

Introduced by: Councilmember Clay

First Reading: November 22, 2010  
Second Reading: November 29, 2010  
Effective Date: December 20, 2010

**CITY OF TAKOMA PARK, MARYLAND  
ORDINANCE NO. 2010-51**

**AMENDING THE *TAKOMA PARK CODE* TITLE 2, ADMINISTRATION  
(CHAPTER 2.12, ADMINISTRATIVE REGULATIONS) AND TITLE 4, PERSONNEL  
(CHAPTER 4.04 CIVIL SERVICE AND CHAPTER 4.08 COLLECTIVE BARGAINING)**

**WHEREAS,** the City Council has reviewed certain sections of the *Takoma Park Code* related to personnel regulations; and,

**WHEREAS,** the City Council has determined that amendments to Chapters 2.12, 4.04 and 4.08 of the Code are appropriate in order to delete obsolete sections, to revise or delete conflicting sections and sections that conflict with the union contracts, and to facilitate the City's ability to establish, organize, and administer personnel regulations in a coherent manner.

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

**SECTION 1.** Title 2, Chapter 2.12 of the *Takoma Park Code* is amended as follows:

**Title 2 ADMINISTRATION**

**Chapter 2.12 ADMINISTRATIVE REGULATIONS**

**2.12.010 Scope.**

- A. The provisions of this Chapter apply to all regulations, unless otherwise provided.
- B. Regulations promulgated by the Police Chief may be exempted from this Chapter at the sole discretion of the City Manager upon consultation with the Police Chief.
- C. The Council is not an agency, and actions of the Council are not subject to the requirements of this Chapter.

**2.12.020 Definitions.**

“Agency” means the City of Takoma Park, Maryland, or any of its subdivisions, including but not limited to any City board, commission, committee, officer or department.

“External regulations” mean regulations that pertain to procedures and policies that directly affect the citizens of the City or those doing business with the City.

“Internal regulations” mean regulations that specifically pertain to the procedures, policies or the implementation of legislation relating to the City government’s internal matters. Such matters include but are not limited to office procedures of ~~the Mayor, the Council,~~ the City Manager or any City agency or subdivision thereof and to ~~certain~~ personnel procedures or policies.

“Regulation” means any agency order, directive or statement of general or particular applicability and future effect designed to implement or interpret law or policy, including an amendment or repeal of a prior regulation.

**2.12.030 Authority.**

A. Express and Implied Authority. If an agency is authorized to implement or enforce an ordinance or law, the agency may adopt regulations to implement or enforce that ordinance or law, even if the authority to adopt the regulations is not expressly stated.

B. Department and City Manager Approval. All proposed regulations and proposed final regulations shall have the written approval of the appropriate agency official, ~~as well as the approval of and~~ the City Manager. For proposed external regulations, such approval must be obtained prior to issuance of public notice. A regulation shall be valid even if not be invalid because the City Manager or appropriate agency official has not indicated his or her approval in writing.

**2.12.040 Single subject and readability requirements.**

A regulation should pertain to only one subject. A regulation should be written in plain language.

**2.12.050 External regulations.**

A. Notice of proposed regulation.

~~A.~~ 1. Publication of Notice. An agency shall publish notice in the Takoma Park Newsletter prior to the adoption, amendment or repeal of any regulation. The agency shall distribute the notice to the Council no later than one week prior to the date of publication.

~~B.~~ 2. Publication of Additional Notice. An agency, exercising its discretion, may also publish additional notice in any neighborhood, civic, professional, trade or industrial publication or in any newspaper of general circulation.

~~C.~~ 3. Comment Period. Following notice of a proposed regulation, there shall be a minimum period of 21 days for comment on the proposed regulation. Council members

may comment on any proposed regulation during the comment period provided in the public notice. At any time before the expiration of the comment period established by the notice, the Council may elect to hold a public hearing on a proposed regulation. The hearing shall be held within 30 days of the end of the comment period, unless the comment period ends while the Council is in recess, in which case, the hearing shall be held within 30 days of the end of the recess. If the Council schedules a public hearing, the public comment period is extended until the date of the public hearing. Based on information from the public hearing or other public or Council comments, the Council may direct the agency to withdraw or modify the proposed regulation.

~~D.~~ 4. Publication of Notice, Exception. Notice does not have to be published in the Takoma Park Newsletter if all persons subject to the proposed regulation are named and either personally served or otherwise given actual notice in accordance with law. The agency shall distribute the notice to the Council no later than one week prior to the date of service of the notice on any person subject to the proposed regulation.

~~E.~~ 5. Content of Notice. In the original published notice, an agency shall either accurately summarize the substance of the proposed regulation and the subject and the issues involved or set forth in the full text of the proposed regulation. If the proposed regulation is summarized, an agency shall state the place where the full text is available. If a hearing will be held, the place, date and time of the hearing shall be stated. The notice shall solicit public comment. The notice shall also contain the requirements or procedure for submitting any written comments; the name, address and telephone number of a contact person who can provide further information; the deadline for receipt of comments and the name, address, and telephone number of the person to whom comments may be directed; any other pertinent deadlines; and the citation of the authority to promulgate the proposed regulation.

**~~2.12.060 Consideration by agency.~~**

B. Consideration by agency. An agency shall consider the comments submitted in response to the notice in Section 2.12.050. The weight given to the various comments is within the discretion of the agency. The Agency will revise the proposed regulation in accordance with the Council's directions pursuant to Section ~~2.12.050(C)~~ 2.12.050(A)(3).

**~~2.12.070 Proposed final regulation—Final action.~~**

C. Proposed final regulation – Final action.

~~A.~~ 1. After consideration of any comments upon a proposed regulation and compliance with the directions of the Council, an agency may adopt proposed final regulations. The agency shall ~~issue~~ submit a copy of the proposed final regulation to the City Manager for approval. Upon approval, the City Manager shall issue the proposed final regulations to the Council.

~~B.~~ 2. The Council may modify or withdraw a proposed final regulation at the next Council meeting, work session, or special session following the issuance of the proposed final regulation. The Council's modification or withdrawal of the proposed final regulation shall be the final action on the regulation.

~~C.~~ 3. If the Council takes no action on the proposed final regulation, the proposed final regulation shall become the final action on the regulation.

**~~2.12.080~~ Publication of notice of final action.**

D. Publication of notice of final action.

~~A.~~ 1. In the issue of the Takoma Park Newsletter that follows the final action taken on a proposed regulation, an agency shall publish notice of the final action taken on the proposed regulation. The notice of the final action taken is published at least 10 days before the effective date of the final regulation.

~~B.~~ 2. If the proposed regulation becomes final, an agency may publish or make available a summary response to public comments received.

~~C.~~ 3. If the proposed regulation becomes final, an agency shall:

1. a. Cite the issue of the Takoma Park Newsletter that contains the notice of the proposed regulation, if there is no substantive difference between the proposed regulation and the final regulation.

2. b. If the agency makes any substantive change to the proposed regulation before it is final, the agency shall publish either a summary of the changes and state the place where the full text is available, or it may set forth the full text of the final regulation with a summary of the changes.

~~D.~~ 4. An agency may withdraw the proposed regulation any time before the regulation becomes final.

**2.12.090 Internal regulations.**

A. The provisions of the Administrative Regulations Ordinance shall apply to all internal regulations except that:

1. Internal regulations do not require ~~prior~~ notice to the public.

2. An agency may solicit comments from the staff members who will be affected by the proposed internal regulations.

B. There is a ~~30-day~~ 30-day waiting period from the date an internal regulation is ~~proposed~~ distributed until it becomes effective, unless immediate implementation is necessary under County, State, or Federal law, or if the regulation addresses safety-related, time-sensitive, or minor procedural matters.

C. Internal regulations will be made available to all affected personnel but need not be published in Takoma Park regulations, established by Section 2.12.130 of this Chapter.

\* \* \*

### **2.12.110 Repeal and modification of regulations by the Council.**

A. The Council may, by resolution, repeal any final or emergency regulation.

B. The Council may, by resolution, instruct the City Manager to modify the final regulation as the Council deems necessary.

### **2.12.120 Delegation of regulation authority.**

In lieu of enacting an ordinance, the Council may delegate by resolution to the City Manager the function of promulgating regulations designed to implement an action authorized by an ordinance or law, provided, however, that the Council shall delegate only executive functions and shall not attempt to delegate its legislative power to an agency. Following final adoption of any regulations, the Council may repeal any ordinance or Code provisions that duplicate the final regulations.

\* \* \*

### **2.12.140 Review of regulations.**

If deemed necessary, the City Manager may conduct a review of the regulations for the purpose of determining whether the regulations should be repealed or amended.

