

Introduced by: Councilmember Small

First Reading: July 1, 2024
Second Reading: July 10, 2024
Effective Date: July 30, 2024

**CITY OF TAKOMA PARK, MARYLAND
ORDINANCE 2024-17**

AMENDING THE CITY OF TAKOMA PARK CODE TO REMOVE PROVISIONS REFERRING TO THE REPEALED LAW ENFORCEMENT OFFICER'S BILL OF RIGHTS AND ADD REFERENCES TO MARYLAND'S POLICE ACCOUNTABILITY ACT.

WHEREAS, the Maryland Code, Local Government Article, Section 5-202, as amended, authorizes the legislative body of each municipal corporation in the State of Maryland to pass ordinances that such legislative body deems necessary to assure the good government of the municipality, to protect and preserve the municipality's rights, property and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort, and convenience of the citizens of the municipality;

WHEREAS, Section 401(a) of the City Charter states that the Council has the power to pass all such ordinances not contrary to the Constitution and laws of the State of Maryland as it may deem necessary for the good government of the City, for the protection and preservation of the City's property, rights, and privileges, for the preservation of peace and good order, for securing persons and property from violence, danger or destruction, and for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the residents of and visitors in the City;

WHEREAS, in 2021, the General Assembly repealed the Law Enforcement Officer's Bill of Rights and replaced it with the Police Accountability Act; and

WHEREAS, the City Code needs to be modified to reflect the changes in State law.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND, THAT the City of Takoma Park Code is hereby amended as follows:

Title 4

PERSONNEL

Chapters:

- 4.04 Civil Service**
- 4.08 Collective Bargaining**
- 4.12 Alcohol and Drug Policy**
- 4.16 Employee Assistance Program**
- 4.20 Screening for Drugs and Alcohol**
- 4.24 Police Employees' Retirement Plan**

Chapter 4.04
CIVIL SERVICE

Sections:

Article 1. Administration

- 4.04.010 Purpose.
- 4.04.020 *Repealed.*
- 4.04.030 Responsibilities of personnel officer.
- 4.04.040 Responsibilities of employee.
- 4.04.050 Applicability of regulations.
- 4.04.060 *Repealed.*
- 4.04.070 Merit principles.

Article 2. Definitions

- 4.04.080 Terms defined.

Article 3. Conduct of Employees

- 4.04.090 General policy.
- 4.04.100 Business activities and solicitation.
- 4.04.110 Outside employment.
- 4.04.120 Privileged information.
- 4.04.130 Political activity.

Article 4. Classified System

- 4.04.140 Overview of compensation.
- 4.04.150 Creation and abolition of positions.
- 4.04.160 Position classification plan.
- 4.04.170 Allocation of positions to classes.
- 4.04.180 Class specifications.
- 4.04.190 Amendments to position classification plan.
- 4.04.200 Reclassifications.
- 4.04.210 Assigning class to pay grade.
- 4.04.220 Contents, preparation and adoption of pay plan.
- 4.04.230 Pay period.
- 4.04.240 Determination of pay increases.
- 4.04.250 Salary rates for reallocations, promotions and demotions.
- 4.04.260 Salary rates for transfers.
- 4.04.270 Compensation for new employees.
- 4.04.280 Overtime.

Article 5. (Reserved)

Article 6. Attendance and Leave

- 4.04.290 Authorized leave.
- 4.04.300 Requests for leave.
- 4.04.310 Accounting responsibilities and procedures.
- 4.04.320 Holiday leave.
- 4.04.330 Annual leave.
- 4.04.340 Sick leave.
- 4.04.350 Compensatory leave.
- 4.04.360 Injury leave.
- 4.04.370 Military leave.
- 4.04.380 Maternity leave.
- 4.04.390 Bereavement leave.
- 4.04.400 Jury leave.
- 4.04.410 Civic duties.

Article 7. Selection and Appointment of Employees

- 4.04.420 Recruitment.
- 4.04.430 Qualification requirements.
- 4.04.440 Applications.
- 4.04.450 Examinations.
- 4.04.460 Appointment.

Article 8. Probationary Period

- 4.04.470 Purpose.
- 4.04.480 Duration.
- 4.04.490 Expiration.

Article 9. Promotions, Transfers, Resignations, Layoffs, Demotions

- 4.04.500 Seniority.
- 4.04.510 Break in employment.
- 4.04.520 Promotion policy.
- 4.04.530 Demotion.
- 4.04.540 Transfer.
- 4.04.550 Resignation.
- 4.04.560 Layoffs.

Article 10. Employee Performance Evaluation

- 4.04.570 Purpose.
- 4.04.580 Maintenance of system.
- 4.04.590 Procedure.
- 4.04.600 Evaluation results and consequences.

Article 11. Disciplinary Actions and Dismissal

- 4.04.610 Responsibility—Applicability to police.
- 4.04.620 Types of disciplinary action—Severity.
- 4.04.630 Reasons for disciplinary action.
- 4.04.640 Reprimand procedures.
- 4.04.650 Disciplinary probation.
- 4.04.660 Expiration of disciplinary probation
- 4.04.670 Suspension.
- 4.04.680 Dismissal.

Article 12. Employee Development

- 4.04.690 Purpose.
- 4.04.700 Responsibility.
- 4.04.710 Payment for non-city provided training programs.
- 4.04.720 Higher education program.
- 4.04.730 Salary adjustments.

Article 13. Fringe Benefits

- 4.04.740 Hospitalization.
- 4.04.750 Life insurance.
- 4.04.760 Hours.
- 4.04.770 State retirement.

Article 14. Grievance Procedure

- 4.04.780 Rights of employees.
- 4.04.790 Procedure.

Article 15. Personnel Appeal Board

- 4.04.800 *Repealed.*
- 4.04.810 *Repealed.*
- 4.04.820 *Repealed.*

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Article 11. Disciplinary Actions and Dismissal.

4.04.610 Responsibility—Applicability to police.

A. All employees shall assume personal responsibility for adhering to the regulations necessary to effectively carry out the operations of the departments to which they are assigned. Abrogation of these regulations may be cause for disciplinary action, including dismissal.

B. Department heads shall assume full responsibility for enforcing these regulations and referring problem situations to the City Administrator’s office.

C. Where sworn police personnel are concerned, disciplinary actions and dismissal procedures shall be conducted in accordance with the State of Maryland’s Police Accountability Act. ~~Police~~

Officers Bill of Rights (Annotated Code of Maryland, Article 27, Sections 727 through 734.) (Prior code § 8B-162)

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Chapter 4.20

SCREENING FOR DRUGS AND ALCOHOL

Sections:

4.20.010 Purpose.

4.20.020 Screening for drugs and/or alcohol.

4.20.010 Purpose.

The purpose of this chapter is to provide policy and procedures for conducting drug and alcohol screening when there is reasonable suspicion that an employee, as defined in Chapter 4.12, is under the influence or intoxicated during working hours. (Prior code § 8B-215)

4.20.020 Screening for drugs and/or alcohol.

A. The City may require a current employee to undergo drug and alcohol testing if there is reasonable suspicion that the employee is under the influence of drugs and alcohol during work hours. Testing of police officers must conform to the provisions of the State of Maryland's ~~Law Enforcement Officer's Bill of Rights~~ Police Accountability Act.

B. "Reasonable suspicion" means an articulable belief based on specific objective facts and reasonable inference drawn from those facts. Reasonable suspicion may include, but is not limited to:

1. A pattern of abnormal or erratic behavior;
2. Information of recent drug or alcohol use provided by a reliable and credible source;
3. Direct observation of drug or alcohol use; or
4. Presence of the physical symptoms of drug or alcohol use (i.e., glassy or bloodshot eyes, alcohol odor on breath, slurred speech, poor coordination and/or reflexes).

C. Consent. Before a drug and alcohol test is administered, employees will be asked to sign a consent form authorizing the testing and permitting release of test results to City officials with a need to know. The consent form shall provide space for employees to acknowledge that they have been notified of the City's drug testing policy. Employees and applicants may at this time provide a list of medications that they have recently used. The list of medications, if provided, shall be sealed and held as confidential until there has been a positive test result. In the event of a confirmed positive test result, the list of medications shall only be disclosed to the medical officer who will determine whether the positive result was due to lawful use of any of the listed medications. Employees may choose to provide such a list after being notified of a confirmed positive result. The consent form shall also include:

1. The procedure for confirming an initial positive test result;
2. The consequences of a confirmed positive test result;
3. The right to explain a confirmed positive test result and the appeal process available;

4. The consequences of refusing to undergo a drug and alcohol test.

D. Procedure. When, in the supervisor's judgment, there is reasonable suspicion to believe that an employee is under the influence of drugs or alcohol, the supervisor will immediately contact the department head, deputy, acting department head, Personnel Officer or Assistant City Administrator who will evaluate the supervisor's recommendation and, if appropriate, authorize the supervisor to request the employee to consent to testing. The employee and a representative of the employee's union will be notified that the City representatives suspect the employee is under the influence of drugs or alcohol and will list the reasons which document their suspicion. The employee, in the presence of his or her union representative, will be questioned about his or her behavior or other reasons that have caused the supervisor and City officer to suspect that the employee is under the influence of drugs or alcohol. If, after the employee's explanation, the supervisor and City officer still suspect that the employee is under the influence of drugs or alcohol, the City officer may request that the employee submit to a drug/alcohol detection test. Provided that the employee consents, the supervisor will escort the individual to the designated testing facility.

