

Introduced by: Councilmember Schultz

First Reading: October 17, 2011

Second Reading: October 24, 2011

Effective Date: November 14, 2011

CITY OF TAKOMA PARK, MARYLAND

ORDINANCE NO. 2011-46

Amending *Takoma Park Code* Chapter 2.12, Administrative Regulations

WHEREAS, Chapter 2.12, Administrative Regulations, sets forth the process for proposal, review, public notice, and approval of administrative regulations; and

WHEREAS, the Chapter was revised on July 25, 2011 by Ordinance 2011-27 to ensure that City Boards have an advance opportunity to review and comment on proposed regulations that relate to the City Board's primary function or purpose; and

WHEREAS, the City Council has identified additional revisions to the Chapter that improve and clarify the language and reflect the Council's intentions for promulgation of administrative regulations.

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

SECTION 1. Title 2, Administration, Chapter 2.12, Administrative Regulations, 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 for the purposes of this Chapter, and actions of the Council are not subject to the requirements of this chapter.

2.12.020 Definitions.

“Agency” means the City Manager or any Department of the City of Takoma Park, Maryland; ~~including but not limited to the City Manager or any City Department.~~

“City Board” means all statutory committees under *Takoma Park Code Chapter 2.16 Boards and Commissions* and any and all in addition to all other Council-appointed boards, commissions, committees and task forces appointed by the Council.

“External regulations” means regulations that pertain to procedures and policies that directly affect ~~pertain to residents~~ the citizens of the City, businesses and other organizations within the City or those doing business with the City.

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

“Regulation” means any A 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.

“Final Regulation” means a regulation that has been adopted and approved in accordance with this Chapter. a set of regulations pertaining to a certain subject, which the Council has authorized to be created, that has been approved by signature by the City Manager or his or her authorized designee and approved by the Council in accordance with this ordinance.

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. An Agency that is authorized to implement or enforce an ordinance or law, whether such authorization is stated explicitly or implied in the ordinance or law, may is required to adopt regulations necessary to implement the ordinance or law.~~

B. Department and City Manager Approval. All proposed regulations and proposed final regulations shall have the written approval of the Director of the Department and the City Manager. For proposed eExternal regulations, such approval must be obtained prior to issuance of public notice. ~~A regulation shall be valid even if the City Manager or the Director of the Department 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. City Boards shall be provided at least 2130 days to submit written comment to the appropriate agency official and the City Manager on proposed external regulations that specifically pertain to the primary function or purpose of the board, commission, committee or taskforce. Based on comments provided by the City Board, the City Manager may direct the agency to modify or withdraw the proposed regulation at any time, prior to publication of notice and distribution to the Council.

B. Notice of Proposed External Regulation.

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

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

3. Comment Period. Following notice of a proposed regulation, there shall be a minimum period of 2130 days for comment on the proposed regulation, except if Council directs a longer period. Councilmembers 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, City Board or Council comments, the Council may, by majority vote, direct the agency to withdraw or modify the proposed regulation.

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 receive actual notice of the proposed regulation in accordance with law. The aAgency 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.

5. Content of Notice. In the original published Nnotice, an Aagency shall either accurately summarize the substance of the proposed regulation and the subject and the issues involved or set forth the full text of the proposed regulation. If the proposed regulation is summarized, an Aagency shall place the full text of the regulation on the City's website and also make available written copies, stating where and how the full text may be obtained—the place where the full text is available. If a public 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, mailing address, telephone number and email address of a the contact person to whom comments may be directed who can provide further information; the deadline for receipt of comments and the name, mailing address,

~~telephone number and email address of the person to whom comments may be directed~~; any other pertinent deadlines; and the citation of the authority to promulgate the proposed regulation.

C. Consideration by City Manager and ~~responsible City Department~~Agency. The City Manager and ~~responsible City Department~~agency shall consider the comments submitted by a City Board or in response to the notice in subsection (B)(3) of this section. The weight given to the various comments is within the discretion of the ~~A~~Agency. The ~~A~~Agency ~~shall~~will revise the proposed regulation in accordance with the Council's directions pursuant to subsection (B)(3) of this section. The Agency shall keep a record of all submitted comments and the City Manager shall make the comments available to the Council upon if requested.

D. Proposed Final Regulation—Final Action.

1. After consideration of any comments upon a proposed regulation and compliance with the directions of the Council, an ~~A~~Agency ~~shall prepare the~~ ~~may adopt~~ proposed final regulations ~~and submit the proposed final regulation, which shall be submitted.~~ ~~The agency shall 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.

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

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

E. Publication of Notice of Final ~~Regulation~~Action.

1. In the issue of the Takoma Park Newsletter that follows the final action taken on a proposed regulation, an ~~A~~Agency shall publish notice of the ~~F~~final action taken on the proposed ~~R~~regulation. The notice of the ~~F~~final ~~Regulation~~action taken is ~~shall be~~ published at least ten (10) days before the effective date of the ~~F~~final ~~R~~regulation.

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

3. Upon adoption of a Final Regulation, an aAgency~~If the proposed regulation becomes final, an agency~~ shall publish the full text of the regulation on the City's website a copy of the full text and shall make written copies of the regulation available to the public.:

~~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.~~

~~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.~~

~~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 notice to a City Board, ~~or~~ the public, publication of notice ~~of the proposed regulation, or a public comment period,~~ publication of notice of final regulation, or final action on a proposed final regulation by the Council.

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 waiting period from the date an internal regulation is 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 ~~shall~~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 ~~e~~Chapter, or published on the City's website.

2.12.100 Emergency regulations.

A. If the City Manager determines that an emergency exists, a regulation need not meet the prior publication and consideration requirements of Sections 2.12.050, 2.12.060 and 2.12.080.

B. An emergency regulation ~~is~~shall be effective immediately upon approval by the City Manager and will remain in effect for a period of ~~60~~45 days. The City Manager shall send to the Council a copy of the regulation and a statement giving the reason for the emergency regulation. The City Manager's statement shall specify the likely consequences of the emergency situation in the absence of the emergency regulation.

C. The City Manager may ask the Council to extend by resolution the effective period of an emergency regulation. The City Manager shall provide the Council with a written statement of the reasons for the extension request.

D. The Council may repeal an emergency regulation at any time according to the provisions of Section 2.12.110 of this chapter.

E. Notice of the approval of an emergency regulation, its repeal, extension or any other final action taken regarding the emergency regulation shall be given in the next Takoma Park Newsletter and in Takoma Park Regulations, if appropriate.

F. Emergency regulations must pertain to situations in which immediate action is needed to protect presenting a clear and present danger to the public health, safety or-and general welfare.

2.12.110 Repeal and modification of regulations by the Council.

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

B. The Council may, by resolution, instruct the City Manager to modify the final external 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.

2.12.130 Compilation of regulations.

A. Takoma Park Regulations Established. The Takoma Park Regulations is established and includes:

1. Each regulation of the City;
2. Any document that the City Manager determines should be included;
3. Any explanatory annotation; and
4. An index by agency and subject matter.

B. Duties of City Manager.

1. The City Manager, with the assistance of the City Clerk, shall compile, codify, edit, index, publish, and supplement the Takoma Park Regulations. The City Manager may procure a contract to meet the requirements of this subsection.

2. Posting of the Takoma Park Regulations on the City's website or other online site shall be considered to satisfy the publication requirements under this subsection.

3. The City Manager may remove a regulation or a part of a regulation from the Takoma

Park Regulations if the regulation is declared unconstitutional or otherwise illegal or invalid by a court after final appeal or if the Agency that enforced or administered the regulation ceases to exist and the functions and responsibilities of the Agency are not transferred to a successor.

4. ~~At least once a year, each regulation adopted during the year and any document that the City Manager determines should be included shall be published in a s~~Supplements to the Takoma Park Regulations shall be published as needed.

5. The City Manager ~~may shall~~ set a reasonable price for each copy of the Takoma Park Regulations and its supplements for sale to the public.

6. A free copy of the Takoma Park Regulations and its supplements shall be is distributed to appropriate public officials and public institutions and to any person the City Manager designates.

7. Failure to include a regulation in the Takoma Park Regulations or its supplements shall not affect the validity of the regulation.

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.

Adopted this 24th day of October, 2011.

AYE: Williams, Wright, Clay, Robinson, Seamens, Snipper, Schultz

NAY:

ABSTAIN:

ABSENT: