CITY OF TAKOMA PARK, MARYLAND (FINAL 2/19/97)

INTERVIEWS, SPECIAL SESSION, WORKSESSION AND EXECUTIVE SESSION

Monday, February 3, 1997

OFFICIALS PRESENT:

Mayor Sharp
Councilmember Chavez
Councilmember Davenport
Councilmember Elrich
Councilmember Rubin
Councilmember Williams

City Administrator Habada
Assistant City Administrator Grimmer
City Clerk Sartoph
Corporation Counsel Silber
Planner Center Coordinator Ludlow
Senior Planner Schwartz
Engineer Monk
Forester Busciano

OFFICIAL ABSENT:

Councilmember Porter

The Council convened at 7:38 p.m. in the Upstairs Meeting Room of the Municipal Building, 7500 Maple Avenue, Takoma Park, Maryland.

The following remarks were made:

INTERVIEWS

#1 Public Safety Citizens Advisory Committee. Council interviewed Elizabeth Reynolds.

#2 Free Burma Committee. The Council interviewed Stacey Heath.

#3 Tree Commission. The Council interviewed Michael Guercin.

SPECIAL SESSION

Mayor Sharp noted that Councilmember Porter is out of town, due to an illness in the family, and will not be here this evening.

#4 Resolution re: Montgomery College Expansion Plan. Mr. Sharp explained that the resolution is a follow-up to last week's discussion. He noted that there is a meeting of the Board of Trustees next Monday, and that this is the Council's last opportunity before that meeting to take action in regards to the matter.

Senior Planner Schwartz stated that she faxed a copy of the resolution to Randy Boehm, who is happy with its contents. She noted that Katie Simpson, as resident of Cedar Avenue, is here this

evening and interested in speaking. Finally, Ms. Schwartz made mention of a companion study regarding the Revitalization of South Silver Spring which is being conducted simultaneously. She read a paragraph pertaining to the college's expansion, from an Executive Summary of the study. The study supports expansion along Georgia Avenue and possibly, relocating the campus in its entirety to South Silver Spring as a long term option.

Moved by Rubin; seconded by Davenport.

Councilmember Davenport remarked that he is disappointed with the Montgomery County Council's reaction to moving the campus outside of the City. He said that he felt, from last week's public hearing and previous meetings, that some of the college administrators were leaning toward plan #2. He questioned how seriously is plan #2 being considered, and what is being said about use of the current campus should it be abandoned.

Ms. Schwartz responded that it is her impression that serious consideration is being given to moving the college outside of the City. In terms of what might replace the college, the college has had discussions with a private school that is interested in the site. However, the private school would probably only locate on the one block that is currently all school campus, leaving other college buildings vacant. A public elementary school has also been mentioned as a possibility. She stated that another option that has been discussed is to demolish the dispersed buildings and revert the properties back to residential housing.

Councilmember Williams remarked that his impression from the County Council Education Committee is that the college is a lot further along in terms of moving than they revealed at our hearing last week.

Ms. Schwartz noted that the college did prefer, all things being equal, moving to Silver Spring, but reminded the Council that it is a matter of money.

Mr. Williams added that he also got the impression that a decision would be made soon.

Ms. Schwartz commented that the College President is to make a recommendation to the Board of Trustees in February. The Board of Trustees will make a recommendation to the County in March.

Mr. Williams pointed out that this time line is different from the impression that was given--the process would take longer.

Ms. Schwartz said that in previous meetings of the task force, members related the desire to move forward with immediate dispatch.

Mr. Williams stated that we need to get a firm idea about what are the parameters for deciding on what will take the college's place on the current campus sites.

Councilmember Rubin remarked that last week, he had been inclined not to include in the resolution mention of the need for concrete terms about what is being negotiated, but that with all of the information coming in now, he agrees that this point should be included in the resolution. The resolution as drafted includes this point.

Councilmember Elrich said that he thinks plan #2 is a giant rip-off, especially when considered in context to the arguments residents have raised with the County about spending more money to renovate grade schools. Yet, the college does not seem to think that $15 million is a big deal. Indeed, it is an enormous tax revenue loss to turn the Canada Dry site over to a tax exempt venture. He remarked about the Canada Dry site as related to revitalization of Silver Spring, and concluded that to take the site for a for public purpose, seems to ignore the need for economic development in the area.

Mr. Sharp remarked that he recently talked to someone who thought the square footage expense for the expansion is excessively high. He stated that he does not want anyone to lose sight that the decision will be voted on by publically elected bodies. Points like the one about the square footage expense must be brought to the attention of elected officials.

Mr. Rubin urged that the Council take an advocacy role for residents, in terms of calling County Councilmembers and State Delegates.

Katie Simpson, 7300 Cedar Avenue, recalled that she took a lot of interest in the college from the beginning when it faced a lot of opposition in the community. She said that she is still very supportive of the college remaining in the City. It has a fine reputation, and the campus occupies an important historical site (i.e., once the Bliss Electric School - one of first electric schools in the country). She remarked that she would be concerned about the development of campus for an industrial purpose if the college leaves, adding that she thinks it would be hard to withstand the pressure for such a development.

Mr. Sharp asked Ms. Simpson whether she has any recollection about promises the college may have made when it moved into the City. He noted that some old homes had to be demolished in order for the college facilities to be built.

Ms. Simpson remarked that the college had such a hard time getting agreement to settle on the site, that she would have thought that the college's intention was to stay there.

Mr. Sharp asked that Ms. Schwartz research records for any evidence of "promises" the college made at the time it located in Takoma Park.

Mr. Rubin noted that several residents made similar comments last week, but that no one referred to specific promises.

Ms. Simpson commented that the college was a little disappointed that they did not get all of the

land that they wanted at that time. There was an old Victorian house that the college wanted but did not get at the time. She said that the college may have since obtained the property.

Benjamin Onyeneke, Maple Avenue, urged the Council to support the resolution, and expressed his confidence that if the college were to move, the site would not remain vacant.

Kathy Breckbill, 7001 Brentwood Avenue, supported the resolution. One advantage of having the college here is the broad educational base it provides for the City's broad community base. The classes and amenities (e.g., pool) are wonderful advantages. She said that she is glad to see that the Council is working to preserve the college in the City.

Ms. Schwartz noted that point #5 of the Therefore clause is in brackets, and asked for the Council's direction about whether to leave it in the resolution.

Mr. Rubin clarified that he moved the resolution with the assumption that point #5 would remain part of the language.

Mr. Davenport confirmed that in terms of the college's discussions, the baseline plan is no longer being considered.

Ms. Schwartz responded that the baseline plan is not favored by the college. There are no spin-off benefits in expansion or for revitalization.

Mr. Rubin commented that plan #1 does have spin-off benefits for the City, as related to accommodations for pedestrian and vehicle traffic included in the plan.

Resolution #1997-7 was adopted unanimously, supporting Montgomery College's concept plan #1, and relating views and concerns to the Montgomery College Board of Trustees for their public forum on February 10 (VOTING FOR: Sharp, Chavez, Davenport, Elrich, Rubin, Williams; ABSENT: Porter).

RESOLUTION #1997-7
(Attached)

#5 Resolution re: Food Co-op Parking Needs. City Administrator Habada noted that the resolution has been reviewed by Ellis Koch who had some suggestions regarding the language in the preamble and Therefore clause. She remarked that she received a call from Larry Bassett (Food Co-op) today, and apologized for not getting back to him. She invited him to present his comments.

Larry Bassett (Coordinator for Food Co-op), stated that the Co-op is disappointed with the wording of the resolution. They thought it would be a 2-track resolution: (1) the City would assist the Co-op with obtaining the parking waiver, and (2) resolve the additional parking needs. He questioned how the wording of the resolution meets the second need. Mr. Bassett recalled the

Mayor stating at one time that he wants to do something to give the Co-op the spaces it needs. Mr. Bassett proposed that the Resolved clause be split into two separate clauses, one dealing with the parking waiver, and one dealing with the additional parking. He noted that the Co-op talked to their bank today, and that the bank is also concerned about the parking issue. He emphasized that the Co-op is at the point where lenders are looking for commitment letters.

Mr. Sharp confirmed that the following two Resolved clauses are what the Co-op would like to see replace the current single Resolved clause:

> "NOW, THEREFORE, BE IT RESOLVED that the City of Takoma Park will support a request from the Co-op to Montgomery County for a parking waiver; and
>
> BE IT FURTHER RESOLVED that the City of Takoma Park will assist the Co-op in obtaining necessary additional parking in an attempt to meet its business needs."

Mr. Sharp moved the resolution with these two Resolved clauses; seconded by Williams.

Mr. Rubin asked what are "business needs."

Mr. Bassett clarified that business needs refers to customer parking and the need for more spaces than exist on their lot.

Mr. Sharp questioned whether the required number of spaces is broken down between customer and "business" (e.g., delivery trucks, employees, etc.) spaces.

Mr. Elrich commented that Park & Planning will not bifurcate customer and business parking. He expressed his concern about the language of the second Resolved clause, explaining that he does not think the City should be in a position of being party to the future success of the Co-op's business.

Mr. Sharp suggested that the language be amended "the City of Takoma Park will <u>make its best efforts</u> to assist the Co-op in obtaining necessary additional parking in an attempt to meet its business needs." There were no Council objections to the amendment.

Mr. Bassett stated that the Co-op has heard a lot about what the "best efforts" will be, but expressed his concern about differing interpretations of these best efforts.

Mr. Elrich suggested that the Co-op urge their bank to call the City for clarification.

Mr. Williams emphasized that the Council is not only considering the future of the City lot, but also the revitalization of Takoma Junction which includes parking in general for the area.

Mr. Elrich commented that he can envision a scenario where employee parking might be off-site.

Kathy Breckbill, encouraged the Council to adopt the resolution and meet the Co-op's request for parking. She said that the Co-op is a primary building block that needs to be supported.

Joseph Klockner, noted that a number of grocery-type businesses have been approached in the past about moving onto the site, but that nothing ever came of those discussions. He said that he understands that to some degree, the Council's hands are tied, but remarked that he would like to see that the "best efforts" are really made. If the Co-op does not move into the site, there is no anchor for the development.

Alice (Co-op employee), received clarification about the impact of granting the Co-op parking spaces on the City lot. She stated that she is thankful that the Council will commit their best efforts.

Gina Gaspin, Columbia Avenue (member of Co-op Board), urged the Council to have the strongest possible language regarding the Co-op parking needs in the resolution. She stated that the Council needs to think of the City lot in the context of which it was acquired (i.e., part of the overall revitalization of Takoma Junction). The site could offer parking for the overall health of the Junction.

Mr. Rubin clarified that the reason this resolution does not have absolute terms regarding supply of parking spaces has nothing to do with, yet in some ways everything to do with, the development of the Junction. The resolution is written in the context of the possibility that a fire station might have to be built on the site. He commented on the three competing interests--fire station, Co-op, development of City lot. Mr. Rubin stated that all three issues have to be considered in context of one another.

Mr. Sharp remarked that it is important that there be sufficient parking for the Co-op. The issue is that we are going to have to take into account, when development of the City lot is discussed, the Co-op's additional parking needs. The two will have to fit together. He said that he views the Co-op as the anchor for development in the Junction.

Mr. Williams commented that his outlook on the fire station issue is different from those of other Councilmembers. There is no doubt in his mind about whether the station can be renovated on its current site--it can be renovated.

Mr. Elrich stated that an advantage of acting as the developer of the City site, is that the City has the ability to decide the size and nature of the development. We have the option of building the minimal economically feasible development, as part of the effort to free-up spaces for the Co-op.

Richard Gross asked if it would ever come down to an either/or situation.

Mr. Sharp said that this question cannot be answered right now.

Mr. Rubin remarked that this is a question that he may have eluded to, in that we may be forced to use the City's lot as the site for a new fire station, or potentially lose a station in the City.

Mr. Bassett explained that because of the kind of organization the Co-op is, it wants to be part of the revitalization effort in the Junction. He said that the extent to which the resolution can be passed unanimously, will be an asset.

Resolution #1997-8 was adopted unanimously, providing a statement of support for the relocation of the Takoma Park Silver Spring Cooperative to the Turner Electric building and pledging the City's cooperation in assisting the Co-op in obtaining the required number of parking spaces (VOTING FOR: Sharp, Chavez, Davenport, Elrich, Rubin, Williams; ABSENT: Porter).

RESOLUTION #1997-8
(Attached)

#6 Resolution re: Alcoholic Beverages Legislation. Planning Center Coordinator Ludlow explained that the bill has gone through many changes. Up until three weeks ago, the bill would have put K.C. Liquors out of business; however, Montgomery County has now agreed to language in the bill which will allow K.C. Liquors to stay in business or sell their license to a future of the business as long as it remains at the current location. She summarized her memo.

Ms. Ludlow commented on the language in the last Whereas clause of the resolution, explaining that the bill doesn't have an exemption from the requirement to purchase through the dispensary system. She remarked that she does not believe that the county will move on this issue.

Mr. Rubin asked whether there is an exemption in Montgomery County for business who get speciality liquors/beverages.

Ms. Ludlow responded that the County has said that they can locate whatever it is that a business requires. It may take some time, but it can be done. She noted that even in establishments where beer is brewed on site, the alcohol still goes through the dispensary system "on paper."

Moved by Chavez; seconded by Davenport.

Mr. Rubin restated that he thought there was an exemption, and confirmed that through the dispensary system, the county will raise the cost of alcoholic beverages by a few percentage points.

Mr. Williams remarked that he was always under the impression that whatever a business required could be found, even if it took some time.

Mr. Davenport asked whether there is any way out of this requirement to purchase through the

dispensary system.

Ms. Ludlow responded that Montgomery County feels very strongly about this issue, adding that the persons on the County Delegation that she has spoken with have said that they will not fight this point.

Mr. Elrich stated that he is not sympathetic to liquor license holders, and that he hopes the monies made by the County go toward supporting other things that need funding.

Mr. Rubin asked what would happen in the case of a business owner who had a warehouse stock of alcoholic beverages.

Ms. Ludlow stated that she does not know the answer, but that in the past she recalls that a license holder was given a limited number of days to dispense of his inventory.

Solomon Marzalov (Co-Owner, International Deli), stated that the switch over to Montgomery County will be hard on his business. Prices will have to go up because of the County dispensary system. He added that his business will lose profits. He remarked that there is a Shoppers Food Warehouse across the street that sells beer and wine, and which will remain in Prince George's County and not have to buy through the dispensary system. Hence, he concluded, the competition will put him out of business.

Mr. Sharp asked what is the cost difference of purchasing through the dispensary system.

Mr. Marzalov stated that he will lose approximately 50% of his profit margin. Some of the prices look okay, but the international beers and wines will cost more than what he is currently paying for them.

Mr. Sharp questioned if the County does not stock a product that the Deli needs, what would they add onto the price if they had to go through the distributer currently being used by the Deli.

Marzalov said that he was not sure of the exact amount.

Mr. Davenport asked whether the County can get anything cheaper.

Mr. Marzalov stated that he reviewed the County list, and that the only thing he saw which was cheaper is six packs of Budweiser and Miller Light.

Mr. Rubin confirmed that the Deli's clientele look for more international beverages.

Mr. Marzalov introduced his partner, Jim Pannetta. Mr. Marzalov also expressed their concern about the ability to later sell the their license. He noted that they spent $40,000 for the license.

Mr. Sharp asked whether the license will be transferable into Prince George's County.

Ms. Ludlow responded in the negative. She explained that she thinks P.G. County is making four more licenses available in the District 21 area. There are no provisions for transferring licenses across County lines, and there is nothing in the bill to say that after unification any of the four licences can be sold to back into P.G. County.

Mr. Marzalov said that he recently spoke with a businessman across the street who is going to open a beer/wine store. Mr. Marzalov expressed his fear of going out of business.

Mr. Rubin stated that one problem is that the Deli obtained its license so recently and has not had time to recoup its cost.

Mr. Pannetta remarked that he was under the impression from the beginning that Unification would not negatively impact any businesses. He requested that the resolution include a provision to exempt the Deli from the dispensary system.

Mr. Marzalov added that the Deli wants to be fully grandfathered (including the ability to transfer their license).

Mr. Sharp said that he had not understood the point about not being able to transfer the license back into P.G. County. He asked whether the County is going to sell the additional four licenses, and noted that the four licenses in question (those going over to Montgomery County with Unification) may not be transferable in Montgomery County, either.

Ms. Ludlow noted that K.C. Liquors would be turned into a Class A license, if privatization occurs.

Mr. Marzalov emphasized the need for Council's assistance.

Benjamin Onyeneke, Maple Avenue, received clarification on the issue. He said that a promise was given to residents when the Unification bill was passed, that no one would be negatively impacted. He urged that the bill should be amended to protect the business owners by requiring, at most, a phase-in change for businesses over the next two years.

Mr. Williams questioned if things proceed as laid out and Prince George's County proceeds with making four additional licenses available, will P.G. County sell each of the four licenses for $30,000.

Ms. Ludlow clarified that the County sees an opportunity for having four additional licenses. Each legislative district is allocated a certain number of licenses, but State law only references legislative district by County.

Councilmembers identified the contradiction of delegates who will continue to represent voters in the portion of their districts that become Montgomery County, yet different consideration is given to districts when it comes to liquor licenses.

Mr. Marzalov stated that he had to buy the liquor license from someone else, explaining why it cost $30,000. P.G. County initially sells a license for $350.

Mr. Rubin commented that the equity point here is very clear.

Mr. Sharp asked what is the time frame for the bill.

Ms. Ludlow responded that the Montgomery County Delegation has submitted the bill as part of their package to the full delegation, and would like to act on this very soon. The County Affairs Committee would have liked to act on this today; however, they waited for Council's action tonight. She stated that there has been no Senate focus on this, yet. She suggested that contact be made with Delegate Dembrow.

Mr. Sharp moved to table the resolution until next week. During the week, he said that he will talk with Delegate Dembrow and other representatives. There were no objections.

Mr. Rubin asked whether there is a point that we can raise that this business relied on information from the City that there would be no negative impact related to Unification. This was the intent of the Unification bill.

Legislation re: Regulation of Pawn Shops (P.G. County). Mr. Sharp explained that County Councilmember DelGiudice has put together a bill to regulate pawn shops in P.G. County. He said that he is going to a send letter in support of that legislation. There were no objections.

WORKSESSION

The Council adjourned to Worksession at 9:13 p.m. Following the Worksession, the Council convened in Executive Session at 10:38 p.m., and later adjourned for the evening.

EXECUTIVE SESSION

Executive Session 2/03/97 - Moved by Williams; seconded by Davenport. Council convened in Executive Session by unanimous vote at 10:40 p.m., in the Conference Room. OFFICIALS PRESENT: Sharp, Chavez, Elrich, Rubin, Williams. OFFICIALS ABSENT: Davenport, Porter. STAFF PRESENT: Habada, Grimmer, Sartoph, Silber. Council discussed (1) ongoing litigation, and (2) City loan to property owner. (1) Counsel was advised to continue pursuing settlement. (2) Staff was advised to proceed to protect City position on loan (Authority: Annotated Code of Maryland, State Government Article, Section 10-508(a)(8)).

Introduced By: Councilmember Rubin

Resolution No. 1997-7

Resolution Concerning South Silver Spring Concept Plans

WHEREAS, the Maryland-National Capital Park and Planning Commission (M-NCPPC) is coordinating an interagency planning effort to revitalize the South Silver Spring community; AND

WHEREAS, exploring options for the expansion of the Takoma Park campus of Montgomery College is an integral part of this planning effort; AND

WHEREAS, as the current home of the College campus and as a jurisdiction adjacent to south Silver Spring, the City has a clear interest in the planning effort; AND

WHEREAS, the City recognizes the College's need to expand and update their facilities; AND

WHEREAS, the future of South Silver Spring is of key importance to the City; AND

WHEREAS, the planning team has developed three concept plans (the Baseline Concept, Concept Plan #1, and Concept Plan #2) providing different scenarios for the College's expansion; AND

WHEREAS, Concept Plan #2 proposes that the College move out of Takoma Park entirely and relocate in Silver Spring near the National Oceanic and Atmospheric Administration (NOAA) on East-West Highway; AND

WHEREAS, the Montgomery College Board of Trustees held an initial public forum on the concept plans on December 16, 1996, and will hold a second public forum on February 10, 1997; AND

WHEREAS, the City Council held a public hearing on the three concept plans on January 27, 1997; AND

WHEREAS, the overwhelming majority of speakers at the City's public hearing expressed a strong desire to see the College remain in Takoma Park, and stated that the College was a good neighbor and a positive influence in the community;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF TAKOMA PARK, MARYLAND THAT the City Council hereby provides the following comments on the concept plans to the Montgomery College Board of Trustees for their public forum on February 10:

1. The City views the Takoma Park campus of Montgomery College as an important anchor and a stabilizing influence in the community. The City does not want to see the campus move out of Takoma Park.

2. The City is concerned that the cost of relocating the campus is considerably higher than the cost of renovating and expanding the existing campus, and may not represent a wise use of taxpayer funds. In addition, moving the campus to East-West Highway will remove valuable property from the County tax rolls.

3. The City is also concerned about the impact on south Silver Spring if the College moves to East-West Highway. The goal of the interagency planning effort is to maximize opportunities for revitalization of south Silver Spring, a goal which is not met if the College moves out of south Silver Spring.

4. The City is very concerned about what might replace the College campus if it were to move out of Takoma Park. If a decision is made to move the College, it is vitally important that a companion planning effort be conducted to determine what would replace the College campus. Any such planning effort should be conducted in close consultation with the City and should afford several opportunities for public comment.

5. For these reasons, the City supports Concept Plan #1, which proposes the renovation of the Takoma Park campus and expansion of the College into south Silver Spring.

BE IT FURTHER RESOLVED THAT the City Administrator is hereby directed to transmit a copy of this Resolution to the Montgomery College Board of Trustees and the appropriate Montgomery County authorities.

ADOPTED THIS 3rd DAY OF FEBRUARY, 1997.

monclexp.res

Introduced by: Mayor Sharp

RESOLUTION 1997 - 8

A resolution providing a statement of support for the relocation of the Takoma Park Silver Spring Cooperative to the Turner Electric building and pledging the City's cooperation in assisting the Co-op in obtaining the required number of parking spaces.

WHEREAS, the City is committed to the revitalization of the Takoma Junction commercial area and has provided funding for activities targeted to achieve this goal; and

WHEREAS, the establishment of the Co-op in the Takoma Junction area will meet a community priority as identified in the Takoma Junction Revitalization Plan prepared for the City by the firm of Hammer, Siler and George Associates; and

WHEREAS, the Co-op will be required to meet certain parking requirements under Montgomery County zoning in order to operate from the Turner Electric building.

NOW THEREFORE BE IT RESOLVED that the City of Takoma Park will support a request from the Co-op to Montgomery County for a parking waiver; and

BE IT FURTHER RESOLVED that the City will make its best efforts to assist the Co-op in obtaining necessary additional parking in an attempt to meet its business needs.

Adopted this 3rd day of February, 1997.

C:\wpdocs\cooppark.res

CITY OF TAKOMA PARK, MARYLAND (FINAL 2/19/97)

INTERVIEWS, PUBLIC HEARING, REGULAR MEETING AND WORKSESSION

Monday, February 10, 1997

Executive Session 2/03/97 - Moved by Williams; seconded by Davenport. Council convened in Executive Session by unanimous vote at 10:40 p.m., in the Conference Room. OFFICIALS PRESENT: Sharp, Chavez, Elrich, Rubin, Williams. OFFICIALS ABSENT: Davenport, Porter. STAFF PRESENT: Habada, Grimmer, Sartoph, Silber. Council discussed (1) ongoing litigation, and (2) City loan to property owner. (1) Counsel was advised to continue pursuing settlement. (2) Staff was advised to proceed to protect City position on loan (Authority: Annotated Code of Maryland, State Government Article, Section 10-508(a)(8)).

OFFICIALS PRESENT:

Mayor Sharp
Councilmember Chavez
Councilmember Davenport
Councilmember Elrich
Councilmember Porter
Councilmember Rubin
Councilmember Williams

City Administrator Habada
Deputy City Administrator Grimmer
City Clerk Sartoph
Assistant Corporation Counsel Perlman
Engineer Monk
Planning Center Coordinator Ludlow
Senior Planner Schwartz
Executive Director COLTA Lee-Bryant
Housing Services Coordinator Walker

The City Council convened at 7:40 p.m. in the Council Chambers in the Municipal Building, 7500 Maple Avenue, Takoma Park, Maryland 20912.

Following the Pledge of Allegiance, these remarks were made:

ANNOUNCEMENTS

Mayor Sharp noted that Councilmember Rubin is testifying this evening about the Montgomery College Expansion Plans, and that he should be arriving later during the meeting. Mr. Sharp welcomed Councilmember Porter back from her travels, and expressed his happiness with the good news about her father's recovery.

Ms. Porter thanked the Mayor for his kind comments, adding that her father is recovering well. She noted that she was visiting her father in the beginning of last week, and that at the end of the week, she attended a conference focused on Transportation Issues. She pointed out that there are almost no East Coast municipalities involved in the Coalition that sponsored the conference. The only other large metropolitan area on the East Coast which participates is Miami. As a related

item, she noted that on Thursday, February 13 at 7:00 p.m. there will be a public forum sponsored by the Transportation Planning Board. She encouraged interested persons to attend this forum and others that come up.

Councilmember Elrich remarked that he attended a welcoming ceremony at Eastern Middle School this morning. A delegation of Spanish exchange students were being welcomed. He described the exchange program, noting that this is the year a number of Takoma Park and Silver Spring families will sponsor students from Spain. He shared with the audience two gifts presented by the Spanish students to the City (i.e., hand painted plate and a full-sized flag).

Councilmember Davenport commented on the tragic murder of D.C. Officer Brian Gibson. He was a decorated officer who fell victim to the same society he vowed to serve. Mr. Davenport said that his thoughts go out to the family and friends of Officer Gibson. He questioned how we have gotten to the point in today's society where murder is so prevalent. He remarked about guns and weapons, stating that he does not think that any law abiding or non-law abiding citizen should carry a gun. Mr. Davenport recalled the young man that was savagely beaten and killed only a couple of weeks ago, and observed that while it may not be statistically accurate, it seems that murder is more prevalent in the African American community. He said that there is no place for hatred, racism or crime, and that all persons have to play a role in fixing this problem. Crime prevention is no longer solely a police or government issue. It is a societal problem. Mr. Davenport challenged the citizens of the City to take on the responsibility for mentoring young people. He commented on his efforts to start a mentoring program called "Positive Images", over the last six months. He expressed dismay at the little response he has received, and urged residents to take the initiative and become more involved.

ADOPTION OF MINUTES

Moved by Williams; seconded by Davenport. The Council Meeting Minutes from 1/13 and 1/21 were adopted unanimously.

ADDITIONAL AGENDA ITEMS (WORKSESSION)

Councilmember Williams requested a discussion of Council's feedback regarding the City Administrator's Workplan.

Mr. Sharp noted that Mr. Rubin has requested a discussion of a shuttle van service from the Takoma Park Metro station.

CITIZEN COMMENTS

Benjamin Onyeneke, Maple Avenue, stated that he has left messages on Mr. Davenport's machine, expressing Generation X's interest in volunteering to mentor young people in the community. He commented about the "Stand for Children" event held in D.C. last year, adding

that President Clinton referenced this event in his State of the Union Address. He remarked that a couple of years ago, Generation X prophesied the need to shut down the night clubs in the area where Officer Gibson was murdered. He concluded with general comments about the crime in America.

INTERVIEWS

1. Free Burma Committee. The Council interviewed Steven Fleishman.

2. Public Safety Citizens Advisory Committee. The Council interviewed Benjamin Onyeneke.

PUBLIC HEARING

3. Storm Water Utility Rate Structure. City Administrator Habada noted that this is the second public hearing on this matter, and that later during the Regular Meeting, Council will be discussing a proposed ordinance to adopt a storm water utility fee. She noted that Laurens Van der Tak and Fernando Pasquel are here from CH2M Hill to respond to questions.

The public hearing was called to order at 8:16 p.m.

Paul Roat, 6405 Kansas Lane, asked a number of questions: (1) How does the "multi-family unit" category apply to apartments? How are parking lots addressed, and are all parking lots assessed? What are examples of "recreational" and "cultural" facilities? He remarked that he is happy to see that schools will not be charged a fee.

Mr. Sharp noted that only public schools are exempt from the fee. Private schools, the hospital and nursing home will be assessed a fee.

Fernando Pasquel stated that single family detached units will be billed as residential units. He commented that parks are recreational facilities and that since the parks in the City are owned by wither M-NCPPC or the City, they will not be assessed.

Assistant Corporation Counsel Perlman noted that if a single family unit has an auxiliary apartment, it will still be billed as "single family."

Laurens Van der Tak also noted the exemption for government-owned property used for public purposes.

Mr. Sharp questioned how a privately owned, vacant lot (i.e., open space) will be treated.

Mr. Pasquel stated that there would be no fee, because there is no impervious surface. The fee is based on impervious surface area.

Ms. Porter explained her confusion about the proposed fee, which is very close to the equivalent tax rate that has been charged in the past, even though the number of parcels being assessed has been increased..

Mr. Sharp noted that Ms. Porter was not present for last week's discussion, when Council addressed this point. He summarized last week's conclusion, explaining that when we take into account the lost tax break, there is a reduction in fees to the single family homeowner of about 16%. He requested that the public hearing be completed before continuing the Council's discussion of numbers.

Mr. Roat noted that the language in the proposed ordinance shows "schools, recreation and cultural facilities" as being deleted. He said that he feels it is safe to assume that this means all schools are exempt from the fee. He commented that he talked to the principals of three different private schools (John Nevin Andrews School, Washington McLaughlin, and Our Lady of Sorrows) this morning, and that no one knew anything about this fee. Mr. Roat remarked that it would be a shame to adopt this legislation without including the schools in the discussion. He said that a property owner pays school taxes, and if that person chooses to send his child to private school at an added cost, he will be burdened by this fee which will be passed on to him in tuition costs. Mr. Roat concluded that this fee presents an impossible situation for private schools.

Mr. Roat wondered what recreational and cultural facilities will be assessed a fee (i.e., Will the hard top playground facilities at schools be charged?). He said that he personally feels that when a storm water fee is taken out of the tax base, it becomes a utility fee. This changes the nature of it completely, and everyone should pay a utility fee. He remarked, however, that the schools should not receive a retroactive bill. For that matter, anyone on a budget may have a problem affording the cumulative bill. He stated that in terms of what the City might be liable for, the Takoma Junction site should be taxed. Mr. Roat urged the Council to delay action on this item tonight, emphasizing that the schools do not know anything about this discussion.

The public hearing was closed.

Ms. Perlman explained the deletions from the proposed ordinance. She noted the series of discussions Council has had in regards to the Storm Water Utility Fee, dating back to June 1996, and commented on the public notification which has taken place.

Ms. Porter suggested that "schools, recreational and cultural facilities" be left in the ordinance to avoid the confusion pointed out by Mr. Roat.

REGULAR MEETING

4. 1st Reading Ordinance re: Storm Water Utility Rate Structure. Moved by Elrich; seconded by Davenport.

Ms. Porter continued the discussion of the numbers (i.e., tax rate, fee rate, calculation).

Mr. Sharp stated that the question to focus on is "what does someone have to pay to come to a particular budget level" versus comparing one budget system to another.

Ms. Porter stated that she is looking at a different comparison.

Mr. Elrich noted that Ms. Porter is excluding the Appropriated Surplus from her calculations. He said that the surplus and real property tax need to be taken into account.

Mr. Williams suggested approaching the problem from the following question: If we need $200,000 revenue for this year's Storm Water Budget, what tax rate would be needed? He stated that he believes it would be 7 cents.

Mr. Elrich referred Ms. Porter to the agenda item spread sheet. Mr. Pasquel referred Ms. Porter to a graph table in the draft report.

Ms. Porter directed her question to Mr. Pasquel, who confirmed that the equivalent tax rate to produce $195,000, would be 5.3 cents. Ms. Porter noted that most people can deduct their taxes, and that this 5.3 cents would be equivalent to 3.9 cents.

Mr. Sharp restated that the Council had this discussion last week, and repeated the "walk through" calculation based on a $210,000 budget.

Ms. Porter said that what the equivalent tax rate is, makes a difference.

Mr. Sharp proposed that Ms. Porter try thinking about this in terms of what people will pay.

Ms. Porter stated that the numbers being presented by the consultants and those being discussed by the Council do not correspond, and that the numbers for the two budget systems seem to be incompatible.

Mr. Sharp remarked that he never understood why government property would be fee bearing, and that it never should have been included from the beginning.

Mr. Williams recalled that this question came up last week, and that the Council remembered deciding that only City property was exempt.

Ms. Porter requested (1) a comparison of numbers under the tax and fee systems for the same amount of revenue, (2) information about the money raised from residential properties under the tax system, and (3) proportions under both systems for single family, multi-family, commercial, and tax exempt properties.

Mr. Williams noted that with the corrections that need to be made to the data base (e.g., deletion of public properties), he thinks the difference is just shy of $12,000. This will have an impact on the overall calculation.

Mr. Van der Tak stated that the re-calculation has been done, and that CH2M Hill will do the calculations to compare the two budget systems, as requested by Ms. Porter.

Mr. Williams said that Takoma Towers (listed as Montgomery County Revenue Authority) should be exempt. He remarked that he always thought that all government properties would be taxed, but that he is not surprised that we have come to this point (i.e., government-owned public properties exempt). He stated that the fifth Whereas clause on page 2 is confusing--"non-single family residential property" can be read many different ways.

Ms. Perlman will rewrite this clause. She noted that she took this language from the language of the original ordinance.

Ms. Porter proposed the following language: "...all developed property but not single family residential property...."

Mr. Williams said in response to Mr. Roat's comment about the City's site (Takoma Junction) being assessed, that once the site is developed and turned over, he would think that it would be charged a fee. He noted that Council passed the original ordinance regarding the Storm Water Utility Fee System in June 1996, and that there has been public notice and numerous opportunities for comment. He referred to an upcoming agenda item where the City Administrator is proposing additional public education on the matter. Mr. Williams referred to the draft CH2M Hill report, noting that the fee for John Nevin Andrews School would be $324.00. He concluded that in general, there has been a lot of information on this subject over the past year.

Mr. Sharp commented on the equity issue that the fee system is aimed at resolving. The fact is that storm water management is a "use", just a much as gas and electricity are uses. He said that he was never clear why big users with tax exempt status, who are contributing to the use, should be subsidized by residents. He explained that Takoma Park is in the forefront in developing a utility fee system, this being the reason we have the EPA Grant.

Mr. Williams stated that private schools, by definition, are not public facilities, and that he does not think government is in the business of trying to undo the added burden a person chooses when sending children to private school.

Mr. Sharp suggested that the exemption for public agencies might be a discussion for the Maryland Association of Counties (MACO), and that it may be worthwhile to pursue a repeal of this exemption.

Mr. Roat disagreed with the statement about public notice. He said that he has attended a number

of discussions on this subject, but that this is the first time that a fee has been discussed. There would be representatives from the schools here this evening, had the language not been crossed-out in the body of the ordinance. They are of the understanding that they have been exempted.

Ms. Porter stated that she disagrees with Mr. Roat. The system needs to be fair. If the City is charging for a service that the schools use, they should also be charged. **ACTION ITEM:** She requested that a copy of the first reading ordinance be forwarded to each of the schools.

Mr. Sharp asked what direct contact has been made with commercial properties.

Ms. Habada stated that the Storm Water Utility Fee System proposal has been discussed with Washington Adventist Hospital and Columbia Union College representatives. She remarked that she has not had conversations with John Nevin Andrews School, Washington McLaughlin School, or the Rehabilitation Center.

Mr. Williams commented that the Council is just getting to a point where we can provide more specific information to the public, and noted that this is the first reading of the ordinance. There will be an opportunity for additional citizen comments at second reading.

Ordinance #1997-6 was accepted unanimously at first reading, establishing the Fiscal Year 1997 Base Rate for Stromwater Management Fee, and exemption for government-owned property used for public purposes (VOTING FOR: Sharp, Chavez, Davenport, Elrich, Porter, Williams; ABSENT: Rubin).

ORDINANCE #1997-6
(Attached)

STORM WATER MANAGEMENT BOARD

Mr. Sharp moved that the Council convene as the Storm Water Management Board. A re-vote was taken on Ordinance #1997-6; the results were the same.

5. 1st Reading Ordinance re: FY97 Storm Water Budget. Moved by Davenport; seconded by Elrich.

Ms. Porter questioned why the engineering services figure has more than doubled. Ms. Habada explained.

Ms. Porter noted that $100,000 is listed as capital improvements (street work).

Ms. Habada described instances (e.g., Elson Place) where street work--curb and gutter--related to storm water management has been done with monies from the Storm Water Budget. She further explained that street work is being covered by combined funds i.e., $100,000 each year from Storm Water Budget (for curb and gutter), and funds from the Street Work Budget. The Storm

Water Budget is paying for curb and gutter work in areas of the City where storm water projects may not be underway. Curbs and gutters are part of the storm water conveyance system.

Ms. Porter stated that it was not clear to her during the budget discussions that street work, unrelated to stormwater projects, would be covered under the Storm Water Budget, and that with this new understanding, it seems that we are double counting monies for street work.

Ordinance #1997-7 was accepted unanimously at first reading, adopting a Storm Water Management Budget for Fiscal Year 97 beginning July 1, 1996 and ending June 30, 1997 (VOTING FOR: Sharp, Chavez, Davenport, Elrich, Porter, Rubin, Williams).

ORDINANCE #1997-7
(Attached)

6. 1st Reading Ordinance re: CH2M Hill Contract Extension. Ms. Habada explained that the ordinance would authorize an extension of the original amount of the contract that is already in place. She said that technically, since the extension would be charged to the Storm Water Budget the ordinance might need to have a second reading.

Mr. Sharp moved the ordinance as a two-reading ordinance; seconded by Williams. Mr. Sharp noted that since a storm water fee rate has not been set, the Storm Water Budget cannot be adopted, and it would follow that adoption of this ordinance would have to be delayed. Mr. Sharp will discuss scheduling with Ms. Habada.

Mr. Sharp questioned why CH2M Hill would be the ones to print the utility bills. Ms. Habada explained that CH2M Hill has the data base and software.

Mr. Sharp noted that the amount of City money being put into this project is now approaching 1/3 of the original grant, and asked whether Ms. Habada anticipated this overage.

Ms. Habada recalled that in the beginning, we had a proposal from CH2M Hill to do an educational piece to the project, but that we thought the estimate was too expensive. She said, however, that she has come to believe that at the very least, we should provide some information about the assessment. She described the recent proposal from CH2M Hill. Ms. Habada remarked that when the bills are sent out, there are likely to be a lot of questions about how the numbers were derived. The best equipped source to deal with those questions is CH2M Hill. She acknowledged that this may not be the preferred approach (i.e., CH2M Hill answering citizen questions), but explained that staff is not prepared to handle the potential influx of calls or to respond to technical questions.

Ms. Porter said that she thinks the questions from citizens will be along the lines of "why are private schools being assessed", and not necessarily, technical. She stated that there needs to be some way to determine which questions are forwarded to CH2M Hill.

Mr. Sharp remarked that a flat rate fee for this inquiry service would not be equitable, but that if it were based on an hourly rate, it would be more acceptable.

Mr. Rubin commented that often the questions received on hot lines, are policy questions. Sometimes, there is a little of both technical and policy questions. The contractor could answer strictly informational questions, but that in terms of effectively serving citizens, it seems that staff should field the calls.

Mr. Williams suggested that the brochure include a description of the types of questions which should be directed to CH2M Hill and those that should go directly to the City.

Mr. Rubin remarked that to most people, the question about how we reached the assessment figure is a policy question.

Mr. Elrich proposed a general response that could be provided to callers.

Mr. Rubin said that the number of calls will be directly proportionate to the number of people who pay more under the new system.

Ms. Porter agreed with Mr. Sharp, in that it does not look good to refer residents to the contractor.

Ms. Habada remarked that this is her proposal. In terms of the number of issues currently being juggled, the number of calls that will come into the Administration Office related to this issue is hard to estimate, and it is difficult to project how the increased workload will be managed.

Ms. Porter stated that she does not think we should make a practice of implementing policies and not being able to explain them to citizens. Residents should also call Councilmembers. She recalled the negative response residents had when told to contact WSSC regarding the Sligo Creek project.

Ms. Habada noted that there are 5,000 customer accounts--persons who will be receiving bills and potentially have a question. There is a concern on staff's part about how to respond to all of these calls.

Mr. Rubin recognized the problem that Ms. Habada is raising, but stated that it goes back to the City's ability to fulfill the *Newsletter* headline--"most people will be paying less." To the extent that this is true, the number of calls will be reduced.

Ms. Porter remarked about the importance of education on this subject.

Mr. Sharp suggested that the best approach might be to have citizen calls go directly to Councilmembers.

Mr. Rubin questioned the cost to have a CH2M Hill representative temporarily stationed at City Hall to take calls.

Mr. Pasquel responded that this is a possibility, but that the proposal, as presented, does not have other costs, such as travel expenses. Mr. Van der Tak stated that if the City would want someone here full-time to answer calls, the City would have to pay that person their full salary for that service. Under the current proposal, the City would only be charged for the time CH2M Hill spends responding to calls from their office.

Mr. Rubin asked whether there has to be an "800" information number, and proposed that a regular City number be used, which might roll-over to another location (i.e., CH2M Hill).

Mr. Sharp stated that the Council will further discuss the specifics at second reading.

Ordinance #1997-8 was accepted at first reading, authorizing extension of the CH2M Hill contract (VOTING FOR: Sharp, Chavez, Davenport, Elrich, Porter, Rubin; ABSTAIN: Williams).

ORDINANCE #1997-8
(Attached)

Ms. Habada explained how the timing of the adoption of this ordinance fits in with the adoption of the Storm Water Utility Rate (second reading ordinance). She said that the other alternative would be to go back and accept the originally proposed educational piece.

Council discussed the merits of educating the public.

Mr. Rubin stated that it needs to be clear on the assessment notice that it is not the actual bill.

Mr. Sharp is to discuss scheduling of second reading with Ms. Habada.

7. 2nd Reading Ordinance re: Speed Humps -- Maple & Maplewood Avenues. Ms. Habada noted that WSSC has indicated an inclination to pay for some of the repairs on Maple Avenue, only.

Moved by Elrich; seconded by Williams.

Ordinance #1997-4 was adopted unanimously, authorizing installation of speed humps on Maple and Maplewood Avenues (VOTING FOR: Sharp, Elrich, Porter, Rubin, Williams; ABSENT: Chavez, Davenport).

ORDINANCE #1997-4
(Attached)

8. 2nd Reading Ordinance re: Use of Public Space. Moved by Williams; seconded by Porter. Mr. Sharp described the ordinance, adding that if problems related to the ordinance come up, then the Council will go back and discuss possible adjustments to the ordinance.

Ordinance #1997-5 was adopted unanimously, amending the Code to authorize adoption of a fee schedule and guidelines for use of public space and facilities, and to exempt community-based groups from certain sections of the Code (VOTING FOR: Sharp, Chavez, Davenport, Porter, Rubin, Williams; ABSENT: Elrich).

ORDINANCE #1997-5
(Attached)

9. Resolution re: Alcoholic Beverages Legislation. Planning Center Coordinator Ludlow noted several persons who she has spoken with since last week, regarding this issue. She explained that the four licenses in question would not be transferable back into Prince George's County after Unification. She stated that from discussions with Montgomery County representatives, she does not think it would be successful to lobby for exemption of these four license holders from going through the dispensary system. She described the order of things to come as the alcoholic beverages bill goes through the legislative process.

Mr. Sharp recalled that Council requested information about the costs of purchasing beverages through the dispensary system.

Ms. Ludlow acknowledged that representatives from K.C. Liquors and the International Deli are here this evening, and stated that the cost information was just presented to her this evening.

Mr. Sharp questioned whether Council has to vote on the resolution tonight.

Ms. Ludlow remarked that the bill itself, must get through the House of Representatives by March 24. She said that she has the impression that if the Council does not act on this issue rather quickly, the bill will be pushed through without any City action. She said that Montgomery County's sense is that if the City were to support the bill as written, it might be accepted by Prince George's County legislators.

Mr. Rubin commented that the bill would prohibit these four licenses from being sold back into Prince George's County, and that this is a fundamental change from the Council's understanding of the provisions in the Unification bill.

Ms. Ludlow agreed that this is an argument that can clearly be made, but that she does not believe the Unification was clearly written as it applies to the liquor licenses.

Mr. Rubin questioned why the Council would support this resolution.

Ms. Porter asked how the proposed bill came up in the first place.

Ms. Ludlow explained that the issue of the four licenses was discussed between Prince George's County and Montgomery County Boards of License Commissioners, who decided that the licenses would be difficult to administer after Unification. They contacted Karvel Payne at the State. From that point, Montgomery County representatives entered into the discussion.

Mr. Sharp confirmed that not all four stores which have liquor licenses in question, are dependent upon their liquor sales.

Ms. Porter remarked that she does not see why the proposed bill would make things better for Montgomery County.

Mr. Sharp noted that he spoke with Delegate Dembrow, who referred him Mr. Payne. Mr. Payne commented that if this bill does not go forward, Prince George's County would essentially not advocate any enforcement efforts regarding these four licenses. Prince George's County would do nothing to monitor the licenses. Mr. Sharp recalled the situation that arose years ago in the case of Julissa's. He stated that we have to think about what we want to deal with if there is no monitoring and enforcement by the County.

Ms. Porter recalled the issues surrounding Julissa's.

Mr. Williams queried if nothing changed about the provisions in the Unification bill and this proposed bill did not get passed, (1) would the four existing licenses remain Prince George's County licenses and (2) could they be sold in Prince George's County.

Ms. Ludlow responded that the licenses would remain P.G. County licenses, and that she does not know if they could be sold within the 21st District.

Ms. Porter confirmed, however, that the license holders would still have to purchase through the Montgomery County dispensary system.

Mr. Sharp added that Mr. Payne said that the Unification bill did not specifically address the Montgomery County dispensary system, and that the County could insist that the four businesses go through the system. A dispute would be handled in court.

Mr. Rubin restated that the Council supported a piece of State legislation (i.e., Unification bill) with a certain understanding about "grandfathering", and concluded that the Council is now addressing issues related to (1) bureaucratic convenience and (2) third-hand supposition that the people that oversee licenses in P.G. County will not monitor the licenses.

Ms. Ludlow remarked that the Board of License Commissioners would be overseeing the four licenses.

Mr. Rubin referred to the information provided to Mr. Sharp about the licenses not being monitored. In regards to the use of the dispensary system, maybe the Council needs to deal with this issue alone. He said that the Council's position seems to be in favor of "grandfathering" the licenses as was stated in the Unification bill.

Ms. Ludlow clarified that she had not received the same information as was provided to Mr. Sharp. She said that she thinks the effect of lobbying for exemption from the dispensary system, would be to kill the bill.

Mr. Sharp stated that the Council is opposing steps being taken at the State level to change the intent of the Unification bill. The matter of the dispensary system is someone else's fight in another forum.

Ms. Porter asked whether there is any difference in terms of the Council "opposing" or "taking no position" on the bill.

Ms. Ludlow responded that she believes that if the Council comes out opposing the bill, the action would be seen as annoying by the Montgomery County Delegation. Not supporting the bill, would probably also be annoying to the Prince George's County Delegation. On the other hand, "taking no position" might have no effect.

Mr. Rubin suggested that the Council take the position that these issues need to be negotiated as administrative issues. This matter should not be addressed in the legislative arena.

Ms. Porter remarked that anything outside of the Unification bill would require a legislative change. She said that Montgomery County wants control over the licenses, and P.G. County does not want to deal with the licenses. The Counties have come to an agreement on this issue.

Mr. Rubin suggested that perhaps something can be worked out with the Counties through negotiations.

Ms. Porter stated that Montgomery County will not think of this approach as an answer to the current situation.

Mr. Davenport agreed with Mr. Rubin, in that the City needs to clearly state to the County where we stand on this issue.

Ms. Porter commented that she does not think that the differing positions on this issue are a result of misunderstanding. Montgomery County simply wants something different than we do.

Ms. Habada restated the problem: P.G. County does not want what is in the Unification bill, as much as Montgomery County does not want it. She commented that she does not believe that negotiations will change this.

Mr. Rubin proposed again that the Council take the position that this is an administrative matter for administrative negotiations.

Mr. Sharp pointed out that the Council has a proposed resolution for consideration tonight.

Ms. Rubin stated that he does not want to see the resolution introduced.

Ms. Ludlow noted that representatives from two of the liquor licensed establishments are present. The representative from the International Deli distributed a price comparison. Ms. Ludlow stated that she spoke to the head of Liquor Control, Frank Cossini, who stated that he can get anything that is out there, but that if it were purchased in a small quantity, the County will put a 35% mark-up on item. In bulk purchases, the prices will vary.

Ms. Porter said that while she has sympathy for the affected business owners, she is not sure that the price comparison presented will make a good argument, since half of the prices are higher and the others appear lower.

Mr. Sharp encouraged continued discussion about these points between Councilmembers and business owners. He stated that he will talk again to Mr. Payne and Delegate Dembrow. He pointed out that there has been no motion with regard to the resolution. At some later point, the Council may discuss other strategies.

Ms. Porter remarked that she is not comfortable just dropping this issue. Both Counties want the same thing, but appear not to care about what the City wants.

Mr. Rubin agreed that the issue should be pursued.

Ms. Porter will have further discussions with the City Administrator about this matter.

WORKSESSION

The Council moved into Worksession at 10:09 p.m. Following the Worksession, the Council adjourned for the evening at 11:30 p.m.

Introduced by: Councilmember Williams

1st Reading: 1/27/97
2nd Reading: 2/10/97

ORDINANCE #1997-5

AMENDING CHAPTER 8. MORALS AND CONDUCT, ARTICLE 3. OFFENSES AGAINST PUBLIC PEACE, DIVISION 1. PUBLIC LANDS, ASSEMBLAGES AND CONDUCT, TO AUTHORIZE ADOPTION OF GUIDELINES AND FEE SCHEDULES FOR USE OF PUBLIC SPACE AND FACILITIES, AND TO EXEMPT COMMUNITY-BASED GROUPS FROM CERTAIN SECTIONS OF THIS ARTICLE.

WHEREAS, the Takoma Park Recreation Department is committed to meeting the needs of Takoma Park residents for use of City-owned indoor facilities, i.e., the Municipal Building, Gym and Heffner Park, and to provide excellent conditions in those facilities for users; and

WHEREAS, there is a need to establish a fee structure that is reasonable and equitable and covers the costs of building management services, expendable materials, utilities and damages; and

WHEREAS, guidelines will also be necessary to, among other things, establish user classifications to contribute to the provision of a consistent and equitable fee structure; and

WHEREAS, the fees shall be charged according to the classification listing, and established after reviewing those of neighboring jurisdictions, to ensure that the City's fees are comparable to other public and private providers that have similar services, and computing direct operational costs; and

WHEREAS, the Council and staff recognizes and appreciates the high level of resident participation in community/neighborhood organizations, interest groups and various committees; and

WHEREAS, the Council and staff desire to provide the opportunity for groups of these kinds to promote and financially support themselves through admission fees or the sale of goods and articles during events held in public parks, space or buildings.

NOW, THEREFORE, BE IT ORDAINED THAT the Takoma Park Code shall be amended as follows:

Sec. 8-15. [Reserved.] Definitions.

A community-based group shall be any group, organization or person, whose membership is primarily composed of City residents, that is not a paid solicitor and:

(1) may be charging admission, soliciting funds or selling goods, for a charitable, educational, non-partisan political, athletic, arts/cultural or other non-commercial purpose; and

(2) is not promoting or selling commercial goods or services for or conducted on behalf of a for-profit business enterprise.

Sec. 8-16. [Reserved.] Applicability; Exemptions.

(a) The provisions of this article shall apply to all persons using public parks, space and/or buildings.

(b) A community-based group which has been granted a permit for use of a public park or building, shall be exempt from the provisions of Sections 8-24(a)(1) and (b)(1).

Sec. 8-17. Fee Schedule and Guidelines for Use of Public Space.

The City Administrator or his/her designee shall have the authority to establish and revise, as necessary, a fee schedule and guidelines which shall apply to all activities covered under the provisions of this Article.

(**Editorial note**: Numbering of Sections 8-17 through 8-24 is amended. Text of sections 8-17 through 8-21 is not amended and therefore, does not appear in full (below).)

Sec. [8-17.] 8-18. Revocation of permit; restoration of property.

. . .

Sec. [8-18.] 8-19. Public space use and limitations.

. . .

Sec. [8-19.] 8-20. Permit required for use of land for amusement purposes.

. . .

Sec. [8-20.] 8-21. Crowd control at theater or place of public amusement.

. . .

Sec. [8-21.] 8-22. Permit for temporary barricade; fee.

. . .

Sec. [8-22.] 8-23. Permit for use of parks and public buildings.

The [Director of Recreation] City Administrator or his/her designee shall issue permits for use of parks and public buildings in consultation with the principal user of the park and/or building[s].

Sec. [8-23.] 8-24. Use of public space and buildings.

(a) All persons using any public park or space shall abide by the following rules and regulations:

(1) To accept no admission fees or to sell or offer for sale any merchandise, article or thing, whatsoever, without the specific consent of the [Mayor and City Council] City Administrator or his/her designee.

(2) Not to practice, carry on, conduct or solicit for any trade, occupation, business or profession without the written permission of the [Mayor and City Council] City Administrator or his/her designee.

(3) To permit no beer, wine or other alcoholic beverages on public property.

(4) To preserve public parks and recreation facilities.

(5) Not to [distribute any handbills or circulars or to] post[, place] or erect any bills, notices, paper or advertising device or matter of any kind.

(6) Not to throw or leave paper or other rubbish anywhere except in the receptacles provided for the purpose.

(7) Not to indulge in riotous, boisterous, threatening or indecent conduct or abusive, threatening, profane, obscene or indecent language.

(8) Not to make or kindle fires except in places provided therefor, and to extinguish all fires, matches, cigarettes, cigars or other burning matter when leaving.

(9) To leave parks clean and orderly [when leaving].

(10) [No one is] Not to remain on a city-owned recreational park after 9:00 p.m., unless especially authorized to do so by the [Chief of Police, or the Director of Recreation], City Administrator, or his/her designee.

(11) No hard ballplaying except on Hodges Field, where only children twelve (12) years of age and under and none others may play hard ball.

[(12) The Director of Public Works City Administrator or his/her designee shall be authorized to erect appropriate signs calling attention to the closing time of the parks.]

(b) All persons using any public building shall abide by the following rules and regulations:

(1) To accept no admission fees or to sell or offer for sale any merchandise, article or thing, whatsoever, without the specific consent of the [Mayor and City Council] City Administrator or his/her designee.

(2) Not to practice, carry on, conduct or solicit for any trade, occupation, business or profession without the written permission of the [Mayor and City Council] City Administrator or his/her designee.

(3) To permit no beer, wine or other alcoholic beverages on public property or buildings.

(4) To preserve public buildings and recreation facilities.

(5) Not to [distribute any handbills or circulars or to] post[, place] or erect any bills, notices, paper or advertising device or matter of any kind.

(6) Not to throw or leave paper or other rubbish anywhere except in the receptacles provided for the purpose.

(7) Not to indulge in riotous, boisterous, threatening or indecent conduct or abusive, threatening, profane, obscene or indecent language.

(8) To leave buildings clean and orderly, to turn off lights, lock buildings and turn thermostat according to instructions above it.

(9) [That] To vacate public buildings [are to be cleaned and evacuated by 12:00 midnight] by the time specified on the permit or no later than 10:00 p.m. (whichever occurs first).

(10) No smoking or carrying of lighted smoking materials [will be] is permitted in public buildings [the Council Auditorium, the Municipal Gymnasium or the assembly areas of the first- and second-floor meeting rooms of the Municipal building]. No food or drink will be permitted in the Council Chamber; no food or drinks in gymnasium except on balcony.

(11) Users are responsible for restoring premises to original conditions, i.e., setting up and replacing tables and chairs. Tables being used for social events, demonstrations, classes, etc., must be covered with paper, plastic or cloth. [Remove] All personal effects must be removed at the time the event is concluded.

(12) [All decorations must be put up with masking tape (no other).] No decorations shall be afixed to the ceiling, floor or walls. No confetti or rice may be used in [the] a public building. Nails, screws, tacks or other hanging devices must not be used.

(13) Regularly scheduled religious services shall not be permitted.

(c) The City Administrator or his/her designee shall be authorized to erect appropriate signs calling attention to the closing time of the parks and other rules and regulations governing use of public parks, space and buildings.

[(c)] (d) A violation of this section is a Class C offense.

[Sec. 8-24. Reserved.]

BE IT FURTHER ORDAINED THAT this ordinance shall become effective upon adoption.

ADOPTED this 10 day of February 1997.

(NOTE: Additions are underlined, and deletions are [bracketed].)

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

Introduced by: Councilmember Davenport

First Reading: 2/10/97
Second Reading:

Drafted by:
Linda S. Perlman
Asst. Corporation Counsel
Draft Date: February 13, 1997

Effective Date:

ORDINANCE NO. 1997-6

(Establishing the Fiscal Year 1997 Base Rate for the Stormwater Management Fee; Exemption for Government-Owned Property Used for Public Purposes)

WHEREAS, on June 10, 1996, the Council passed Ordinance No. 1996-15 adding a new Chapter 10D, Stormwater Management Fee System, to the *Takoma Park Code* and providing for a stormwater management utility fee system based on the amount of runoff from each property to fund the costs of stormwater management in the City; and

WHEREAS, all developed property in the City, including property owned by non-governmental tax-exempt entities, contributes to runoff and either uses or benefits from the stormwater system; and

WHEREAS, a stormwater management fee, which is a utility charge for services and not an *ad valorem* tax, will provide for a fair and equitable contribution from the owners of developed property to the City's stormwater management program and to the costs of operating, maintaining, and improving the City's stormwater system and will inure to the benefit of all citizens of the City; and

WHEREAS, state law provides that the City may not impose a stormwater management fee on government-owned property which is used for public purposes; and

WHEREAS, the stormwater management fee will be calculated using a base unit (which is sometimes referred to as an "equivalent residential unit" or "ERU") which represents the median impervious surface area of a typical single family residence in the City; and

WHEREAS, in preparation for establishing a stormwater utility, the City entered into a contract with CH2M Hill, Inc., an engineering firm with extensive experience in assisting jurisdictions with implementation of stormwater utility fee systems and with rate structure development; and

WHEREAS, CH2M Hill used geographic information system (GIS) maps and data from the Maryland-National Capital Park and Planning Commission; tax account, assessment, and land use information from the State Department of Assessments and Taxation and the Maryland Office of Planning; and conducted field measurements in order to develop an accurate base unit for the City and to determine the number of base units for multi-family and non-residential (commercial, industrial, and tax-exempt) properties in the City; and

WHEREAS, CH2M Hill has estimated a base unit, *i.e.,* the median impervious area of single family residential properties in the City, at 1,226 square feet; and

WHEREAS, the base rate for the stormwater management fee is the annual (fiscal year) charge for one base unit; and

WHEREAS, the stormwater management fee for single family residential properties in the City will be a fixed yearly fee equal to the base rate; and

WHEREAS, the stormwater management fee for other developed property in the City will be calculated by multiplying the number of base units of impervious area of the property by the base rate; and

WHEREAS, "other developed property" is all [developed non-] **property but** single family residential property in the City which has more than 409 square feet (one-third of the base unit) of impervious surface area, except property that is used for public purposes and is owned by the State of Maryland or an agency or unit of the State, by a County, by the City, or by a volunteer fire department; and

WHEREAS, the final estimates from CH2M Hill of the total number of ERUs in the City and the revenue needs of the City's stormwater management program have been considered in establishing the fiscal year 1997 base rate for the stormwater management fee.

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. Ordinance No. 1996-15 (Chapter 10D, Stormwater Management Fee System, of the *Takoma Park Code*) is amended as follows:

Sec. 10D-2. Authority.

Authority for the adoption of a system of charges to fund the implementation of stormwater management programs is conferred on the City by Article 29, Section 3-205 and by Section 4-204(d), Environment Article, of the *Annotated Code of Maryland*, as amended.

Sec. 10D-3. Definitions.

* * * *

(l) *Other Developed Property* means developed property other than single-family residential property. Such property shall include, but not be limited to, multi-family dwellings, commercial properties, industrial properties, parking lots, hospitals, **private schools, private recreational and cultural facilities,** ~~schools, recreational and cultural facilities,~~ hotels, offices, and churches.

Sec. 10D-9. Charges for Tax-Exempt Properties; Exemptions for Undeveloped Property and for Government Property Used for Public Purposes.

(a) The Council finds that all real property in the City contributes to runoff and either uses or benefits from the maintenance of the stormwater system. Therefore, except as otherwise provided in this Section, all real property in the City, including property that is exempt from property tax by Title 7 of the Tax-Property Article, *Annotated Code of Maryland*, as amended, shall be charged the Fee.

(b) Property ~~which is~~ owned by the State of Maryland or an agency or unit of the State, by a County, by the City, or by a regularly organized volunteer fire department that is used for public purposes shall be exempt from the Fee.

(c) Undeveloped Property shall be exempt from the Fee.

[NOTE: Shading indicates additions to the language of Ordinance No. 1996-15 and ~~strikeouts~~ indicate deletions from the language of Ordinance No. 1996-15. * * * * indicates language of Ordinance No. 1996-15 which is not being charged and is not reproduced herein.]

SECTION 2. The base rate for the stormwater management fee for fiscal year 1997 (July 1, 1996, to June 30, 1997, both inclusive) is $24.00. The base rate shall be used to calculate the stormwater management fee for other developed property in the City as provided in Ordinance No. 1996-15, as amended (Chapter 10D, Stormwater Management Fee System, of the *Takoma Park Code*). The stormwater management fee for fiscal year 1997 shall be billed to the owners of single-family residential property and other developed property in the City as provided in Ordinance No. 1996-15, as amended (Chapter 10D, Stormwater Management Fee System, of the *Takoma Park Code*).

SECTION 3. This Ordinance shall be effective immediately.

Adopted this _____ day of _____, 1997, by roll-call vote as follows:

Aye:
Nay:
Abstain:
Absent:

NOTE: [Bold brackets] indicate deletions to Ordinance No. 1997-6 after the First Reading on 2/10/97.
Bold double underlines indicate additions to Ordinance No. 1997-6 after the First Reading on 2/10/97.

f:\wpdocs\takoma\ordinanc\rev-fee.ord

Introduced by: Councilmember Davenport

1st Reading: 2/10/97
2nd Reading:

Ordinance No. 1997 - 7

AN ORDINANCE TO ADOPT A STORM WATER MANAGEMENT BUDGET FOR FISCAL YEAR 97 BEGINNING JULY 1, 1996 AND ENDING JUNE 30, 1997.

WHEREAS, Article XII, Section 1201 of the Takoma Park City Charter states that the Council shall, by ordinance, be designated the Storm Water Management Board for Takoma Park with all the powers therein; AND,

WHEREAS, Section 4-204(d), Environment Article of the Annotated Code of Maryland authorizes the adoption of a system of charges for storm water management programs by the City; AND,

WHEREAS, Article XII, Section 1205 of the Takoma Park City Charter (as amended by Charter Resolution 1996-21) states that the Stormwater Board is empowered to charge and collect stormwater utility fees or user charges in order to raise sufficient annual revenue to pay for storm water management activities in the City; AND,

WHEREAS, the Storm Water Management Board desires to maintain a Storm Water Management Fund for the collection and payment of revenues and expenditures as it deems necessary to provide for the construction, maintenance, operations and repair of the storm water drainage system in the City.

NOW THEREFORE BE IT ORDAINED BY THE STORM WATER MANAGEMENT BOARD OF THE CITY OF TAKOMA PARK

SECTION 1: THAT for the 1996-97 fiscal year, a Storm Water Management Fee shall be imposed on real property in the City in an amount sufficient to fund the Storm Water Management Expenditures established by Section 4 of this Ordinance. The base rate for the Storm Water Management Fee shall be established by separate Ordinance.

SECTION 2: THAT a Storm Water Management Fund shall be maintained into which shall be deposited:

(a) All the receipts and revenues from user charges, and utility fees imposed by the City to pay for storm water management; AND,

(b) All charges, fees, fees-in-lieu, grants, and other contributions received from any person or governmental entity in connection with storm water management activities or programs.

SECTION 3: THAT from and out of the monies known to be received from the utility fees set by the Storm Water Management Board, and from all monies to come into all funds during the twelve (12) month period ending June 30, 1997, there shall be, and hereby are appropriated Storm Water Management Fund revenues, as follows:

Utility Fees:		$195,000
Stormwater permit fees:		5,000
EPA Grant:		40,074
Chesapeake Bay Fund:		1,000
	TOTAL	$241,074

SECTION 4: THAT there shall be, and hereby are appropriated the following sums for use for the support of storm water management activities during the 1996-97 Fiscal Year:

Storm Water Management Expenditures: $241,074

SECTION 5: THAT stormwater management project that are declared to be emergencies as defined by the City Council in accordance with the City Charter, may be funded through the Emergency Reserve or other reserves as may be designated by the City Council.

SECTION 6: THAT the approved FY 97 budget document with account listings is to be incorporated as a part of this Ordinance by reference.

SECTION 7: THAT should any section of this Ordinance be determined to be invalid, such invalidity shall not affect any other sections.

SECTION 8: THAT this Ordinance shall become effective July 1, 1996.

Adopted this _____ day of February, 1997 by Roll Call Vote of the Storm Water Management Board for the City of Takoma Park.

AYES:
NAYS:
ABSTAIN:
ABSENT:

Introduced by: Mayor Sharp

1st Reading: 2/10/97
2nd Reading:

ORDINANCE #1997 - 8

AUTHORIZING EXTENSION OF CH2M HILL CONTRACT

WHEREAS, in March 1996, the City sent out a request for proposals (RFP) soliciting unpriced technical proposals from vendors to assist the City with implementation of a stormwater utility fee billing system; AND

WHEREAS, the Council adopted Ordinance 1996-12, authorizing the City Administrator to negotiate with and enter into a contract with CH2M Hill to provide assistance to the City in the implementation of a stormwater utility fee system and to develop rate structure recommendations and billing data system development; AND

WHEREAS, the cost of the contract in FY96 was covered by an EPA grant from the State of Maryland; AND

WHEREAS, in September 1996, Council adopted Ordinance #1996-32, authorizing the City Administrator to enter into a contract with CH2M Hill for Phase II of the City Storm Water Utility Project; AND

WHEREAS, the source of funding for Phase II was from EPA grant funds available in FY97 ($40,074) and $9,799 charged to the City's FY97 Stormwater Budget; AND

WHEREAS, following a series of newsletter articles, worksession discussions, public briefings and public hearings on the implementation of the storm water utility rate system, the Council is currently considering adoption of the storm water utility rate; AND

WHEREAS, in a final effort to ensure that all ratepayers are knowledgeable of the City's intent to adopt a storm water utility rate system, the City Administrator desires to send assessment notices, including a brochure about the system, to all ratepayers following the first reading of the rate ordinance; AND

WHEREAS, upon request, CH2M Hill has submitted a proposal to:

- prepare a brochure and print copies for mailing,

- print and mail copies of assessment notices to all rate payers along with the above

referenced brochure,
- handle all telephone inquiries about the new system following the mailing of the assessment notices,

- print the actual bills to be mailed out to rate payers about two weeks after the assessment notices have been mailed; AND

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of Takoma Park, Maryland, authorizes the City Administrator to extend the CH2M Hill contract to provide professional services in an amount not to exceed $33,000 (Thirty-three Thousand Dollars) to be charged to the FY97 Stormwater Budget.

ADOPTED this _____ day of _____, 1997.

AYE:
NAY:
ABSTAIN:
ABSENT:

Introduced by: Councilmember Elrich

1st Reading: 1/27/97
2nd Reading: 2/10/97

ORDINANCE #1997-4

SPEED HUMP PETITIONS
MAPLE & MAPLEWOOD AVENUES

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

SECTION 1. THAT Ordinance No. 2676, adopted June 27, 1983, be amended by the addition of a new subsection to Section 1, as set forth below:

That speed hump installations, as defined in Sec. 13-2(a)(14.2) of the Code of Takoma Park, Maryland, 1972, as amended, be effected at the following locations:

(a) Maple Avenue (between Maplewood and Erie Avenues), exact number and location of speed humps shall be at the discretion of the City Administrator; AND

(b) Maplewood Avenue (between Maple and Flower Avenues), exact number and location of speed humps shall be at the discretion of the City Administrator.

SECTION 2. THAT this Ordinance becomes effective upon adoption.

ADOPTED this 10 day of February, 1997.

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

CITY OF TAKOMA PARK, MARYLAND (FINAL 3/21/97)

PUBLIC HEARING, REGULAR MEETING, WORKSESSION AND EXECUTIVE SESSION OF THE CITY COUNCIL

Monday, February 24, 1997

OFFICIALS PRESENT:

Mayor Sharp
Councilmember Chavez
Councilmember Davenport
Councilmember Elrich
Councilmember Porter
Councilmember Rubin
Councilmember Williams

City Administrator Habada
Deputy City Administrator Grimmer
Assistant City Administrator Hobbs
Assistant Corporation Counsel Perlman
Deputy City Clerk Espinosa
Engineer Monk
Planning Center Coordinator Ludlow
Community Development Coordinator Sickle
Volunteer Coordinator Moffet
Housing Services Coordinator Walker
Executive Director, COLTA, Lee-Bryant
Acting Police Chief Wortman
Lieutenant Rosenthal
Lieutenant Creamer
Lieutenant Gowin
Sergeant Coursey
Sergeant Hubbard

The City Council convened at 7:32 p.m. on Monday, February 24, 1997, in the Council Chambers of the Municipal Building, 7500 Maple Avenue, Takoma Park, Maryland.

Following the Pledge of Allegiance, these remarks were made:

PRESENTATIONS

Police Department Accreditation. Acting Police Chief Wortman introduced Dick Calea, Executive Director, described the accreditation process and announced that the assessment team is happy to present certification of accreditation to the Takoma Park Police Department. He read the certificate for the record, explaining that the accreditation is good for a period of three years. He congratulated Captain Wortman and other members of the Police Department.

Captain Wortman presented individual awards to Project Managers, Kathy Coursey and Sgt.

Mike D'Ovidio, Lt. John Gowin (Patrol Division), Lt. James Rosenthal (Administration), Sgt. Ed Coursey (Special Enforcement Unit), Lt. Cynthia Creamer (CID), and Sgt. George Hubbard (CID). Captain Wortman recalled that while three years ago, the accreditation process required some redecorating in the Police Department, similar activities were not necessary this time. He presented commemorative coffee mugs to the Mayor and other members of the Council, and thanked the Council for their support. Captain Wortman concluded by stating that he appreciates the cooperation and work of all the officers who had to contend with requirements of the process in addition to their daily work responsibilities.

Mayor Sharp thanked Captain Wortman as the motivator, initially, and for keeping the process moving forward this time around. He said that he appreciates Captain Wortman's efforts.

ANNOUNCEMENTS

Councilmember Davenport thanked the Recreation Department, in particular, Chrylle Bluford, Matt Corley, Pablo Semio, for putting on a very good program last Friday evening. He remarked that the St. Luke's Choir and Ed Walker Concert Band performed well, and expressed appreciation to all persons who came out and supported this program.

MINUTES

Moved by Williams; seconded by Davenport. The Council Meeting Minutes from 1/27, 2/03 and 2/10 were adopted unanimously (VOTING FOR: Sharp, Chavez, Davenport, Porter, Rubin, Williams; ABSENT: Elrich).

COUNCIL COMMENTS

Mr. Sharp noted that several Worksession items are listed as tentative, explaining that they may not be discussed if the Council does not get to them until late in the evening.

CITIZEN COMMENTS

Benjamin Onyeneke, Maple Avenue (Generation X), remarked about President Clinton's proposal for more voluntary teachers in schools nationwide, and commented on the importance of parents and communities taking a role in the development of young people. He emphasized that there is a need for more constructive education in schools. He expressed concerns about drugs in society.

PUBLIC HEARING

#1 Unification-related Sectional MapAmendment and Text Amendments.

James Wilson, Church (& School) of Our Lady of Sorrows (former City Administrator), said that it was good to be here this evening during the presentation of the Accreditation Certificate. He

recalled the initial process, three years ago. Mr. Wilson spoke on behalf of the churh and school, noting that after quickly looking through the materials he does not see any mention of the church and school. He commented, however, that the church wants to be on record as not wanting to move into a situation where "what has been, becomes something different in Montgomery County." Mr. Wilson remarked that rumor has it that Montgomery County is fairly open when it comes to things like private churches and schools, but that he does not depend on rumors.

Frank Boleben, 6705 Poplar (native of Takoma Park), explained that he does not currently live in the City, but that he owns the property at 6705 Poplar Avenue. He noted that he received a letter explaining that his property would be re-zoned. Mr. Boleben stated that his property is split by the City's boundary, and explained that he has been paying taxes to the City, Prince George's County and the State of Maryland over the years. He questioned how the re-zoning will affect his property, since a portion will remain outside the City in Prince George's County.

Planning Center Coordinator Ludlow noted that there are copies of preliminary information from Montgomery County Park & Planning just put out this evening, and stated that detailed information which is being sent out by Park & Planning to all affected property owners had not arrived in peoples' mailboxes as of today. She remarked that this information could later answer some of the questions which might be raised this evening.

Vicki Sotak, 6411 Allegheny Avenue, stated that she was a big proponent of annexing into the City and unifying into Montgomery County. She recalled assurances from the Council that there would be minor changes with annexation, and said that she is now very disappointed that immediately upon unification, Montgomery County wants to make changes in zoning. She stated that she owns several properties in Prince George's County, and that she is adverse to Montgomery County making any changes to the way things currently exist in P.G. County. Ms. Sotak remarked that Montgomery County should be able to accept the few unification-related private businesses, non-conforming uses, and special exceptions without the further changes that are being suggested.

Benjamin Onyeneke, Maple Avenue, encouraged the Council to protect the P.G. County residents from unification hardships, and said that he would like Montgomery County to accept the P.G. County zoning classifications.

G. Neel Teague, President of Stout & Teague Management Center and owner of 7676 New Hampshire Avenue (also, President of Takoma-Langley CDA), stated that he is speaking this evening as a property owner. He noted that he has had an opportunity to see some draft proposals from Montgomery County and has discussed the proposals with his business partners. He remarked that the City has been supportive of efforts to stabilize commercial development along New Hampshire Avenue and in Takoma-Langley, and that he wants the progress that has been made to continue. Mr. Teague stated that he is generally supportive of the staff work to date, but that he is concerned that there will be some serious consequences from the proposed amendments. He commented on possible negative impacts on small businesses, calling for more

latitude from Montgomery County. Similarly, non-conforming structures, while going to be allowed, will undergo a strict enforcement of current codes in Montgomery County which may have a very adverse effect on property owners. Expansion of some businesses could be cost prohibitive. He expressed concern that the proposals could result in significant set-backs in the area. Mr. Teague said that there needs to be added fexibility for businesses. In regard to 7676 New Hampshire Avenue, the proposal does not provide for a commercial overlay for the adjacent parking lot. He explained that if this property were ever to be redeveloped, there could be a significant impact on property value if the parking lot is zoned R-60 (residential), and that in the future the building could not be redeveloped to its current size. In Montgomery County development is based on the size of the property, not the available parking, as in P.G. County. He noted that the proposal is not consistent with former commercial structures along University Boulevard which are provided an R-60 overlay.

Catherine F. Scott, 7207 Flower Avenue (trustee for property), said that she purchased the property in 1977 and has operated the dwelling as a three-unit building since that time. She noted that should there be a fire, she would not be able to rebuild the three-unit dwelling under the current proposal, and that this restriction would present her with a significant financial problem.

Terry Lewis, 316 Circle Avenue, congratulated the City on the successful execution of the curb and gutter work on the street, adding that the neighbors are appreciative. He explained that he purchased his property in 1984 and went through a fairly elaborate design process with P.G. County to get approval for a home studio. During the course of the process, the original building permit expired, requiring him to reapply to complete the final design work for construction. In the time that had elapsed, an addendum to include artists and craftsmen was made to the list of categories for home occupations in P.G. County. Mr. Lewis said that it was suggested that he use this category instead of reinventing the wheel in terms of zoning. Since that time, things have been working well. He commented that he wants to ensure the fact that uses can be grand fathered into Montgomery County without requiring property owners to repeat the process.

Monte Agro, 7813 Carroll Avenue, remarked that he was only notified of this issue last week, and that he does not feel he has had time to understand the changes and potential impacts. Furthermore, information has not been received from Montgomery County Park & Planning. He requested that the Council extend the citizen comment period beyond this evening. He commented that he also knows of a neighbor who has not received notice from the City of County, to date.

Nelli Moxley, 6411 Eastern Avenue, agreed with Ms. Sotak's comments. She said that the City is infringing on the residents of the annexation area, and is taking everything and going through it like these residents are "trash buckets." Ms. Moxley remarked that residents of this area do not want to feel that we have someone looking at them as underdogs all the time. She concluded that residents do not want to have to fit into Montgomery County zoning classifications.

Mr. Sharp explained that the City is not the responsible governmental entity when it comes to

zoning matters. The City is attempting to work with Montgomery County and citizens to insure that the transition is as smooth as possible. He noted that the Council has expressed itself consistently as being concerned that people not have property rights taken away from them as a result of this transition. The basis of unification was that people would not be disadvantaged by the transition. Mr. Sharp remarked that there have been circumstances which have arisen in other areas related to unification (i.e., business licenses) which have required attention and work. He concluded that the purpose of this public hearing is to hear a full range of citizen concerns, and assured the audience that the Council wants to make the transition as painless as possible.

Randy Denchfield, 6911, 7913, 6917, 6921 Eastern Avenue and lot 25 on East-West Highway, expressed concern about zoning and its impact on lot 25. He stated that he wants the zoning to remain as is.

Robert Lobe, 7415 Aspen Avenue, stated that he does not think anyone voted to join Montgomery County with the expectation that their properties would be subjected to changes from the way they have existed for some time. He said that all properties should be grand fathered, within the realm of reasonableness. He noted that he has written to the City about re-paving Aspen Avenue and even suggested that it be done simultaneous with the paving of Sligo Creek Parkway.

Mr. Sharp remarked that the Council can take up this issue at another time, explaining that the City does have an infrastructure plan but that he is not sure where individual streets are on the list.

Leroy Koon, Principle John Nevin's Andrews School, commented that he does not understand the issues that well, but noted that the school has been in Montgomery County for many years. It is not being transferred from P.G. County to Montgomery County. He wondered why a zoning change is proposed for the school.

Ms. Ludlow stated that she would have to check on this matter.

Dave Cruz, Lockney Avenue, questioned what is going to happen to land records.

Ms. Ludlow responded that the land records will remain on file in Upper Marlboro until there is some change to the property. At that time, the change would be made in Rockville. She noted that a brochure will be mailed out in a couple of months that will explain these types of things.

Paul Roat, Kansas Lane (President, Pine Crest Citizens Association), said that he thinks residents are clear as far as the variances are concerned. He commented, however, that after reading the material provided this evening he has a problem with the non-conforming use list. He asked why the Washington McLaughlin School and John Nevin Andrew's School are on the list--both currently in Montgomery County. He questioned why schools would be zoned non-conforming uses. Mr. Roat remarked that he has a home that was legally built in 1942 with an apartment in it. Under the proposal, the home could not be restored with the apartment. He asked if the same

restriction would apply to the schools and what would be the impact. He concluded that he would like to see the home occupancy and multi-family dwellings grandfathered without penalties.

Ms. Ludlow remarked that the Park & Planning proposal, in terms of grand fathering, is to use Montgomery County zones and processes. She commented, however, that staff and Council have seen as we have been going through this process that this approach might not be the best. In a couple of weeks Council will consider a resolution regarding the Park & Planning proposal. If the City Council does not support the proposal, it would take a super-majority of the Montgomery County Council to approve it.

The public hearing was closed at 8:25 p.m.

Mr. Sharp noted that the next scheduled discussion of this matter is next week during Worksession. He expressed appreciation for the comments made this evening, reiterated that there have been a number of concerns expressed about a number of the proposals.

Councilmember Porter noted that Council heard some issues raised during the hearing that she did not know were issues until this evening. She requested that staff provide Council with further information on these matters.

REGULAR MEETING

#2 Resolution re: Retirement -- Jesus Ramirez. Mr. Sharp read the resolution for the record.

Moved by Sharp; seconded by Davenport.

Councilmember Davenport expressed congratulations.

Resolution #1997-9 was adopted unanimously (VOTING FOR: Sharp, Chavez, Davenport, Elrich, Porter, Rubin, Williams).

RESOLUTION #1997-9
(Attached)

#3 1st Reading Ordinance re: Article 7. Landlord Tenant Relations. Mr. Sharp explained that this discussion has been going on for a long time, noting that there is a discussion about voluntary rent increases scheduled later this evening which grew out of the larger discussion about amendments to Article 7. He summarized the changes to the ordinance--voluntary escrow, provisions on amortization and conforming changes.

Moved by Davenport; seconded by Porter.

Ms. Porter questioned whether all the changes discussed by Council are included in the ordinance (i.e., marked and shaded). She said that it seems that the Council discussed other issues that are

not reflected.

Housing Services Coordinator Walker stated that staff included everything they could recall from Council discussions.

Ms. Porter remarked that the Council talked about some issues that are not in the ordinance. She confirmed that the Council is only voting on the things that are reflected in the ordinance.

Councilmember Williams referred to page 39, shaded item #3, and asked whether this is an attempt to get at the question raised by Councilmember Elrich during the last discussion.

Executive Director, COLTA, Lee-Bryant responded in the affirmative.

Mr. Sharp stated that it would be helpful to have a one-page summary of the highlighted changes available at the time of second reading.

Ms. Porter commented that the Whereas clauses are somewhat a summary of the issues, but that they may not be in the form which some would find most helpful.

Ms. Walker noted that the changes to the amortization schedule are not included in the ordinance, since the amortization schedule is covered under a corresponding regulation. Changes will be made to the regulation.

Ordinance #1997-9 was accepted unanimously at first reading (VOTING FOR: Sharp, Chavez, Davenport, Elrich, Porter, Rubin, Williams).

ORDINANCE #1997-9
(Attached)

#4 **2nd Reading Ordinance re: Storm Water Utility Rate Structure.** Mr. Williams made a motion that the Council convene as the Storm Water Management Board (seconded by Porter).

Ordinance moved by Davenport; seconded by Williams.

Ms. Porter noted that the language includes a fee of $24/base rate, but that she understands from the cover memo that a $25 fee is needed in order to cover the anticipated costs.

Mr. Davenport clarified that the recommendation is $25.

Mr. Sharp summarized the recommendation which assumes a delinquency rate which is extremely high and an amount to cover the exempted government properties. He asked the City Administrator's feeling about the $24 fee.

City Administrator Habada stated that she is comfortable with the $24 rate. She explained that the actual square footage for the exempt properties was originally thought to be greater, and that there were some properties which should have been included in the original calculations but were not. She agreed that the delinquency rate may be a little high.

Ms. Porter explained a couple of issues to the audience. One major reason for going to a utility fee system is to promote equity for properties who currently pay taxes (which included the storm water tax rate) and those who do not pay (i.e., tax exempt). The idea behind ordinance is to treat both equally. Both types of properties are receiving the same service in terms of channeling storm water. She stated that with the fee system, all residential properties will pay the same fee. The fee is based on the fact that the City has to handle a certain amount of storm water coming from the property. The fee, however, is not deductible for persons who itemize their tax returns. The fee is the same for all residential properties, regardless of individual property value.

Paul Roat, noted that in all of the material received so far, the rate has been listed as $24 for property of a certain number of square feet, but asked what the square footage includes.

Ms. Habada remarked that the base unit is 1228 square feet of impervious surface. This is applied to buildings only at this point.

Mr. Roat questioned how long it will be before the formula includes parking lots.

Ms. Habada stated that this will be fine tuned in the next phase of the project.

Mr. Williams confirmed, however, that the impervious surface formula is not being applied to residential properties.

Mr. Sharp asked how the differentiation was made between commercial and residential properties since parking lots were not taken into account. A larger commercial space will still be paying more than a smaller commercial space that has a smaller parking lot. He said that he does not completely understand how parking lots were not taken into account.

Ms. Habada used the John Nevin Andrew's School for an example. The records used did not include the parking lot, only the building footprint. There are some properties where a parking lot needs to be added in. For single family dwellings, there is no assumption about a parking lot.

Mr. Elrich pointed out that in the case of single family dwellings, the average driveway space is built into the base unit.

Mr. Williams recognized that some refinements will take place, but that it will not be a case where a whole class of properties with parking lots and driveways are redefined. Only some properties for which we do not have data at this time may be affected.

Ms. Habada reiterated that in some cases, the land records are not complete.

Ms. Porter commented that the intention is to include all impervious surfaces. She confirmed that corrective action to resolve the land record discrepancies would not require Council action.

Mr. Roat noted that the multi-family units are listed separately from single family units. He asked whether this means that this property has a double charge.

Ms. Porter recalled that she once asked this question and was told that if a residence has a single extra unit, it will still be considered a single family dwelling.

Mr. Williams asked whether it is after two units (i.e., residence plus one extra unit) that a dwelling becomes a multi-family unit.

There was no response from staff.

Mr. Sharp requested that staff provide a response to this question. He stated that from an equity stand point, the fee system seems to be the way to go. He noted that a large portion of the costs of this project has been funded under a grant from the State Environmental Protection Agency which is interested in seeing how this system will work for the City.

Ordinance #1997-6 was adopted unanimously at second reading (VOTING FOR: Sharp, Chavez, Elrich, Porter, Rubin, Williams; ABSENT: Davenport).

ORDINANCE #1997-6
(Attached)

#5 2nd Reading Ordinance re: CH2M Hill contract Extension. Ms. Habada described the separate in-coming phone line that will be used by staff to pre-screen calls regarding the fee system. Those questions which cannot be answered by staff, will be forwarded to CH2M Hill for technical responses.

Mr. Sharp confirmed that it will be a dedicated phone line.

Ms. Porter invited constituents to call her with policy questions, but cautioned that she may not be able to address the more technical questions.

Councilmember Elrich asked if there will be some kind of monitoring to ensure that staff will be answering all the questions that can be handled internally, and not just flipping calls over to CH2M Hill.

Ms. Habada responded that she will sit down with staff and CH2M Hill representatives to work out the process. Calls will be handled in this way for approximately one month.

Moved by Williams; seconded by Porter.

Mr. Elrich said that he continued to believe that this process can be handled entirely by staff, and that the items under the contract extension are too expensive. He commented that he does not believe it would cost as much for staff to do these added services as estimated by CH2M Hill.

Ms. Porter noted that the amount of the contract extension is the "upper limit number."

Mr. Williams remarked that it is his sense that a lot of the cost is in printing and mailing of the bills and brochures.

Ms. Porter agreed, adding that it would be virtually the same cost if staff were to do this work (i.e., printing and postage).

Mr. Elrich disagreed, explaining that in regard to printing costs, the City would not have any overhead/mark-up associated with printing.

Mr. Sharp referred to the memo which includes a breakout of the cost components.

Ms. Habada stated that the bulk of the cost is shown under the telephone hotline element, noting that the proposal related to the hotline has been modified to include work on the part of staff. The telephone component was originally estimated at $19,000.

Mr. Sharp clarified that the $19,000 is part of the total $33,000 figure. He noted that some costs have to do with the design work for the brochure.

Mr. Williams observed that the other costs are fixed, and that at least $14,000 will be spent.

Ms. Porter commented that in regard to printing brochures, it can be decided ahead of time the number of copies to be printed. The same "definite" number cannot be assigned to the number of phone calls that will be referred to CH2M Hill--we do not know the amount of service needed.

Ordinance #1997-8 was adopted at second reading (VOTING FOR: Sharp, Chavez, Davenport, Porter, Rubin, Williams; NAY: Elrich).

ORDINANCE #1997-8
(Attached)

The Council adjourned from Storm Water Management Board and Regular Meeting at 8:55 p.m., to convene in Worksession. Following the Worksession, the Council convened in Executive Session.

EXECUTIVE SESSION

Executive Session 2/24/97 - Moved by Williams; seconded by Porter. Council convened in Executive Session by unanimous vote at 10:10 p.m., in the Conference Room. OFFICIALS PRESENT: Sharp, Chavez, Porter, Rubin, Williams. OFFICIALS ABSENT: Davenport, Elrich. STAFF PRESENT: Habada, Grimmer, Hobbs, Silber, Espinosa. Council discussed (1) ongoing litigation, and (2) personnel matters. (1) Counsel was given direction on litigation. (2) No action taken (Authority: Annotated Code of Maryland, State Government Article, Section 10-508(a)(1)(ii) and (8)).

RESOLUTION 1997-9

IN APPRECIATION OF JESUS RAMIREZ

WHEREAS, Jesus Ramirez is retiring from service with the City of Takoma Park Public Works Department on February 28, 1997; AND

WHEREAS, Mr. Ramirez began his service with the City of Takoma Park Public Works Department on September 7, 1976 and has served the City for 20 ½ years; AND

WHEREAS, Mr. Ramirez was first hired to serve as an Equipment Operator in the City's Street Division, with the responsibility of operating the City's street sweeper, and was later transferred to our Building Maintenance Division; AND

WHEREAS, throughout his employment Mr. Ramirez has provided support and assistance to al City staff; AND

NOW, THEREFORE, BE IT RESOLVED THAT the Council, on behalf of the Citizens and employees of the City of Takoma Park, commend and thank Jesus Ramirez for his contributions and dedicated service to the citizens and the staff of the City of Takoma Park, Maryland; AND

BE IT FURTHER RESOLVED THAT the Council expresses its wishes that Jesus enjoys his retirement and is successful in any endeavors he may undertake.

Adopted this 24th day of February 1997.

ATTEST: Thomas Espinosa

Thomas Espinosa, Deputy City Clerk

Introduced by:
Councilmember Davenport

First Reading: 2/10/97
Second Reading: 2/24/97
Effective Date: 2/24/97

ORDINANCE NO. 1997-6

(Establishing the Fiscal Year 1997 Base Rate for the Stormwater Management Fee; Exemption for Government-Owned Property Used for Public Purposes)

WHEREAS, on June 10, 1996, the Council passed Ordinance No. 1996-15 adding a new Chapter 10D, Stormwater Management Fee System, to the *Takoma Park Code* and providing for a stormwater management utility fee system based on the amount of runoff from each property to fund the costs of stormwater management in the City; and

WHEREAS, all developed property in the City, including property owned by non-governmental tax-exempt entities, contributes to runoff and either uses or benefits from the stormwater system; and

WHEREAS, a stormwater management fee, which is a utility charge for services and not an *ad valorem* tax, will provide for a fair and equitable contribution from the owners of developed property to the City's stormwater management program and to the costs of operating, maintaining, and improving the City's stormwater system and will inure to the benefit of all citizens of the City; and

WHEREAS, state law provides that the City may not impose a stormwater management fee on government-owned property which is used for public purposes; and

WHEREAS, the stormwater management fee will be calculated using a base unit (which is sometimes referred to as an "equivalent residential unit" or "ERU") which represents the median impervious surface area of a typical single family residence in the City; and

WHEREAS, in preparation for establishing a stormwater utility, the City entered into a contract with CH2M Hill, Inc., an engineering firm with extensive experience in assisting jurisdictions with implementation of stormwater utility fee systems and with rate structure development; and

WHEREAS, CH2M Hill used geographic information system (GIS) maps and data from the Maryland-National Capital Park and Planning Commission; tax account, assessment, and land use information from the State Department of Assessments and Taxation and the Maryland Office of Planning; and conducted field measurements in order to develop an accurate base unit for the City and to determine the number of base units for multi-family and non-residential (commercial, industrial, and tax-exempt) properties in the City; and

WHEREAS, CH2M Hill has estimated a base unit, *i.e.,* the median impervious area of single family residential properties in the City, at 1,226 square feet; and

WHEREAS, the base rate for the stormwater management fee is the annual (fiscal year) charge for one base unit; and

WHEREAS, the stormwater management fee for single family residential properties in the City will be a fixed yearly fee equal to the base rate; and

WHEREAS, the stormwater management fee for other developed property in the City will be calculated by multiplying the number of base units of impervious area of the property by the base rate; and

WHEREAS, "other developed property" is all property but single family residential property in the City which has more than 409 square feet (one-third of the base unit) of impervious surface area, except property that is used for public purposes and is owned by the State of Maryland or an agency or unit of the State, by a County, by the City, or by a volunteer fire department; and

WHEREAS, the final estimates from CH2M Hill of the total number of ERUs in the City and the revenue needs of the City's stormwater management program have been considered in establishing the fiscal year 1997 base rate for the stormwater management fee.

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. Ordinance No. 1996-15 (Chapter 10D, Stormwater Management Fee System, of the *Takoma Park Code*) is amended as follows:

Sec. 10D-2. Authority.

Authority for the adoption of a system of charges to fund the implementation of stormwater management programs is conferred on the City by Article 29, Section 3-205 and by Section 4-204(d), Environment Article, of the *Annotated Code of Maryland*, as amended.

Sec. 10D-3. Definitions.

* * * *

(l) *Other Developed Property* means developed property other than single-family residential property. Such property shall include, but not be limited to, multi-family dwellings, commercial properties, industrial

properties, parking lots, hospitals, private schools, private recreational and cultural facilities, hotels, offices, and churches.

Sec. 10D-9. Charges for Tax-Exempt Properties; Exemptions for Undeveloped Property and for Government Property Used for Public Purposes.

(a) The Council finds that all real property in the City contributes to runoff and either uses or benefits from the maintenance of the stormwater system. Therefore, except as otherwise provided in this Section, all real property in the City, including property that is exempt from property tax by Title 7 of the Tax-Property Article, *Annotated Code of Maryland*, as amended, shall be charged the Fee.

(b) Property ~~which is~~ owned by the State of Maryland or an agency or unit of the State, by a County, by the City, or by a regularly organized volunteer fire department that is used for public purposes shall be exempt from the Fee.

(c) Undeveloped Property shall be exempt from the Fee.

[NOTE: Shading indicates additions to the language of Ordinance No. 1996-15 and ~~strikeouts~~ indicate deletions from the language of Ordinance No. 1996-15. * * * * indicates language of Ordinance No. 1996-15 which is not being charged and is not reproduced herein.]

SECTION 2. The base rate for the stormwater management fee for fiscal year 1997 (July 1, 1996, to June 30, 1997, both inclusive) is $24.00. The base rate shall be used to calculate the stormwater management fee for other developed property in the City as provided in Ordinance No. 1996-15, as amended (Chapter 10D, Stormwater Management Fee System, of the *Takoma Park Code*). The stormwater management fee for fiscal year 1997 shall be billed to the owners of single-family residential property and other developed property in the City as provided in Ordinance No. 1996-15, as amended (Chapter 10D, Stormwater Management Fee System, of the *Takoma Park Code*).

SECTION 3. This Ordinance shall be effective immediately.

Adopted this 24th day of February, 1997, by roll-call vote as follows:

Aye:	Sharp, Chavez, Elrich, Porter, Rubin, Williams
Nay:	None
Abstain:	None
Absent:	Davenport

f:\wpdocs\takoma\ordinanc\swm-rate.ord

Introduced by: Mayor Sharp

1st Reading: 2/10/97
2nd Reading: 2/24/97

ORDINANCE #1997 - 8

AUTHORIZING EXTENSION OF CH2M HILL CONTRACT

WHEREAS, in March 1996, the City sent out a request for proposals (RFP) soliciting unpriced technical proposals from vendors to assist the City with implementation of a stormwater utility fee billing system; AND

WHEREAS, the Council adopted Ordinance 1996-12, authorizing the City Administrator to negotiate with and enter into a contract with CH2M Hill to provide assistance to the City in the implementation of a stormwater utility fee system and to develop rate structure recommendations and billing data system development; AND

WHEREAS, the cost of the contract in FY96 was covered by an EPA grant from the State of Maryland; AND

WHEREAS, in September 1996, Council adopted Ordinance #1996-32, authorizing the City Administrator to enter into a contract with CH2M Hill for Phase II of the City Storm Water Utility Project; AND

WHEREAS, the source of funding for Phase II was from EPA grant funds available in FY97 ($40,074) and $9,799 charged to the City's FY97 Stormwater Budget; AND

WHEREAS, following a series of newsletter articles, worksession discussions, public briefings and public hearings on the implementation of the storm water utility rate system, the Council is currently considering adoption of the storm water utility rate; AND

WHEREAS, in a final effort to ensure that all ratepayers are knowledgeable of the City's intent to adopt a storm water utility rate system, the City Administrator desires to send assessment notices, including a brochure about the system, to all ratepayers following the first reading of the rate ordinance; AND

WHEREAS, upon request, CH2M Hill has submitted a proposal to:

- prepare a brochure and print copies for mailing,

- print and mail copies of assessment notices to all rate payers along with the above referenced brochure,

- handle all telephone inquiries about the new system following the mailing of the assessment notices,

- print the actual bills to be mailed out to rate payers about two weeks after the assessment notices have been mailed; AND

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of Takoma Park, Maryland, authorizes the City Administrator to extend the CH2M Hill contract to provide professional services in an amount not to exceed $33,000 (Thirty-three Thousand Dollars) to be charged to the FY97 Stormwater Budget.

ADOPTED this 24 day of February, 1997.

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

Introduced By:
Councilmember Davenport

First Reading: 2/24/97
Second Reading:

ORDINANCE NO. 1997-9

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

WHEREAS, Chapter 6, Article 7, Landlord-Tenant Relations, of the Takoma Park Code has outlined the rights and responsibilities of landlords and tenants in Takoma Park; and

WHEREAS, through continual administration of Chapter 6, Article 7, Landlord-Tenant Relations of the Takoma Park Code, the City Council has determined a need for clarifying language and minor technical changes to the law; and

WHEREAS, the City Council believes that the changes made to Chapter 6, Article 7, Landlord-Tenant Relations of the Takoma Park Code, by this Ordinance, further improves the law and its aim at promoting fair and equitable relations between landlords and tenants in the City of Takoma Park; and

WHEREAS, the City Council desires to extend the appeal time for rent increase petitions when a need for additional time is demonstrated by a party to a rent increase petition; and

WHEREAS, the City Council supports the use of voluntary escrow accounts by landlords and tenants during the pendency of rent increase petitions; and

WHEREAS, the City Council believes that the changes in the amortization schedule used in rent increase petitions and the elimination of the rent rollback after the amortization period expires is equitable for landlords and tenants; and

WHEREAS, for the foregoing reasons, the City Council hereby adopts this Ordinance revising Chapter 6, Housing, Article 7, Landlord-Tenant Relations of the Takoma Park Code; and

WHEREAS, the City Council adopts, ratifies and incorporates by reference the purposes and policies for revising the City of Takoma Park's Landlord-Tenant Relations Law as set forth.