E. Documentation of Reasonable Suspicion. Supervisors and City officers shall detail in writing the specific facts, symptoms or observations which formed the basis for their determination that reasonable suspicion existed to warrant the testing of an employee. This documentation shall be forwarded to the appropriate department head or designee and a copy shall be furnished to the employee. The facts underlying the determination of reasonable suspicion shall be disclosed to the employee at the the demand is made.

F. Drugs to be Tested For. When drug and alcohol screening is required under the provisions of this policy, a urinalysis test will be given to detect the presence of the following drugs:

1. Alcohol (ethyl);
2. Amphetamines (e.g., speed);
3. Barbituates (amobarbital, butabarbital, phenobarbital, secobarbital);
4. Cocaine;
5. Methaqualone (e.g., quaalude);
6. Opiates (e.g., codeine, heroin, morphine, hydromorphone, hydrocodone);
7. Phencyclidine (PCP);
8. THC (marijuana);
9. Drugs specified in the State of Maryland Schedule of Controlled Dangerous Substances.

G. Refusal to Consent. An employee who refuses to consent to a drug and alcohol test when reasonable suspicion of drug or alcohol use has been identified is subject to disciplinary action up to and including termination.

H. Laboratory testing requirements.

1. All drug and alcohol testing of employees shall be conducted at medical facilities or laboratories selected by the City. To be considered as a testing site, a medical facility or lab must submit, in writing, a description of the procedure that will be used to maintain test samples. The City shall not select a test facility that does not employ:

- a. Testing procedures that ensure privacy to employees consistent with the prevention of tampering;
- b. Methods of analysis that ensure reliable test results, including the use of gas chromatography/mass spectrometry to confirm positive test results;
- c. Chain of custody procedures that ensure proper identification, labeling and handling of test samples;
- d. Retention and storage procedures that ensure reliable results on confirmatory tests of original samples.

2. All drug and alcohol testing will be performed by a laboratory which meets the standards recommended by the National Institute on Drug Abuse (NIDA).

I. Confidentiality of Test Results. All information from an employee's drug and alcohol test is confidential, and only those with a need to know are to be informed of test results. Disclosure of test results to any other person, agency or organization is prohibited unless written authorization is obtained from the employee. The results of a positive test shall not be released until the results are confirmed. The records of unconfirmed positive test results and negative test results shall be destroyed by the testing laboratory.

J. Privacy in Drug Testing. Urine samples shall be provided in a private restroom stall or similar enclosure so that employees may not be viewed while providing the sample. Employees will be given hospital gowns to wear while they are providing test samples in order to ensure that there is no tampering. Street clothes, bags, briefcases, purses and other containers may not be carried into the test area. The water in the commode shall be colored with blue dye to protect against dilution of test samples.

K. Mandatory Employee Assistance Program Referral. Upon the first confirmed determination that an employee has been under the influence of drugs or alcohol, the City shall refer the employee to the Employee Assistance Program for assessment, counseling and rehabilitation, unless the employee's drug or alcohol use has resulted in an accident serious enough to warrant dismissal. Participation in the Employee Assistance Program is voluntary, and no disciplinary action may be taken against an employee for failure to begin or complete an Employee Assistance Program. Disciplinary action based on a violation of the City's Drug and Alcohol Policy is not automatically suspended by an employee's participation in an Employee Assistance Program and may be imposed when warranted.

Voluntary participation in an Employee Assistance Program prior to a confirmed positive test result is encouraged. No disciplinary action will be brought as a result of volunteering to participate in such a program. Employees who, prior to a positive test result, voluntarily identify themselves as drug or alcohol users and obtain counseling and rehabilitation through the City's Employee Assistance Program shall not be disciplined for their drug and/or alcohol use if they thereafter

refrain from violating the City’s Drug and Alcohol Policy. All employees, however, can be disciplined for any incidents resulting from their violation of the City’s Alcohol and Drug Policy.

L. Grievances and appeals. All appeals and grievances for actions under this policy will be in accord with the grievance procedures in the Charter and Code of the City of Takoma Park, City Regulations or an applicable collective bargaining contract. (Prior code § 8B-216)

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THIS ORDINANCE IS ADOPTED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND, THIS 10TH DAY OF JULY, 2024, BY ROLL-CALL VOTE AS FOLLOWS:

AYE: Fulcher, Dyballa, Gibson, Seamens, Honzak, Searcy
NAY: None
ABSTAIN: None
ABSENT: Small

Explanatory Note:

1. Underlining indicates language being added to the Code.
2. ~~Strikethrough~~ indicates language being deleted from the Code.