\*\*\*\*\*

**SECTION 2.** Title 4, Chapter 4.04 of the *Takoma Park Code* is amended as follows:

#### **Title 4 PERSONNEL**

#### **Chapter 4.04 CIVIL SERVICE**

#### **Article 1. Administration**

#### **4.04.010 Purpose.**

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

#### **4.04.020 Employees' Personnel Committee.**

~~\_\_\_\_\_ A. In furtherance of Section 4.04.010 above, there shall be established an Employees' Personnel Committee. The Committee shall be comprised of one employee representative from each department and division, to be elected by their representative departments and divisions. The Committee shall meet monthly with representatives of City administration to review any proposals that would impact employees. The monthly meetings may be deferred upon mutual agreement of Committee members and administration representatives. The full Committee may be broken down into smaller subcommittees to accommodate meetings on specific issues.~~

~~\_\_\_\_\_ B. Specific guidelines for the functioning of the full Committee and its subcommittees shall be set forth for consideration and approval by the Mayor and Council.~~

~~\_\_\_\_\_ C. The Mayor and Council shall consider the recommendations of the Committee when making decisions that would impact employees.~~

#### **4.04.030 Responsibilities of personnel officer.**

A. The City ~~Administrator~~ Manager is the personnel officer. In this capacity, the City ~~Administrator~~ Manager bears the responsibility of administering all personnel matters. The City ~~Administrator~~ Manager may delegate his or her authority in personnel matters to an ~~assistant~~ an appropriate designee.

B. The City ~~Administrator~~ Manager may adopt regulations to implement the personnel system. The regulations must be consistent with the laws of the City and must further the purpose of the personnel system.

~~\_\_\_\_\_ C. The City Manager shall have the authority to adopt internal regulations with respect to personnel policies or procedures, as set forth in Chapter 2.12 of this Code, so long as such policies and procedures do not conflict with provisions of this Code or with State or Federal law.~~

#### **4.04.040 Responsibilities of employee.**

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

#### **4.04.050 Applicability of regulations.**

The provisions of this chapter apply to all employees of the City, unless the provisions conflict with or are inconsistent with State or Federal legislation or a written contract of employment.

**~~4.04.060 Adoption of administrative regulations.~~**

~~— The City Administrator must use the following procedures when adopting regulations relating to personnel matters:~~

~~— A. — Except for emergency regulations, the City Administrator must publish a notice of proposed regulations in the Takoma Park Newsletter. If the newsletter is not published, the notice of proposed regulations must be published in another publication that is widely distributed in the City. The City must make copies of the newsletter or other publication available to every employee.~~

~~— B. — The newsletter, or other publication, must contain a deadline and a procedure for submitting written comments on the proposed regulations. The deadline must be at least 21 days after the proposed regulations are published.~~

~~— C. — The City Administrator must review all of the written comments that are submitted before adopting the proposed regulations. The City Administrator may adopt the regulations as proposed or with amendments.~~  
(Prior code § 8B-106)

\* \* \*

**SECTION 3.** Title 4, Chapter 4.08 of the *Takoma Park Code* is amended as follows:

**Title 4 PERSONNEL**

**Chapter 4.08 COLLECTIVE BARGAINING**

\* \* \*

**4.08.020 Definitions.**

In this chapter, the following terms have the meanings indicated:

~~Appropriate Bargaining Units.~~ There ~~shall be 2~~ are two “~~appropriate bargaining units~~” among the employees of the City of Takoma Park, as follows:

1. All sworn police officers except for Police Department management and supervisory personnel and confidential employees;

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

“Confidential Employee” means an employee who has regular access to privileged information regarding personnel management or labor policies through the employee’s duty to assist:

1. The Mayor or a Councilmember;
2. The City ~~Administrator~~ Manager or ~~Assistant Deputy City Administrator~~ Manager; or
3. A department head or assistant department head.

“Employee” means any person who legally occupies a position in the City’s classified service ~~which~~that:

1. Requires work on a continuous basis for a minimum of 20 hours per week; or
2. Is allocated to the class of crossing guard.

“Employee organization” means any lawful organization ~~which~~that admits municipal employees to membership, the primary purpose of which is to represent employees concerning terms and conditions of employment. An organization that practices a policy of illegal discrimination or that fails to accord its members the basic principles and procedures of internal democracy under Section 4.08.040 is not an “employee organization.”

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

“Employer” means the City of Takoma Park.

Employer Rights. Subject to the provisions of this chapter, it is the exclusive right of the employer to establish or determine the mission of the departments of City government, set standards of service to be offered to the public, classify jobs under Chapter 4.04 of this title, exercise control and direction over its organization, operations and budget and establish merit system principles ~~which~~that will guide its personnel actions.

“Grievance” means a dispute that:

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

2. Affects the terms and conditions of employment.

“Management and supervisory personnel” means any employee who:

1. Serves at the pleasure of the Mayor and Council;

2. Acts as a representative of the City in collective bargaining;

3. Is the personnel officer for the City;

4. Is the director or assistant director of a department;

5. Is a sanitation, shop or street supervisor in the Department of Public Works;

6. Is a uniformed police officer at the rank of Sergeant or above; or

7. Is the City ~~Administrator~~ Manager, ~~Assistant Deputy City Administrator~~ Manager, City Clerk, ~~Deputy Assistant City Clerk~~, ~~Economic and Community Development Coordinator~~ or ~~Accounting Supervisor~~ Senior Account Clerk.

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

“Terms and conditions of employment” means all terms and conditions ~~which~~that establish, affect or control pay, fringe benefits, retirement and pension benefits, attendance and leave, promotions, transfers, layoffs, demotions, termination, discipline, evaluation, professional development, workload, work schedule or health and safety, and those items ~~which~~that both parties agree to negotiate. Terms and conditions must be consistent with Federal, State and local law, and must not be excluded under the prerogative of “employer rights,” under this section.

**4.08.030 ~~Employer to meet with employee representatives~~ Management and supervisory personnel.**

Management and supervisory personnel and confidential employees have the right to form an employee organization ~~which~~that represents their interests and is recognized as their exclusive representative. The employer shall provide such organization an opportunity to participate in the formulation and implementation of policies and practices affecting the conditions of the

employment of these employees. None of the other provisions of this chapter apply to these employees or an employee organization established under this section.

\* \* \*

#### **4.08.060 Collective bargaining negotiations.**

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

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

C. City's Representative. A duly appointed designee shall act as the City's primary representative for the purpose of conducting any negotiations or other relationships between any recognized employee organization and the City government.

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

E. Grievance Procedure in Agreement. An agreement may contain a grievance procedure culminating in final and binding arbitration of grievances and disputed interpretations of such

agreement. The grievance procedure shall set forth requirements for an election of remedies where other avenues of appeal may be equally available.

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

G. Submission of Agreement to Council. A request for funds necessary to implement such written agreement and for approval of any provision of the agreement ~~which that is in conflict with~~ differs from any City law, ordinance, rule or regulation shall be submitted to the City Council by the employer within the time schedule provided in the agreement. The City Council may approve or reject such request as a whole. If the submission is rejected, the entire agreement shall be returned to the parties for further bargaining, and either party may reopen all or part of the agreement. If the Council rejects a request, it must give the parties a detailed statement of the reasons for rejecting the request, so that the parties may be properly guided when they resume bargaining. Such request shall be considered accepted if the Council fails within 30 days after submission to said body to take final action thereon. Failure by the employer or his or her representative to submit such request within the designated time period shall be considered an unfair labor practice committed by the employer.

H. Conflicts Between Agreement and Rules or Regulations. If, upon approval of the City Council, pursuant to subsection (G) of this section, there is a conflict between the collective bargaining agreement and any rule or regulation adopted by the employer, including a merit system or other personnel regulations, the terms of such agreement shall prevail, except where specifically precluded by the Charter or State law. ~~Similarly, †~~ The City Council, upon approval of such agreement, should enact such legislation and appropriate whatever funds are required to comply with the collective bargaining agreement. Any agreement is dependent upon the City's receipt of the revenues projected by the City as necessary for implementation of the agreement. If projected revenues fall below the level needed to fund any agreement, the City will provide notice of any revenue shortfall, and the City Manager, after conferring with the City Council, may request renegotiation of the fiscal terms of the agreement. Failure to enact the legislation and appropriate necessary funds is an unfair labor practice under Section 4.08.090(A).

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

\* \* \*

Adopted this 29th day of November, 2010 by roll-call vote as follows:

Aye: Williams, Clay, Robinson, Seamens, Snipper, Schultz  
Nay: Wright  
Absent: None  
Abstain: None

**Explanatory notes:**

Additions to the existing language of the Takoma Park Code are shown by underlining.

Deletions to the existing language of the Takoma Park Code are shown by ~~striketrough~~.

\* \* \* \* indicates language of the Takoma Park Code that is not reproduced in this Ordinance and that is not being changed.