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

SECTION 1. Chapter 6, Article 7, of the Takoma Park Code is hereby amended as follows:

February 20, 1997

ARTICLE 7

T A B L E O F C O N T E N T S

Section 6-76. Legislative Findings.

The Council of the City of Takoma Park hereby finds that there is often unequal bargaining power between landlords and tenants, that the common law principles pursuant to which leases are interpreted as grants of right or possession rather than mutual and dependent covenants evolved in an agricultural setting and are ill-suited to the modern residential setting of this urban city; that in order to facilitate fair and equitable arrangements, to foster the development of housing which will meet the necessary minimum standards of the present day and promote the health, safety and welfare of the people as set forth in Article ~~II~~ 2 of Chapter 6 of the Takoma Park Code, it is necessary and appropriate that the City define minimum respective rights and duties of landlords and tenants and provide mechanisms for the resolution of disputes between landlords and tenants.

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

Section 6-77. Purposes and Policies.

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

Section 6-78. Applicability.

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

Section 6-79. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

(l) **Dwelling Unit** shall mean any room or group of rooms located within a dwelling, ~~forming a single habitable unit and including cooking facilities. See also Section 6-76(y) of this Article, definition of rental unit.~~ providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

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

~~(dd)~~(n) **Family Member** of an owner of a dwelling unit shall mean any of the following:

(1) an owner's parents, grandparents, children or grandchildren, or their spouses or domestic partners; or

(2) an owner's spouse or domestic partner or the spouse's or the domestic partner's parents, grandparents, children or grandchildren, or their spouses or domestic partners.

~~(ee)~~(o) **Housemate** shall mean any person who lawfully occupies a rental unit or dwelling as a residence and where the housemate has an obligation to pay or share household expenses or to perform chores in lieu of rent for such accommodations.

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

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

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

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

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

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

~~(ff)~~(v) **Owner-occupied Group House** shall mean a dwelling which is occupied as the principal residence of an owner of the dwelling or a family member of an owner of the dwelling and by one or more non-family members or housemate.

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

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

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

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

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

~~(y)~~(bb) **Rental Unit** shall mean either a dwelling unit, including a single-family home or a rooming unit which has as its purpose occupancy by one (1) or more tenants, but shall not mean any rooming unit within an owner-occupied group house. See also Sections (l) and (cc) of this section, definitions of "dwelling unit" and "rooming unit."

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

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

~~(bb)~~(ee) **Serious Violation** shall, for the purposes of this Article, mean any violation designated in Section 6-16 of Article ~~II~~ 2, Chapter 6 of the Takoma Park Code, as amended, ~~as Serious,~~ which:

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

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

~~(cc)~~(ff) **Tenant** shall mean any person who lawfully occupies a rental unit or dwelling as a residence and where the tenant, housemate or some other person has an obligation to pay rent for such accommodations. "Tenant" shall not mean any owner-occupant of a dwelling or rental unit, any occupant of an owner-occupied group house (except that an occupant of a dwelling unit or an accessory apartment located in an owner-occupied group house shall be considered a tenant), any shareholder-occupant of a unit in a cooperative housing corporation or any employee (including a nanny, babysitter, au pair, maid, and the like) of an owner-occupant of a dwelling or rental unit.

Section 6-80. Lease Requirements.

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

(1) Acknowledges the landlord's responsibility to maintain the premises and incorporates by reference the standards of Article ~~II~~2, Chapter 6 of the Takoma Park Code as amended as a warranty of habitability.

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

(3) Requires written receipts for all cash, or money orders paid in person by the tenant to the landlord for rent, security deposits, and other payments. If a tenant requests a written receipt from the landlord for any payment sent by mail, the tenant shall provide a stamped, self-addressed envelope to the landlord.

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

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

(6) Provides for the reimbursement to the tenant for damage sustained by the tenant as a result of the negligence

of the landlord or the landlord's failure to comply with any applicable law.

(7) Informs the tenant in rental units subject to Rent Stabilization:

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

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

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

(8) Stipulates the Notice to Vacate Requirements as stated in Section 6-86:

(A) By Tenant - Tenant may terminate this lease at the expiration of the lease term or any extension thereof by giving the landlord one (1) month's written notice prior to the rent due date of intent to vacate.

(B) By Landlord:

(i) Landlord/Agent may terminate this lease without cause and repossess the premises at the expiration of a one-year lease term by giving the tenant three (3) months' written notice prior to the rent due date. In the case of a month-to-month tenancy, the landlord/agent may terminate this lease by giving the tenant two (2) months' written notice prior to the rent due date to quit and vacate.

(ii) ~~In the event of any default of the lease terms default on the part of the tenant, the~~ Landlord/Agent ~~shall~~ may give the tenant a one (1) month's written notice to vacate prior to the rent due date in the event of any breach of the lease terms on the part of the tenant.

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

(1) Establishes a penalty for late payment in excess of five percent (5%) of the amount of rent due for the rental period for which payment is delinquent,

or which allows for late fees to be charged less than ten (10) days after the date that rent is due.

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

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

Section 6-80.1. Lease Term Requirements.

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

(a) One Year Leases.

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

The landlord shall offer the tenant the opportunity to renew the lease for a term of one year ~~not more than~~ three (3) months prior to the expiration of the term stated herein with substantially the same covenants, terms and conditions, except for any lawful change in rent, except in cases where:

(A) The lease has been terminated in accordance with Section 6-86, by either party; or

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

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

this case, at the expiration of the lease, the lease term shall convert to a month-to-month tenancy.

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

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

(b) Leases for Other Than One Year.

Leases for other than one year may be established if:

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

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

Section 6-80.2. Leasing Fees.

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

Section 6-80.3. Rent Escalator Clauses (Applicable to those Units Subject to Rent Stabilization).

(a) For rental units subject to rent stabilization, ~~A~~ a landlord may incorporate a rent escalator clause~~,~~ into the lease providing for an increase or escalation in the rent ~~paid at the commencement of the tenancy,~~ to take effect on or after the anniversary date in the following circumstances:

(1) Occupied Rental Units. For occupied rental units, the landlord may provided in the lease for an increase in the rent to take effect on or after twelve full months from the date of the last rent increase ("anniversary date") for that unit. Such increase may not exceed the Rent Stabilization Allowance per Section 6-95.1(a) of this Article in effect at the time the increase is taken and/or the rent increase granted by the Commission pursuant to a capital improvement or hardship petition. ~~of execution of the lease.~~

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

(b) No such rent increase shall take effect as a result of a rent escalator clause without the landlord having first given the tenant(s) at least one (1) month, but no more than two (2) months written notice of the rent increase prior to the effective date of the rent increase. Such notice shall be in the form prescribed by the Department Regulations and shall be provided in addition to any notice of rent increase provided in the lease.

Section 6-80.4. Occupancy Restrictions.

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

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

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

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

Section 6-81. Obligations of Tenants and Landlords.

(a) Obligations of Tenants.

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

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

(2) Disposing all rubbish, garbage, recyclables as required by Chapter 10, Article 3, Section 10-21, and other organic and flammable waste from the rental facility in a clean and sanitary manner.

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

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

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

(6) Complying with all written rules which are consented to in writing by the tenant or which become effective after the onset of tenancy and are reasonably necessary for the peaceful enjoyment of other tenants, health, safety and welfare of people lawfully on the property or the preservation of the property. Any such written rules issued after the beginning of the tenancy shall become effective no sooner than one (1) month after the tenant receives written notice of them from the landlord~~.~~, except for those ~~Such~~ rules which materially affect the health or safety of people lawfully on the property shall become effective at such date deemed necessary by the landlord.

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

(8) Permitting any lawful inspection.

(b) Obligations of Landlords.

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

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

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

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

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

(4) Providing and maintaining appropriate receptacles and conveniences for the removal of ashes, rubbish, garbage and recyclables as required by Chapter 10, Article 3, Section 10-21 and arranging for the frequent removal of such materials.

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

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

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

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

(9) Ensuring that a durable notice is posted in an accessible, conspicuous, and convenient place in a common area in each rental facility (where such a common area

exists) and providing for the personal distribution of the notice to all tenants. Such notice shall contain:

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

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

Section 6-82. Entry.

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

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

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

~~(2) The landlord or authorized person shall enter the rental unit only with the tenant's consent.~~ The tenant's requirement that he or she be provided with advance forty-eight (48) hours written notice of the landlord's intent to enter the rental unit shall be presumed reasonable.

~~(3)~~ (2) The tenant shall not unreasonably withhold consent to enter. If the tenant has repeatedly and unreasonably withheld consent for the landlord or other person authorized to act on the landlord's behalf to enter the premises during normal business hours, including weekends, for any of the aforementioned purposes, the landlord or other person authorized to enter on the

landlord's behalf may enter after forty eight (48) hours written notice. If the landlord or other person authorized to act on the landlord's behalf enters under this forty eight (48) hours notice provision, the landlord or authorized person shall:

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

(B) Be present during such entry.

~~(4)~~(3) The landlord or authorized person shall afford the tenant the opportunity to be present at such entry. In cases where entry is to be made by some other person authorized to act on the landlord's behalf, the tenant may request the landlord's presence during such entry.

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

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

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

(1) Contain the following information:

(A) the date and time of such entry
(B) the time of departure
(C) the reason for the entry
(D) the work performed, if any
(E) the names of all individuals who entered the premises
(F) the address and telephone number of the Department

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

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

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

Section 6-83. Security Deposits.

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

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

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

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

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

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

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

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

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

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

Section 6-84 Fees.

(a) Fees charged by the landlord to any tenant for basic utilities or services, including but not limited to, fees for electricity, gas, water, air-conditioning, and trash collection, shall be for the actual amount. At the request of the tenant, the landlord shall provide the tenant with copies of the applicable bills, invoices, or other documentation from the utility or service provider and an explanation of how the fee to the tenant was computed. If the tenant has requested verification of a utility or service fee, the tenant shall not be obligated to pay such fee until the verification is provided to the tenant.

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

Section 6-85. Utilities or Service Transfer.

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

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

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

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

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

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

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

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

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

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

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

Section 6-86. Notice to Vacate.

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

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

(2) Notice to Vacate Without Cause. A landlord wishing to terminate a tenancy without cause and repossess a rental unit in the case of a month-to-month tenancy or any tenancy for a term of less than one year shall give the tenant, prior to the rent due date, two-month's written notice to vacate.

(3) Notice to Vacate at End of Lease. A landlord wishing to terminate a tenancy and repossess a rental unit in the case of a year-to-year tenancy or any tenancy for a term of one year or more shall give the tenant written notice three months prior to the rent due date before the expiration of the current year of the tenancy. The notice

must specify that the tenancy will terminate at the end of the lease term.

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

(1) Notice to Vacate at End of Term of Tenancy. A tenant wishing to vacate a rental unit in the case of a month-to-month or year-to-year tenancy shall give a landlord a one-month written notice prior to the rent due date of intent to vacate. Any lease provision that requires more than a one-month notice is invalid.

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

Section 6-87. Tenant Rights of Association.

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

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

(c) Tenants and tenant organizations shall have the right to distribute freely and post in centrally-located areas of a rental facility literature concerning landlord-tenant issues, provided the literature is properly identified as to its origin.

(d) Tenant organizations shall have standing to file complaints under any provision of this Article in a representative capacity on behalf of those tenants who have authorized such representation. Nothing herein shall be

construed to permit any tenant's organization to represent any tenant or class of tenants unless specifically authorized in writing to do so.

Section 6-88. Department Investigation and Conciliation.

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

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

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

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

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

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

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

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

(B) A Commission member who resigns, whose term expires, or who ceases to reside in Takoma Park, at the discretion of the Commission Chairperson, may continue as an inactive member of the Commission to complete

work on cases in which he or she participated as an active member of the Commission. This participation may include the approval and signature of Opinion and Orders released by the Commission.

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

(b) Commission Activities.

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

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

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

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

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

(c) Powers and Duties of the Commission.

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

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

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

investigation of any violations of this Article or of any complaints or petitions filed to the Commission.

Section 6-89.1. Commission Jurisdiction.

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

(a) Complaints

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

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

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

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

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

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

(a) Upon the filing of any Commission complaint, the Department shall make such investigation as it deems appropriate to ascertain whether there are reasonable grounds to believe that the allegation of conditions or violations over which the Commission has jurisdiction can be substantiated.

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

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

(A) Dismiss the complaint;

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

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

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

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

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

Section 6-89.3. Commission Hearings.

(a) Hearing Process.

(1) The Chairperson of the Commission is hereby authorized to designate three (3) active members of the Commission to sit as a panel to conduct a hearing on any complaint or petition pending before the Commission. The Chairperson shall designate one (1) panel member to serve as the Commission panel's presiding Commissioner. The

Chairperson of the Commission shall endeavor to rotate panel membership from time to time among active members of the Commission.

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

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

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

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

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

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

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

(b) Hearings on Complaints.

(1) In adjudicating Commission complaints under this Article, a Commission panel shall hold a fact-finding hearing.

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

(c) Hearings on Rent Increase Petitions.

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

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

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

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

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

Section 6-90. Commission Complaints and Remedies.

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

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

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

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

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

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

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

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

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

affected tenant may deduct the amount of the refund owed from the succeeding month or months rent (even if the rent to be paid is reduced to zero.)

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

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

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

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

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

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

Section 6-90.3. Complaints of Retaliatory Practices.

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

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

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

(b) Remedies. Where the Commission finds that a landlord has engaged in retaliatory action, the complainant tenant may be entitled to one (1) or more of the following remedies as ordered by the Commission:

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

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

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

Section 6-90.4. Complaints of Defective Tenancy.

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

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

(c) Remedies.

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

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

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

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

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

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

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

(B) Order, upon such termination of the lease and vacating of the rental unit, the return of the security deposit (in accordance with Section 6-83) and rental monies already paid to the landlord from the period the landlord was notified of the condition.

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

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

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

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

(4) Where the Commission finds that a tenant has caused a defective tenancy which has resulted in a substantial breach of the lease by the tenant, the Commission may, in addition to ordering other remedial action as appropriate, authorize the complainant landlord to immediately terminate the lease and gain possession of the premises in accordance with the Real Property Article of the Annotated Code of Maryland, as amended.

Section 6-91. Rent Increase Petitions for Units Subject to Rent Stabilization.

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

(1) Actual and Reasonable Interest shall mean the annual percentage rate (APR) based on compounding interest methods using a constant annual interest rate percentage and a monthly payment schedule over the amortization period.

~~*(1)*~~ *(2) Adjusted Net Operating Income* shall mean the net operating income adjusted from the base year to the petition year by a percentage of the Consumer Price Index.

~~*(2)*~~ *(3) Base Year Net Operating Income* shall mean the net operating income generated by a rental facility during the base year.

~~*(3)*~~ *(4) Base Year* shall mean the year that has been established for the purpose of calculating a change in the net operating income.

~~*(4)*~~ *(5) Capital Improvement* shall mean materials and/or labor that have been added to a rental facility that are not annually recurring and that have a useful life of more than one year.

~~*(5)*~~ *(6) Capital Improvement Petition* shall mean a petition filed by a landlord in order to request a rent increase pursuant to a past or planned capital improvement.

~~*(6)*~~ *(7) Hardship Petition* shall mean a petition filed by a landlord in order to maintain the rental facility's net operating income.

~~*(7)*~~ *(8) Net Operating Income* shall mean the rental income generated by a property less the operating expenses

incurred pursuant to Section 6-91 of this Article, during a base or petition year.

~~(8)~~ (9) *Operating Expenses* shall mean all expenses incurred during a base or petition year, except for those expenses excluded by Section 6-91 of this Article.

~~(9)~~ (10) *Petition Year* shall mean the calendar year, or a fiscal year consisting of a consecutive 12-month period occurring within the 15 months preceding the date of the filing of the petition.

~~(10)~~ (11) *Rent Increase Petition* shall mean a petition by a landlord to raise rents above the rent stabilization allowance and includes both hardship petitions and capital improvement petitions.

~~(11)~~ (12) *Rental Income* shall mean the total collectable income from the rental facility from all sources, less the allowable vacancy loss established in Section 6-91 (c)(5)(F)~~(i)~~.

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

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

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

(c) Rent Increases Pursuant to a Hardship Petition.

(1) Purpose of Section. The purpose of this Section is to protect tenants from unwarranted rent increases, while also allowing rent levels which provide landlords with a fair return on their investment. This Section is designed to allow increases in the landlord's rental income only when the landlord demonstrates that the net operating income in the base year is larger, after adjusting for inflation

pursuant to Section 6-91 (c)(8), than the net operating income in the petition year.

(2) Net Operating Income. The net operating income for a rental facility for either base year or petition year shall be the actual income, including rents and other considerations, less the allowable operating expenses incurred, pursuant to Section 6-91 (c)(5).

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

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

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

(C) The base year net operating income shall be adjusted by the Commission if the landlord shows by competent evidence that the base year net operating income was exceptionally high or low in comparison to other years the rental facility was in operation. In such instances, the Commission may make adjustments to reflect average expenses for the rental facility over a reasonable period of time. A landlord who demonstrates to the Commission that rents were not increased by the full rent stabilization allowance since February 2, 1992, (effective date of this Article) in order to protect existing tenants shall have the net operating income adjusted to reflect full possible income available to the landlord had the full rent stabilization allowance increases been taken.

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

stabilization base year shall be 1987, and the landlord shall provide the Commission with data for income and expenses for 1987.

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

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

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

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

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

(B) The beginning and ending dates of the consecutive 12-month period, if other than January 1 to December 31, 1990, during which the landlord seeks to have the base date established. This period shall be considered the base year.

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

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

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

(F) The dates that the proposed rent increases are to go into effect; the effective dates of the proposed rent increases shall not be more than 14 months after the filing of the petition.

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

(A) Utilities;

(B) Administrative expenses;

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

(ii) Landlords who manage their own properties may deduct up to 6 percent of maximum rental income for management fees. Landlords who perform labor at the property shall document the times and nature of such labor. The landlord shall be allowed reasonable compensation for the labor performed at an hourly rate for skilled and unskilled labor, to be established by the Commission's Regulations. If the landlord wishes to be compensated for skilled labor, the landlord must provide evidence showing the necessary experience and skills for the job performed.

(C) Operating and maintenance expenses;

(D) Payroll;

(E) Taxes and insurance payments;

(F) Uncollected rents and vacancy losses;

Vacancy losses shall not be more than five percent (5%) of the maximum rental income, unless good cause can be shown why the vacancy rate is higher than five percent. Good cause shall be determined at the Commission's discretion.

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

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

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

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

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

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

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

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

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

(G) Contributions to lobbying efforts;

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

(I) Political contributions for candidates for office;

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

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

(L) Attorney's fees charged for services connected with counseling or litigation related to actions brought by the City due to the landlord's failure to comply with applicable housing regulations or Chapter 6 (Housing) of the Takoma Park Code, as amended. This provision shall apply unless the landlord has prevailed in such an action brought by the City.

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

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

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

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

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

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

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

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

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

(8) After the Commission's adjustments to the landlord's original figures listed on the petition, the

Commission shall calculate the landlord's base year net operating income by subtracting all allowable expenses approved for the base year from the landlord's income during the base year. The Commission shall then make an upward adjustment of the base year net operating income by fifty (50%) percent of the Consumer Price Index in order to calculate the allowable petition year net operating income. If the landlord's petition year documentation shows that the petition year net operating income is less than the adjusted base year net operating income, the Commission shall allow rents to be adjusted upwards to result in a net operating income equal to the adjusted base year net operating income. Landlords who have paid no mortgage expenses from the base year to the petition year shall receive an upward adjustment of the base year net operating income by one hundred (100%) percent of the Consumer Price Index.

(9) Rollback of Rents if Hardship Not Demonstrated. If, upon consideration of a landlord's hardship petition the Commission finds that the landlords' adjusted base year net operating income is less than his actual petition year net operating income, and that the landlord's hardship petition was filed in bad faith, the Commission may require the landlord to roll back the rents charged on the rental units covered by the petition to result in a net operating income equal to the adjusted base year net operating income.

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

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

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

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

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

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

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

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

(i) Miscalculations and simple mathematical errors;

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

(D) The Commission shall verify the information upon which it makes its findings of bad faith and shall issue a decision clearly stating the basis for its finding. The landlords shall be required to notify all tenants affected by the rent rollback and, if the landlord was permitted to increase rents by the rent stabilization allowance pending a decision on the hardship petition, all rent increases so collected shall be refunded to the affected tenants within thirty (30) days. If the landlord fails to rollback the rents or fails to refund the rent increases collected, the affected tenants may begin paying the rolled back rent or may deduct any rent refunds or rollbacks owed the tenants in accordance with Section 6-90.1(b)(1) of this Article.

(d) Petitions for Rent Increases for Capital Improvements.

(1) Purpose. Landlords may petition the Commission for rent increases over the amount permitted by the rent stabilization allowance established in Section 6-95.1 in order to recover the costs of installing, maintaining, and future improvements replacement of capital improvements. These costs must be amortized according to the amortization schedule in the Commission's Regulations. Rent increases following a capital improvement petition shall have the effect of reimbursing landlords, over time, for the costs of capital improvements as well as their future repair and replacement.

(2) Definition of Capital Improvement. A capital improvement shall be any improvement to a rental unit or

useful life of more than one year, which is not annually recurring in nature, and which has a direct cost of $200 or more per unit affected, or $2,500, whichever is less.

(3) No capital improvement item may be petitioned for or granted for a rental unit or rental facility more than one time unless, upon a landlord's written request and for good cause shown, the Commission determines that another petition and rent increase is warranted for the same capital improvement item.

~~(3)~~ (4) The rent levels for a rental unit or rental facility shall be raised to reflect the amortized costs of planned or completed capital improvements to the rental unit or property, where such capital improvements:

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

(B) Are provided to maintain the rental unit or rental facility in good physical condition and to maintain services provided to tenants.

~~(4)~~ (5) *Amortized Cost.* The annual amortized cost of a capital improvement shall be calculated according to the following formula: the reasonable cost of the capital improvement, plus the cost of financing, divided by the appropriate amortization period for that improvement. The annual amortized cost shall then be divided by twelve (12) to calculate the monthly cost to the affected units, then divided among the units in a manner consistent with the amenities or improvements made to each unit.

~~(5)~~ (6) *Cost of Financing.* The cost of financing a capital improvement shall be the actual and reasonable amount of interest and other charges paid to the lender in connection with a loan taken to finance the capital improvement.

~~(6)~~ (7) *Imputed Financing.* If a landlord has financed the capital improvement with her or his own funds, the cost of financing shall be deemed to be the amount of financing costs the landlord would have incurred had the landlord financed the capital improvement with a loan for the

amortization period of the improvement, at an interest rate equal to the prime rate in effect at the time of construction or installation of the capital improvement, plus two percent (2%), per annum.

~~(7)~~ *(8)* *Amortization Schedule.* The cost of a capital improvement shall be amortized according to the amortization schedule established in the Commission's Regulations. For capital improvements not listed in the schedule, the Commission shall determine a reasonable amortization period. The amortization period for a capital improvement shall begin at the time a rent increase granted by the Commission goes into effect, or upon completion of the capital improvement, whichever occurs later. The filing of a petition shall stop the amortization period until the decision on the petition goes into effect.

~~(8)~~ *(9)* *Expiration of Amortization Period.* ~~Notwithstanding any other provision of these regulations, a~~ A rent increase granted under this Section shall not be adjusted downward per the amortization schedule ~~by the amount of any prior upward rent adjustment attributable to a capital improvement granted under this Section~~ after the end of the time period over which the cost of that ~~prior~~ improvement was amortized.

~~(9)~~ *(10)* *Future Improvements.* In order to encourage capital improvements, a landlord may petition for an upward rent adjustment in advance of the improvement. Such a petition will be based upon the anticipated future cost of the capital improvement(s). If the adjustment is granted in whole or in part, it shall not take effect until the capital improvement is completed, and its actual costs and completion is documented to the Commission.

~~(10)~~ *(11)* The following information shall be included in the petition for a rent increase pursuant to capital improvements:

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

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

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

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

~~(11)~~ *(12) Filing Dates.* A petition for a rent increase for capital improvements may only be filed with the Commission six (6) months before the capital improvements are expected to be installed in the rental facility, or within six (6) months after the capital improvements are installed in the rental facility. Landlords who file rent increase petitions more than six months before or after the capital improvements are installed may include the annual amortized amount in a hardship petition, pursuant to Section 6-91(c) of this Article.

(A) Capital improvements which are installed due to the need for immediate repair may be included on a capital improvement petition up to one (1) year after the installation of the improvement.

(B) Landlords who file rent increase petitions outside the time period for inclusion in a capital improvement petition may include the annual amortized amount in a hardship petition, pursuant to Section 6-91(c) of this Article.

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

(1) Cost of Refinancing. Landlords shall be permitted to include in a rent increase petition the cost of refinancing a loan secured by the rental facility when the refinancing is required due to the terms and conditions of the original loan or due to business necessity outside of the control of the owner(s). The cost of refinancing shall be amortized over the life of the new loan and included in a hardship petition pursuant to Section 6-91(c).

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

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

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

(D) A petition for a rent increase under Section 6-91(e)(1) shall be filed with the Commission within one (1) year after the date on which the mortgage facility is refinanced.

(2) Interest Rate Increases. If a landlord demonstrates that the interest rate on a loan secured by the rental facility has increased by three (3) or more percentage points from the base year to the petition year, the landlord may include the interest expense on a hardship petition.

(A) The portion of rent increases granted under this Section shall be known as rent surcharges, and shall be adjusted pursuant to changes in the interest rate on a mortgage secured by the rental facility.

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

(C) Rent surcharges granted under this Section shall not form the basis of calculating maximum allowable rent, and rent increases granted under Sections 6-91(c), 6-91(d), or 6-91(e)(1), and allowable under Section 6-95.1 (Rent Stabilization Allowance) shall be taken on the maximum allowable rent only.

(D) Any rent surcharge granted under this Section due to an increase in the interest rate on a loan secured by the rental facility shall be for the period of the loan interest rate adjustment, but not less than one year, and shall be adjusted pursuant to the period of the loan interest rate adjustment, but not less than one year, when the landlord demonstrates that the interest rate on the loan has not decreased to less than three (3) percentage points above the interest rate paid on the loan during the base year. The rent surcharge shall be adjusted as follows:

(i) If the interest rate remains within one percentage point of the interest rate in the petition year, the landlord may continue to charge the rent surcharge.

(ii) If the interest rate on a loan secured by the rental facility decreases by one (1) percentage point or more from the interest rate in effect during the petition year, the maximum allowable rents at the rental facility shall be maintained, and no rent increases granted under Section 6-91 or allowable under Section 6-95.1 shall be taken, until the amount of the rent surcharge attributable to the interest rate decrease has been offset.

(iii) If the interest rate again rises by more than one percentage point after an offset has been in effect pursuant to Section 6-91(e)(2)(D)(2), the rent surcharge shall be adjusted upward accordingly by the amount attributable to the interest rate change. However, if the interest rate rises beyond the interest rate in the petition year, no further extraordinary rent surcharges may be taken unless the landlord files an additional hardship petition.

(iv) If the interest rate on a loan secured by the rental facility decreases to less than three (3) percentage points above the interest rate paid on the loan during the base year, the maximum allowable rents at the rental facility shall be maintained, and no rent increases shall be taken, until all rent surcharges taken under this Section have been offset. No further upward adjustments shall be made after the interest rate on the loan decreases to less than three (3) percentage points above the interest rate paid during the base year, unless the landlord files a subsequent hardship petition.

(E) If the interest rate on the loan in the base year is computed using a different formula or method than is used to compute the interest rate in the petition year, the interest rate in the base year shall be recomputed using the same formula used to calculate the interest rate in the petition year. The recomputed interest rate shall be used to calculate the interest expense in the base year.

(F) Notwithstanding the base year that has been established to calculate a hardship petition for the rental facility pursuant to Section 6-91(c), the base year for the purposes of calculating a rent surcharge due to interest rate increases from the base year to the petition year shall be 1990, or the year the landlord acquired the rental facility, whichever is later.

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

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

(2) The landlord may begin charging additional rent, not to exceed the rent stabilization rate in effect, on the effective dates of the increase.

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

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

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

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

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

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

(8) When two rent increase petitions are filed within a one-year period and the second petition includes a request for a rent increase on a rental unit listed in the first petition, then no rent increase on that unit shall have an effective date earlier than twelve (12) months after the date of the last rent increase.

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

(1) Until the properly completed petition form, including supporting documentation, has been submitted to the Commission;

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

(3) When the landlord has not filed required rent reports for the three (3) years prior to the filing date of the petition with the Department; provided that the Commission may, at its discretion, waive the above requirement for good cause shown;

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

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

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

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

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

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

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

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

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

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

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

(c) In addition to the enforcement provisions under applicable laws, any award of damages not paid when due may be

enforced by the party to whom the award was granted in a court of competent jurisdiction, and the court is authorized to grant judgment for such damages plus interest from the date payment was due.

Section 6-92.2. Interim Order.

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

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

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

Section 6-92.3. Commission Consideration.

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

Section 6-93. Reconsideration and Appeals.

(a) Appeals. Any person aggrieved by a final Opinion and Order of the Commission on a complaint or the final Order of the Commission on a petition (hereinafter jointly referred to as ("Opinion and Order") may file ~~an Order for Appeal with the Clerk of~~ a Petition for Judicial Review in the Circuit Court of the appropriate county. The procedures for an appeal from the Opinion and Order of the Commission shall be governed by ~~Subtitle B (Administrative Agencies - Appeal From)~~ Title 7, Chapter 200

(Judicial Review of Administrative Decisions) of the Maryland Rules, as amended.

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

(2) ~~Service on~~ Notice to the Commission. ~~Prior to filing an Order for Appeal with the Circuit Court, the person~~ Upon filing the Petition for Judicial Review, the petitioner shall ~~serve~~ deliver a copy ~~thereof on~~ of the petition for the Commission to the Clerk of the Circuit Court who shall promptly mail a copy of the petition to the Commission informing the Commission of the date the petition was filed and the civil action number assigned to the action for judicial review.

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

(b) Reconsideration.

(1) Motion to Clarify, Reconsider or Amend an Opinion and Order. On motion of any party filed within ten (10) days of the date of an Opinion and Order of the Commission or, at any time for a compelling reason at the request of a governmental agency or court of competent jurisdiction, the Commission may open the Opinion and Order to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the Order, or may enter a new Order. A motion to alter or amend an Opinion and Order shall stay the time for filing an appeal until the Commission rules on the motion.

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

(3) Fraud, Mistake, Irregularity. On motion of any party filed at any time, the Commission may take any action

that it could have taken under Section 6-93 (b)(1) in case of fraud, mistake or irregularity.

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

Section 6-94. Reporting Requirements for Rental Units Subject to Rent Stabilization.

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

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

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

Section 6-95. Review of Rent Stabilization.

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

Section 6-95.1. Rent Stabilization Allowance.

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

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

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

(2) Any accessory apartment.

(3) Any one (1) rental unit provided that the landlord owns no more than one rental unit in the City of Takoma Park.

(4) Any owner-occupied group house.

Section 6-96. Increases in Rent.

(a) Annual Rent Increases for Rental Units Subject to Rent Stabilization

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

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

(b) Allowable Additional Rent Increases for Rental Units Subject to Rent Stabilization

(1) Notwithstanding the provisions of Section 6-96(a) if a rental unit becomes vacant as a result of a termination of the tenancy by the tenant or a termination of the tenancy by the landlord for cause, a landlord may increase the rent for such rental unit by the actual dollar amount of any annual Rent Stabilization Allowances which were not charged ~~to the tenant vacating the rental unit.~~ for to the unit from February 2, 1992 to the present. This rent increase may be in addition to any Rent Stabilization Allowance increase which the landlord may impose on or after twelve (12) months from the date of the last Rent Stabilization Allowance increase for that rental unit.

(2) During the pendency of a hardship petition or capital improvement petition to increase rents above the Rent Stabilization Allowance, rent increases up to the Rent Stabilization Allowance may be taken on the rental units which are the subject of the petition on or after the anniversary date of the last rent increase. If an additional rent increase pursuant to a petition is subsequently approved by the Commission, ~~it~~ a second increase may be taken pursuant to the terms and the

conditions of the administrative decision and final Order and may be retroactive to the date indicated in the notices of rent increases to the tenants.

(c) Notice of Annual Rent Increases for all Rental Units

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

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

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

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

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

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

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

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

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

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

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

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

Section 6-97. Violations.

(a) The following shall be municipal infractions:

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

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

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

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

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

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

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

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

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

Section 6-98. Enforcement Authority and Penalties.

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

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

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

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

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

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

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

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

Section 6-99. Statute of Limitations.

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

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

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

SECTION 2. This Ordinance shall be effective immediately.

Adopted this ____ day of _____, 1997, by roll-call vote as follows:

Aye:
Nay:
Abstain:
Absent: