment due date. The special assessment charges that are deferred under this section and any interest are due when the property or any part of it is sold or transferred.

(d) Liens. A lien shall attach to the property in the amount of all deferred special assessment charges and interest. The lien shall remain attached until the deferred special assessment charges and interest are paid in full.

(e) Written agreements. The payment deferral under this section shall be authorized by written agreement. The agreement shall reflect the terms and conditions of the payment deferral including notice of the lien. The agreement shall be recorded in the land records of the county.

(f) Applications. A property owner shall apply to the City Administrator for the payment deferral of the special assessment charges levied by this Ordinance. The City Administrator may develop forms and rules to implement the provisions of this section.

THIS ORDINANCE IS ADOPTED THIS 27TH DAY OF MARCH, 1995, BY
ROLL CALL VOTE AS FOLLOWS:

Aye: Sharp, Chavez, Davenport, Elrich, Porter, Rubin, Williams

Nay: None

Abstained: None

Absent: None

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Introduced by: Councilmember Chavez

First Reading: 3/13/95
Second Reading: 3/27/95

Drafted By:
Marty Moskowitz, City Arborist
Linda S. Perlman,
Assistant Corporation Counsel

Draft Date: March 24, 1995

Effective Date: 3/27/95

ORDINANCE NO. 1995 - 5

(REVISION OF CHAPTER 12, TREES AND VEGETATION,
OF TAKOMA PARK CODE)

WHEREAS, the City of Takoma Park has the authority to make and administer laws and regulations to protect the public's health and safety, and to protect the environment; and

WHEREAS, the City has the authority under Section 5-427 of the Natural Resources Article of the Annotated Code of Maryland to implement a local urban and community forestry program; and

WHEREAS, trees and other plants provide significant public benefits in terms of air, noise, and visual pollution control, control water run-off and support the biologic and hydrologic integrity of watersheds and ecosystems, and have significant aesthetic value affecting property values and the quality of life in the City; and

WHEREAS, the protection and proper care of the trees and vegetation within the City of Takoma Park enhances the level of public benefits they produce; and

WHEREAS, as part of its effort to preserve and protect the trees and vegetation in the City of Takoma Park, the City intends to develop and update, regularly, an urban forestry plan which describes the urban forestry activities to be undertaken by the

City, such as a tree inventory, planting projects, and educational projects; and

WHEREAS the Council desires that reports on the number of trees removed and replaced in the City and on current and proposed urban forestry activities by the City be included as part of the annual budget process; and

WHEREAS, the Council has determined that certain provisions of Chapter 12, Trees and Vegetation, of the Takoma Park Code need to be revised and, accordingly, adopts this Ordinance repealing and reenacting with changes Chapter 12 of the Takoma Park Code.

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

SECTION ONE. Chapter 12, Trees and Vegetation, of the Takoma Park Code is repealed in its entirety and replaced with the following:

CHAPTER 12. TREES AND VEGETATION.

ARTICLE 1. GENERAL PROVISIONS.

Sec. 12-1. Definitions.

Sec. 12-2. Interpretation.

Sec. 12-3. Authority of City Administrator to adopt regulations.

Sec. 12-4. Interference prohibited.

Sec. 12-5. Enforcement; stop work orders.

Sec. 12-6. Procedure to be followed in case of infractions.

Sec. 12-7. Charges for City taking corrective action.

Sec. 12-8. City Administrator to have decision-making authority for all trees on City property.

Sec. 12-9. Inspection for insects and disease; taking of specimens.

Sec. 12-10. Permission required to prune, spray, plant or remove from City property.

Sec. 12-11. Requirement for supervision by a tree expert.

Secs. 12-12 through 12-15 Reserved.

ARTICLE 2. PROHIBITIONS ON MAINTAINING UNDESIRABLE VEGETATION.

Sec. 12-16. Infected or infested woody vegetation on private property.

Sec. 12-17. Fallen or dangerous trees on private property.

Sec. 12-18. Vegetation not to obscure intersection.

Sec. 12-19. Vegetation not to obstruct sidewalks or traffic.

Sec. 12-20. Noxious growths.

Sec. 12-21. Uncontrolled growth of vegetation on vacant lots.

Sec. 12-22. Uncontrolled growth of lawns on private property.

Sec. 12-23 through 12-25. Reserved.

ARTICLE 3. URBAN FOREST.

Sec. 12-26. Legislative Findings.

Sec. 12-27. Urban forest trees.

Sec. 12-28. Tree permit required.

Sec. 12-29. Tree permit applications; waivers.

Sec. 12-30. Tree replacement required.

Sec. 12-31. Appeals from permit decisions.

Sec. 12-32. Criteria for permit decisions.

Sec. 12-33. Violations and penalties; enforcement.

CHAPTER 12. TREES AND VEGETATION.

ARTICLE 1. GENERAL PROVISIONS.

Sec. 12-1. Definitions.

As used in this Chapter:

(a) "Basal area" means the area of a tree trunk's cross section, measured outside the bark.

(b) "Caliper" means the diameter measurement of the trunk of nursery stock trees, taken at caliper height.

(c) "Caliper height" means 6 inches above the ground, except that in the case of a tree that is 4 or more inches in diameter, "caliper height" means 12 inches above the ground. The diameter measurement of the tree is taken at 6 inches above the ground.

(d) "Canopy" means the combined crowns of all trees on a tract of land.

(e) "City Administrator" means the City Administrator appointed under Section 2-20 or his or her designee.

(f) "City property" means City rights-of-way, City parks, median strips, and other City-owned property.

(g) "Crown" means the volume defined by the spread of the branches and foliage of a tree.

(h) "Department" means the City Department of Public Works.

(i) "Diameter at Breast Height" or "DBH" of a tree means the measurement of the average diameter of the tree taken at 4½ feet above the ground.

(j) "Drip Line" means an imaginary line on the ground

directly below the outer edge of a tree's crown.

(k) "Hazardous," in relation to a tree or tree part, means defective, diseased or dead, and posing a high risk of failure or fracture with the potential to cause injury to people or damage to property.

(l) "Nursery stock tree" means a tree which meets the standards established by the American Standard for Nursery Stock published by the American Association of Nurserymen (Publication No. ANSI Z60.1-1990), as revised and amended from time to time.

(m) "Person" has the meaning in Section 1-2 and does not include the City.

(n) "Tree Commission" means the Tree Commission established under Section 2-141.

(o) "Tree cover" means area covered by canopy, expressed in square feet or as a percentage of the area of a tract of land.

(p) "Tree Protection Plan" means a site plan that delineates tree save areas and details measures to be taken to ensure survivability of trees to be saved prior to and during construction.

(q) "Woody Vegetation" means vegetation with stems of wood (other than vines) and includes trees and bushes.

(r) See Section 1-2 for definitions of the terms "City", "Owner", and "Street".

Section 12-2. Interpretation.

This Chapter is intended to supplement and not to contradict or supersede any applicable provisions of the law and

regulations of the State of Maryland, and is to be interpreted as such.

Sec. 12-3. Authority of City Administrator to adopt regulations.

The City Administrator may adopt regulations to implement this Chapter, in accordance with the provisions of Chapter 2, Article 5, Administrative Regulations.

Sec. 12-4. Interference prohibited.

A person who prevents, delays, or interferes with the City Administrator while he or she is carrying out the provisions of this Chapter in or upon any public highway or public space commits a Class C municipal infraction.

Sec. 12-5. Enforcement; stop work orders.

(a) The Department has primary responsibility for the administration and enforcement of this Chapter.

(b) Representatives of the Department and City Code Enforcement Officers of the Department of Housing and Community Development may serve as the City Administrator's designee, with full authority to enforce all municipal infraction provisions of this Chapter.

(c) In addition to all other means of enforcement provided for by law and in this Chapter, the City Administrator, City Code Enforcement Officers or police officers may issue a "stop work order" to any person who violates any provision of this Chapter. A stop work order also may be issued on the basis of an affidavit received setting forth the facts of the alleged violation.

(1) Any person who receives such a stop work order

shall immediately cease the activity which constitutes the violation. The person shall comply with all terms and conditions imposed by the person issuing the order before the activity may resume.

(2) A person who receives a stop work order may appeal the issuance of the stop work order to the Tree Commission pursuant to Section 12-31 within 15 days after the issuance of the stop work order, as if the issuance were a denial of a tree permit.

Sec. 12-6. Procedure to be followed in case of infractions.

(a) In the case of violations of this Chapter, the City may issue a warning notice in accordance with Section 1-18, giving the person an appropriate period of time to correct a violation before a municipal infraction citation is issued. No additional warning notices shall be issued for subsequent violations for which a warning notice was issued.

(b) Failure to abate a violation for which a municipal infraction citation has been issued by the due date of the fine, as set forth on the municipal infraction citation, causes subsequent violations to be treated as repeat offenses.

(c) In addition to the fine for a municipal infraction, as set forth in Section 1-19, the City may obtain a court order for the owner to abate the violation or for the City to abate the violation at the expense of the owner.

Sec. 12-7. Charges for City taking corrective action.

(a) Where the City has taken corrective action to bring a

property into compliance with this Chapter, the City Administrator shall send the owner a bill for the cost of the corrective action. The bill shall be sent by regular mail to the owner's last-known address or delivered by any other means reasonably calculated to bring the bill to such person's attention. If the owner does not pay the bill within one month after it is presented, the City Administrator may certify the cost of such corrective action to the City Treasurer.

(b) The City Treasurer shall send a bill for the costs of such corrective action to the owner of the real property, as listed in the City property tax records. The City Treasurer also may send a copy of the bill for the costs of the corrective action to a lender under a mortgage or deed of trust made by the owner and secured by the real property, as listed in the City property tax records. The bill shall be sent by regular mail to the last-known address of the owner or lender or delivered by any other means reasonably calculated to bring the bill to such person's attention. If the bill is not paid within one month after it is presented, then the cost becomes a lien against the real property which may be collected and enforced in the same manner as are taxes, special assessments, and other liens against real property or collected by a law suit against the owner.

Sec. 12-8. City Administrator to have decision-making authority for all trees on City property.

(a) The City Administrator has authority over the disposition of all trees located on City property and has the

power to plant, maintain, or remove trees on City property, subject to the provisions of this Chapter.

(b) The City Administrator may order the removal of any tree or part of a tree on City property that --

(1) poses a threat to safety;

(2) may cause damage to sewers or other public improvements;

(3) is diseased or infested and poses a danger to other healthy trees; or

(4) impairs the appearance of City property.

Sec. 12-9. Inspection for insects and disease; taking of specimens.

(a) The City Administrator is authorized to inspect any woody vegetation that appears to be or is reported to be infected with a fungus, virus, bacterium, or other pathogen or infested with insects or other parasites which, due to such infection or infestation, may cause damage to other woody vegetation or other property, and may take specimens from the woody vegetation if necessary to determine the existence of such infection or infestation.

(b) If the City Administrator cannot determine with certainty the existence of infection or infestation in any woody vegetation, the City Administrator shall send any such specimens for examination, diagnosis and report to the Cooperative Extension Service, Home and Garden Information Center, University of Maryland or other laboratory, and shall base further action on

such extension service or other laboratory report.

Sec. 12-10. Permission required to prune, spray, plant or remove from City property.

(a) Except as provided in subsection (b), a person who sprays, prunes, cuts, removes, or plants any vegetation on City property, without obtaining prior written permission from the Department, commits a Class B municipal infraction.

(b) Permission is not required to plant or maintain non-woody vegetation on planting strips or City rights-of-way located adjacent to the person's property (i.e., between the front yard or the sidewalk and the street), unless the City Administrator informs the person of the City Administrator's objection to the planting or maintenance.

Sec. 12-11. Requirement for supervision by a tree expert.

(a) No person shall perform tree trimming, tree removal or other tree work for hire without supervision, involving a site visit, by a Tree Expert licensed by the Maryland Department of Natural Resources.

(b) A violation of this section is a Class C municipal infraction.

Secs. 12-12 to 12-15. Reserved.

ARTICLE 2. PROHIBITIONS ON MAINTAINING UNDESIRABLE VEGETATION

Sec. 12-16. Infected or infested woody vegetation on private property.

A person who maintains on private property woody vegetation

found to be infected with a fungus, virus, bacterium, or other pathogen or found to be infested with insects or other parasites which, due to such infection or infestation, may cause damage to other woody vegetation or may pose a threat to persons or the property of others commits a Class C municipal infraction.

Sec. 12-17. Fallen or dangerous trees on private property.

(a) No person shall permit a tree or tree part, dead or alive (including a stump displaced from the ground), to stand on private property if it is a menace to public safety, or endangers any building, public improvement or other property.

(b) No person shall maintain a fallen tree, brushwood, or part of a fallen tree on private property that constitutes a harborage place for rodents or other pests.

(c) A violation of this section is a Class C municipal infraction.

Sec. 12-18. Vegetation not to obscure intersection.

(a) Vegetation taller than 3 feet above a street surface, except an Urban Forest Tree, is not permitted within 20 feet of the corner of a property located at an intersection of two streets. If the vegetation is located on top of a retaining wall, the retaining wall shall be considered part of the 3 feet.

(b) A violation of this section is a Class D municipal infraction.

Sec. 12-19. Vegetation not to obstruct sidewalks or traffic.

A person who permits any vegetation on private property to encroach on or to overhang within 8 feet above any street,

sidewalk, or traffic control device commits a Class D municipal infraction.

Sec. 12-20. Noxious growths.

(a) A person who --

(1) maintains on private property poison ivy (*Rhus radicans* or *Toxicodendron radicans*), poison oak (*Rhus toxicodendron* or *Toxicodendron quercifolium* or *Toxicodendron diversilobum*), poison sumac (*Rhus vernix* or *Toxicodendron vernix*), ragweed (*Amrosia artemisiifolis*) or similar vegetation; or

(2) fails to control the growth of kudzu-vine (*Pueraria lobata*), honeysuckle, wisteria, or other vine that is causing a threat to public safety or damage to trees on the property or to trees or structures on adjacent properties, commits a Class D municipal infraction.

Sec. 12-21. Uncontrolled growth of vegetation on vacant lots.

(a) The owner of a vacant lot that does not have at least 60% tree cover is required to keep the natural non-woody vegetation on the lot to within 10 inches of the ground.

(b) A violation of this section is a Class D municipal infraction.

Sec. 12-22. Uncontrolled growth of lawns on private property.

A person who allows 30% or more of a lawn to reach or exceed the height of 10 inches commits a Class D municipal infraction.

Secs. 12-23 to 12-25. Reserved.

ARTICLE 3. URBAN FOREST.

Sec. 12-26. Legislative findings.

The Council of the City of Takoma Park hereby finds that it is in the interest of the citizens of the City to protect, preserve, and promote the City's urban forest. The City's urban forest is part of a larger ecosystem and contributes significantly to air, noise, and visual pollution control. The existence of shade providing trees moderates climatic extremes and promotes sound energy conservation. The City's urban forest is part of the watershed of Long Branch and Sligo Creeks and therefore plays an important role in controlling water run-off and supports the biologic and hydrologic integrity of these watersheds. The urban forest has significant aesthetic value which affects property values and the quality of life necessary to a community. Regulation of actions affecting the urban forest provides mutual benefits to City residents and property owners.

Sec. 12-27. Urban forest trees.

An urban forest tree is a tree in the City which --

(a) measures more than 24 inches in circumference at 4½ feet above ground level or more than 7 and 5/8 inches diameter at breast height;

(b) is required to be planted or maintained, pursuant to governmental order, agreement, stipulation, covenant or easement, a Tree Protection Plan, or as a condition of issuance of a tree permit; or

(c) is planted with government funding or under a government

program.

Sec. 12-28. Tree permit required.

(a) Except as provided in subsection (b) or (c), a tree permit is required for -

(1) the removal, relocation, destruction, topping, pruning of limbs with significant diameter in relation to the size of the tree, or other action which would significantly and permanently detract from an urban forest tree's health or growth; or

(2) activity within the drip line of an urban forest tree which may destroy a significant portion of the roots of a tree or endanger the water supply to the roots. These activities may include excavation, depositing of fill dirt or other materials, construction of a structure, or paving of a significant area.

(b) No tree permit is required -

(1) where a tree permit waiver is obtained under Section 12-29; or

(2) for action required on an emergency basis (with no time to apply for a tree permit or a tree permit waiver) to prevent harm to life or property.

(c) The removal, destruction, cutting or trimming of an urban forest tree that has branches or roots which obstruct or interfere with utility pipes, lines, and wires shall not require either a tree permit or a tree permit waiver when such tree removal or destruction is performed by or at the written request

of a utility company such as PEPCO, Bell Atlantic, WSSC or Washington Gas.

Sec. 12-29. Tree permit applications; waivers.

(a) An owner may apply for a tree permit or tree permit waiver covering action relating to an urban forest tree or trees on the owner's property. The application shall be made under procedures specified by the City Administrator.

(b) Upon receipt of an application for a tree permit waiver, the City Administrator may issue a written determination (referred to as a tree permit waiver), waiving the requirement to obtain a tree permit for the action described in the waiver application:

(1) in the case of a proposed removal or destruction of an urban forest tree if the City Administrator determines that the tree is dead, in a severe state of decline, diseased beyond recovery, or hazardous;

(2) in the case of proposed activity relating to an urban forest tree, if the City Administrator determines that the activity will not pose a substantial danger to the health of the tree; or

(3) in the case of the proposed removal of part of an urban forest tree, if the City Administrator determines that the tree part is dead, in a severe state of decline, diseased beyond recovery, or hazardous.

(c) Upon issuance of a tree permit waiver, the City Administrator shall inform the applicant that the City encourages

the planting of replacement trees on a voluntary basis.

(d) An applicant for a tree permit shall pay a processing fee of twenty five dollars (\$25.00) to the City with the application. No fee shall be charged by the City for a tree permit waiver application.

(e) If a tree permit waiver is denied, an owner may apply for a tree permit covering the proposed action by paying the twenty five dollars (\$25.00) processing fee to the City and completing a tree permit application.

(f) The City Administrator shall --

(1) make a copy of each application for a tree permit or tree permit waiver available for public inspection; and

(2) provide an at-cost copy of an application to any person requesting one.

(g) If the City Administrator determines that the applicant is entitled to a tree permit, the City Administrator shall notify the applicant that the City has granted preliminary approval for a tree permit. Within two working days of this notification, the Department shall post notice of the preliminary approval, on the property in question, in plain view from the public right-of-way. A copy of the notice shall be posted on a bulletin board at the Municipal Building. The notice must describe the procedure and time limit for filing an appeal from the preliminary approval for a tree permit. If no appeal is filed within 15 days after the notice has been posted, the City Administrator shall issue the tree permit. If an appeal from the preliminary approval for a

tree permit is filed in accordance with Section 12-31, then no tree permit shall be issued until the appeal has been decided.

Sec. 12-30. Tree replacement required.

(a) Tree replacement as specified in this section is required in the following cases:

(1) The applicant's agreement to replace removed urban forest trees shall be required as a condition of issuance of a permit to remove a tree under Section 12-28, and may be required as a condition of issuance of a permit for other actions under Section 12-28 that are likely to lead to destruction of a tree.

(2) Applicants are required to replace trees originally indicated and intended to be saved when such trees are excessively damaged or removed in violation of an approved tree protection plan.

(3) Any person who removes or excessively damages a tree in violation of Section 12-28 is required to replace the tree.

(b) Replacement trees shall be equal or superior to the removed trees in terms of species quality, shade potential, and other characteristics. Replacement trees shall be nursery stock trees with a minimum size of 2½ inches in caliper for deciduous trees, or 10 feet in height for evergreen trees and guaranteed for one (1) year.

(c) (1) Except as provided in paragraphs (2) and (3), the basal area of the replacement trees, measured at caliper height, must be no less than a percentage of the total basal area of the

tree to be removed, measured at 4½ feet above the ground. The percentage shall be determined, using the following health quality analysis rating scale.

| CRITERION | VALUE | | | RATING |
|----------------------|----------------------------------|-------------------------------------|-------------------------------------|--------|
| | 5 or 4 | 3 or 2 | 1 | |
| Trunk | Sound and solid | Sections of bark missing | Extensive bark loss and hollow | _____ |
| Growth/Rate per year | More than 6-inch twig elongation | 2 to 6-inch twig elongation | Less than 2-inch twig elongation | _____ |
| Structure | Sound | 1 major or several minor limbs dead | 2 or more major limbs dead | _____ |
| Insects/Diseases | No pests present | 1 pest present | 2 or more pests present | _____ |
| Crown/Development | Full and balanced | Full but unbalanced | Unbalanced and lacking a full crown | _____ |
| Life Expectancy | Over 30 years | 15 to 20 years | Less than 5 years | _____ |
| | | | Total Rating | _____ |

Using the above scale, trees are to be replaced according to the following formula:

| Total Rating of Tree To Be Removed | Percentage of Basal Area To Be Replaced |
|------------------------------------|---|
| 6-15 | 1% |
| 16-24 | 2% |
| 25-30 | 3% |

(2) For trees removed or excessively damaged in

violation of this Chapter or an approved Tree Protection Plan, the total basal area of the replacement tree at caliper height must be no less than 10% of the basal area at 4½ feet above the ground of the tree removed or damaged.

(3) In the case of an applicant's removing trees for the purpose of developing property, the replacement trees must be adequate to insure that the extent of tree cover at the time of development will be achieved by newly planted trees on or off site within 25 years.

(d) Where it is not feasible or desirable to replace trees on site, the replacement requirement may be satisfied by planting trees at another location within the City or by a contribution equivalent to the installed market value of the required replacement trees to the City's tree planting fund.

Sec. 12-31. Appeals from permit decisions.

(a) The permit applicant or any resident of the City or owner of property in the City may appeal the preliminary approval of a tree removal permit within the 15 day posting period. If a notice of appeal is filed during such 15 day posting period, then no tree removal permit shall be issued until the Tree Commission has conducted a fact-finding hearing and has issued its final decision on the appeal.

(b) The permit applicant also may appeal the denial of a permit within 15 days after the date that the City Administrator notifies the applicant of the denial of a permit for the removal or destruction of a tree covered by this Article.

(c) There shall be no appeal from the issuance of a tree permit waiver by the City Administrator.

(d) A notice of appeal shall be in writing, shall state the reasons for the appeal, and the nature of the interest of the person filing the appeal. Appeal notices shall be filed with the City Administrator who shall forward the notice to the Tree Commission.

(e) The Tree Commission shall conduct a fact-finding hearing on an appeal from a permit decision or issuance of a stop work order after giving reasonable notice of the hearing to all interested parties in accordance with the Tree Commission's rules. At the hearing, any interested party may present testimony and evidence to substantiate any material point. All testimony shall be given under oath or by affirmation. The parties may also cross-examine opposing witnesses presenting testimony at the hearing. A verbatim record of the hearing shall be made. The record shall be open to inspection by any person and, upon request, the Tree Commission shall furnish such person with an at-cost copy of the hearing record. After due consideration of the evidence and testimony and the criteria for permit decisions set forth in Section 12-32, the Tree Commission shall issue its decision on the appeal and shall give notice to all interested parties.

(f) Within 30 days of the date of the issuance of a decision of the Tree Commission, a person who was a party to the proceedings before the Tree Commission and who is aggrieved by

the decision may seek judicial review of the decision ~~of the Tree Commission~~ by filing a petition for judicial review in accordance with Title 7, Chapter 200, Judicial Review of Administrative Agency Decisions, of the Maryland Rules of Procedure, or any subsequent amendments thereto.

Sec. 12-32. Criteria for permit decisions.

(a) The City Administrator or, upon appeal, the Tree Commission shall approve an application for a permit if so indicated by the factors set forth in subsection (b). Upon appeal, the Tree Commission shall, taking into account the factors set forth in subsection (b), approve the permit, disapprove the permit, or approve the permit with modifications.

(b) The following factors, and any other relevant information, shall be taken into account:

(1) The extent to which tree clearing is necessary to achieve proposed development or land use, and, when appropriate, the ameliorating effects of any tree protection plan which has been submitted or approved.

(2) The number and type of replacement trees, and, if appropriate, any reforestation plan proposed as mitigation for the tree or trees to be removed.

(3) Any hardship which the applicant will suffer from a modification or rejection of the permit application.

(4) The desirability of preserving any tree by reason of its age, size or outstanding quality.

(5) The extent to which the area would be subject to

environmental degradation due to removal of the tree or trees.

(6) The impact of the reduction in tree cover on adjacent properties, the surrounding neighborhood and the property on which the tree or trees are located.

(7) Whether sound urban forest management practices indicate the tree or trees should be removed.

(8) The general health and condition of the tree or trees.

(9) The desirability of the tree species as a permanent part of the City's urban forest.

(10) The placement of the tree or trees in relation to utilities, structures and the use of the property.

(11) Whether the tree or trees are diseased beyond recovery.

(12) Whether the tree or trees are injured beyond restoration.

(13) Whether the tree or trees are in a severe state of decline.

(14) Whether the tree or trees are hazardous.

(15) The need to remove the tree or trees for the purpose of installing, repairing, replacing or maintaining essential public or private utility services.

Sec. 12-33. Violations and penalties; enforcement.

(a) Municipal infractions.

(1) Any of the following shall be a Class AA municipal infraction:

(A) Doing any of the acts prohibited in Section 12-28 without applying for a permit, after an application for a permit has been denied, or after applying for a permit but before a permit has been issued, unless a permit waiver covering the act has been issued or the act is described in Section 12-28 (b) or (c).

(B) Failure to fulfill the requirements of Section 12-30.

(C) Any violation of a decision or order of the Tree Commission, including but not limited to the violation or nonperformance of conditions imposed in connection with the issuance of a permit.

(b) Misdemeanors.

(1) It shall be a Class A misdemeanor to do any of the following:

(A) To do any of the acts specified in subsection (a) in relation to 3 or more urban forest trees, whether or not such urban forest trees are located on the same property, within a 3 month period.

(B) To do any of the acts specified in subsection (a) in relation to any urban forest tree which has been designated by the Tree Commission or the City as having special botanical, ecological or historical significance or as a landmark.

(C) To do any of the acts specified in subsection (a) in relation to any tree which is more than 33 inches in

circumference at 4½ feet above ground level.

(D) To willfully or repeatedly violate this Chapter or an order of the Tree Commission.

(E) To violate a stop work order issued pursuant to Section 12-5(c).

(c) Each urban forest tree that is damaged or destroyed as a result of act(s) taken in violation of any provision of this Chapter is considered a separate violation of the appropriate section(s).

(d) In cases where a person has hired an individual or organization to perform tree work that is in violation of any provision of this Chapter, both the hired and the hirer may be subject to the penalties set forth in this Chapter.

(e) Any person or organization that performs tree trimming or tree removal for hire within the City of Takoma Park and who violates any provision of this Chapter may be barred from contracting with or performing work for the City of Takoma Park.

(f) A civil action for damages may be brought against any person or persons who violate the provisions of this Article by any person or persons who suffer personal injury, property damage or financial loss as a result of such violation.

SECTION TWO. This Ordinance shall be effective immediately. This Ordinance shall not apply to tree permit applications filed before this Ordinance becomes effective.

Adopted this 27th day of March, 1995 by roll call vote as follows:

Aye: Sharp, Chavez, Davenport, Elrich, Porter, Rubin, Williams

Nay: None

Abstained: None

Absent: None