

ARTICLE 1

PERSONNEL ADMINISTRATION

Section 3-1-1. Purposes of Article; definitions.

(a) *Purposes.* The purposes of this Article are:

(1) To place personnel administration on a merit basis in order to attract and retain for public service in the County Government employees with integrity and superior ability;

(2) To strengthen the effectiveness of the County Government through the improvement of personnel administration;

(3) To provide for a County merit system under which recruitment, appointment, and advancement of covered employees will be on a competitive basis, free of discrimination on the basis of race, color, national origin, religion, sex, age, political affiliation or handicap, and which will be administered in conformity with the Merit Principles set forth by the U.S. Office of Personnel Management (5 CFR 900) under authority of the Intergovernmental Personnel Act of 1970, as amended;

(4) To provide for an exempt service which will be limited to positions so designated in accordance with this Article or by Personnel Regulations.

(b) *Authority.* The authority for this article is contained in *Va. Code Ann.* § 15.2-1506, which reads, in part, as follows: "Notwithstanding any other provision of law to the contrary, the governing body of every county, city and town which has more than fifteen employees shall establish by June thirty, nineteen hundred seventy-four, a grievance procedure for its employees to afford an immediate and fair method for the resolution of disputes which may arise between such public employer and its employees and a personnel system including a classification plan for service and uniform pay plan for all employees;" and *Va. Code Ann.* §15.2-807, which reads, in part, as follows: "All appointments shall be on the basis of ability, training and experience of the appointees which fit them for the work which they are to perform." 1

1 As to appointment, tenure, suspension or removal and compensation of officers and employees, see *Va. Code Ann.*, § 15.2-807, 15.2-808 and 15.2-809.

(c) *Applicability.*

(1) This Article applies to all employees in the administrative service of the County who are appointed by the Board of Supervisors, County Executive or the head of a department, as provided in *Va. Code Ann. §15.2-807. 2*

(2) This Article and any regulations or administrative directives or procedures issued under its authority also may be applied to designated employees of other public agencies within the County, pursuant to written agreements between the heads or governing boards of such agencies and the Human Resources Director of the County, subject to approval of the County Executive and Board of Supervisors, to the effect that the conditions of employment of such employees are to be administered under this Article in the same manner as if those employees were in the administrative service of the County.³

(d) *Severability.* Should any article, section, subsection, sentence, clause, or phrase of this ordinance, for any reason, be held unconstitutional or invalid for any reason, such decision or holding shall have no effect on the validity of the remaining portions hereof. It is the intent of the Board of Supervisors to enact or have enacted each section, and portion thereof, individually, and each such section shall stand alone, if necessary, and be in force regardless of the determined invalidity of any other section or provision.

(e) *Definitions.*

(1) *Personnel Regulations.* A body of rules governing County personnel administration issued under authority of this Article by the Board of Supervisors after consideration of the recommendation of the County Civil Service Commission, and having the effect of ordinance.

² Wherever used in this Article, the term "department" means "department," "office," "agency," or other administrative unit, the director of which reports to the County Executive, either directly or via a deputy county executive. Elected officials, persons appointed to fill vacancies in elective offices, and members of boards, authorities and commissions appointed by the Board of Supervisors are not employees in the sense of this article, although they may be compensated and receive such other benefits as State law or regulations, County ordinance or the Board of Supervisors may authorize.

³ Public agencies authorized to execute such agreements include (but are not limited to) the offices of Constitutional Officers and individual members of the Board of Supervisors, the School Board, the Library Board, the Park Authority, the Housing Authority, the Fairfax/Falls Church Community Services Board, the Economic Development Authority, the Water Authority, the Industrial Authority, similar agencies established by the Board of Supervisors in the future, community centers and other service agencies established in small districts under authority of the Board of Supervisors, and State agencies located in and serving the County where such agreements are consistent with State law and regulations. Employees whose conditions of employment are to be administered pursuant to such agreements may be either merit system or exempt employees, as defined in this Article, whichever is specified in the applicable agreement.

(2) *Competitive service.* All positions not specifically designated as exempt positions in accordance with this Article, and the employees appointed to fill such positions. Competitive positions must be filled in accordance with merit principles. Persons in the competitive service are considered career employees. They have all rights, benefits, privileges, protections and obligations set forth in this Article and Personnel Regulations.

(3) *Exempt service.* Positions which are specifically so designated in accordance with this article and Personnel Regulations, and employees appointed to fill such positions. Exempt personnel are not merit employees. They may be appointed, classified, promoted to other exempt positions, demoted to other exempt positions and discharged without regard to the restrictions contained in this Article and Personnel Regulations, which apply to the competitive service. They are entitled to only such employee rights and benefits as are provided for various categories of exempt personnel elsewhere in this Article and Personnel Regulations or by the Board of Supervisors or in procedural directives issued by the County Executive or his or her designee.

(4) *Full-time position.* Any position, whether authorized for the competitive service or exempt, which is authorized to be filled for at least 2080 scheduled hours in 12 consecutive months.

(5) *Part-time position.* Any position, whether authorized for the competitive service or exempt, which does not meet the above criteria for full-time positions.

(6) *Full-time employee.* Any employee, whether in the competitive service or exempt, who is regularly scheduled to work at least 2080 hours in 12 consecutive months.

(7) *Part-time employee.* Any employee, whether in the competitive service or exempt, who does not meet the above criteria for full-time employees.

(8) *Probationary employee.* Any employee in the competitive service serving in a probationary appointment as defined in § 3-1-13 of this Article and Personnel Regulations.

(9) *Merit system.* The system of personnel administration applicable to the competitive service. It includes the provisions of this Article, other applicable provisions of County ordinances, County Personnel Regulations and all applicable and lawful personnel management directives of the Board of Supervisors, County Executive or Human Resources Director.

(10) *Merit employee.* Any employee in the competitive service.

(11) *Department Head.* An employee appointed by the Board of Supervisors to oversee, direct, or manage a major functional division of County government, whether formally known as a department or not, under the general direction of the County Executive, and to act as the appointing authority for the positions assigned to that organization. All department head positions are assigned to the exempt service. All persons appointed as department heads on or after July 1, 1987, are exempt employees. Any department head appointed as a department

head on or after July 1, 1987, may be removed by the Board of Supervisors with or without cause and in any event, may not grieve his or her removal under the County's grievance procedures. (7-87-3; 32-8-3; 26-98-3; 35-05-3.)

Section 3-1-2. County service and divisions thereof.

(a) The County service shall be divided into an exempt service and a competitive service. Exempt employees shall not be appointed to positions in the competitive service except through the competitive process specified in this Article and in Personnel Regulations. A member of the exempt service may become a member of the competitive service only through appointment to a position in the competitive service through the competitive selection process specified in this Article and in the Personnel Regulations. Thus, service in the exempt service shall not by itself permit an employee to become a member of the competitive service.

(b) The following employees shall constitute the exempt service.

(1) The County Executive, County Attorney, deputy county executives, assistant county executives, executive assistants to the County Executive, department heads appointed after July, 1987 and office staffs of members of the Board of Supervisors.

(2) Employees who are engaged under contracts.

(3) Employees appointed under the provisions of the procedural directives governing the exempt service, with hours limited to 1,560 in one calendar year if employed in an exempt-benefits-eligible position, or 900 in one calendar year if employed in an exempt-temporary position.

(4) Employees administered pursuant to an agreement executed in accordance with § 3-1-1(c)(2) of this Article, provided that they are designated exempt in such an agreement.

(5) Assistant registrars and all election officials employed by the Electoral Board.

(6) Employees who are providing services pursuant to requirements contracts such as fee class instructors.

(c) The County Executive shall issue procedural directives, with the approval of the Board of Supervisors, for administration of the exempt service. Only such provisions of this Article and of Personnel Regulations, which specifically state that they are applicable to exempt employees, or which are made applicable through procedural directives provided herein, shall apply to the exempt service.

(d) All other employees to whom this Article applies are in the competitive service, except as otherwise provided by state law or regulation. They shall be appointed, promoted, demoted, transferred or dismissed solely on the basis of merit and fitness in accordance with the provisions of this Article and Personnel Regulations. (7-87-3; 32-89-3; 10-92-3; 26-98-3; 35-05-3.)

Section 3-1-3. Existing employees to retain positions; acceptance of non-competitive appointment by a merit system employee.

(a) All persons in the County service holding positions included within the competitive service, as defined in this Article, on May 18, 1987 shall be continued in their respective positions, without further examination. All persons appointed competitively before May 18, 1987 to positions which become exempt as a result of this amendment or later amendments to this Article shall have the rights, privileges, benefits and protection of the merit system while serving in the positions they occupied on the date of such amendment, unless they subsequently elect to accept exempt appointments. Any such employees who may become subject to removal for disciplinary reasons shall be removed in accordance with the provisions of this Article and the Personnel Regulations adopted thereunder.

(b) Except as otherwise provided in Personnel Regulations, any employee in the competitive service who accepts an appointment to an exempt position thereby forfeits the rights, privileges, benefits and protections accorded to competitive service employees and shall be entitled to only such rights, privileges, benefits and protections as are authorized for the exempt position which the employee has accepted; provided that:

(1) Upon termination of the exempt appointment for any reason other than misconduct, the employee may be reinstated in his or her former merit system class, grade and salary, as provided in Personnel Regulations. Any appointment to a different class within the competitive service shall be on a competitive basis, except that an appointment to a lower ranked class within the same series shall be considered a reinstatement.

(2) If the employee's merit system position and the exempt position are covered by different retirement systems, the provisions of later Articles of this Chapter which govern those retirement systems will apply upon acceptance of the exempt appointment and, if applicable, upon reinstatement or reappointment to any merit system position. (7-87-3; 26-98-3; 35-05-3.)

Section 3-1-4. Responsibility and duties of County Executive.

(a) In the administration of the personnel system established by this Article, the County Executive shall have the authority and shall be required:

(1) To administer the merit system, through both his or her general authority as administrative head of the County and through his or her authority to supervise the Human Resources Director, subject to the Personnel Regulations adopted hereunder.

(2) To recommend proposed Personnel Regulations to the County Civil Service Commission and the Board of Supervisors.

(3) In the event of a vacancy in the position of Human Resources Director, to designate a qualified member of the County staff temporarily to perform the duties of the Human Resources Director.

(4) To cooperate with and render necessary assistance to the County Civil Service Commission.

(5) To confer with and receive advice and counsel from the Employees Advisory Council upon the Personnel Regulations and such other matters as may be deemed appropriate. (7-87-3; 26-98-3; 35-05-3.)

Section 3-1-5. Human Resources Director; qualifications; appointment.

(a) The Human Resources Director shall be a person trained and skilled in personnel administration, with knowledge of and interest in public personnel administration.

(b) The Human Resources Director shall be appointed by the Board of Supervisors upon the recommendation of the County Executive. (7-87-3; 26-98-3; 35-05-3.)

Section 3-1-6. Human Resources Director, responsibility and function.

(a) The Human Resources Director shall serve as head of the Department of Human Resources.

(b) The Human Resources Director shall have the following functions and responsibilities:

(1) To give leadership and to issue procedural instructions and interpretations of this ordinance and Personnel Regulations to department heads and other officials to ensure that the personnel function is administered in accordance with law, regulations and sound principles of public personnel management. To ensure compliance with equal employment opportunity laws and regulations. To stimulate all supervisory personnel to use the most effective methods of utilization and coordination of employee abilities and skills.

(2) To conduct open competitive assembled, unassembled or other types of examinations for all original appointments in the competitive service and promotional examinations for all promotional appointments in the competitive service. To conduct appropriate examinations for original and promotional appointments for certain exempt positions, including all project positions and any other exempt positions for which the appointing authority requests such examinations. To publicize all competitive examinations. To recruit qualified personnel for the County's competitive service; provided, that in formulating examinations appointing authorities shall be consulted concerning their personnel requirements and the qualifications necessary to perform the work. With the concurrence of the County Executive and subject to the availability of appropriated funds, to offer monetary awards, up to but not exceeding \$5,000.00, or five percent of the employee's annual salary, whichever is greater, to current County employees for referring qualified applicants for critical vacant positions in the County service who are subsequently hired and remain in such positions for

such period of time as determined by the Director of Human Resources and to successful applicants for such critical positions who remain employed in such period of time as determined by the Director of Human Resources.

(3) To establish and as necessary to maintain eligible lists, based on such examinations, for each class of positions in the competitive service to which appointments are to be made when, in the opinion of the Human Resources Director, the volume of appointments warrants the establishment and maintenance of such lists.

(4) With the approval of the County Executive, to enter into agreements with other public personnel departments or agencies (local, regional, state or federal) for the joint administration of examinations and the joint use of eligible lists resulting therefrom.

(5) To maintain the Position Classification Plan and to prepare and recommend to the County Executive amendments to the Plan.

(6) To maintain the Compensation Plan and to prepare and recommend to the County Executive amendments to the Plan.

(7) To administer the Position Control and Payroll System.

(8) To maintain a roster of central personnel records for all employees in the competitive and exempt services which shall specify as to each such person the class title of all positions held; the current salary or pay rate; any changes in class title, salary or pay; records of performance evaluations, formal disciplinary actions, commendations or awards; and such other data as may be deemed useful or significant in the development of a career service.

(9) To direct and enforce the maintenance by all departments of the County of such personnel records of employees in the competitive service as he or she shall prescribe, and to specify the kinds of personnel records to be kept by other public agencies for which the Department of Human Resources provides personnel administration services in accordance with § 3-1-1(c)(2) of this Article.

(10) To certify approved appointments and ensure that no payments shall be made to any person through the payroll system unless so certified.

(11) To assist department heads in developing systematic programs of in-service training for members of the competitive service, for the purpose of bettering their performance and of qualifying them when practicable for consideration when vacancies occur in the service of the County.

(12) To develop and administer a system of employee performance evaluation and to make information about individual employee performance available to appointing authorities when requested in connection with selection of personnel for appointment, promotion, training, assignment, or other personnel actions and to the Civil Service Commission when requested in connection with appeals or grievance hearings.

(13) To coordinate employee relations.

(14) To provide and administer a grievance system as required by State law, and to investigate alleged violations of this Ordinance, Personnel Regulations and other laws and regulations applicable to personnel administration with the Fairfax County Government.

(15) To develop and administer employee health, safety and welfare activities.

(16) To confer with the Employees Advisory Council and to cooperate with that council in provision of voluntary recreational, welfare, educational and related activities for the benefit of employees.

(17) To investigate the operation and effect of this Article, and any amendments thereto hereafter adopted by the Board of Supervisors and the Personnel Regulations adopted thereunder, and report his or her findings and recommendations to the County Executive at least annually.

(c) The Human Resources Director shall administer all employee benefits programs which may be established by ordinance, under the Personnel Regulations or by a plan adopted by resolution of the Board of Supervisors, unless some other officer, employee, or entity is specifically designated to do so.

(1) The term "Employee Benefits Program" shall include, but is not limited to group medical insurance and group term life insurance, and all benefit options offered under a "cafeteria plan" under U.S. Internal Revenue Code § 125, which may be adopted by the Board of Supervisors.

(2) The Human Resources Director is specifically delegated the authority, with respect to any employee benefit program established by a plan adopted by the Board of Supervisors by resolution, to make such changes in the benefit options and conditions offered as may be in the interest of the County and its employees, within the limits of funds appropriate and available for such purposes; provided however, no such change shall be of any effect until approved by the Board of Supervisors. In any event, any such change which requires a change in the salary reduction amount under a duly enacted "cafeteria plan" under I.R.C. § 125 shall be of no effect until an appropriate amendment has been made to the Compensation Plan.

(d) Notwithstanding any other provision of this Code to the contrary, and in addition to any other provisions thereof, the Board authorizes, subject to the availability of appropriated funds, the payment of monetary incentives, awards and bonuses to employees in the County service for exceptional services rendered by employees. Such incentives, awards or bonuses may not exceed \$5,000.00, or five percent of the employee's annual salary whichever is greater. Such incentives, awards and bonuses may be offered and paid for such exceptional services as defined in the procedural directives issued by the County Executive or his/her designee, including, but not necessarily limited to, any or all of the following purposes:

- (1) Individual incentive awards,
- (2) Special recognition awards,
- (3) Work group/excellence awards,
- (4) Certification/proficiency attainment bonuses,
- (5) Organization-wide awards,
- (6) Outstanding performance awards,
- (7) Managerial excellence awards,
- (8) Departmental honors awards,
- (9) Peer awards,
- (10) Spot incentives/awards,
- (11) Suggestion awards, and
- (12) Lead worker incentives

The Human Resources Director shall administer the incentive award and bonus program. The types of incentives, awards and bonuses and the types of exceptional services for which they may be granted, the amount of particular incentives, awards and bonuses, and the selection criteria and process for particular incentives, awards and bonuses shall be set forth in the procedural directives issued by the County Executive. (7-87-3; 26-98-3; 17-01-3; 35-05-3.)

Section 3-1-7. County Civil Service Commission established.

There is established the Fairfax County Civil Service Commission. (7-87-3; 26-98-3; 35-05-3.)

Section 3-1-8. County Civil Service Commission; jurisdiction.

The jurisdiction of the County Civil Service Commission shall be limited to the competitive service. (7-87-3; 26-98-3; 35-05-3.)

Section 3-1-9. County Civil Service Commission; quorum; qualifications; term of office; compensation; political activities; removal of members and staffing.

(a) The County Civil Service Commission shall be composed of 12 persons who are qualified voters in the County, who have had broad experience in management or public affairs, and who are in full agreement with the application of merit principles in public employment. At least three members of the Commission shall be male, three members

shall be female and three shall be a member of a minority group; provided that three members shall constitute a quorum for hearing an appeal whether or not any seat on the Commission shall be vacant, and two of the three members of a panel must vote in favor of a party or its position on a motion or objection for that party to prevail. Each member of the Commission shall be required to attend annual training on pertinent matters, including, but not limited to, the content of Personnel Regulations and procedural memoranda, the conduct of appeal hearings, and the evaluation of evidence.

(b) The Commission shall meet in panels of three members each as needed to conduct panel hearings to hear and decide those matters determined to be grievable under the grievance procedure. Members of the Commission shall receive a fee for attendance at panel hearings and at public hearings in an amount as set by resolution of the Board of Supervisors. The Commission shall, conduct panel hearings in a timely manner and such panel hearings shall be held whenever possible during the County's regular business day. Members of the Commission shall be required to attend such panel hearings to which they have been assigned at the designated time and place. Failure to regularly attend such meetings shall constitute good cause for removal pursuant to part (f) below.

(c) Members of the Commission shall hold no paid office or employment under the government of the County, or in any other public agency for which the Department of Human Resources provides personnel services in accordance with § 3-1-1(c)(2) of this Article, while serving as members of the Commission.

(d) Members of the Commission shall be appointed by the Board of Supervisors for terms of two years from the date of appointment. Members of the Commission previously appointed to serve a four year term shall complete their current term of office. Thereafter, any re-appointment to the Commission shall be for a two year term.

(e) The Board of Supervisors shall designate one member of the Commission to serve as chair, and the Board of Supervisors may change that designation if it chooses to do so.

(f) Any member of the Commission may be removed for good cause shown by majority vote of the Board of Supervisors, but only after the Board of Supervisors has given the member a statement, in writing, of the reasons for such removal and an opportunity to be heard before a public session of the Board of Supervisors.

(g) No member of the Commission, while serving, shall become a candidate for election to public office; nor shall any serving Commissioner be an officer in any organization which actively sponsors and works for the election of candidates to public office.

(h) The Civil Service Commission's staff shall include an Executive Director. (7-87-3; 26-98-3; 35-05-3.)

Section 3-1-10. County Civil Service Commission; responsibility and duties.

The County Civil Service Commission shall have the responsibility and shall be required:

(a) To represent the public interest in the improvement of personnel administration in the County service.

(b) To advise the Board of Supervisors, the County Executive and the Human Resources Director in the formulation of policies concerning personnel administration in the competitive service.

(c) To act as an impartial hearing body for appeals and grievances as required by *Va. Ann. Code* §§ 15.2-1506 and 15.2-1507, under procedures set forth in Personnel Regulations. The Commission shall only hear an appeal of, and shall render a final and binding decision on matters determined to be grievable under the grievance procedure by sitting, hearing, and deciding such cases in panels consisting of three Commissioners.

(d) To make at least annually a report of its findings and recommendations concerning the application of this Article. The annual report of the Commission shall be made available to the public concurrently upon presentation to the Board of Supervisors.

(e) To make specific recommendations to the Board of Supervisors concerning changes in state legislation affecting personnel administration.

(f) To perform other duties as set forth elsewhere in this Article or as specified by the Board of Supervisors. (7-87-3; 26-98-3; 35-05-3.)

Section 3-1-11. Adoption, legal status and scope of Personnel Regulations.

(a) This article shall be implemented and expanded upon by Personnel Regulations, which shall be issued and maintained by the Human Resources Director after approval by the Board of Supervisors as provided below.

(b) From time to time, the Human Resources Director shall draft proposed changes to Personnel Regulations, consulting affected appointing authorities, the Employees Advisory Council and the County Executive as appropriate. Such proposed changes shall be forwarded to the Civil Service Commission by the Human Resources Director.

(c) The Commission shall schedule a public hearing on all such proposed changes no later than 90 days after receipt of such proposals from the Human Resources Director. The Commission shall cause to be published, at least once in a newspaper of general circulation in the County, a notice of the time and place of the public hearing, to take place not less than 30 days after the publication of such notice. Copies of such proposed changes shall be made available to the public, heads of departments and the Employees Advisory Council by the Commission.

(d) Following the public hearing before the County Civil Service Commission, the Commission shall make its recommendation thereon to the Board of Supervisors.

(e) The Board of Supervisors shall adopt Personnel Regulations after full consideration of the views of the County Executive, the Human Resources Director, the Employees Advisory Council and the Commission; provided, however, that notwithstanding any

provision contained hereinabove to the contrary, the Board of Supervisors may on its own motion adopt or amend the Personnel Regulations if it deems such action to be in the best interest of sound public personnel administration, and provided further that in such event said adopted regulations shall be referred to the County Executive, the Human Resources Director and the Employees Advisory Council for comment, and to the Civil Service Commission for public hearing in accordance with the provisions of subsections (c) and (d) herein, and for review and recommendations to be forwarded to the Board of Supervisors for consideration.

(f) To the extent that they are consistent with this Article, and the *Virginia Code*, Personnel Regulations and amendments thereof so adopted shall have the force of law. Any provision of Personnel Regulations which conflicts with this Article or with any future amendments to this article shall be without effect until it has been amended to conform to this Article; but such suspension of effect shall relate only to specific provisions which conflict with this Article and shall not affect other provisions of Personnel Regulations which are not so in conflict.

(g) Among other things, the Personnel Regulations shall provide for equal employment opportunity; the method of holding competitive examinations; the establishment, maintenance, consolidation, and cancellation of eligible lists; certification and appointment of applicants; the administration of the Position Classification Plan and the Compensation Plan; methods of promotion and the application of service ratings thereto; probationary periods of employment; transfers of employees; hours of work, annual leave, sick leave, military leave, and other leaves of absence; overtime pay; temporary appointments; employee performance evaluation; the order and manner in which lay-offs shall be effected; procedures governing discipline and separation; maintenance of personnel records; procedure for appeals and grievances; and such other matters as may be necessary to provide adequate and systematic handling of the personnel affairs of the County. (7-87-3; 26-98-3; 14-00-3; 35-05-3.)

Section 3-1-12. Appointing authorities.

(a) Appointing authority means the officer, board, commission, person or group of persons having the power by virtue of State law or County ordinance to make appointments. The appointing authority or his or her designee is the responsible official or body to whom the Human Resources Director certifies lists of eligibles from which appointments shall be made. The appointing authority is generally responsible for personnel administration within a given department. For the purposes of this Article, appointing authorities are described as follows:

(1) The Board of Supervisors shall be the appointing authority for the County Executive, deputy county executives, the County Attorney and department heads under the control of the County Executive. The Board of Supervisors shall consult the County Executive with regard to all such appointments.

(2) The department heads in the above departments are delegated the authority to appoint all employees in their respective department.

(3) The appointing authority for other public agencies within the County which may have executed agreements to administer their personnel under this Article,

as provided by section 3-1-1(c)(2) of this Article, shall be the person or body designated as such in the applicable agreement, unless otherwise specified by law or regulation.

(4) Except as otherwise provided in this section or elsewhere by law, the County Executive shall be the appointing authority for the staff, if any, of the Planning Commission, the Civil Service Commission and all boards and commissions whose functions are primarily advisory rather than operating. In making such appointments, the County Executive shall consider the recommendations of the respective boards and commissions.

(b) For any positions not covered by the above descriptions, the County Executive shall be the appointing authority. For new departments, which may be created, the Board of Supervisors shall be the appointing authority for the department head. The appropriate department head shall be the appointing authority for all other employees. (7-87-3; 26-98-3; 35-05-3.)

Section 3-1-13. Probationary appointments, personnel actions and employee rights of appeal.

(a) Merit employees shall be subject to such personnel actions as may be ordered or approved by the County Executive or the Human Resources Director, in accordance with Personnel Regulations.

(b) All original appointments in the competitive service shall be made from lists of qualified candidates certified by the Human Resources Director. All original appointments shall be made for a probationary period, the conditions of which shall be governed by the Personnel Regulations. Prior to the conclusion of the probationary period of any employee, his or her service may be terminated by the appointing authority, if in the opinion of the appointing authority the employee does not demonstrate the level of performance required by the position to which he or she was appointed.

(c) Personnel Regulations shall provide procedures for disciplinary actions including suspension, demotion and dismissal.

(d) Merit employees shall be entitled to appeal personnel matters in accordance with the grievance procedures adopted by the Board of Supervisors. (7-87-3; 32-89-3; 26-98-3; 35-05-3.)

Section 3-1-14. Promotions.

(a) Vacancies in higher positions in the competitive service shall be filled as far as practicable by promotion from lower classes. When the County Executive or the Human Resources Director determines that there is an insufficient number of well-qualified eligibles within the service, or to achieve a balanced work force in accordance with an Affirmative Action Plan approved by the Board of Supervisors, he or she may direct that the competitive examination for such positions shall be open not only to members of the competitive service but also to all other qualified persons.

(b) All examinations for promotions shall be conducted by the Human Resources Director in accordance with the Personnel Regulations. The qualified candidates shall be certified to the appointing authority as specified in Personnel Regulations and all promotional appointments shall be made from among the persons so certified. A change from a position in any class to a position in another class for which a higher minimum rate of pay is prescribed shall be considered a promotion if such change is the result of a competitive process as provided in this Article and Personnel Regulations.

(c) All promotional appointments shall be made for a probationary period, the conditions of which shall be governed by Personnel Regulations. Prior to the conclusion of the probationary period of any promoted employee, he or she may be demoted under conditions specified in Personnel Regulations if, in the opinion of the appointing authority, concurred in by the Human Resources Director, the employee does not demonstrate the level of performance required by the position to which he or she was promoted. (7-87-3; 26-98-3; 35-05-3.)

Section 3-1-15. Position classification plan.

(a) All positions in the competitive and exempt services shall be classified by the Human Resources Director and allocated to an appropriate class in accordance with the character, difficulty and responsibility of assigned duties. Personnel Regulations shall provide for the preparation and administration of the Position Classification Plan.

(b) It shall be the duty of the Human Resources Director to review specifications for each class of positions, on a recurring basis so that approximately one-fifth of all classes are reviewed each year and every class is reviewed at least once every five years. Appointing authorities may be consulted where appropriate. Based upon such review, the Human Resources Director shall submit recommendations to the County Executive for modifying class specifications, if such be found necessary. Except as provided below, such modifications shall take effect and become part of the Position Classification Plan when approved by the County Executive.

(c) Where such recommendations include abolition of one or more classes within the merit system, the County Executive shall forward them to the Board of Supervisors for final approval.

(d) Where such recommendations include creation of one or more classes within the merit system, the County Executive shall review them, and if he or she concurs in the recommendations, such recommendations shall take effect. The County Executive shall inform the Board of such changes on a quarterly basis.

(e) Upon the recommendation of the Human Resources Director, the County Executive may approve specifications for exempt classes or classes which will be used to classify positions in non-County agencies for which the County provides payroll services but does not provide a full personnel administration system.

(f) No person shall be appointed to or employed in a position in the competitive service under any class title, which has not been approved in accordance with the provisions of this Article.

(g) Employees who feel that they have been adversely affected by the allocation or reallocation of a position to a class or by any changes in the Classification Plan shall be afforded a right of appeal under Personnel Regulations.

(h) No position in the competitive service shall be filled other than on a temporary appointment basis by any person who does not meet the qualification requirements for that position as set forth in the class specifications which are a part of the Position Classification Plan, except that the Human Resources Director may approve such an appointment on a training basis at a reduced rate of pay for a longer period in accordance with a written agreement as provided in Personnel Regulations. (7-87-3; 26-98-3; 24-99-3; 35-05-3.)

Section 3-1-16. Compensation plan.

(a) There shall be a Compensation Plan consisting of two parts. The first part shall assign a pay grade to each class in the Position Classification Plan. The second part shall assign a pay range to each such grade. Pay ranges for non-public safety classes shall provide for a minimum, mid-point and maximum rate of pay and shall provide for annual percentage increases not to exceed seven (7) percent, following an employee's annual performance review, depending on how the employee failed to meet, met or exceeded the performance standards established for such increases. Pay ranges for public safety classes shall provide for a minimum and a maximum rate of pay and shall provide for regular increments within such range to be earned by length of service and performance exceeding minimum standards for satisfactory work performance. Each such pay grade and range shall be determined with due regard to the pay practices which are competitive with public and private organizations in the Washington, D.C. metropolitan area with whom the County competes for talent; pay ranges for other classes the duties of which are similar or of equal difficulty or responsibility; minimum qualifications required; and any other factors that may properly be considered to have a bearing upon the fairness or adequacy of the pay range. The Compensation Plan shall also provide for the payment of bonuses not to exceed five percent of an employee's salary on an annual basis to those nonpublic safety employees who are at the maximum rate of pay in their pay grade and who, following their annual performance review, met or exceeded the performance standards set for the award of such bonuses.

(b) The Compensation Plan adopted by the Board of Supervisors in effect May 18, 1987 shall continue in effect until amended in accordance with the provisions of this Article.

(c) At least once each fiscal year, the Human Resources Director shall review the Compensation Plan and forward such recommendation for change as he or she may have to the County Executive. Except as otherwise provided in subsection (d) of this Section, the County Executive's recommendations for amendment or revision shall be forwarded to the Board of Supervisors. The Board of Supervisors may seek the advice of the Civil Service Commission on compensation matters where it considers the public interest sufficiently involved. The Board of Supervisors shall not increase or decrease any individual salaries but shall act solely with respect to the Position Classification and Compensation Plans. Any action affecting a class or pay grade and salary shall affect all employees in that class or grade and salary; provided however, that this sub-section does not preclude an employee and the County from entering into a salary reduction

agreement pursuant to a duly enacted employee benefit "cafeteria plan" under U.S. Internal Revenue Code § 125. If an employee benefit "Cafeteria Plan" pursuant to I.R.C § 125 is adopted by the Board of Supervisors, the Compensation Plan shall include a table detailing the salary reduction amount required for each benefit option offered. Such table may be amended from time to time in accordance with the provisions of this Article.

(d) The County Executive may assign any new class established by him or her pursuant to Section 3-1-15(c) to the appropriate pay grade on an existing pay schedule and may reassign any single position class to a different grade on any existing pay schedule. In making such assignments or re-assignments of pay grades to such classes, the County Executive shall give due regard to the pay practices which are competitive with public and private organizations in the Washington, D.C. metropolitan area with whom the County competes for talent; pay ranges for other classes the duties of which are similar or of equal difficult or responsibility; minimum qualifications required; and any other factors that may properly be considered to have a bearing upon the fairness or adequacy of the pay range.

(e) The above provisions shall not be taken to preclude the adoption of more than one pay schedule within the Compensation Plan, provided that each pay schedule as adopted conforms to the requirements and standards of this Article. (7-87-3; 26-98-3; 24-99-3; 14-00-3; 17-01-3; 35-05-3.)

Section 3-1-17. Employees' advisory council; members; duties.

(a) There shall be an Employees Advisory Council to provide a continuing medium through which all employees in the competitive service may contribute their advice and suggestions for the improvements of a career merit system and other aspects of the administration of the government of Fairfax County. Rules for election of Council members and the Council's by-laws shall be subject to approval of the Civil Service Commission.

(b) In addition to conferring with the Human Resources Director and the County Executive, and the Commission, the Employees Advisory Council may undertake to sponsor such voluntary recreational, welfare, educational and related activities as will contribute to employee well-being and to building harmonious and effective relations among all employees of Fairfax County and their families. (7-87-3; 26-98-3; 35-05-3.)

Section 3-1-18. Retirement systems; continuous; amendments.⁴

The retirement systems for employees of the County heretofore established shall continue in force and effect, subject to the right of the Board of Supervisors to amend such systems by subsequent ordinance. (7-87-3; 26-98-3; 35-05-3.)

⁴ See Articles 2, 3, 4, 7 and 8 of this Chapter.

Section 3-1-19. Protection of legitimate political activity of employees; restrictions.

(a) For the purposes of this Section:

(1) "Political campaign" means activities engaged in for the purposes of promoting a political issue, for influencing the outcome of an election for local or state or federal office, or for influencing the outcome of a referendum or a special election.

(2) "Political candidate" means any person who has made known his or her intention to seek, or campaign for, local or state or federal office in a general, primary, or state election.

(3) "Political party" means any party organization or group having as its purpose the promotion of political candidates or political campaigns.

(4) "Political activities" includes, but is not limited to, voting, registering to vote; soliciting votes or endorsements on behalf of a political candidate or political campaign; expressing opinions, privately or publicly, on political subjects and candidates; displaying a political picture, sign, sticker, badge, or button; participating in the activities of, or contributing financially to, a political party, candidate, or campaign or an organization that supports a political candidate or campaign; attending or participating in a political convention, caucus, rally, or other political gathering; initiating, circulating or signing a political petition; engaging in fund-raising activities for any political party, candidate or campaign; acting as a recorder, watcher, challenger, or similar officer at the polls on behalf of a political party, candidate or campaign; or becoming a political candidate.

(5) "Employee" means any person in the competitive or exempt service of the County, including, but not limited to, firefighters, emergency medical technicians, police officers, and deputies, appointees, and employees of the Commonwealth's Attorney, the Clerk of the Circuit Court, and the Sheriff.

(b) All employees shall be protected against any unwarranted infringement of their rights as American citizens to vote as they choose, to express their opinions, and to join any legitimate political organization whose purposes are not inconsistent with their loyalty to the United States. It is the intent of this Section to grant employees the full latitude to participate in political activities provided by state statute, subject to all of the restrictions placed on such participation by state law, including, but not limited to, Va. Code Ann. § 15.2-1512.2, in a manner that is consistent with the proper and efficient performance of their duties as employees.

(1) To this end, all employees may participate in political activities while they are off duty, out of uniform, and not on the premises of their employment with the County.

(2) It is prohibited for any employee to engage in political activities while on duty, in uniform, or on the premises of their employment with the County;

provided, however, employees may attend or participate in a candidate forum or debate sponsored by a non-partisan organization held on County premises; and provided further that employees who are not on duty and not in uniform may engage in political activities on County-owned or leased premises under the same circumstances and subject to the same terms and conditions that apply to members of the general public.

- c) It shall be unlawful for any person in the service of the County or of a constitutional officer to reward or to discriminate against any applicant for a position as an employee or any employee because of his or her political affiliations or political activities as permitted by this Section, except as such affiliation or activity may be established by law as disqualification for employment by the County or by the constitutional officer.
- (d) The County Executive is hereby authorized and directed to acquaint employees with the provisions of this Article protecting them against intimidation, coercion and discrimination on account of such legitimate political activities. The County Executive is also hereby authorized to promulgate such procedural directives as he or she deems appropriate to administer the provisions of this Section.
- (e) Any employee who has access to the grievance procedure and who feels that he or she has been discriminated or retaliated against in violation of the provisions of this Section because of his or her participation or failure to participate in political activities shall be entitled to file a grievance concerning such action under the County's grievance procedure.
- (f) The appointing authority, the County Executive, and the Human Resources Director shall give no consideration to any endorsements or recommendations from any national, state or local political party or officer thereof in making appointments, promotions or dismissals or in any other personnel action.
- (g) Employees are prohibited from using their official authority to coerce or attempt to coerce a subordinate employee to pay, lend, or contribute anything of value to a political party, candidate, or campaign, or to discriminate against any employee or applicant for employment because of that person's political affiliations or political activities, except as such affiliation or activity may be established by law as disqualification for employment.
- (h) Employees are prohibited from discriminating in the provision of public services, including, but not limited to firefighting, emergency medical, or law enforcement services, or responding to requests for such services on the basis of the political affiliations or political activities of the person or organization for which such services are provided or requested.
- (i) Employees are prohibited from suggesting or implying that any county, city, or town has officially endorsed a political party, candidate, or campaign.
- (j) If an employee violates a provision of this Section, the employee shall be subject to disciplinary action, up to and including dismissal. It shall be unlawful for a person other than an employee to violate any provision of this Section.

(k) It shall be an affirmative defense to a criminal charge or a disciplinary action under this Section that, prior to engaging in the activity giving rise to the criminal charge or disciplinary action, the officer or employee or person who is not an employee had requested and received from the County Executive a determination that his or her participation in the proposed activity under the facts and circumstances described in his or her request did not fall under any of the prohibitions of this Section. Such determination is a defense only to the extent that the officer or employee fully and completely disclosed all material facts and circumstances in his or her request for determination. Requests for such a determination shall be in writing. The County Executive shall render his or her determination in writing no sooner than (10) days after receipt of the request and after obtaining the opinion of the County Attorney. Such determinations shall be kept on file in the office of the Clerk of the Board of Supervisors.

(l) Nothing in this Section shall be construed as relieving an employee from complying with the provisions of any applicable federal law, including, but not limited to, the Hatch Act, 5 U.S.C. §§ 1501, et seq.

Section 3-1-20. Off-duty employment of police officers.

The Chief of Police shall promulgate reasonable rules and regulations which permit law enforcement officers to engage in off-duty employment which may occasionally require the use of their police powers in the performance of such employment. (7-87-3; 26-98-3; 35-05-3.)

Section 3-1-21. Prohibited practices.

(a) No person shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification, promotion, reduction, removal or appointment held or made under the provisions of this Article or in any manner commit or attempt to commit any fraud preventing the impartial execution of the Personnel Regulations adopted pursuant to this Article.

(b) No person shall, either directly or indirectly, pay, render or give any money, service or other valuable thing to any person for, on account of or in connection with any test, appointment, promotion, reduction or removal in which he or she is concerned.

(c) No officer or employee of the County shall knowingly defeat, deceive or obstruct any person in his or her right to examination, eligibility certification or appointment under this Article or furnish to any person any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the competitive service.

(d) No officer or employee of the County shall discriminate against any employee or applicant for employment with regard to recruitment, application, testing, certification, appointment, assignment, performance evaluation, training, working conditions, promotion, demotion, discipline, lay-off, discharge, or retirement on the basis of race, color, sex, creed, religion, national origin, age or handicap.

(e) No officer or employee of the County shall retaliate against any employee with regard to recruitment, application, testing, certification, appointment, assignment,

performance evaluation, training, working conditions, promotion, demotion, discipline, lay-off, discharge, or retirement because the employee has used or has participated in the County's grievance procedure, has complied with any law of the United States, or of the Commonwealth, or has reported any violation of such law to a governmental authority, or has sought any change in law before the Congress of the United States or the General Assembly, or has reported an incidence of fraud, abuse, or gross mismanagement to the Board of Supervisors, the County Executive, or other governmental authority. (7-87-3; 26-98-3; 35-05-3.)

Section 3-1-22. Penalties for violation of Article and Personnel Regulations.

(a) Willful violation of the provisions of § 3-1-19 or § 3-1-21 of this Article or of Personnel Regulations shall constitute grounds for dismissal from the County competitive service. In the discretion of the appointing authority, a lesser penalty may be imposed under extenuating circumstances, but in no case shall the penalty for willfully engaging in prohibited political activities be established at less than thirty days' suspension from duty without pay.

(b) Any person not in the competitive service of the County who by himself or herself or with others willfully violates any provisions of this Article or of the Personnel Regulations hereunder shall be guilty of a misdemeanor, and shall, upon conviction thereof, be punished as provided in § 1-1-12.

(c) Any person who is convicted under this Section shall, for a period of five years, be ineligible for appointment to or employment in a position in the service of the County, and, if her or she be an officer or employee of the County, shall immediately forfeit the office or position he or she holds. (7-87-3; 26-98-3; 35-05-3.)

Section 3-1-23. Criminal history record check and fingerprinting; appointment to sensitive positions.

(a) *Finding.* The Board of Supervisors of Fairfax County, Virginia, hereby finds that it is necessary in the interest of public welfare and safety to determine whether the past criminal conduct of a person conditionally offered employment in a sensitive position in the County's competitive or exempt service is directly related to such position and would be compatible with the nature of such employment.

(b) *Intent.* It is the intent of the Board of Supervisors in enacting this section to comply with the provisions of *Va. Code Ann.* §§ 15.2-1503.1, 15.2-1505.1 and 19.2-389(A)(7), as amended, to be able to access criminal history record information regarding those persons conditionally offered employment in sensitive positions in the County service in order to determine whether the past criminal conduct of such persons would be compatible with the nature of such employment. Further, the provisions of this section are intended to be in addition to, and not in derogation of all other federal and state statutes and County ordinances providing for access to criminal history record information concerning applicants for, and persons offered, positions in the County service, including, but not limited to, *Va. Code Ann.* §§ 18.2-389(A)(25) and 37.1-197.2, concerning direct consumer care positions assigned to the Fairfax-Falls Church Community Services Board.

(c) *Definitions.*

(1) As used in this section, a *sensitive position* is a position in the county service that meets one or more of the following criteria and is designated as such by the County Executive in accordance with the provisions of sub-section (e)(1)(A) of this section:

(A) Where the employee is responsible for providing services to further the health, safety, and welfare of minors, persons with disabilities, the elderly, or other persons unable to care for themselves.

(B) Where the employee, as part of his or her duties, must enter person's residences or businesses.

(C) Where the employee has the capability of making changes to County technology systems,

(D) Where the employee is employed in a position involved in water or wastewater treatment,

(E) Where the employee is required as part of his or her duties to operate a vehicle requiring a Commercial Drivers License or an aircraft,.

(F) Where the employee handles cash or has the ability to effect transfers of County funds or funds of others, or otherwise is accountable for County funds,.

(G) Where the employee has access to public records, records containing personal information as defined in *Va. Code Ann. § 2.2-3801(2)*, and/or records that are made confidential by state or federal statute,

(H) Where the employee needs to enter secured County facilities, or

(I) Where the employee is otherwise directly responsible for the health, safety, and welfare of the general populace and/or the protection of critical infrastructure.

(2) As used in this section, the phrase *conditionally offered employment* shall include a conditional offer of initial employment in a sensitive position, a conditional offer to laterally transfer, promote, or demote an employee to a sensitive position, or the conditional offer of a sensitive position in the County's competitive service to an employee in its exempt service or of a sensitive position in the County's exempt service to an employee in its competitive service.

(d) *Policy.* All persons conditionally offered employment in a sensitive position in the County service, shall as a condition of their employment, prior to the effective date of such employment, submit to fingerprinting and provide personal descriptive information to be forwarded to the Central Criminal Records Exchange and the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding

them. All offers of employment in sensitive positions in sensitive positions are conditioned upon the person offered such employment submitting to fingerprinting and providing personal descriptive information as described above. Failure of the person conditionally offered employment in a sensitive position to submit to fingerprinting and to provide personal descriptive information shall disqualify the person from employment in the position.

(e) *Responsibilities.*

(1) The County Executive:

(A) After consultation with the Human Resources Director and department heads, shall establish and maintain the list of sensitive positions that are subject to the provisions of this section. He or she may list a position as a sensitive position by job classification under the County's Classification Plan, by the department or sub-division of the department to which the position is assigned, by work location, by position number, or any combination thereof. The County Executive may, from time to time, as may be necessary, add or remove positions from the list of sensitive positions.

(B) Unless and until removed from the list of sensitive positions by the County Executive, those positions listed in the former version of this section under sub-section (a), as reflected in Ordinance 48-92-3, as amended by Ordinance 12-99-3, shall be deemed sensitive positions on such list.

(C) Shall receive the report from the Central Criminal Records Exchange concerning whether the person conditionally offered employment has no criminal history record information or the record of criminal history information. He or she may designate the Human Resources Director to receive such reports.

(2) The Human Resources Director shall:

(A) Ensure that the class specifications, position descriptions, and announcements of sensitive positions reflect that the positions are sensitive positions that are subject to the provisions of this section; provided, however, that his or her failure to do so shall not change the status of the position as a sensitive position subject to the provisions of this section.

(B) Upon receipt of the report from the Central Criminal Record Exchange concerning a person conditionally offered employment that indicates that the person has a criminal history record, and after consulting with the appointing authority, determine whether the conviction or convictions on the record directly relate to the sensitive position, whether the past criminal conduct contained in the record is compatible with the nature of the employment in the sensitive position, and whether such conviction or convictions disqualifies the person from employment in that sensitive position. In determining whether a criminal conviction

directly relates to a sensitive position, the Human Resources Director shall consider the following criteria:

- (i) The nature and seriousness of the crime,
- (ii) The relationship of the crime to the work to be performed in the position applied for,
- (iii) The extent to which the position applied for might offer an opportunity to engage in further criminal activity of the same type as that in which the person had been involved,
- (iv) The relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the position being sought,
- (v) The extent and nature of the person's past criminal activity,
- (vi) The age of the person at the time of the commission of the crime,
- (vii) The amount of time that has elapsed since the person's last involvement in the commission of a crime,
- (viii) The conduct and work activity of the person prior to and following the criminal activity, and
- (ix) Evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release.

(C) Notify in writing all persons who are denied employment in a sensitive position because of the information appearing in his or her criminal history record that information obtained from the Central Criminal Records Exchange contributed to such denial and inform him or her of his or her right to obtain a copy of his or her criminal history record from the Central Criminal Records Exchange.

(D) Shall issue procedural instructions and promulgate all forms necessary to carry out the provisions of this section.

(3) Department heads shall:

(A) Upon making a conditional offer of employment in a sensitive position, notify the County Executive, or his or her designee, and the Human Resources Director, or his or her designee, of the extension of such offer; provided, however, that his or her failure to do so shall not change the status of the position as a sensitive position subject to the provisions of this section.

(B) Upon making a conditional offer of employment in a sensitive position, inform the offeree in writing that he or she must, as a condition

of employment, submit to fingerprinting and provide personal descriptive information to be forwarded along with the applicant's fingerprints to the Central Criminal Records Exchange and the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding him or her; provided, however, that his or her failure to do so shall not change the status of the position as a sensitive position subject to the provisions of this section.

(f) Nothing in this section shall be construed as prohibiting the voluntary disclosure by an applicant for a sensitive position of his or her criminal history record information and information relevant to the criteria set forth in sub-section (e)(2)(B) during the application, examination, certification, and selection processes, or prohibiting the solicitation of such voluntary disclosure by applicants. (48-92-3; 12-99-3; 5-04-3.)

Section 3-1-24. Right of employees to contact elected officials.

(a) For the purposes of this Section, "matters of public concern" mean matters of interest to the community as a whole, whether for social, political, or other reasons, and shall include discussions that disclose any (1) evidence of corruption, impropriety or other malfeasance on the part of government officials, (2) violations of law, or (3) incidence of fraud, abuse, or gross mismanagement.

(b) Nothing in this Article shall be construed to prohibit or otherwise restrict the rights of any employee in the County service to express opinions to federal, state, or local elected officials on matters of public concern, nor shall any such employee be subjected to any acts of retaliation because the employee has expressed such opinions.

(c) Nothing in this Section shall be construed as prohibiting the County from designating and limiting who may speak on its behalf or on behalf of its departments.

APPENDIX

An Ordinance to Establish

A

MERIT SYSTEM

of

PERSONNEL ADMINISTRATION

in

Fairfax County, Virginia

Adopted by the Board of County Supervisors of Fairfax County, Virginia on January 2, 1957, and concurred in by the School Board of Fairfax County on June 4, 1957. BE IT ORDAINED by the Board of County Supervisors of Fairfax County, Virginia, as follows:

(CHAPTER 3, ARTICLES 1,2,3,4 and 5 OF THE CODE OF THE COUNTY OF FAIRFAX)

MAY 1987

Amended February 24, 1992

Amended July 27, 1998

Amended July 12, 1999

Amended April 24, 2000

Amended May 7, 2001