FAIRFAX COUNTY
BOARD OF SUPERVISORS
April 7, 2015

AGENDA

9:30	**Done**	Presentations
10:30	**Done**	Items Presented by the County Executive
	ADMINISTRATIVE ITEMS	
1	**Approved**	Additional Time to Commence Construction for Special Exception SE 2012-DR-003, TD Bank (Dranesville District)
2	**Approved**	Authorization to Advertise Public Hearings on Amendments to the Fairfax County Code to: Adopt New Chapter 108.1 (Noise Ordinance), Repeal Chapter 108 (Noise Ordinance), and Repeal Article 6 (Excessive Sound Generation in Residential Areas and Dwellings Ordinance) to Chapter 5 (Offenses)
3	**Approved**	Extension of Review Period for 2232 Application (Dranesville District)
4	**Approved**	Approval of Traffic Calming Measures and Installation of "Watch for Children" Signs as Part of the Residential Traffic Administration Program (Hunter Mill and Dranesville Districts)
5	**Withdrawn**	Authorization to Advertise a Public Hearing to Consider an Ordinance to Amend Fairfax County Code Section 7-2-13 Relating to Election Precincts and Polling Places (Hunter Mill District)
	ACTION ITEMS	
1	**Approved**	Authorization to File Reply Comments in Response to the Federal Communications Commission Notice of Proposed Rulemaking in the Matter of 9-1-1 Governance and Accountability and Improving 9-1-1 Reliability
2	**Approved**	Approval of Revisions to Chapters 2, 4, 5, 6, 7, 12 and 17 of the Personnel Regulations, Providing Administrative Clarifications, Implementing the New Pay Structure, and Updating Performance Management Requirements
3	**Approved**	Approval of a Memorandum of Agreement (MOA) Between the United States Department of Transportation, the Federal Highway Administration and the County of Fairfax for $210,000 Related to the Route 1 Widening Project (Mount Vernon District)
4	**Approved**	Adoption of a Resolution to Designate a Portion of the Laurel Hill Adaptive Reuse Area as a "Revitalization Area" for the Purpose of Empowering the Virginia Housing Development Authority to Provide Financing (Mount Vernon District)

FAIRFAX COUNTY
BOARD OF SUPERVISORS
April 7, 2015

	INFORMATION ITEMS	
1	**Noted**	Consolidated Plan Certification for the Fairfax County Redevelopment and Housing Authority Moving to Work Annual Plan for Fiscal Year 2016
10:40	**Done**	Matters Presented by Board Members
11:30	**Done**	Closed Session

	PUBLIC HEARINGS	
2:30	**Approved**	Public Hearing on SE 2014-LE-062 (Bila Hamdael Crane / Bila's Child Care) (Lee District)
2:30	**Approved**	Public Hearing on AR 92-V-001-02 (Belmont Bay Farms, LTD) (Mount Vernon District)
2:30	**Approved**	Public Hearing on SE 2014-PR-001 (7799 Leesburg Pike, LLLP) (Providence District)
2:30	**Approved**	Public Hearing on RZ 2014-PR-025 (7799 Leesburg Pike, LLLP) (Providence District)
2:30	**Approved**	Public Hearing on RZ 2014-BR-019 (Christopher At Kenilworth LLC) (Braddock District)
3:00	**Public hearing held; decision deferred**	Public Hearing on the FY 2016 Effective Tax Rate Increase
3:00	**Public hearing held; decision deferred**	Public Hearing on a Sewer Ordinance Amendment to Revise the Sewer Service Charges and the Base Charges and to Maintain the Availability Charges
3:30	**Deferred to May 12, 2015 at 3:30 p.m.**	Public Hearing on SE 2014-DR-052 (Trinity Land LLC) (Dranesville District)
3:30	**Approved**	Public Hearing on PCA 77-D-025 (Fairfax County Park Authority PCA) (Dranesville District)
4:00	**Held; Public Hearing continued to April 8, 2015**	Public Hearing on the County Executive's Proposed FY 2016 Advertised Budget Plan, the Advertised Capital Improvement Program for Fiscal Years 2016-2020 (CIP) (With Future Fiscal Years to 2025) and the Current Appropriation in the FY 2015 Revised Budget Plan

R E V I S E D

Fairfax County, Virginia

BOARD OF SUPERVISORS AGENDA

Tuesday
April 7, 2015

9:30 a.m.

PRESENTATIONS

SPORTS AND SCHOOLS

- RESOLUTION – To recognize Mount Vernon Woods Elementary School for its 50th anniversary. Requested by Supervisor McKay.

- CERTIFICATE – To recognize the McLean High School Girls Gymnastics Team for winning the Virginia High School League 6A state championship. Requested by Supervisor Foust.

- CERTIFICATE – To recognize the Langley High School Girls Swim and Dive for winning the Virginia High School League 6A state championship. Requested by Supervisor Foust.

— more —

Board Agenda Item
April 7, 2015

DESIGNATIONS

- PROCLAMATION – To designate May 10-16, 2015, as Police Week and May 15, 2015, as Peace Officers Memorial Day in Fairfax County. Requested by Chairman Bulova.

- PROCLAMATION – To designate April 16, 2015, as Holocaust Remembrance Day in Fairfax County. Requested by Chairman Bulova.

RECOGNITIONS

- RESOLUTION – To recognize Lift Me Up! for its 40th anniversary. Requested by Supervisor Foust.

STAFF:
Tony Castrilli, Director, Office of Public Affairs
Bill Miller, Office of Public Affairs

Board Agenda Item
April 7, 2015

10:30 a.m.

Items Presented by the County Executive

Board Agenda Item
April 7, 2015

ADMINISTRATIVE - 1

Additional Time to Commence Construction for Special Exception SE 2012-DR-003, TD Bank (Dranesville District)

ISSUE:
Board consideration of additional time to commence construction for SE 2012-DR-003, pursuant to the provisions of Sect. 9-015 of the Zoning Ordinance.

RECOMMENDATION:
The County Executive recommends that the Board approve twelve (12) months additional time for SE 2012-DR-003 to March 11, 2016.

TIMING:
Routine.

BACKGROUND:
Under Sect. 9-015 of the Zoning Ordinance, if the use is not established or if construction is not commenced within the time specified by the Board of Supervisors, an approved special exception shall automatically expire without notice unless the Board approves additional time. A request for additional time must be filed with the Zoning Administrator prior to the expiration date of the special exception. The Board may approve additional time if it determines that the use is in accordance with the applicable provisions of the Zoning Ordinance and that approval of additional time is in the public interest.

On September 11, 2012, the Board of Supervisors approved Special Exception SE 2012-DR-003, subject to development conditions. The application was filed in the name of TD Bank, N.A. for the purpose of permitting a drive-in financial institution and a waiver of the minimum lot size requirements within the C-5 zoning district for property located at 6256 and 6260 Old Dominion Drive, Tax Map 31-3 ((1)) 112A and 116A (see Locator Map in Attachment 1). The drive in financial institution, a Category 5 special exception use, is permitted pursuant to Section 4-504 4. E. of the Fairfax County Zoning Ordinance. The waiver of minimum lot size requirements, a Category 6 special exception use, is permitted pursuant to 9-601 6. of the Zoning Ordinance and is subject to the additional submission requirements of Section 9-610. SE 2012-DR-003 was approved with a condition that the use be established or construction commenced and diligently prosecuted within thirty (30) months of the approval date unless the Board grants additional time. The development conditions for SE 2012-DR-003 are included as part of the Clerk to the Board's letter contained in Attachment 2.

On January 22, 2015, the Department of Planning and Zoning (DPZ) received a letter dated January 20, 2015, from Frederick R. Taylor, agent for the Applicant, requesting an unspecified amount of additional time. On February 18, 2015, DPZ received a follow-up letter clarifying the request for twelve (12) months of additional time. (see Attachment 3). The approved Special Exception will not expire pending the Board's action on the request for additional time.

Mr. Taylor states internal operational issues related to the remote tellers and parking, issues not associated with the Fairfax County permitting and site approval process, needed to be addressed, resulting in TD Bank construction management teams being reassigned to other projects within the company. TD Bank needed to complete other projects before construction could begin on the Old Dominion Drive bank. The internal delays not-withstanding, Mr. Taylor states building permits have been applied for with Fairfax County and are in the last stages of approval. The request for twelve (12) months of additional time is necessary to finalize these approvals and commence construction.

Staff has reviewed Special Exception SE 2012-DR-003 and has established that, as approved, it is still in conformance with all applicable provisions of the Fairfax County Zoning Ordinance to permit a drive-in financial institution and a waiver of the minimum lot size requirements in the C-5 district. Further, staff knows of no change in land use circumstances that affects compliance of SE 2012-DR-003 with the special exception standards applicable to this use, or which should cause the filing of a new special exception application and review through the public hearing process. The Comprehensive Plan recommendation for the property has not changed since approval of the Special Exception. Finally, the conditions associated with the Board's approval of SE 2012-DR-003 are still appropriate and remain in full force and effect. Staff believes that approval of the request for twelve (12) months additional time is in the public interest and recommends that it be approved.

FISCAL IMPACT:
None

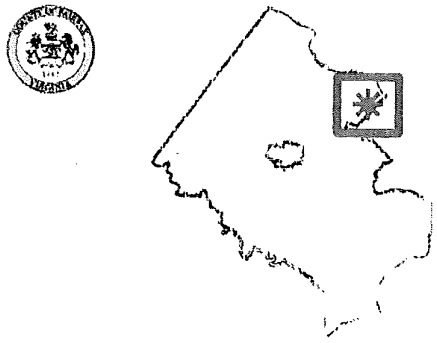
ENCLOSED DOCUMENTS:
Attachment 1: Locator Map
Attachment 2: Letter dated September 12, 2012, to Lori K. Murphy
Attachment 3: Letters dated January 20, 2015, to Leslie B. Johnson and February 18, 2015, to Stephen Gardner

Board Agenda Item
April 7, 2015

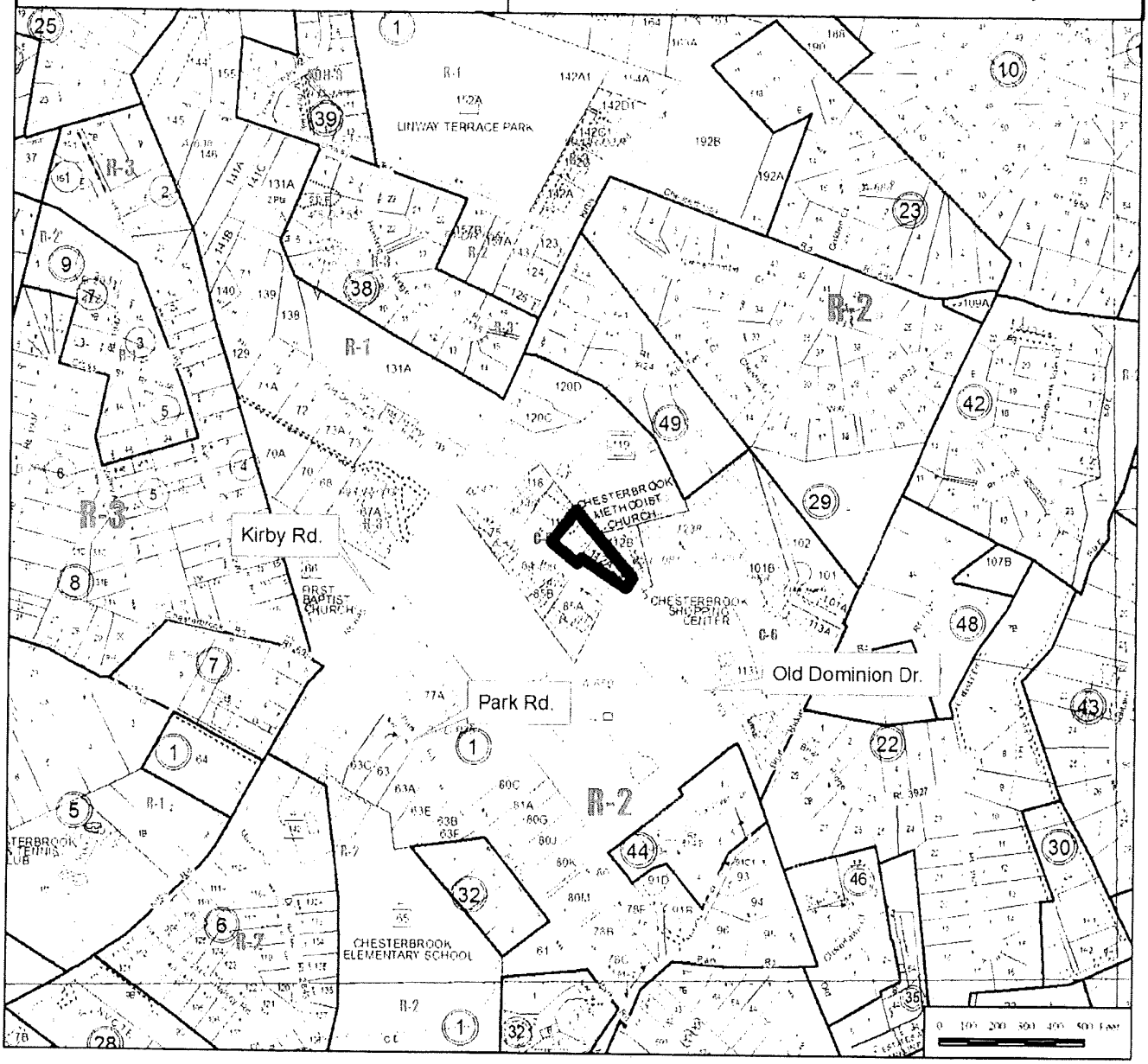
STAFF:
Robert A. Stalzer, Deputy County Executive
Fred R. Selden, Director, Department of Planning and Zoning (DPZ)
Barbara C. Berlin, Director, Zoning Evaluation Division (ZED), DPZ
Kevin J. Guinaw, Chief, Special Projects/Applications/Management Branch, ZED, DPZ
Pamela Nee, Chief, Environment and Development Review Branch, Planning Division, DPZ
Stephen Gardner, Staff Coordinator, ZED, DPZ

Special Exception

SE 2012-DR-003



Applicant:	TD BANK, N.A.
Accepted:	03/28/2012
Proposed:	DRIVE-IN FINANCIAL INSTITUTION AND WAIVER OF MINIMUM LOT SIZE REQUIREMENTS
Area:	29.595 SF OF LAND; DISTRICT - DRANESVILLE ZIP - 22101
Zoning Dist Sect:	09-0610, 04-0504
Art 9 Group and Use:	6-06 5-06
Located:	6256 AND 6260 OLD DOMINION DRIVE
Zoning:	C- 5
Plan Area:	2
Map Ref Num:	031-3- /01/ /0112A /01/ /0116A pt.



ATTACHMENT 2

County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

September 12, 2012

Lori K. Murphy
Bean, Kinney & Korman, P.C.
2300 Wilson Boulevard, 7th Floor
Arlington, VA 22201

Re: Special Exception Application SE 2012-DR-003

Dear Ms. Murphy:

At a regular meeting of the Board of Supervisors held on September 11, 2012, the Board approved Special Exception Application SE 2012-DR-003 in the name of TD Bank, N.A. The subject property is located at 6256 and 6260 Old Dominion Drive on approximately 25,595 square feet of land, zoned C-5 in the Dranesville District [Tax Map 31-3 ((1)) 112A and 116A pt.]. The Board's action permits a drive-in financial institution and waiver of minimum lot size requirement, pursuant to Sections 4-504 and 9-610 of the Fairfax County Zoning Ordinance, by requiring conformance with the following development conditions:

1. This Special Exception is granted for and runs with the land indicated in this application and is not transferable to other land.

2. This Special Exception is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special exception plat approved with the application, as qualified by these development conditions.

3. This Special Exception is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special exception shall be in substantial conformance with the approved Special Exception Plat (SE Plat) prepared by Bohler Engineering, dated June 18, 2012, and these conditions. Minor modifications to the approved special exception may be permitted pursuant to Par. 4 of Sect. 9-004 of the Zoning Ordinance.

Office of the Clerk to the Board of Supervisors
12000 Government Center Parkway, Suite 533
Fairfax, Virginia 22035
Phone: 703-324-3151 ♦ Fax: 703-324-3926 ♦ TTY: 703-324-3903
Email: clerktothebos@fairfaxcounty.gov
http://www.fairfaxcounty.gov/bosclerk

4. Architecture of the drive-in financial institution shall be in substantial conformance with that shown on the SE Plat, as determined by the Zoning Administrator.

5. The applicant shall maintain the existing and proposed sidewalks across the site's frontage along Old Dominion Drive. Prior to the issuance of the Non-RUP for the drive-in financial institution, a license agreement, such as a covenant of perpetual maintenance, shall be entered into by the applicant with the Virginia Department of Transportation (VDOT) to permit the landscaping and sidewalk shown on the SE Plat to be provided and maintained by the applicant in the right-of-way along Old Dominion Drive.

6. Prior to final site plan approval, the applicant shall submit throat length exceptions to VDOT for the access points along Old Dominion Drive. If approved by VDOT, the applicant shall implement any conditions associated with such exception. If the throat length exceptions are not approved, the applicant shall satisfy the applicable throat length requirements as determined by VDOT.

7. The applicant shall provide striping to clearly delineate the vehicular route from the point at which a vehicle exits the drive-in canopy to the stop bar at the drive-in exit, as shown on the SE Plat.

8. The applicant shall provide an additional storm filter or facility equivalent in phosphorus removal efficiency as determined by DPWES to treat the stormwater runoff in the area generally bounded by the grass median adjacent to the remote drive-through; the VDOT right-of-way along Old Dominion Drive; and, the two site entrances serving the SE area (treating a total area of at least 0.12 acres). The additional storm filter shall be installed prior to the issuance of a Non-RUP.

9. The loading space shall only be used for temporary loading purposes. The applicant shall provide signage that clearly identifies the space as such.

10. The applicant shall retain the services of a certified arborist or landscape architect. The limits of clearing and grading shall be marked with a continuous line of flagging prior to construction. Prior to commencement of any land disturbing activities, the applicant's certified arborist or landscape architect shall walk the limits of clearing and grading with a representative from UFMD to determine where adjustments to the clearing limits can be made to increase the size of the area to be left undisturbed, and to increase the survivability of trees to be preserved that occur near the edge of the limits of clearing and grading. Any adjustments agreed to by the applicant and UFMD shall be agreed upon and memorialized in writing by both the applicant and UFMD before any such adjustments are implemented, and such adjustments shall be implemented.

11. The applicant shall attempt to preserve the five trees along the rear property line of parcel 112A currently shown on the SE Plat as "subject to removal w/permission of adjacent property owner" by taking the following measures. All individual trees to be preserved and all areas designated to be left undisturbed shall be protected by tree protection fencing and signage. Tree protection fencing shall be erected at the drip line of individual trees to be preserved and at the limits of clearing and grading. The installation of all tree protection fencing shall be performed under the supervision of a certified arborist or landscape architect and accomplished in a manner that does not harm existing vegetation to be preserved. Prior to final bond release, a representative from UFMD shall inspect the condition of these five trees to determine if they are hazardous or dying and should be removed. If UFMD recommends that these trees be removed and the trees are determined to be on the application property, the applicant shall remove these trees. If UFMD recommends that these trees be removed and the trees are determined to be on the adjacent property, the applicant shall attempt to enter into an agreement with the adjacent property owner to remove and replace these trees. The selection of the species and the placement of these replacement trees shall be subject to the review and approval by UFMD.

12. The applicant shall provide supplemental plantings along the rear property line of parcel 112A, as depicted on the SE Plat.

13. Prior to final site plan approval, the applicant shall provide supplemental plantings such as small shrubs or groundcover throughout the tree preservation area shown at the eastern boundary of parcel 112A. The selection of these plantings shall be subject to approval by UFMD.

14. Irrespective of any signs shown on the SE plat, all signage shall comply with the provisions of Article 12 of the Zoning Ordinance.

15. The applicant shall remove the existing chain link fence along the rear property line of parcel 112A.

16. The dumpster on the application site shall be enclosed with a brick wall. All doors to the dumpster shall remain closed when not in use.

17. A. The Applicant shall include, as part of the site plan submission and building plan submission for the building, a list of specific credits within the most current version of the U. S. Green Building Council's Leadership in Energy and Environmental Design for Commercial Interiors - (LEED® -CI) rating system, or other LEED rating system determined to be applicable to the financial institution by the U. S. Green Building Council (USGBC), that the Applicant anticipates attaining. At least one principal participant of the Applicant's project team shall be a LEED Accredited Professional, and such professional shall provide certification statements at both the time of site plan review and the time of building plan

review confirming that the items on the list are expected to meet at least the minimum number of credits necessary to attain LEED certification for the financial institution.

B. Prior to building plan approval for the building, the Applicant shall submit, to the Environment and Development Review Branch of DPZ, documentation from the U. S. Green Building Council demonstrating that LEED precertification has been attained for that building. Prior to release of the bond for that building, the Applicant shall provide documentation to the Environment and Development Review Branch of DPZ demonstrating the status of attainment of LEED Certification from the U. S. Green Building Council for the financial institution.

C. If the Applicant fails to attain LEED precertification or certification prior to submission of the application for a Non-RUP, the Applicant shall, prior to issuance of a Non-RUP, execute a separate agreement and post a "green building escrow," in the form of a cash or a letter of credit from a financial institution acceptable to DPWES as defined in the Public Facilities Manual, in the amount of $15,000. This escrow shall be in addition to and separate from other bond requirements and shall be released upon demonstration of attainment of certification, by the U.S. Green Building council, under the most current version of the LEED-CI rating system or other LEED rating system determined, by the U.S. Green Building council, to be applicable to the financial institution. The provision to the Environment and Development Review Branch of DPZ of documentation from the U.S. Green Building Council that the financial institution has attained LEED certification shall be sufficient to satisfy this commitment. If the applicant fails to provide documentation to the Environment and Development Review Branch of DPZ demonstrating attainment of LEED certification within two years (or such longer time if the Applicant provided documentation to the satisfaction of the Environment and Development Review Branch of DPZ that USGBC review of the LEED certification has been delayed through no fault of the Applicant) of issuance of the first Non-RUP for the drive-in financial institution, the escrow shall be released to Fairfax County and shall be posted to a fund within the county budget supporting implementation of environmental initiatives within the Dranesville District.

This approval, contingent on the above noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be himself responsible for obtaining the required Non-Residential Use Permit through established procedures, and this Special Exception shall not be valid until this has been accomplished.

Pursuant to Section 9-015 of the Zoning Ordinance, this special exception shall automatically expire, without notice, thirty (30) months after the date of approval unless the use has been established as evidenced by the issuance of a Non-RUP for the drive-in financial institution use. The Board of Supervisors may grant additional time to establish

the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special exception. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

The Board also:

- Waived the minimum lot size requirements to permit a lot area of 29,595 square feet instead of the required 40,000 square feet.
- Modified the transitional screening and waived the barrier requirements along the site's southern boundary along Old Dominion Drive in favor of that shown on the SE Plat.
- Modified the transitional screening and barrier requirements along the site's northern and northeastern boundaries in favor of that shown on the SE plat.
- Modified the trail requirement along Old Dominion Drive in favor of the sidewalks shown on the SE plat.
- Waived the loading space requirement for the drive-in financial institution use.

Sincerely,

Catherine A. Chianese
Clerk to the Board of Supervisors

Cc: Chairman Sharon Bulova
Supervisor John Foust, Dranesville District
Janet Coldsmith, Director, Real Estate Division, Dept. of Tax Administration
Barbara C. Berlin, Director, Zoning Evaluation Division, DPZ
Diane Johnson-Quinn, Deputy Zoning Administrator, Dept. of Planning and Zoning
Angela K. Rodeheaver, Section Chief, Transportation Planning Division
Donald Stephens, Transportation Planning Division
Ken Williams, Plans & Document Control, ESRD, DPWES
Department of Highways-VDOT
Sandy Stallman, Park Planning Branch Manager, FCPA
Charlene Fuhrman-Schulz, Development Officer, DHCD/Design Development Division
Planning Commission
Karyn Moreland, Chief Capital Projects Sections, Dept. of Transportation

ATTACHMENT 3

BEAN KINNEY & KORMAN PLLC
ATTORNEYS

2300 WILSON BOULEVARD
7TH FLOOR
ARLINGTON, VA 22201
PHONE 703.525.4000
FAX 703.525.2207

FAIRFAX COUNTY RECEIVED
JAN 20 2015
DIVISION OF ZONING ADMINISTRATION
2015-0085

January 20, 2015

Leslie B. Johnson, Zoning Administrator
County of Fairfax
12055 Government Center Parkway
Fairfax VA 22035-5508

RECEIVED
Department of Planning & Zoning
JAN 22 2015
Zoning Evaluation Division

Re: Special Exception SE 2012-DR-003-TD Bank, NA
6256 and 62560 Old Dominion Drive
Tax parcel numbers 031-1 ((!)) 112A and 116 pt.
Zoning District C-5
REQUEST FOR ADDITIONAL TIME

Dear Ms. Johnson:

The purpose of this letter is request additional time within which to commence construction contemplated by the above special exception.

Some operational issues, some relating to the remote tellers and parking, needed to be addressed, and this contributed to the delay in construction. While these issues were being resolved, the construction team was assigned to other projects and their current work has to be completed before construction can commence for the Old Dominion Drive store. Building permits have been applied for, and are in the last stages of approval. TD Bank looks forward to joining the community in the Chesterbrook area as soon as possible, but believes that the additional time requested is necessary in order to complete the improvements in an orderly and satisfactory manner.

If you or your staff have any questions, I will do my best to answer them.

Very truly yours,

Frederick R. Taylor

00570016-1

KINNEY KORMAN
ATTORNEYS

[illegible]
[illegible]
[illegible] VA [illegible]
PHONE 703 [illegible]
FAX 703 [illegible]

February 18, 2015

Mr. Steven Gardner
Department of Zoning Evaluation
County of Fairfax
12055 Government Center Parkway
Fairfax VA 22035-5508

Re: Special Exception SE 2012-DR-003-TD Bank, NA
6256 and 62560 Old Dominion Drive
Tax parcel numbers 031-1 ((!)) 112A and 116 pt.
Zoning District C-5
REQUEST FOR ADDITIONAL TIME

Dear Mr. Gardner:

Thank you for taking the time to meet with me last Friday. We discussed the merits of requesting additional time for a period of one year from the time the Special Exception would otherwise expire. We are hopeful that construction can be started by the end of the year, but it seemed prudent to request slightly more time in the event of unforeseen delays. Therefore, we respectfully request that the Special Exception be extended until March 11, 2016.. The reasons for our request are outlined in the original request. You advised me that the original filing of the request for additional time was all that was necessary under the Zoning Ordinance to toll the expiration date even though a recommendation for approval would probably not be acted upon by the Board of Supervisors until April. If my understanding is incorrect, please advise me.

I advised you that Supervisor Foust's office did not appear to have issues with our request. If you have any questions or need any other exhibits, please call me.

Very truly yours,

Frederick R. Taylor

00570016-1

Board Agenda Item
April 7, 2015

ADMINISTRATIVE - 2

Authorization to Advertise Public Hearings on Amendments to the Fairfax County Code to: Adopt New Chapter 108.1 (Noise Ordinance), Repeal Chapter 108 (Noise Ordinance), and Repeal Article 6 (Excessive Sound Generation in Residential Areas and Dwellings Ordinance) to Chapter 5 (Offenses)

ISSUE:
The Board requested staff to better address the methodology used in noise measurements, consider the appropriateness of establishing daytime and night time noise to protect the community, and add other objective criteria to regulate noise within Fairfax County. In response, a new Noise Ordinance is being proposed, and the current Noise and Excessive Sound Generation in Residential Areas and Dwellings Ordinances would be repealed.

RECOMMENDATION:
The County Executive recommends the authorization of the advertisement of a public hearing for the proposed amendments.

TIMING:
Board action is requested on April 7, 2015, to provide sufficient time to advertise the proposed Board public hearing on May 12, 2015 at 4:00 p.m. The provisions of this amendment would become effective at 12:01 a.m. on the day following adoption.

BACKGROUND:
The proposed amendment is on the 2014 Priority 1 Zoning Ordinance Amendment Work Program and is in response to a Board of Supervisors' (Board) request to review and revise the Noise Ordinance (Chapter 108 of the County Code) to better address the methodology used in noise measurements, consider the appropriateness of establishing daytime and nighttime noise levels to protect the community, and add other objective criteria to regulate noise within Fairfax County. On December 3, 2013, the Board adopted a new Article 6 (Excessive Sound Generation in Residential Areas and Dwellings Ordinance) to Chapter 5 (Offenses) of the County Code which gave the Police Department the ability to address certain sound that is generated in a residential dwelling or residential area that is plainly audible and discernible inside another person's dwelling with doors and windows closed. The new Article 6 of Chapter 5 was intended to be an interim step in addressing noise until more comprehensive amendments to Chapter 108 were considered by the Board. The proposed amendments, which include the establishment of a new Noise Ordinance (Chapter

108.1 of the County Code), the repeal of Chapter 108, and the repeal of Article 6 of Chapter 5 are in response to these requests. The amendment addresses, but is not limited to, the following:

(1) Addresses certain sounds that are a hazard to the public health, welfare, peace and safety and the quality of life of the citizens of Fairfax County.

(2) Prohibits certain sound producing activities **(prohibitions)**; excludes certain activities from the Noise Ordinance **(exceptions)**; and when not specifically prohibited or excepted, subjects activities or sources of sound to **maximum decibel levels**. The prohibitions, exceptions and maximum decibel levels may be further qualified by time, location and duration limitations.

(3) Is administered and enforced by the Director of the Department of Planning and Zoning (Director) and his/her duly authorized agents, including the Zoning Administrator, the Department of Code Compliance and the Department of Public Works and Environmental Services, and would be assisted by other departments. The Police Department may also enforce the Ordinance.

(4) Provides that violations of the Noise Ordinance may be prosecuted as a misdemeanor or a civil penalty, or the Board could seek injunctive relief from the Circuit Court.

(5) Provides that waivers from the Noise Ordinance can be granted by the Director for up to one year if it is found that the noise does not endanger the public health, safety or welfare; or that compliance with the Noise Ordinance produces serious hardship without providing an equal or greater benefit to the public. Any person aggrieved by a waiver decision of the Director can appeal the decision within 30 days of the decision to the County Executive.

(6) Provides that if there is a conflict between the Noise Ordinance and any proffered conditions and/or development conditions pertaining to noise or sound, the text of the Noise Ordinance in effect at the time such conditions were approved shall govern.

A more detailed discussion of the proposed amendments is set forth in the Staff Report enclosed as Attachment 1.

REGULATORY IMPACT:
The proposed amendments should facilitate the implementation and enforcement of the noise regulations. The amendments will be implemented and enforced using existing resources and staff.

Board Agenda Item
April 7, 2015

FISCAL IMPACT:
None.

ENCLOSED DOCUMENTS:
Attachment 1 – Staff Report

STAFF:
Robert A. Stalzer, Deputy County Executive
Fred Selden, Director, Department of Planning and Zoning (DPZ)
Leslie B. Johnson, Zoning Administrator, DPZ
Lorrie Kirst, Senior Deputy Zoning Administrator, DPZ

ATTACHMENT 1

FAIRFAX COUNTY

STAFF REPORT

V I R G I N I A

PROPOSED COUNTY CODE AMENDMENTS

Adopt New Chapter 108.1 (Noise Ordinance)

Repeal Chapter 108 (Noise Ordinance)

Repeal Chapter 5 (Excessive Sound Generation in Residential Areas and Dwellings Ordinance) of Article 6 (Offenses)

PUBLIC HEARING DATES

Board of Supervisors May 12, 2015 at 4:00 p.m.

PREPARED BY
ZONING ADMINISTRATION DIVISION
DEPARTMENT OF PLANNING AND ZONING
703-324-1314

April 7, 2015

LK

Americans With Disabilities Act (ADA): Reasonable accommodation is available upon 7 days advance notice. For additional information on ADA call 703-324-1334 or TTY 711 (Virginia Relay Center).

STAFF COMMENT

The proposed amendment is on the 2014 Priority 1 Zoning Ordinance Amendment Work Program and is in response to a Board of Supervisors' (Board) request to review and revise the Noise Ordinance (Chapter 108 of the County Code) to better address the methodology used in noise measurements, consider the appropriateness of establishing daytime and nighttime noise levels to protect the community, and add other objective criteria to regulate noise within Fairfax County. On December 3, 2013, the Board adopted a new Article 6 (Excessive Sound Generation in Residential Areas and Dwellings Ordinance) to Chapter 5 (Offenses) of the County Code which gave the Police Department the ability to address certain sound that is generated in a residential dwelling or residential area that is plainly audible and discernible inside another person's dwelling with doors and windows closed. The new Article 6 of Chapter 5 was intended to be an interim step in addressing noise until more comprehensive amendments to Chapter 108 were considered by the Board. The proposed amendments, which include the establishment of a new Noise Ordinance (Chapter 108.1 of the County Code), the repeal of Chapter 108, and the repeal of Article 6 of Chapter 5, are in response to these requests.

Background

Fairfax County has a longstanding policy that certain sounds are a hazard to the public health, welfare, peace, and safety, and adversely affect the quality of life of its citizens. Many provisions in the current Noise Ordinance contain ascertainable and objective enforcement standards that do not depend upon the subjective tolerances of the listener. Provisions in Chapter 108 dealing with "nuisance noises," however, require enforcement based upon a subjective, "reasonable person" standard. In April 2009, the Supreme Court of Virginia, in the case of *Tanner v. City of Virginia Beach,* 227 Va. 432, 674 S.E.2d 848 (2009), struck down as unconstitutional a similar "reasonable person" standard found in Virginia Beach's noise ordinance. As a result of the *Tanner* decision, many jurisdictions throughout Virginia have either amended their noise ordinances, or are in the process of amending their noise ordinance to address the Supreme Court decision. For example, Arlington County, the City of Richmond, and the City of Virginia Beach have amended their noise ordinances in response to the *Tanner* decision. Staff has reviewed the adopted noise ordinances from these jurisdictions, and has incorporated similar provisions while maintaining as much of the current structure of the Fairfax County noise regulations as possible.

Because, excessive sound generation in residential areas was an issue that required more immediate attention, in December 2013 the Board adopted the Excessive Sound Generation in Residential Areas and Dwellings. This ordinance served as an interim solution to allow the Police Department to effectively respond to calls for service regarding excessive noise in residential areas. The addition of Article 6 to Chapter 5, Offenses, allowed the Police Department to enforce these types of sound violations while staff further reviewed and studied a more comprehensive overhaul of Chapter 108. Furthermore, in order to avoid potential conflicts between Article 6 of Chapter 5 and the nuisance provisions of Article 5 of Chapter 108, the nuisance provisions in Chapter 108 were repealed at the same time that Article 6 of Chapter 5 was adopted in December 2013.

Staff from the Department of Planning and Zoning (DPZ), the Department of Code Compliance (DCC), the County Attorney's Office, and the Police Department have been meeting regularly since

2013 to review the regulations from other jurisdictions, consider the applicable State Code provisions, discuss the public and Board comments, and to develop a new Noise Ordinance.

On February 18, 2014, staff presented the first draft of a new Noise Ordinance to the Board's Development Process Committee (Committee), which is a Committee of the entire Board. The overall goal of the proposed Noise Ordinance is to:

- Recognize that there will always be certain levels of noise that occur in the normal course of daily living;
- Allow certain levels of daytime noise so that people can live, work, and play during the day; and
- Minimize nighttime noise so residents have an appropriate quiet environment in their homes at night.

The proposed new Noise Ordinance would replace both the existing Chapter 108 and Article 6 of Chapter 5. The overall framework of the proposed new Noise Ordinance would be to:

- Prohibit **c**ertain activities **(prohibitions);**
- Exclude certain activities from the Noise Ordinance **(exceptions);** and
- When not specifically prohibited or excepted, then activities or sources of sound would be subject to **maximum decibel levels**.

The above framework would be further qualified by time, location, and duration limitations.

The Committee on February 18, 2014, requested staff to conduct a series of outreach meetings on the staff's proposed rewrite of the Noise Ordinance in order to solicit public input. Accordingly, staff conducted three meetings in May 2014 at different locations throughout the County. A total of approximately 200 people attended these meetings. In addition, the following organizations were notified about the amendment and were asked to provide input: the Environmental Quality Advisory Committee (EQAC), Northern Virginia Building Industry Association (NVBIA), Commercial Real Estate Development Association (NAIOP), Engineers and Surveyors Institute (ESI), Planning Commission, Fairfax County Park Authority, Fairfax County Schools, Fairfax County Department of Public Works and Environmental Services (DPWES), Washington Metropolitan Area Transit Authority (WMATA), Chamber of Commerce, Heavy Construction and Contractors Association and the Federation of Citizen Associations. Staff has also met with the Fairfax County Park Authority (FCPA), Fairfax County Schools, WMATA, EQAC, the Planning Commission's Environment Committee, NAIOP/NVBIA, and the privately-owned trash haulers community. In addition, staff developed the http://www.fairfaxcounty.gov/dpz/zoning/noiseordinance/ website for the proposed Noise Ordinance Amendment and received comments via an on-line comment form.

The number and variety of comments received from the public outreach was wide-ranging and it was clear from reviewing the comments that there was no clear consensus on the issues. On June 10, 2014, staff presented a summary of all comments received to the Committee. At that meeting, the Committee directed staff to prepare a range of options for the Board to consider given the diversity of opinions and comments on the proposal.

On September 30, 2014, staff presented options to the Committee, and the Committee requested that the options be simplified to minimize changes from the existing Noise Ordinances. The Board further directed staff to take noise measurements at high school athletic events. Noise measurements were taken at high school football games at Hayfield, McLean, and Centreville High Schools. The measurements were taken using a noise meter and measured in decibels (dBA) (the units that measure pressure levels or intensity of sound). The measurements showed that the noise from the surrounding traffic was generally as loud as the cumulative sound coming from the games, including the use of loudspeakers, crowd noise, and the noise from the official's whistles, and these noise levels were measured at approximately 70 to 75 dBA, which is generally consistent with the maximum sound level of 72 dBA which is permitted in industrial districts.

Given that the FCPA and other golf course operators had expressed the need to begin operating power lawn equipment as early as 5:30 a.m. in order to accommodate 6 a.m. tee times, and in recognition that complaints regarding golf course lawn maintenance noise had been received from residents living adjacent to golf courses, staff also obtained a sample of noise level readings for golf course lawn equipment. Those measurements were taken at the FCPA Twin Lakes Golf Course on January 23, 2015, at different distances and using different pieces of power lawn equipment. The measurements revealed that leaf blowers were the loudest piece of equipment and the operation of leaf blowers exceeded 60 dBA when measured 100 yards from the operation of the equipment. The measurements also showed that the sound from the operation of all other lawn maintenance equipment was no more than 55 dBA when measured 50 yards from such operation. Staff believes that 50 yard distance is appropriate because 55 dBA is the current maximum noise level permitted in residential districts.

At the February 3, 2015, Committee meeting, staff distributed an updated draft Noise Ordinance and summary chart and requested guidance on several issues. With the understanding that additional modifications to the proposed amendment could be made as part of the public hearing process, the Committee recommended several changes to the staff proposal for advertising purposes including:

- Activities on School and Recreational Grounds – Advertise a decibel range of 60 to 72 dBA for limiting the maximum noise levels for cumulative noise when loudspeakers are used.
- "People Noise" – Begin the plainly audible prohibition standard at 11 p.m. on weekends and the day before a holiday.
- Dog Parks – Begin dog park hours at 8 a.m. on weekends and holidays.
- Operation of Power Lawn Equipment – Permit the use of power lawn equipment associated with golf course maintenance, except leaf blowers, beginning at 5:30 a.m. when operating more than 50 yards from a residence.
- Trash Collection – No changes to current proposal which is the same as the existing regulations in Chapter 108.
- Maximum Sound Levels – No changes to the proposed maximum decibel levels.

The proposed Noise Ordinance incorporates the recommended changes.

Proposed County Code Amendments

The proposed amendments to the County Code consist of three parts:

- The adoption of Chapter 108.1 (Noise Ordinance) (See Attachment A);
- The repeal of existing Chapter 108 (Noise Ordinance) (See Attachment C); and
- The repeal of the existing Article 6 (Excessive Sound Generation in Residential Areas and Dwellings Ordinance) of Chapter 5 (Offenses) of the County Code (See Attachment D).

Proposed Chapter 108.1 consists of the following:

Article 1 - General Provisions.

- Chapter 108.1 is referred to as the Noise Ordinance.

- It is the purpose and intent of the proposed Ordinance to recognize that certain noise is a hazard to the public health, welfare, peace, and safety, and the quality of life of the citizens of Fairfax County; that people have a right to and should be ensured of an environment free from sound that jeopardizes the public health, welfare, peace, and safety or degrades the quality of life; and it is the policy of the Board to prevent such noise to the extent such action may be permitted pursuant to Federal or State law.

Article 2 - Definitions.

- Words and phrases used in the proposed ordinance would have the meaning as outlined in the proposed definitions. Many of the definitions from Chapter 108 are being updated and carried forward into the proposed Ordinance, and new definitions are also being incorporated in order to define new terms and sound sources. Some of the new definitions include: continuous sound, discernible, dog park, dusk, golf course, impulse sound, instrument, mixed use area, non-residential area, plainly audible, recreational grounds and transportation facility.

Article 3 - Administration, Penalties and Authority and Duties.

- The current Noise Ordinance is administered and enforced by the Zoning Administrator. The proposed Noise Ordinance would be administered and enforced by the Director of DPZ and his/her duly authorized agents, including the Zoning Administrator, DCC and DPWES, and would be assisted by other Departments. The Police Department may also enforce the Noise Ordinance.

- In addition to the above, prosecution for the violation of any provisions of the proposed Noise Ordinance could be pursued before a magistrate upon the sworn complaint of two people who are not members of the same household alleging the specific violation complained of, both of the complainants must affirm that made a reasonable attempt to request abatement of the violation, and that the violation continued after such request.

- Violations of the proposed Noise Ordinance could be prosecuted as a misdemeanor or a civil penalty, or the Board could seek injunctive relief from the Circuit Court. If so enforced by

the Police Department, the civil remedies would not be applicable. In addition, pursuant to the *Code of Virginia*, the civil penalty provisions would not apply to noise generation in connection with business being performed on industrially zoned property, nor to railroads or to sound emanating from any area permitted by the Virginia Department of Mines, Minerals and Energy.

Article 4 - Prohibited Sound.

- Certain sound generating activities would be specifically prohibited and these prohibitions may be further qualified by time, duration, and location limitations. All of the proposed prohibited sounds and activities are listed in the "Applicability of the Proposed Noise Ordinance Table" set forth in Attachment B. The following activities are currently prohibited in Chapter 108 and would continue to be prohibited under the proposed Noise Ordinance at night: operation of most loudspeakers, outdoor construction, outdoor motor vehicle or mechanical device repair, outdoor powered model vehicle operation, trash collection in residential districts, and the loading and unloading of trucks within 100 yards of a residence.

- Generally, the time frame for prohibited activities would extend from 9:00/10:00 p.m. to 7 a.m.. Certain activities, such as the use of loudspeakers and outdoor construction, would be prohibited until 9:00 a.m. on weekends and federal holidays. In recognition that some of the proposed time frames include 12 a.m./midnight, those time parameters would be defined to end at the specified time on the following day.

- Unless otherwise addressed by the proposed Chapter as either a prohibition or an exception, no person could permit, operate, or cause any source of sound or sound generation that exceeds the maximum sound limits outlined in the Maximum Sound Levels Table that is set forth in the proposed amendment (See Attachment A). The sound levels would be measured in decibels with a sound level meter. The sound level measurements would be taken at the property boundary of the sound source, or at any point within any other property affected by the sound.

  The current Noise Ordinance has maximum sound levels for stationary noise sources with a maximum of 55 dBA in residential districts, 60 dBA in commercial districts, and 72 dBA in industrial districts. There is no distinction between daytime and nighttime noise levels, or between residential and nonresidential uses, such as a church or school, in residential districts. As previously mentioned, one of the parameters of the amendment is to ensure that people have the ability to live, work, and play during the day and to have an expectation of quiet in their homes at night. As such, staff believes it appropriate to have different daytime and nighttime maximum noise levels for residential areas in residential districts with a maximum allowable decibel level of 55 dBA between 10 p.m. and 7 a.m. and a maximum sound level of 60 dBA between 7 a.m. and 10 p.m. It is also staff's opinion that the current maximum decibel level of 72 dBA is too high in industrial districts at night, and is recommending a maximum level of 65 dBA between 10 p.m. and 7 a.m. Staff further believes it appropriate to allow a maximum decibel level of 60 dBA at all times for those non-residential uses in residential districts, as it is believed that the current maximum decibel

level of 55 dBA is too low for such uses given that a normal conversation has a decibel level of approximately 55 to 60 dBA. Finally, staff recognizes that Fairfax County is rapidly urbanizing and there are more mixed used areas, such as Tysons, Reston, Fair Lakes, Fairfax Corner, Merrifield, Kingstowne, and the various Community Business Centers, where sound producing activities may occur 24 hours a day. As such, staff is recommending that the maximum allowable sound level in mixed use areas be 65 dBA at any time.

In addition, the proposed Ordinance makes a distinction between continuous sound and impulse sound. Continuous sound is a sound whose intensity remains essentially constant during the period of observation and is measured with a sound level meter using the A-weighted network. Continuous sound levels are averaged over a period of time, are abbreviated as dBA, and were discussed in the preceding paragraph. Impulse sound is defined as acoustical energy characterized by a rapid rise to a maximum sound pressure followed by a somewhat slower decrease in sound pressure, both occurring within a short time frame. Impulse sound is measured in decibels, is abbreviated as dB, and is the actual highest sound level that occurs with no averaging. Examples of impulse sounds would include sound from weapons fire, pile drivers, and blasting. Except in residential areas in residential districts and industrial districts at night, the proposed maximum allowable impulse sound level would be 100 dB. Between 10 p.m. and 7 a.m., the proposed maximum allowable impulse sound would be 80 dB in residential areas in residential districts and 120 dB in industrial districts.

- Certain sound-producing activities that are plainly audible inside another person's residence and are discernible would be prohibited, with "plainly audible" being defined as sound that can be heard with the human ear, and "discernible" being defined as sound that is sufficiently distinct such that its source can be clearly identified. These activities include: noise from a person, motor vehicle or instruments (people noise) at night; and barking dogs, crowing roosters, and other animal noises.

Article 5 - Exceptions.

- Certain sounds or activities would not be subject to the proposed Noise Ordinance (exceptions), and these exceptions may be further qualified by time, duration, and location limitations. All of the proposed sounds and activities that would not be subject to the proposed Noise Ordinance are listed on the "Applicability of the Proposed Noise Ordinance Table" as set forth in Attachment B.

- Activities or sounds not subject to the Noise Ordinance at any time include: emergency work, alarms in an emergency situation; back-up generators during power outages; activities preempted by Federal or State law; motor vehicles traveling on the right-of-way; operation of helicopters and airplanes; trains traveling on railroad tracks and railroad track maintenance; snow and ice removal; heat pumps/air conditioning units on single family lots when operating in accordance with manufacturers specifications; and impulse sound that does not exceed the maximum decibel levels listed in the Maximum Sound Levels Table, which is set forth in the proposed amendment (See Attachment A).

- Certain activities or sounds would not be subject to the Noise Ordinance during the day, but would be prohibited at night, including: certain loudspeakers; outdoor construction; outdoor trash and recycling collection; land fill operations; operation of lawn equipment; operation of mechanical devices for cleaning outdoors; and the use of dog parks.

- Certain activities or sounds would not be subject to the Noise Ordinance during the day, but would be subject to the maximum decibel levels at night, including: routine testing of alarms and back-up generators; transportation facilities; bells, carillons and other calls to worship; and band performances or practices, athletic contests, and other such activities on school or recreational grounds.

- Certain activities would be subject to the maximum decibel levels during the day and prohibited at night, including: most loudspeakers; outdoor motor vehicle or mechanical device repair; operation of powered model vehicles; and outdoor truck loading and unloading.

Article 6 – Waivers.

- The current Noise Ordinance allows for variances from the Noise Ordinance provisions that can be approved by the Zoning Administrator. The proposed amendment essentially carries forward these provisions, except that it refers to these modifications as a "waiver" instead of a "variance," and allows the Director to approve such waiver requests instead of the Zoning Administrator.

- The Director may grant such a waiver if it is found that the noise does not endanger the public health, safety, or welfare, or that compliance with the Noise Ordinance produces serious hardship without providing an equal or greater benefit to the public. The administrative process for granting such waivers will continue to rest with the Zoning Inspections Branch of DPZ

- A waiver can only be granted for a period of up to one year, but any waiver could be renewed for a like period if the Director finds the waiver is again justified.

- Any person aggrieved by a waiver decision of the Director can appeal the decision to the County Executive within 30 days from the date of the decision. The County Executive must review the appeal within 60 days and either affirm or overturn the decision.

Article 7 - Proffered and Development Condition Applications.

- A property may be subject to proffered conditions and/or development conditions pertaining to noise, and the proposed Noise Ordinance would not negate any such conditions. In the event of any conflict between the conditions and the Noise Ordinance, the text of the Noise Ordinance in effect at the time the conditions were approved shall govern.

Article 8 - Severability.

- If any part of the Noise Ordinance is declared unconstitutional or invalid by a Court, such unconstitutionality or invalidity would not affect the validity of the Noise Ordinance in its entirety or any of the remaining portions of the Noise Ordinance.

Conclusion

Certain noises are a hazard to the public health, welfare, peace, and safety and adversely affect the quality of life of its citizens. However, it is also recognized that a certain amount of noise is inevitable, particularly in a suburban/urban area such as Fairfax County. It is believed that certain levels of daytime noise should be allowed so that people can live, work, and play during the day. Conversely, nighttime noise should be minimized so residents have an appropriate quiet environment in their homes at night. The proposed amendments address these overall themes by prohibiting certain sounds, not subjecting certain sounds to the Noise Ordinance (exceptions), and subjecting all remaining sounds to maximum sound (decibel) levels.

Staff recognizes that there is tension between citizens who want to make full use of their property and not be subject to noise regulations, and those citizens who live near the noise source and may be adversely impacted by it. It is staff's opinion that the proposed amendment provides an appropriate balance between these two valid and competing interests. As such, staff recommends approval of the proposed amendments with an effective date of 12:01 a.m. on the day following adoption.

ATTACHMENT A

PROPOSED COUNTY CODE AMENDMENT

April 7, 2015

Amend the Fairfax County Code by adding a new Chapter 108.1, Noise Ordinance, to read as follows:

ARTICLE 1. General Provisions.

Section 108.1-1-1. Short title.

This Chapter may be referred to as the "Noise Ordinance" of the County of Fairfax.

Section 108.1-1-2. Declarations of findings and policy.

The Board hereby finds and declares that certain noise is a hazard to the public health, welfare, peace and safety and the quality of life of the citizens of Fairfax County; that the people have a right to and should be ensured of an environment free from sound that jeopardizes the public health, welfare, peace and safety or degrades the quality of life; and that it is the policy of the Board to prevent such noise to the extent such action is not inconsistent with Federal or State law.

ARTICLE 2. Definitions.

Section 108.1-2-1. Definitions.

(a) The following words and phrases, when used in this Chapter, shall for the purposes of this Chapter, have the meanings respectively ascribed to them in this Section, except in those situations where the context clearly indicates a different meaning:

(1) *A-weighted sound pressure level* shall mean the sound pressure level as measured on a sound level meter using the A-weighted network. The level so read shall be abbreviated as dBA.

(2) *Board* shall mean the Fairfax County Board of Supervisors.

(3) *Continuous sound* shall mean a sound whose intensity remains essentially constant during the period of observation. Continuous sound shall be defined for measurement purposes as sound which is measured by the slow response setting of a sound level meter.

(4) *Decibel* shall mean a unit which describes the sound pressure level or intensity of sound. The sound pressure level in decibels is twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound in microbars to a reference pressure of 0.0002 microbar; abbreviated dB.

(5) *Device* shall mean any mechanism which is intended to, or which actually produces sound when operated or handled.

(6) *Director* shall mean the Director of the Fairfax County Department of Planning and Zoning or his/her duly authorized agent.

(7) *Discernible* shall mean that the sound is sufficiently distinct such that its source can be clearly identified.

(8) *Dog Park* shall mean either a public or privately owned open space area that is primarily used by dogs not on a leash. A dog park shall not include areas that are located on individual single family residential dwelling lots or a recreational ground.

(9) *Dusk* shall mean thirty (30) minutes after sunset, which is defined as the moment each day when the top of the sun disappears below the western horizon.

(10) *Emergency work* shall mean any work performed for the purpose of preventing or alleviating physical injury or illness or property damage threatened or caused by an emergency, including work performed by public service companies when emergency inspection, repair of facilities, or restoration of services is required for the immediate health, safety, or welfare of the community and the operation of police cars, fire trucks, ambulances, helicopters and other vehicles that are responding to emergencies.

(11) *Golf course* shall mean land area that is either publicly or privately owned and designed for the game of golf with a series of nine (9) or eighteen (18) holes each including a tee, fairway and putting green and often one (1) or more natural or artificial hazards. Any remaining portions of a property containing a golf course, including clubhouses, parking areas and other recreational facilities, shall for the purposes of this Chapter be deemed a recreational ground.

(12) *Impulse sound* shall mean acoustical energy characterized by a rapid rise to a maximum sound pressure followed by a somewhat slower decrease in sound pressure, both occurring within a short time frame. Impulse sound may include, but is not limited to, sound from weapons fire, pile drivers or blasting.

(13) *Instrument* shall mean any musical instrument, radio, phonograph, compact disc player, amplifier or any other device which produces, reproduces or amplifies sound.

(14) *Landfill* shall mean a site used in a controlled manner by a person for the dumping of debris; or a disposal site operated by means of compacting and covering solid waste with an approved material. This term is intended to include both debris landfills and sanitary landfills as defined in Chapters 104 and 109.1 of the Fairfax County Code.

(15) *Mixed use area* means the parcel on which one or more residential dwellings and at least one other non-residential use are located and any contiguous rights-of-ways, roads, streets, lanes, sidewalks, or other such means of egress and ingress to any such parcel.

(16) *Motor vehicle* shall mean any vehicle which is self-propelled or designed for self-propulsion including but not limited to, automobiles, trucks, truck-trailers, semitrailers, campers, motorcycles, mini-bikes, motor scooters and motor boats. Motor vehicles shall not include lawn mowers or other lawn equipment and nothing herein shall conflict with state law.

(17) *Noise* shall mean the intensity, frequency, duration or character of sounds from a single source or multiple sources that may degrade the public health, safety or welfare.

(18) *Non-residential area* shall mean a parcel in a residential district that does not contain a residential dwelling and contains non-residential uses such as schools, parks, places of worship, fire stations and sewage treatment plants.

(19) *Person* shall mean any individual, corporation, cooperative, partnership, firm, association, trust, estate, private institution, group, agency, or any legal successor, representative, agent, or agency thereof.

(20) *Plainly audible* shall mean the sound can be heard by the human ear with or without a medically approved hearing aid or device.

(21) *Powered model vehicles* shall mean any mechanically powered vehicle, either airborne, waterborne or landborne, which is not designed to carry persons including, but not limited to, model airplanes, boats, cars, drones and rockets.

(22) *Recreational grounds* shall mean any playground, athletic field, park or open space area that is publicly or privately owned, including land owned by a homeowner's or condominium association. Recreational grounds shall not include areas that are located on individual single family residential dwelling lots or dog parks.

(23) *Residential area* shall mean a parcel on which a residential dwelling is located and any contiguous rights of way, roads, streets, lanes, sidewalks, or other such means of egress and ingress to any such parcel.

(24) *Residential dwelling* shall mean any structure in which one or more persons live on a permanent or temporary basis, including, but not limited to, single family dwellings, multiple family dwellings, hotels and motels.

(25) *Road right-of-way* shall mean any street, avenue, boulevard, highway~~,~~ or alley which is open to the public.

(26) *Sound* shall mean an oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

(27) *Sound level meter* shall mean an instrument to measure sound pressure levels which shall meet or exceed the American National Standards Institute (ANSI) Standard S1.4 for a "Type Two" meter and shall be calibrated by the manufacturer or a company that can certify the calibration at least one (1) time each year.

(28) *Sound generation* or *to generate sound* shall mean any conduct, activity or operation, whether human, mechanical, electronic or other, including but not limited to, any animal or bird, and any instrument, machine or device, whether continuous, intermittent or sporadic, and whether stationary or ambulatory in nature, which produces or results in a sound that is plainly audible and discernible to the human ear.

(29) *Transportation facility* shall mean bus and rail facilities to include stations, platforms, garages, maintenance and staging areas, associated parking areas, and other associated mechanical appurtenances such as traction power stations, communication rooms, train control rooms, tie-breaker stations and other similar facilities

(30) *Zoning administrator* shall mean the Fairfax County Zoning Administrator or his/her duly authorized agent.

(31) *Zoning district classification:* Refers to the scheme of land use classification contained in the Fairfax County Zoning Ordinance.

ARTICLE 3. Administration, Penalties and Authority and Duties.

Section 108.1-3-1. Administration and Enforcement.

(a) The provisions of this Chapter shall be administered and enforced by the Director and/or his/her duly authorized agents, including the Zoning Administrator, the Department of Code Compliance, and the Department of Public Works and Environmental Services, and shall be assisted by other County departments as applicable.

(b) In addition, the provisions of this Chapter may also be enforced by the Police Department. If so enforced by the Police Department, the civil remedies referenced below shall not be applicable.

(c) The person operating, controlling or allowing the sound generation or source shall be guilty of any violation caused by that generation or source. If it cannot be determined which person is operating, controlling or allowing the sound generation or source, any owner, tenant, resident or manager physically present on the property where the violation is occurring is rebuttably presumed to be operating or controlling the sound generation or source.

(d) Except as hereinbefore provided in Subparagraph (a) of this Section, a warrant may be obtained from a magistrate for the violation of any provision of this Chapter only upon the sworn complaint of a police officer or two (2) persons who are not members of the same household alleging the specific violation complained of, that either or both of the complainants requested or made a reasonable attempt to request abatement of the violation, and that the violation continued

after such request. Provided, however, that if there be no more than one household within one half mile of the sound source, a warrant may be issued upon the sworn complaint of one person making the foregoing allegations.

(e) For purposes of this Chapter, whenever a time parameter includes 12 a.m. or midnight, that time parameter shall be construed to end at the specified time on the following day.

Section 108.1-3-2. Penalties.

(a) Any violation of any provision of this Chapter shall constitute a Class 2 misdemeanor and upon conviction thereof, shall be punishable up to no more than six (6) months in jail and a fine of not more than $1,000, either or both. Failure to abate any such violation within the time period established by the Court shall constitute a separate Class 2 misdemeanor offense.

(b) In lieu of the criminal penalties set forth above, a violation of any provision of this Chapter may be punishable by a civil penalty of not more than $250, or $500 for each subsequent offense. However, this civil penalties provision shall not apply to noise generation in connection with business being performed on industrially zoned property, nor shall this provision apply to railroads or to sound emanating from any area permitted by the Virginia Department of Mines, Minerals and Energy or any division thereof.

(c) In addition to, and not in lieu of, the penalties prescribed in this section, the Board may apply to the circuit court for an injunction against the continuing violation of any of the provisions of this Chapter and may seek any other remedy or relief authorized by law.

Section 108.1-3-3. Authority and duties of the Director of Planning and Zoning.

In addition to any other authority vested in him by law, the Director or his/her duly authorized agent:

(a) May coordinate the sound control activities of all agencies and departments of the Fairfax County government and advise, consult, and coordinate sound control activities with other local governmental units, state agencies, inter-governmental agencies, the Federal government, and with interested persons and groups with respect to the provisions of this Chapter.

(b) Shall issue such orders, rules and regulations and measurement procedures and methodologies as may be necessary to effectuate the provisions of this Chapter and enforce the same by all appropriate administrative and judicial proceedings.

(c) May enter and inspect any property, premises or place at any reasonable time for the purpose of ascertaining compliance with any provision of this Chapter when granted permission by the owner, or some person with reasonably apparent authority to act for the owner. When permission is refused or cannot be obtained, a proper search warrant may be obtained from a Court of competent jurisdiction upon showing of probable cause to believe that a violation of this Chapter may exist.

(d) May obtain warrants for violations of any of the provisions of this Chapter and apply to any court of competent jurisdiction for such injunctive relief as shall be necessary to terminate continuing violations of this Chapter.

(e) May perform such other acts as may be necessary to carry out the functions of this Chapter and such other acts as may be specifically enumerated herein.

ARTICLE 4. Prohibited Sounds.

Section 108.1-4-1. Specific prohibitions.

The following acts are violations of this Chapter:

(a) Unless otherwise excepted by this Chapter, the use of a loudspeaker or other sound amplification device that is mounted on the exterior of any structure or motor vehicle between 10 p.m. and 7 a.m. on Sunday through Thursday, or between 10 p.m. and 9 a.m. on Fridays, Saturdays and the day before a Federal holiday. However, this prohibition shall not apply to loudspeakers that are required by State or Federal regulations or provide a public service announcement, such as train or bus arriving.

(b) Any action related to the construction, repair, maintenance, remodeling or demolition, grading or other improvement of real property in the outdoors between 9 p.m. and 7 a.m. on Sunday through Thursday, or between 9 p.m. and 9 a.m. on Fridays, Saturdays, and the day before a Federal holiday.

(c) Outdoor repairing or modifying~~,~~ any motor vehicle or other mechanical device between 9 p.m. and 7 a.m.

(d) The operation of powered model vehicles in the outdoors between 9 p.m. and 7 a.m.

(e) Outdoor collection of trash or recyclable materials in residential districts and/or within 100 yards of a residential dwelling between 9 p.m. and 6 a.m.

(f) Any person that operates or permits to operate any motor vehicle, mechanical device, noise source, or any combination thereof, at a landfill between 9 p.m. and 6 a.m. and when located within 100 yards of a residential dwelling.

(g) Outdoor Loading or unloading trucks within 100 yards of a residential dwelling between 9 p.m. and 6 a.m.

(h) Unless otherwise addressed by this chapter, the operation of power lawn equipment, including but not limited to lawn mowers, leaf blowers, chain saws, trimmers and edgers:

(1) Between 9 p.m. and 7 a.m. when operated within 100 yards from a residential dwelling, or

(2) Between 9 p.m. and 6 a.m. when operated 100 yards or more from a residential dwelling, or

(3) Between 9 p.m. and 5:30 a.m. for golf course maintenance when operated 50 yards or more from a residential dwelling; or

(4) Between 9 p.m. and 7 a.m. for golf course maintenance when operated less than 50 yards from a residential dwelling.

Notwithstanding the above, the operation of leaf blowers on all property, including on golf courses, is prohibited between 9 p.m. and 7 a.m.

(i) Unless otherwise excepted by this Chapter, the operation of mechanical devices within 100 yards of a residential dwelling for the cleaning of outdoor parking, pedestrian and/or loading areas between 9 p.m. and 7 a.m.

(j) Unless otherwise excepted by this Chapter, any person, motor vehicle or instrument that permits, operates, or causes any source of sound or sound generation to create a sound that is plainly audible in any other person's residential dwelling with the doors and windows closed:

(1) Between 10 p.m. and 7 a.m. on Sunday through Thursday, or between 11 p.m. and 7 a.m. on Fridays, Saturdays, and the day before a Federal holiday; or

(2) Between 1 a.m. and 7 a.m. on Saturdays, Sundays and federal holidays when the residence is located in a mixed use area and the sound is emanating from a nonresidential use.

In addition, the source of sound or sound generation must be discernible regardless of whether such doors and windows are closed.

(k) Any owner or person in control of any animal that allows or otherwise permits any such animal to bark, howl, bay, meow, squawk, quack, crow or make such other sound:

(1) Between 10 p.m. and 7 a.m. that is plainly audible in any other persons residence with doors and windows closed and the source of sound generation shall be discernible regardless of whether such doors or windows are closed; or

(2) Between 7 a.m. and 10 p.m. when the animal sound is plainly audible and discernible across real property boundaries or through partitions common to residential dwellings and such sound can be heard for more than two (2) consecutive or non-consecutive minutes in any ten (10) minute period of time. Animal sounds that can be heard for less than two (2) consecutive or non-consecutive minutes in any ten (10) minute period shall not be subject to this Chapter.

The provisions of this paragraph shall not apply to any animal that, at the time of the sound or sound generation, was responding to pain or injury or was protecting itself, its kennel, its offspring, or a person from an actual threat; when the animal is a police dog that is engaged in the performance of its duties at the time of making the sound; or when part of a bona fide agricultural operation. This provision shall apply to all animal sounds emanating from the same property. Notwithstanding the provisions of this paragraph, animals located in a dog park shall be subject to the provisions of Par. (l) below.

(l) The use of dog parks between dusk and 7 a.m. Sunday through Thursday, or between dusk and 8 a.m. on Friday, Saturday and the day before a Federal holiday.

Section 108.1-4-2. Sound generation.

(a) Unless otherwise addressed by this Chapter, no person shall permit, operate, or cause any source of sound or sound generation to create a sound which exceeds the limits set forth in the following table titled "Maximum Sound Levels" when measured at the property boundary of the sound source or at any point within any other property affected by the sound. When a sound source can be identified and its sound measured in more than one (1) zoning district classification, the sound shall not exceed the sound limits set forth in the following table for the zoning district or area in which the source of sound is located, and the sound levels on the affected properties shall not exceed the sound levels set forth in the table for the affected property.

MAXIMUM SOUND LEVELS			
Use and Zoning District Classification	Time of Day	Continuous Sound (dBA)	Impulse Sound (dB)
Residential Areas (as defined herein) in Residential Districts	7 a.m. to 10 p.m.	60	100
Residential Areas (as defined herein) in Residential Districts	10 p.m. to 7 a.m.	55	80
Non-Residential Areas in Residential Districts	All	60	100
Mixed Use Area (as defined herein)	All	65	100
Commercial Districts	All	65	100
Industrial Districts	7 a.m. to 10 p.m.	72	120
Industrial Districts	10 p.m. to 7 a.m.	65	100

ARTICLE 5. – Exceptions.

Section 108.1-5-1. Exceptions.

No provisions of this Chapter shall apply to:

(a) The emission of sound for the purpose of alerting persons to the existence of an emergency, provided that such alarm signals cease once any such threat is no longer imminent.

(b) The emission of sound in the performance of emergency work.

(c) Activities for which the regulation of sound has been preempted by Federal or State law.

(d) Motor vehicles on road right-of-way.

(e) Operation of airplanes and helicopters.

(f) Trains traveling on tracks located in railroad right-of-way or easements, including trains serving an interstate area and trains serving the Washington metropolitan region, and railroad track maintenance,

(g) Back-up generators subject to the following:

(1) The operation of back-up generators during power outages resulting from storms and other emergencies.

(2) The routine testing and maintenance of back-up generators provided that such activity occurs between 7 a.m. and 9 p.m. and the routine testing shall not occur for more than two (2) consecutive or non-consecutive hours in any one (1) day. The testing and maintenance of such generators is prohibited for (i) more than two (2) consecutive or non-consecutive hours in any one (1) day; or (ii) during the hours of 9 p.m. to 7 a.m.

(h) Heat pumps and/or air conditioners located on property containing single family detached or attached residential dwellings that are operating in accordance with the manufacturer's specifications.

(i) Activities associated with the removal of snow and/or ice from walkways, parking areas and travel lanes.

(j) Impulse sound that does not exceed the maximum impulse sound levels contained in the Maximum Sound Levels Table contained in Sect.108.1-4-2 above.

(k) Activities related to the construction, repair, maintenance, remodeling or demolition, grading or other improvement of real property between 7 a.m. and 9 p.m., provided that such activity does not exceed 90 dBA in residential areas, and it shall be a violation of this Chapter to commence such activity before 9 a.m. on Saturdays, Sundays, and Federal holidays.

(l) Operation of power lawn equipment:

(1) Between 7 a.m. and 9 p.m. when operated within 100 yards from a residential dwelling; or

(2) Between 6 a.m. and 9 p.m. when operated 100 yards or more from a residential dwelling; or

(3) Between 5:30 a.m. and 9 p.m. for golf course maintenance when operated 50 yards or more from a residential dwelling; or

(4) Between 7 a.m. and 9 p.m. for golf course maintenance when operated less than 50 yards from a residential dwelling.

Notwithstanding the above, the operation of leaf blowers is not permitted prior to 7 a.m. on any property, including on golf courses.

(m) Operation of mechanical devices to sweep or clean outdoor parking, pedestrian and/or loading areas, except it shall be a violation of this Chapter to operate such devices when located within 100 yards of a residential dwelling between 9 p.m. and 7 a.m.

(n) Trash and recycling collection, except it shall be a violation of this chapter to collect trash or recyclable materials in the outdoors in residential districts and/or within 100 yards of a residential dwelling between 9 p.m. and 6 a.m.

(o) Operation of a landfill, except it shall be a violation of this Chapter for any person to operate or permit to operate any motor vehicle, mechanical device, noise source, or any combination thereof, at a landfill between 9 p.m. and 6 a.m. and when located within 100 yards of a residential dwelling.

(p) The testing of plainly audible and discernible signal devices which are employed as warning or alarm signals in case of fire, emergency, theft, or burglary, or imminent danger, provided that such testing occurs between 7 a.m. and 9 p.m. and shall not occur for more than two (2) consecutive or nonconsecutive hours in any one (1) day. The testing of such signal devices is prohibited for (i) more than two (2) consecutive or non-consecutive hours in any one (1) day; or (ii) during the hours of 9 p.m. to 7 a.m.

(q) Operation of transportation facilities between 7 a.m. and 9 p.m.

(r) Band performances or practices, athletic contests or practices and other such activities on school or recreational grounds, or any activity on recreational grounds customarily associated with its intended use shall not be subject to the provisions of this Chapter between 7 a.m. to 10:00 p.m. on Sunday through Thursday, or between 7 a.m. and 11:00 p.m. on Friday and Saturday or the day before a Federal holiday. Loudspeakers or instruments associated with such activities shall be subject to the following:

(1) Notwithstanding the other provisions of this Chapter, the use of loudspeakers or instruments, except for unamplified musical instruments, shall not be permitted prior to 9 a.m. on Saturdays, Sundays and Federal holidays; and

(2) The overall noise levels for the loudspeakers and/or instruments and the associated activities shall not exceed 72 dBA at the property boundary of the noise source. ***[The advertised range is between 60 and 72 dBA]***

(s) The use of dog parks between 7 a.m. and dusk Monday through Friday, or between 8 a.m. and dusk on Saturday, Sunday and Federal holidays.

(t) Bells, carillons, and other calls to worship shall not be subject to this chapter between 7 a.m. and 10 p.m. provided that any such sounds do not occur for more than five (5) consecutive or nonconsecutive minutes in any one (1) hour.

ARTICLE 6. Waivers

Section 108.1-6-1. Waivers.

(a) Any person responsible for any noise source may apply to the Director for a waiver or partial waiver from the provisions of this Chapter. The Director may grant such waiver or partial waiver if he/she finds that:

(1) The noise does not endanger the public health, safety or welfare; or

(2) Compliance with the provisions of this Chapter from which waiver is sought would produce serious hardship without producing equal or greater benefit to the public.

(b) In determining whether to grant such waiver, the Director shall consider the time of day when noise will occur, duration of the noise, its loudness relative to the required limits of this Chapter, whether the noise is intermittent or continuous, its extensiveness, the technical and economic feasibility of bringing the noise into conformance with this Chapter and such other matters as are reasonably related to the impact of the noise on the health, safety and welfare of the community and the degree of hardship which may result from the enforcement of the provisions of this Chapter.

(c) No waiver or partial waiver issued pursuant to this Section shall be granted for a period to exceed one (1) year, but any such waiver or partial waiver may be renewed for like periods if the Director shall find that such renewal is justified after again applying the standards set forth in this Section. No renewal shall be granted except upon application therefor.

(d) Any person aggrieved by a decision of the Director made pursuant to this Section may obtain review of such decision by the County Executive by delivering a written statement of grievance to the Office of the County Executive within thirty (30) days from the date of the decision.

The County Executive shall review all statements of grievances and shall, within sixty (60) days from the date of the Director's decision, either affirm or set it aside, making such further order as shall be necessary to effectuate the provisions of this Section.

ARTICLE 7. Proffered and Development Condition Applicability

Section 108.1-7-1 Proffered and Development Condition Applicability.

The provisions of this Chapter shall not negate any applicable proffered condition, development condition, special permit or special exception condition pertaining to noise or sound. In the event of any conflict between the conditions and this Chapter, the text of the Noise Ordinance in effect at the time the conditions were approved shall govern.

ARTICLE 8. Severability

Section 108.1-8-1. Severability.

If any of the Articles, Sections, Paragraphs, sentences, clauses, or phrases of this Chapter shall be declared unconstitutional or invalid by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect the validity of the Chapter in its entirety or any of the remaining Articles, Sections, Paragraphs, sentences, clauses, and phrases.

ATTACHMENT B

APPLICABILITY OF PROPOSED NOISE ORDINANCE

SOURCE OF SOUND	PROHIBITIONS	EXCEPTIONS (Not Subject to Noise Ordinance)	MAX DECIBELS (Pursuant to Proposed Maximum Sound Level Chart)
1. Outdoor Loudspeakers	Unless otherwise regulated: 1. Between 10 p.m. and 7 a.m. on Sun. – Thurs.; or 2. Between *10 p.m. and 9 a.m. on Fri, Sat., and the day before Fed. Holidays.	Use of certain loudspeakers that: 1. Are required by state or federal regulations; or 2. Provide a public service announcement, such as train or bus arriving.	Unless otherwise regulated: 1.*7 a.m. to 10 p.m. Mon. – Fri. 2. 9 a.m. to 10 p.m. Sat, Sun, Fed. Holidays
2. Outdoor Construction	Between 9 p.m. and 7 a.m. on Sun. – Thurs.; or Between 9 p.m. and 9 a.m. on Fri.*, Sat, and the day before a Fed. Holiday.	7 a.m. to 9 p.m. Mon. – Fri. 9 a.m. to 9 p.m. Sat*, Sun, Fed. Holidays provided that a maximum decibel level of 90 dBA is not exceeded in residential areas.	
3. Outdoor Motor Vehicle or Mechanical Device Repair	Between 9 p.m. to 7 a.m.		*7 a.m. to 9 p.m.
4. Operation of Powered Model Vehicles	Between 9 p.m. to 7 a.m.		*7 a.m. to 9 p.m.
5. Outdoor Trash and Recycling Collection	In residential districts and/or within 100 yards of a residential dwelling prohibited from 9 p.m. to 6 a.m.	1. At any location from 6 a.m. to 9 p.m. and, 2. When located 100 yards or more from a residential dwelling and not in a residential district, from 9 p.m. to 6 a.m.	
6. *Land Fill Operation	Within 100 yards of a residential dwelling prohibited from 9 p.m. to 6 a.m.	1. At any location from 6 a.m. to 9 p.m. and, 2. When located 100 yards or more from a dwelling, from 9 p.m. to 6 a.m.	
7. Outdoor Truck Loading/ Unloading	When located within 100 yards of a residential dwelling prohibited from 9 p.m. to 6 a.m.		*1. At any location between 6 a.m. and 9 p.m.; and 2. When located 100 yards or more from a residential dwelling between 9 p.m. and 6 a.m.

SOURCE OF SOUND	PROHIBITIONS	EXCEPTIONS (Not Subject to Noise Ordinance)	MAX DECIBELS (Pursuant to Proposed Maximum Sound Level Chart)
8. *Lawn Equipment Operation	Unless otherwise excepted or prohibited 1. When operated within 100 yards from a residence, between 9 p.m. and 7 a.m.; or 2. When operated 100 yards or more from a residence, between 9 p.m. and 6 a.m.; or 3. Between 9 p.m. & 5:30 a.m. for golf course maintenance when operated 50 yards or more from a residence; or 4. Between 9 p.m. and 7 a.m. for golf course maintenance when operated less than 50 yards from a residence. Notwithstanding the above, the operation of leaf blowers on all property, including on golf courses, is prohibited between 9 p.m. and 7 a.m.	1.When operated within 100 yards from a residence, between 7 a.m. and 9 p.m., or, 2.When operated 100 yards or more from a residence, between 6 a.m. and 9 p.m., or 3. Between 5:30 a.m. and 9 p.m. for golf course maintenance when operated 50 yards or more from a residence, or 4. Between 7 a.m. and 9 p.m. for golf course maintenance when operated less than 50 yards from a residence. Notwithstanding the above, the operation of leaf blowers is not permitted prior to 7 a.m. on any property, including on golf courses.	
9. *Operation of Mechanical Devices for cleaning outdoors	When located within 100 yards of a residential dwelling, between 9 p.m. to 7 a.m., unless otherwise excepted.	1.At any location from 7 a.m. to 9 p.m. and, 2.When located 100 yards or more from a residential dwelling from 9 p.m. to 7 a.m.	
10. *Person, Motor Vehicle or Instrument	Unless otherwise excepted, prohibited when plainly audible inside a residential dwelling with doors and window closed, and the sound must be discernible regardless of whether such doors and windows are closed: 1. Between 10 p.m. & 7 a.m. on Sun.-Thurs., or between 11 p.m. & 7 a.m. on Fri., Sat., and the day before a Fed. Holiday; or 2. Between 1 a.m. & 7 a.m. on Sat., Sun. and Fed. Holidays when the residence is located in a mixed use area and the sound is emanating from a nonresidential use.		1. Within any residential area between 7 a.m. to 10 p.m. on Sun. – Thurs; or from 7 a.m. to 11 p.m. on Fri, Sat., and day before a Fed holiday. 2. When the residence is located in a mixed use area and the sound is emanating from a nonresidential use, then 7 a.m. to 1 a.m. on Fridays, Saturdays and the day before a Fed holiday.
11. *Animals	Animal noise:	1.When the animal is	

SOURCE OF SOUND	PROHIBITIONS	EXCEPTIONS (Not Subject to Noise Ordinance)	MAX DECIBELS (Pursuant to Proposed Maximum Sound Level Chart)
	1. Between 10 p.m. and 7 a.m. that is plainly audible in any other persons residence with doors and windows closed and the source of source of sound generation is discernible regardless of whether such doors or windows are closed; or 2. Between 7 a.m. and 10 p.m. when the animal noise is plainly audible and discernible across property boundaries or through partitions common to residential dwellings and such sound can be heard for more than 2 consecutive or nonconsecutive minutes in any 10 minute period. Animal sounds that can be heard for less than 2 consecutive or non-consecutive minutes in any 10 minute period shall not be subject to the Noise Ordinance.	responding to pain or injury or is protecting itself, its kennel, its offspring, a person from a real threat, or 2.When the animal is a police dog that is engaged in the performance of its duties at the time of making the noise. 3. When part of a bona fide agricultural operation.	
12. Emergency Work		Any time	
13. *Alarms		1. Emission of sound for purpose of alerting people to the existence of an emergency, provided that such alarm signals cease when any such threat is no longer imminent. 2. The routine testing of plainly audible alarms for fire, emergency, theft or imminent danger between 7 a.m. to 9 p.m., provided that such testing does not occur for more than 2 consecutive or nonconsecutive hours in any one day. The testing of such signal devices is prohibited for (i) more than 2 consecutive or nonconsecutive hours in any one day; or (ii) during the hours of 9 p.m. to 7 a.m.	1. Emergency alarm testing between 9 p.m. and 7 a.m.; and 2. Routine testing that occurs between 7 a.m. and 9 p.m. and for more than 2 consecutive or nonconsecutive hours in any one day.

SOURCE OF SOUND	PROHIBITIONS	EXCEPTIONS (Not Subject to Noise Ordinance)	MAX DECIBELS (Pursuant to Proposed Maximum Sound Level Chart)
14. *Preempted Activities		Activities for the regulation of sound that have been preempted by Federal or State law.	
15. *Snow and Ice Removal		Any time	
16. ***Motor Vehicles**		Motor vehicles on the road right-of-way - any time	
17. Airplanes and Helicopters		Airplanes and helicopter flying overhead - any time	
18. Trains		Anytime, trains traveling on tracks located in railroad right-of-way or easements, and rail road track maintenance.	
19. *Heat Pumps/Air Conditioners		Use of heat pumps/air conditioners on single family dwelling lots when operating in accordance with the manufacturer's specifications.	1. Use of heat pump/air conditioner on a single family dwelling lot not operating in accordance with the manufacturer's specifications; and 2. Use of heat pump/air conditioner on all non-single family dwelling lots
***20. Back-Up Generators**		1. Use of back-up generators during power outages resulting from storms and other emergencies. 2. Routine testing and maintenance of back-up generators between 7 a.m. and 9 p.m. provided that such testing does not occur for more than 2 consecutive or nonconsecutive hours in any one day. The testing and maintenance of such generators is prohibited for (i) more than 2 consecutive or non-consecutive hours in any one day; or during the hours of 9 p.m. to 7 a.m.	1. Use of generators during power outages not caused by a storm or other emergency; 2. Routine testing and maintenance of back-up generators between 7 p.m. and 9 a.m.; and 3. Routine testing that occurs between 7 a.m. and 9 p.m. and for more than 2 consecutive or nonconsecutive hours in any one day.
21.*Impulse Sound		Impulse sound that does not exceed the maximum decibels listed in the Maximum Sound Level Chart.	Anytime

SOURCE OF SOUND	PROHIBITIONS	EXCEPTIONS (Not Subject to Noise Ordinance)	MAX DECIBELS (Pursuant to Proposed Maximum Sound Level Chart)
22. Transportation Facility		7 a.m. to 9 p.m.	9 p.m. to 7 a.m.
23. *Bells, Carillons and other Calls to Worship		7 a.m. to 10 p.m., provided that any such sounds do not occur for more than 5 consecutive or nonconsecutive minutes in any one hour.	1. 10 p.m. to 7 a.m., and 2. Between 7 a.m. to 10 p.m. when the sounds last for more than 5 consecutive or nonconsecutive minutes in any one hour.
24. *Band performances or practices, athletic contests or practices and other such activities on school or recreational grounds	Notwithstanding the other provisions of this Chapter, the use of loudspeakers or instruments, except for unamplified musical instruments, shall not be permitted prior to 9 a.m. on Saturdays, Sundays and Fed. Holidays. The overall noise levels for the loudspeakers and/or instruments and the associated activities shall not exceed 72 dBA at the property boundary of the noise source. *[The advertised range is between 60 and 72 dBA.]*	7 a.m. to 10 p.m. Sun. – Thurs and Fed. Holidays; or 7 a.m. to 11 p.m. Fri. Sat, and the day before a Fed. Holiday	10 p.m. to 7 a.m. Sun. – Thurs., Fed. Holidays 11 p.m. to 7 a.m. Fri., Sat. and day before a Fed. holiday
25. Dog Parks	Notwithstanding the other provisions, the use of dog parks between dusk and 7 a.m. on Sun. – Thurs.; or between dusk and 8 a.m. on Fri. Sat. and the day before a Fed. Holiday	Notwithstanding the other provisions, the use of dog parks between 7 a.m. and dusk Mon. – Fri., and between 8 a.m. and dusk on Sat., Sun. and Fed. Holidays	
26. All Other Sound Sources Not Listed Above			All other sound sources not listed above.

*** Items marked with an asterisk are new with the proposed amendment.**

ATTACHMENT C

PROPOSED COUNTY CODE AMENDMENT

April 7, 2015

Amend Chapter 108, Noise, by repealing it in its entirety.

~~**ARTICLE 1. General Provisions.**~~

~~**Section 108-1-1. Short title.**~~

~~This Chapter may be referred to as the "Noise Ordinance" of the County of Fairfax.~~
~~(24-75-16A; 1-1-76)~~

~~**Section 108-1-2. Declarations of findings and policy.**~~

~~It is hereby declared to be the public policy of Fairfax County, in cooperation with Federal, State and local governments and regional agencies, to promote an environment for its citizens free from noise that jeopardizes their health or welfare or degrades the quality of life. Nothing contained in this Chapter shall be construed to authorize or direct any action which shall result in any substantial increase in noise levels from any noise source in Fairfax County.~~
~~(24-75-16A; 1961 Code, § 16A.1.2.)~~

~~**Section 108-1-3. Penalties.**~~

~~Any violation of any provision of this Chapter shall constitute a misdemeanor and any person violating this Chapter shall, upon conviction, be punishable by imprisonment not to exceed thirty (30) days or by a fine not to exceed one thousand dollars ($1,000.00), or both. Each separate act on the part of the person violating the Chapter shall be deemed a separate offense, and each day a violation is permitted to continue unabated shall be deemed to constitute a separate offense.~~
~~(24-75-16A; 1961 Code, § 16A.1.3.)~~

~~**Section 108-1-4. Severability.**~~

~~If any of the Articles, Sections, Paragraphs, sentences, clauses, or phrases of this Chapter shall be declared unconstitutional or invalid by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect the validity of the Chapter in its entirety or any of the remaining Articles, Sections, Paragraphs, sentences, clauses, and phrases.~~
~~(24-75-16A; 1961 Code, § 16A.1.4.)~~

~~**Section 108-1-5. Enforcement.**~~

~~(a) Whenever the Zoning Administrator has reason to believe that a violation of any provision of this Chapter or a rule or regulation issued pursuant thereto has occurred, he may give notice of~~

~~such violation to the person failing to comply with this Chapter and order said person to take such corrective measures as are necessary within a reasonable time thereafter.~~

~~Such notice and order shall be in writing and shall be served personally upon the person to whom directed, or if he be not found, by mailing a copy thereof by certified mail to his usual place of abode and conspicuously posting a copy at the premises, if any, affected by the notice and order.~~

~~If such person fails to comply with the order issued hereunder, the Zoning Administrator may institute such actions as are necessary to terminate the violation, including obtaining criminal warrants, and applying to courts of competent jurisdiction for injunctive relief.~~

~~Failure on the part of such person to take steps to comply with such order within the time provided for therein shall constitute a separate violation of this Chapter. If such person complies with such order promptly, no further action to terminate the violation shall be required, but compliance shall not be deemed to inhibit prosecution of such person for the violation.~~

~~(b) If the noise source is a motor vehicle moving on a public right-of-way, violation of this Chapter shall be cause for the Zoning Administrator to obtain a criminal warrant forthwith.~~

~~(c) Except as hereinbefore provided in Subparagraph (a) of this Section, a warrant may be obtained for the violation of any provision of Article 5 of this Chapter only upon the sworn complaint of a police officer or two (2) persons who are not members of the same household alleging the specific violation complained of, that either or both of the complainants requested or made reasonable attempt to request abatement of the violation and that the violation continued after such request. Provided, however, that if there be no more than one household within one half mile of the noise source, a warrant may be issued upon the sworn complaint of one person making the foregoing allegations.~~

~~(d) Section 108-5-2(b) shall also be enforced by the Director of the Department of Animal Control, or his duly authorized agent.~~

~~(7-17-68, § 17-5; 24-75-16A; 1961 Code, § 16A.1.5; 3-75-108.)~~

~~ARTICLE 2. Definitions.~~

~~Section 108-2-1. Definitions.~~

~~(a) The following words and phrases, when used in this Chapter, shall for the purposes of this Chapter, have the meanings respectively ascribed to them in this Section, except in those situations where the context clearly indicates a different meaning:~~

~~(1) *A-weighted sound pressure level* shall mean the sound pressure level as measured on a sound level meter using the A-weighted network. The level so read shall be postscripted dB(A) or dBA.~~

~~(2) *Decibel* shall mean a unit which describes the sound pressure level or intensity of sound. The sound pressure level in decibels is twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound in microbars to a reference pressure of 0.0002 microbar; abbreviated dB.~~

~~(3) *Device* shall mean any mechanism which is intended to, or which actually produces noise when operated or handled.~~

~~(4) *Disposal* shall mean the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land.~~

~~(5) *Emergency work* shall mean work made necessary to restore property to a safe condition following a public calamity, or work required to protect persons or property from immediate exposure to danger, including work performed by public service companies when emergency inspection, repair of facilities, or restoration of services is required for the immediate health, safety, or welfare of the community.~~

~~(6) *Equivalent sound level (Leq)* shall mean the constant sound level that, in a given situation and time period, conveys the same sound energy as the actual time-varying A-weighted sound pressure level.~~

~~(7) *Landfill* shall mean a site used for the disposal of solid waste.~~

~~(8) *Motor vehicle* shall mean any vehicle which is self-propelled or designed for self-propulsion including but not limited to, passenger cars, trucks, truck-trailers, semitrailers, campers, motor boats and racing vehicles; and any motorcycle (including but not limited to motor scooters and mini-bikes) as defined in Paragraph 14 of § 46.1.1. Va. Code Ann.~~

~~(9) *Noise* shall mean any sound which may cause or tend to cause an adverse psychological or physiological effect on human beings.~~

~~(10) *Noise disturbance* shall mean any unnecessary sound which annoys, disturbs, or perturbs reasonable persons with normal sensitivities; or any unnecessary sound which reasonably may be perceived to injure or endanger the comfort, repose, health, peace or safety of any person.~~

~~(11) *Octave band analyzer* shall mean an instrument to measure the octave band composition of a sound by means of a bandpass filter. It shall meet the specifications of the American National Standards Institute publications. S1.4-1961, S1.6-1967, and S1.11-1966, or their successor publications.~~

~~(12) *Person* shall mean any individual, corporation, cooperative, partnership, firm, association, trust, estate, private institution, group, agency, or any legal successor, representative, agent, or agency thereof.~~

~~(13) *Powered model vehicles* shall mean any mechanically powered vehicle, either airborne, waterborne or landborne, which is not designed to carry persons or property including, but not limited to, model airplanes, boats, cars and rockets.~~

~~(14) *Public right-of-way* shall mean any street, avenue, boulevard, highway, alley or public space which is owned or controlled by a public governmental entity.~~

~~(15) *Solid waste* shall mean any garbage, trash, refuse, debris, construction rubble and other discarded material.~~

~~(16) *Sound* shall mean a temporal and spatial oscillation in pressure, or other physical quantity, in a medium with internal forces that causes compression and rare fraction of that medium, and which propagates at finite speed to distant points.~~

~~(17) *Sound level meter* shall mean an instrument to measure sound pressure levels which shall meet or exceed performance standards for a "Type Two" meter as specified by the American National Standards Institute.~~

~~(18) *Sound pressure* shall mean the instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space.~~

~~(19) *Stationary noise source* shall mean any equipment or facility, fixed or movable, capable of emitting sound beyond the property boundary of the property on which it is used.~~

~~(20) *Zoning Administrator* shall mean the Fairfax County Zoning Administrator or his duly authorized agent.~~

~~(21) *Zoning district classification:* Refers to the scheme of land use classification contained in the Fairfax County Zoning Ordinance.~~

~~(7-17-68, § 17-5.2; 24-75-16~~

~~ARTICLE 3. Administration, Authority and Duties.~~

~~Section 108-3-1. Administration of the Ordinance.~~

~~The provisions of this Chapter shall be administered and enforced by the Zoning Administrator or his duly authorized agent.~~

~~(24-75-16A; 1961 Code, § 16A.3.1; 3-79-108.)~~

~~Section 108-3-2. Authority and duties of the Zoning Administrator.~~

~~In addition to any other authority vested in him by law, Zoning Administrator:~~

~~(a) May conduct, or cause to be conducted, studies, research and monitoring related to noise and its prevention, abatement and control.~~

~~(b) May conduct programs of public education regarding the causes and effects of noise and the means for its abatement, and encourage the participation of public interest groups in related public information efforts.~~

~~(c) May coordinate the noise control activities of all agencies and departments of the Fairfax County government and advise, consult, cooperate and coordinate noise control activities with other local governmental units, state agencies, interstate and interlocal agencies, the Federal government, and with interested persons and groups with respect to the provisions of this Chapter.~~

~~(d) Shall issue such orders, rules and regulations and measurement procedures and methodologies as may be necessary to effectuate the provisions of this Chapter and enforce the same by all appropriate administrative and judicial proceedings.~~

~~(e) May make recommendations to the Board of Supervisors for changes to this Chapter to make it consistent with all preemptive State and Federal legislation.~~

~~(f) May enter and inspect any property, premises or place at any reasonable time for the purpose of ascertaining compliance with any provision of this Chapter when granted permission by the owner, or some person with reasonably apparent authority to act for the owner. When permission is refused or cannot be obtained, a proper search warrant may be obtained from a Court of competent jurisdiction upon showing of probable cause to believe that a violation of this Chapter may exist.~~

~~(g) May administer grants or other funds or gifts from public and private agencies, including the State and Federal governments, for the purpose of carrying out any of the provisions of this Chapter.~~

~~(h) May secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise.~~

~~(i) May obtain warrants for violations of any of the provisions of this Chapter and apply to any court of competent jurisdiction for such injunctive relief as shall be necessary to terminate continuing violations of this Chapter.~~

~~(j) Shall make an annual report to the Board of Supervisors on the status and effectiveness of the Noise Ordinance, including the reasonableness of the noise standards prescribed therein, and shall make recommendations for improvement of this Ordinance.~~

~~(k) May perform such other acts as may be necessary to carry out the functions of this Chapter and such other acts as may be specifically enumerated herein. (24-75-16A; 1961 Code, § 16A.3.2; 3-79-108.)~~

~~ARTICLE 4. Noises Prohibited.~~

~~Section 108-4-1. Specific prohibitions.~~

~~The following acts are violations of this Chapter:~~

~~(a) Using or operating a loudspeaker or other sound amplification device in a fixed or movable position exterior to any building, or mounted upon any motor vehicle for the purpose of commercial advertising, giving instructions, information, directions, talks, addresses, lectures, or providing entertainment to any persons or assemblage of persons on any private or public property, between the hours of 11 p.m. and 7 a.m. the following day.~~

~~(b) Operating or causing to be operated any equipment used in construction, repair, alteration, or demolition work on buildings, structures, streets, alleys, or appurtenances thereto in the outdoors between the hours of 9 p.m. and 7 a.m. the following day, except that no such activity shall commence prior to 9 a.m. on Sundays and Federal holidays.~~

~~(c) Repairing, rebuilding, or modifying, any motor vehicle or other mechanical device in the outdoors between the hours of 9 p.m. and 7 a.m. the following day.~~

~~(d) Operating or permitting the operation of powered model vehicles in the outdoors between the hours of 9 p.m. and 7 a.m. the following day.~~

~~(e) The collection of trash or refuse in residential use districts between the hours of 9 p.m. and 6 a.m. the following day.~~

~~(f) Loading or unloading trucks in the outdoors within one hundred (100) yards of a residence between the hours of 9 p.m. and 6 a.m. the following day. (7-17-68, § 17.9; 24-75-16A; 1961 Code, § 16A.4.1; 34-76-108; 24-98-108.)~~

~~Section 108-4-2. Places of public entertainment or assembly.~~

~~It shall be unlawful after the Zoning Administrator has given appropriate notice requesting abatement, for any person to operate, or permit to be operated, any loudspeaker or other device for the production of sound in any place of public entertainment or other place of public assembly which produces sound pressure levels of 90 dB(A) or greater at any point that is normally occupied by a person, as read with the slow response on a sound level meter, unless a conspicuous and legible sign is located outside such place, near the entrance, stating "WARNING! PROLONGED EXPOSURE TO SOUND ENVIRONMENT WITHIN MAY CAUSE HEARING IMPAIRMENT." (24-75-16A; 1961 Code, § 16A.4.2; 3-79108.)~~

~~Section 108-4-3. Quiet zone.~~

~~(a) It shall be unlawful for any person to create any noise in excess of that prescribed within any area designated as a "quiet zone" in conformance with the provisions of Sup-paragraph~~

~~(b) of this Section; provided conspicuous signs are displayed in adjacent or continuous streets indicating that said area is a quiet zone.~~

~~(b) Whenever the protection of the public health, safety and welfare so require, after a duly advertised public hearing, the Board of Supervisors may designate any geographical area of Fairfax County as a "quiet zone." Such designation shall include a description of the subject area, the reasons for its designation as a quiet zone, and shall prescribe the level of noise which shall be permitted in such quiet zone. (24-75-16A; 1961 Code, § 16A.4.3.)~~

~~Section 108-4-4. Maximum permissible sound pressure levels.~~

~~(a) It shall be unlawful for any person to operate, or permit to be operated, any stationary noise source in such a manner as to create a sound pressure level which exceeds the limits set forth in the table following titled "Maximum Sound Pressure Levels" when measured at the property boundary of the noise source or at any point within any other property affected by the noise. When a noise source can be identified and its noise measured in more than one zoning district classification, the limits of the most restrictive classification shall apply.~~

~~(b) Notwithstanding the provisions of the foregoing Subsection, sound created by the operation of power equipment, such as power lawn mowers and chain saws, between the hours of 7 a.m. and 9 p.m. the same day shall be permitted so long as they do not constitute a noise disturbance. (7-17-68, § 17-4-3; 24-75-16A; 1961 Code, § 16A.4.4.; 34-76-108.)~~

~~MAXIMUM SOUND PRESSURE LEVELS~~				
~~ZONING DISTRICT CLASSIFICATION~~	~~MAXIMUM dBA~~	~~OCTAVE BAND LIMIT~~		
			~~CENTER FREQUENCY HERTZ (HZ)~~	~~dB~~
		~~31.5~~	~~70~~	
		~~63~~	~~69~~	
		~~125~~	~~64~~	
		~~250~~	~~59~~	
~~RESIDENTIAL~~	~~55~~	~~500~~	~~53~~	
		~~1,000~~	~~47~~	
		~~2,000~~	~~42~~	
		~~4,000~~	~~38~~	
		~~8,000~~	~~35~~	
		~~31.5~~	~~75~~	
		~~63~~	~~74~~	

		~~125~~	~~69~~
		~~250~~	~~64~~
~~COMMERCIAL~~	~~60~~	~~500~~	~~58~~
		~~1,000~~	~~52~~
		~~2,000~~	~~47~~
		~~4,000~~	~~43~~
		~~8,000~~	~~40~~
		~~31.5~~	~~85~~
		~~63~~	~~84~~
		~~125~~	~~79~~
		~~250~~	~~74~~
~~INDUSTRIAL~~	~~72~~	~~500~~	~~68~~
		~~1,000~~	~~62~~
		~~2,000~~	~~57~~
		~~4,000~~	~~53~~
		~~8,000~~	~~50~~

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~~**Section 108-4-5. Permissible motor vehicle sound pressure levels.**~~

~~(a)~~ ~~The maximum sound pressure level emitted by motor vehicles not equipped with a muffler conforming to the requirements of §§ 46.1-301 and 46.1-302, Va. Code Ann., operated on a public right-of-way as measured at a point fifty (50) feet from the motor vehicle shall be as provided in the table below titled "Motor Vehicle Noise Limits."~~

~~MOTOR VEHICLE NOISE LIMITS~~

~~Vehicle Class~~	~~Sound Pressure Level, dB(A) Speed limit 35 mph or less~~	~~Speed limit above 35 mph~~
~~Any motor vehicle with a manufacturers gross vehicle rating of 10,000 pounds or more, and any combination of vehicles towed by such motor vehicle~~	~~86~~	~~90~~
~~Any motorcycle~~	~~82~~	~~86~~
~~Any other motor vehicle and any combination of vehicles towed by such motor vehicle~~	~~76~~	~~82~~

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~~(24-75-16A; 1961 Code, § 16A.4.5.)~~

~~Section 108-4-6. Civil transport category airplane operations; noise limitations.~~

~~(a) No person may operate, to or from an airport wholly or partially located within Fairfax County, Virginia, any civil transport category airplane unless:~~

~~(1) That airplane complies with the noise level requirements of the Federal Aviation Administration (14 CFR, Part 36) for subsonic transport category airplanes; or~~

~~(2) That airplane had flight time before December 31, 1974.~~

~~(b) This amendment shall remain in full force and effect only until such time as its provisions are superseded by FAA standards (established under § 711 of the FAA Act) which can be enforced by any citizen of Fairfax County.~~

~~(c) Notwithstanding any other provision of this ordinance, the Zoning Administrator shall enforce the noise limitations for civil transport category airplane operations only in the following manner. He shall serve a notice of violation on any person who violates these provisions, providing a reasonable time for abatement or discontinuance of the violation. Should the person in violation of these provisions fail to take such corrective steps, the Zoning Administrator shall request the County Attorney to seek injunctive relief.~~
~~(3-76-108; 21-76-208; 3-79-108.)~~

~~Section 108-4-7. Landfills; maximum sound pressure levels.~~

~~It shall be unlawful for any person to operate, or permit to be operated, any motor vehicle, stationary noise source or device, or any combination thereof, at a landfill in such a manner as to create noise which:~~

~~(a) When measured at any point within any other property affected by the noise, exceeds the following equivalent sound levels (Leq):~~

~~(1) Property used for residential—Leq of 55 dB(A).~~
~~(2) Property used for commercial—Leq of 60 dB(A).~~
~~(3) Property used for industrial—Leq of 72 dB(A).~~

~~or~~

~~(b) When measured at the property boundary of the landfill or at any point within any other property affected by the noise exceeds an A-weighted sound pressure level of seventy-five (75) dB(A).~~

~~For the purpose of this Section, a minimum test period of one (1) hour shall be used for the Leq, and the survey shall be conducted in accordance with the standards and procedures specified in Procedural Memorandum 103.~~ ~~2~~ ~~H~~
~~(37-81-108.)~~

~~Section 108-4-8. Measurement procedures.~~

~~(a) Field measurement procedures for the enforcement of the sound pressure levels set forth in this Chapter shall be promulgated by the Zoning Administrator.~~

~~(b) Noise shall be measured with a sound level meter and octave band analyzer.~~
~~(24-75-16A; 1961 Code, § 16A.4.6; 3-76-108; 3-79-108; 37-81-108.)~~

~~ARTICLE 5. Reserved.~~

~~ARTICLE 6. Variances and Exemptions Permitted.~~

~~Section 108-6-1. Emergencies.~~

~~An exemption from the provisions of this Chapter is granted for noise caused in the performance of emergency work. Nothing in this Section shall be construed to permit law enforcement, ambulance, fire or other emergency personnel to make excessive noise in the performance of their duties when such noise is clearly unnecessary.~~
~~(24-75-16A; 1961 Code, § 16A.6.1.)~~

~~Section 108-6-2. Undue hardship.~~

~~(a) Any person responsible for any noise source may apply to the Zoning Administrator for a variance or partial variance from the provisions of this Chapter. The Zoning Administrator may grant such variance or partial variance if he finds that:~~
~~(1) The noise does not endanger the public health, safety or welfare; or~~
~~(2) Compliance with the provisions of this Chapter from which variance is sought would produce serious hardship without producing equal or greater benefit to the public.~~

~~(b) In determining whether to grant such variance, the Zoning Administrator shall consider the time of day when noise will occur, duration of the noise, its loudness relative to the required limits of this Chapter, whether the noise is intermittent or continuous, its extensiveness, the technical and economic feasibility of bringing the noise into conformance with this Chapter and such other matters as are reasonably related to the impact of the noise on the health, safety and welfare of the community and the degree of hardship which may result from the enforcement of the provisions of this Chapter.~~

~~(c) No variance or partial variance issued pursuant to this Section shall be granted for a period to exceed one (1) year, but any such variance or partial variance may be renewed for like periods if the Zoning Administrator shall find that such renewal is justified after again applying the standards set forth in this Section. No renewal shall be granted except upon application therefor.~~

~~(d) Any person aggrieved by a decision of the Zoning Administrator made pursuant to Article 6 of this Chapter may obtain review of such decision by the County Executive by delivering a written statement of grievance to the Office of the County Executive within thirty (30) days from the date of the decision.~~

~~The County Executive shall review all statements of grievances and shall, within sixty (60) days from the date of the Zoning Administrator's decision, either affirm or set it aside, making such further order as shall be necessary to effectuate the provisions of this Section.~~

~~(24-75-16A; 1961 Code, § 16A.6.2; 3-79-108.)~~

ATTACHMENT C

PROPOSED COUNTY CODE AMENDMENT

Amend Chapter 5, Offenses, Article 6, An Ordinance to Regulate Certain Excessive Sound Generation in Residential Areas and Dwellings, by repealing it in its entirety.

~~**5-6-1. Declaration of findings and policy.**~~

~~The Board hereby finds and declares that certain audible and discernible sounds are a serious hazard to the public health, welfare, peace and safety and the quality of life of the citizens of Fairfax County; that the people have a right to and should be ensured an environment free from such sound that may jeopardize the public health, welfare, peace and safety or degrade the quality of life; and that it is the policy of the Board to prevent such sound to the extent such action is not inconsistent with a citizen's First Amendment rights.~~

~~**5-6-2. Definitions.**~~

~~The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~*Audible* means the sound can be heard by the human ear with or without a medically approved hearing aid or device.~~

~~*Discernible* means that the sound is sufficiently distinct such that its source can be clearly identified.~~

~~*Emergency* means any occurrence or set of circumstances involving actual or imminent physical injury or illness or property damage that requires immediate action.~~

~~*Emergency work* means any work performed for the purpose of preventing or alleviating the physical injury or illness or property damage threatened or caused by an emergency, including work performed by public service companies when emergency inspection, repair of facilities, or restoration of services is required for the immediate health, safety, or welfare of the community.~~

~~*Instrument, machine or device* means and refers to any musical instrument, radio, phonograph, compact disc player, cassette tape player, amplifier or any other machine or device for producing, reproducing or the amplification of sound.~~

~~*Residential area* means the parcel on which a residential dwelling is located and any contiguous rights of way, roads, streets, lanes, sidewalks, or other such means of egress and ingress to any such parcel.~~

~~*Residential dwelling* means any building or other structure, including multifamily and mixed use structures, in which one or more persons lives on a permanent or temporary basis, including, but not limited to, houses, apartments, condominiums, hotels, and motels.~~

~~*Sound* means an oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.~~

~~*Sound generation or to generate sound* means any conduct, activity or operation, whether human, mechanical, electronic or other, including but not limited to, any animal or bird, and any instrument, machine or device, whether continuous, intermittent or sporadic, and whether stationary or ambulatory in nature, which produces or results in a sound that is audible and discernible to the human ear.~~

~~**5-6-3. Administration and enforcement.**~~

~~(a) The police department may issue a summons for enforcement of the noise control program established by this article and may be assisted by other County departments as required.~~

~~(b) Nothing in this section shall preclude a private citizen from obtaining a magistrate's summons based upon a probable cause determination by the magistrate's office.~~

~~**5-6-4.Violations.**~~

~~(a) Any person who violates any provision of this article shall be deemed to be guilty of a Class 3 misdemeanor for a first offense. Any person who violates a provision of this article within one (1) year from the date of a prior conviction under this ordinance shall be guilty of a Class 2 misdemeanor.~~

~~(b) The person operating or controlling the sound generation or source shall be guilty of any violation caused by that generation or source. If it cannot be determined which person is operating or controlling the sound generation or source, any owner, tenant, resident or manager physically present on the property where the violation is occurring is rebuttably presumed to be operating or controlling the sound generation or source.~~

~~(c) In addition to and not in lieu of the penalties prescribed in this section, the Board may apply to the circuit court for an injunction against the continuing violation of any of the provisions of this ordinance and may seek any other remedy or relief authorized by law.~~

~~**5-6-5. Exceptions.**~~

~~No provisions of this ordinance shall apply to:~~

~~(1) The emission of sound for the purpose of alerting persons to the existence of an emergency, provided that such alarm signals cease once any such threat is no longer imminent;~~

~~(2) The emission of sound in the performance of emergency work;~~

~~(3) Activities for which the regulation of noise has been preempted by federal or state law;~~

~~(4) Motor vehicles travelling on a public right of way;~~

~~(5) Back-up generators operating during power outages resulting from storms and other emergencies;~~

~~(6) Heat pumps and/or air conditioners located on property containing single family detached or attached dwellings that are operating in accordance with the manufacturer's specifications;~~

~~(7) Operation of public transportation facilities;~~

~~(8) Work authorized by a variance or partial variance pursuant to Article 6 of Chapter 108 of the Code.~~

~~5-6-6. Sound generation and residential dwellings.~~

~~(a) No person in any residential dwelling or residential area, including the common areas of multifamily dwellings or mixed use structures, shall permit, operate, or cause any source of sound or sound generation to create a sound that is audible in any other person's residential dwelling with the doors and windows to the other person's residential dwelling closed. In addition, the source of sound or sound generation must be discernible regardless of whether such doors and windows are closed.~~

~~(b) *Exemptions*. The following activities or sources of sound shall be exempt during the hours of 7 a.m. to 9 p.m. from the prohibition set forth in section (a) of this section:~~

~~(1) Activities related to the construction, repair, maintenance, remodeling or demolition, grading or other improvement of real property, except no such activities shall commence before 9 a.m. on Saturdays, Sundays, and federal holidays.~~

~~(2) Gardening, lawn care, tree maintenance or removal, and other landscaping activities.~~

~~(3) Refuse collection and sanitation services, except that refuse collection and sanitation services may begin at 6:00 a.m.~~

~~(4) The testing of audible signal devices which are employed as warning or alarm signals in case of fire, emergency, theft, or burglary, or imminent danger.~~

~~(c) The following activities or sources of sound shall be exempt during the hours of 7 a.m. to 11 p.m. from the prohibition set forth in section (a) of this section:~~

~~(1) Band performances or practices, athletic contests or practices and other such activities on school or recreational grounds.~~

~~(2) Bells, carillons, and other calls to worship provided that any such sounds do not occur for a duration of longer than 5 minutes per hour.~~

~~(d) *Prohibitions.*~~

~~(1) Use of a loudspeaker or other sound amplification device that is mounted in a fixed or movable position on the exterior of any structure between the hours of 11 p.m. and 7 a.m.~~

~~(2) Repairing or modifying any motor vehicle or other mechanical device in the outdoors between 9 p.m. and 7 a.m.~~

~~(3) Operation of powered model vehicles in the outdoors between 9 p.m. and 7 a.m.~~

~~(4) Collection of trash in residential districts and/or within 100 yards of a residence between 9 p.m. and 6 a.m.~~

~~(5) Operation of power lawn equipment between 9 p.m. and 7 a.m.~~

~~(6) Loading or unloading trucks in the outdoors within 100 yards of a residence between 9 p.m. and 6 a.m.~~

~~(7) Sound generation in an area designated by the Board as a quiet zone.~~

~~**5-6-7. Severability.**~~

~~A determination of invalidity or unconstitutionality by a court of competent jurisdiction of any clause, sentence, paragraph, section or part of this article shall not affect the validity of the remaining parts thereto.~~

~~**5-6-8. Effect on Chapter 108.**~~

~~(a) Article 5 of Chapter 108 of the Fairfax County Code is hereby repealed in its entirety. *But see* Article 6 of Chapter 5 of this Code.~~

~~(b) To the extent that anything in this Ordinance in regard to the regulation of certain sound generation in residential areas and dwellings, conflicts with any provision of Chapter 108 of this Code entitled "Noise," this article supersedes any such provision in Chapter108. In addition, notwithstanding anything in this article, all development conditions and proffers of any nature that refer to the Noise Ordinance shall be deemed to apply to Chapter 108 and not this article, and all such development conditions and proffers are unaffected by this article and shall remain in full force and effect. Nor shall anything in this Ordinance be construed to exempt any use from any future development conditions or proffers related to noise.~~

Board Agenda Item
April 7, 2015

ADMINISTRATIVE – 3

Extension of Review Period for 2232 Application (Dranesville District)

ISSUE:
Extension of review period for 2232 application to ensure compliance with review requirements of *Section* 15.2-2232 of the *Code of Virginia.*

RECOMMENDATION:
The County Executive recommends that the Board extend the review period for the following application: FS-D14-53.

TIMING:
Board action is required on April 7, 2015, to extend the review period of the application noted above before its expiration date.

BACKGROUND:
Subsection B of *Section* 15.2-2232 of the *Code of Virginia* states: "Failure of the commission to act within 60 days of a submission, unless the time is extended by the governing body, shall be deemed approval." The need for the full time of an extension may not be necessary, and is not intended to set a date for final action.

The review period for the following application should be extended:

FS-D14-53	Falls Church City School Board (Mount Daniel Elementary School) 2328 North Oak Street Falls Church, VA Dranesville District Accepted February 12, 2015 Extend to October 13, 2015

FISCAL IMPACT:
None

ENCLOSED DOCUMENTS:
None

STAFF:
Robert A. Stalzer, Deputy County Executive
Fred R. Selden, Director, Department of Planning and Zoning, DPZ
Chris B. Caperton, Chief, Facilities Planning Branch, Planning Division, DPZ
Douglas W. Hansen, Senior Planner, Facilities Planning Branch, Planning Division, DPZ

Board Agenda Item
April 7, 2015

ADMINISTRATIVE - 4

Approval of Traffic Calming Measures and Installation of "Watch for Children" Signs as Part of the Residential Traffic Administration Program (Hunter Mill and Dranesville Districts)

ISSUE:
Board endorsement of Traffic Calming measures and installation of "Watch for Children" signs, as part of the Residential Traffic Administration Program (RTAP).

RECOMMENDATION:
The County Executive recommends that the Board endorse a traffic calming plan for Carrhill Road (Attachment I) consisting of the following:

- Two Speed Tables on Carrhill Road (Hunter Mill District)

The County Executive further recommends approval for "Watch for Children" signs on the following street:

- Riva Ridge Drive (Dranesville District)

In addition, the County Executive recommends that the Fairfax County Department of Transportation (FCDOT) be requested to schedule the installation of the approved measures as soon as possible.

TIMING:
Board action is requested on April 7, 2015.

BACKGROUND:
As part of the RTAP, roads are reviewed for traffic calming when requested by a Board member on behalf of a homeowners' or civic association. Traffic calming employs the use of physical devices such as multi-way stop signs (MWS), speed humps, speed tables, raised pedestrian crosswalks, chokers, median islands, or traffic circles to reduce the speed of traffic on a residential street. Staff performed engineering studies documenting the attainment of qualifying criteria. Staff worked with the local Supervisors' office and community to determine the viability of the requested traffic calming measures to reduce the speed of traffic. Once the plan for the road under

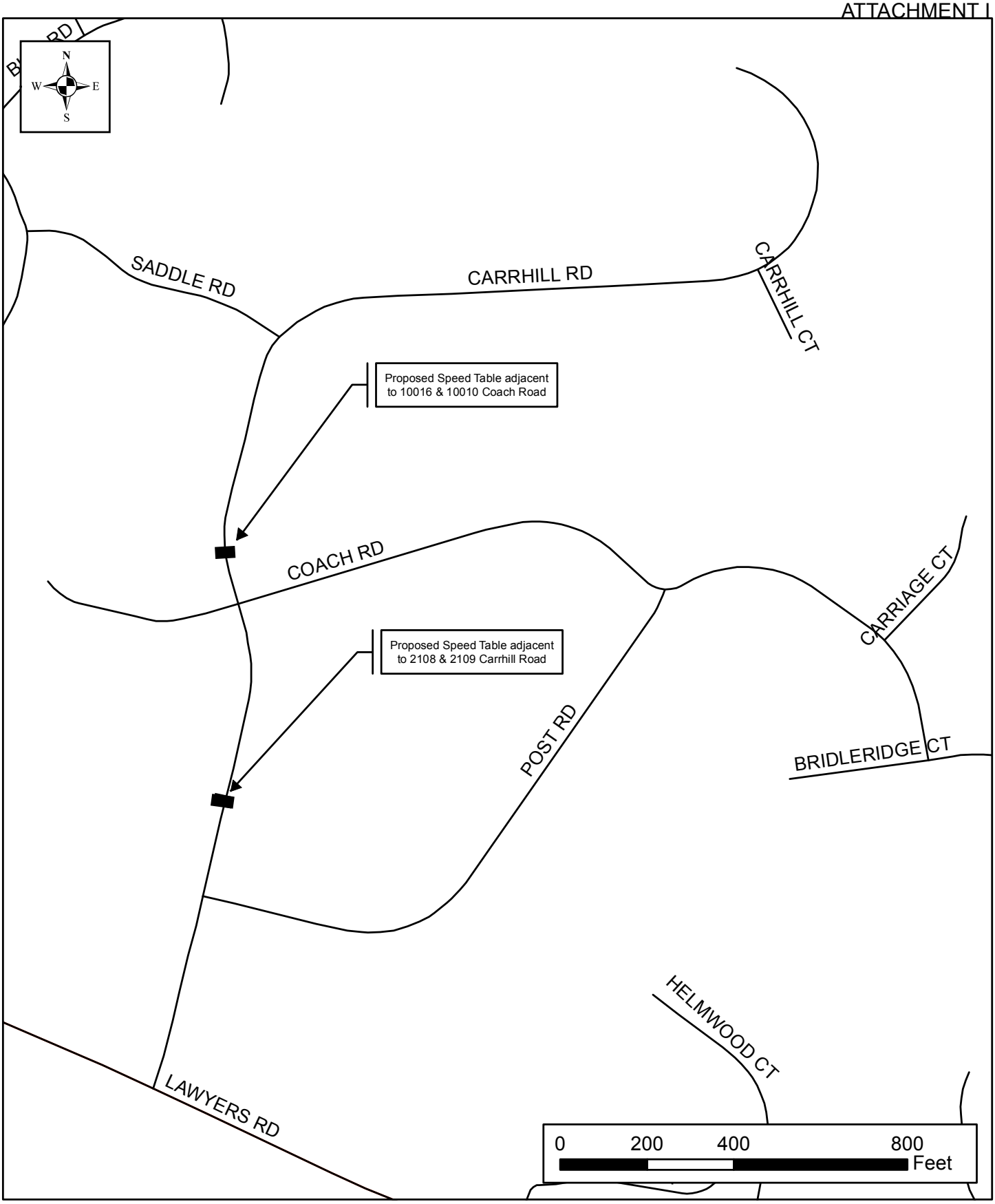
review is approved and adopted by staff that plan is then submitted for approval to residents of the ballot area in the adjacent community. On February 18, 2015, FCDOT received verification from the local Supervisor's office confirming community support for the above referenced traffic calming plan.

The RTAP allows for installation of "Watch for Children" signs at the primary entrance to residential neighborhoods, or at a location with an extremely high concentration of children relative to the area, such as playgrounds, day care centers, or community centers. FCDOT reviews each request to ensure the proposed sign will be effectively located and will not be in conflict with any other traffic control devices. On February 17, 2015, FCDOT received written verification from the appropriate local supervisor confirming community support for the referenced "Watch for Children" signs.

FISCAL IMPACT:
Funding in the amount of $15,000 for the traffic calming measures associated with the Carrhill Road Traffic Calming project and the "Watch for Children" signs for Riva Ridge Drive is available in Fund 300-C30050, General Fund, under Job Number 2G25-076-000.

ENCLOSED DOCUMENTS:
Attachment I: Traffic Calming Plan for Carrhill Road

STAFF:
Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Eric Teitelman, Chief, Capital Projects and Operations Division, FCDOT
Neil Freschman, Chief, Traffic Operations Section, FCDOT
Steven K. Knudsen, Transportation Planner, Traffic Operations Section, FCDOT



February, 2015

Fairfax County Department of Transportation
Residential Traffic Administration Program (RTAP)
TRAFFIC CALMING PLAN
CARRHILL ROAD
Hunter Mill District

A Fairfax Co. Va., publication

Tax Map: 27-4, 28-3, 37-2, 38-1

Board Agenda Item
April 7, 2015

ADMINISTRATIVE - 5

Authorization to Advertise a Public Hearing to Consider an Ordinance to Amend Fairfax County Code Section 7-2-13 Relating to Election Precincts and Polling Places (Hunter Mill District)

ISSUE:
Authorization to advertise a public hearing to consider an ordinance that proposes to amend Section 7-2-13 of the Fairfax County Code to temporarily move the polling place for the Vienna No. 2 precinct.

RECOMMENDATION:
The County Executive recommends that the Board authorize advertisement of a public hearing on Tuesday, April 28, 2015, at 4:00 p.m., to consider this ordinance.

TIMING:
Board action is requested on April 7, 2015, to provide sufficient time to advertise the proposed public hearing for adoption of this ordinance on April 28, 2015, at 4:00 p.m., and to allow sufficient time to notify voters of the change in advance of the 2015 primary elections.

BACKGROUND:
Virginia Code permits the governing body of each county and city to establish by ordinance as many precincts as it deems necessary with one polling place for each precinct. The Board of Supervisors is authorized to change polling place locations subject to the requirements of Virginia Code Sections 24.2-310 and 24.2-310.1. All registered voters who are affected by a change in their polling place will be mailed a new Virginia Voter Information Card in advance of the primary elections.

In Hunter Mill District, staff recommends temporarily moving the polling place for the Vienna No. 2 precinct from the Vienna Community Center located at 120 Cherry Street, Southeast, Vienna, to the nearby Vienna Elementary School located at 128 Center Street South, Vienna. The Vienna Community Center will close in June 2015 for major renovations and will remain closed for 15-18 months. In 2017, the polling place will return to the Vienna Community Center. The polling location for the May 3, 2016, Town of Vienna election will be determined at a future date.

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FISCAL IMPACT:
Insignificant. Funding for polling place change notifications is provided in the agency's FY 2015 Adopted Budget.

ENCLOSED DOCUMENTS:
Attachment 1 – Virginia Code Pertaining to Election Precincts and Polling Places
Attachment 2 – Description and Map of Proposed Change
Attachment 3 – Proposed Ordinance

STAFF:
Cameron Quinn, General Registrar
Corinne Lockett, Assistant County Attorney

§ 24.2-307. Requirements for county and city precincts.

The governing body of each county and city shall establish by ordinance as many precincts as it deems necessary. Each governing body is authorized to increase or decrease the number of precincts and alter precinct boundaries subject to the requirements of this chapter.

At the time any precinct is established, it shall have no more than 5,000 registered voters. The general registrar shall notify the governing body whenever the number of voters who voted in a precinct in an election for President of the United States exceeds 4,000. Within six months of receiving the notice, the governing body shall proceed to revise the precinct boundaries, and any newly established or redrawn precinct shall have no more than 5,000 registered voters.

At the time any precinct is established, each precinct in a county shall have no fewer than 100 registered voters and each precinct in a city shall have no fewer than 500 registered voters.

Each precinct shall be wholly contained within any election district used for the election of one or more members of the governing body or school board for the county or city.

The governing body shall establish by ordinance one polling place for each precinct.

(Code 1950, §§ 24-45, 24-46; 1954, c. 375; 1956, c. 378; 1962, cc. 185, 536; 1970, c. 462, §§ 24.1-36, 24.1-37; 1971, Ex. Sess., c. 119; 1976, c. 616; 1977, c. 30; 1978, c. 778; 1980, c. 639; 1992, c. 445; 1993, c. 641; 1999, c. 515.)

§ 24.2-310. Requirements for polling places.

A. The polling place for each precinct shall be located within the county or city and either within the precinct or within one mile of the precinct boundary. The polling place for a county precinct may be located within a city (i) if the city is wholly contained within the county election district served by the precinct or (ii) if the city is wholly contained within the county and the polling place is located on property owned by the county. The polling place for a town precinct may be located within one mile of the precinct and town boundary. For town elections held in November, the town shall use the polling places established by the county for its elections.

B. The governing body of each county, city, and town shall provide funds to enable the electoral board to provide adequate facilities at each polling place for the conduct of elections. Each polling place shall be located in a public building whenever practicable. If more than one polling place is located in the same building, each polling place shall be located in a separate room or separate and defined space.

C. Polling places shall be accessible to qualified voters as required by the provisions of the Virginians with Disabilities Act (§ 51.5-1 et seq.), the Voting Accessibility for the Elderly and Handicapped Act (52 U.S.C. § 20101 et seq.), and the Americans with Disabilities Act relating to public services (42 U.S.C. § 12131 et seq.). The State Board shall provide instructions to the local electoral boards and general registrars to assist the localities in complying with the requirements of the Acts.

D. If an emergency makes a polling place unusable or inaccessible, the electoral board shall provide an alternative polling place and give notice of the change in polling place, including to all candidates, or such candidate's campaign, appearing on the ballot to be voted at the alternative polling place, subject to the prior approval of the State Board. The electoral board shall provide notice to the voters appropriate to the circumstances of the emergency. For the purposes of this subsection, an "emergency" means a rare and unforeseen combination of circumstances, or the resulting state, that calls for immediate action.

E. It shall be permissible to distribute campaign materials on the election day on the property on which a polling place is located and outside of the building containing the room where the election is conducted except as specifically prohibited by law including, without limitation, the prohibitions of § 24.2-604 and the establishment of the "Prohibited Area" within 40 feet of any entrance to the polling place. However, and notwithstanding the provisions of clause (i) of subsection A of § 24.2-604, and upon the approval of the local electoral board, campaign materials may be distributed outside the polling place and inside the structure where the election is conducted, provided that the "Prohibited Area" (i) includes the area within the structure that is beyond 40 feet of any entrance to the polling place and the area within the structure that is within 40 feet of any entrance to the room where the election is conducted and (ii) is maintained and enforced as provided in § 24.2-604. The local electoral board may approve campaigning activities inside the building where the election is conducted when an entrance to the building is from an adjoining building, or if establishing the 40-foot prohibited area outside the polling place would hinder or delay a qualified voter from entering or leaving the building.

F. Any local government, local electoral board, or the State Board may make monetary grants to any non-governmental entity furnishing facilities under the provisions of § 24.2-307 or 24.2-308 for use as a polling place. Such grants shall be made for the sole purpose of meeting the accessibility requirements of this section. Nothing in this subsection shall be construed to obligate any local government, local electoral board, or the State Board to appropriate funds to any non-governmental entity.

(Code 1950, §§ 24-45, 24-46, 24-171, 24-179 through 24-181; 1954, c. 375; 1956, c. 378; 1962, cc. 185, 536; 1970, c. 462, §§ 24.1-36, 24.1-37, 24.1-92, 24.1-97; 1971, Ex. Sess., c. 119; 1976, c. 616; 1977, c. 30; 1978, c. 778; 1980, c. 639; 1981, c. 425; 1984, c. 217; 1985, c. 197; 1986, c. 558; 1992, c. 445; 1993, cc. 546, 641; 1994, c. 307; 2003, c. 1015; 2004, c. 25; 2005, c. 340; 2008, cc. 113, 394; 2010, cc. 639, 707; 2012, cc. 488, 759.)

§ 24.2-310.1. Polling places; additional requirement.

The requirement stated in this section shall be in addition to requirements stated in §§ 24.2-307, 24.2-308, and 24.2-310, including the requirement that polling places be located in public buildings whenever practical. No polling place shall be located in a building which serves primarily as the headquarters, office, or assembly building for any private organization, other than an organization of a civic, educational, religious, charitable, historical, patriotic, cultural, or similar nature, unless the State Board has approved the use of the building because no other building meeting the accessibility requirements of this title is available.

(1993, c. 904, § 24.1-37.1; 1993, c. 641.)

Commonwealth of Virginia

COUNTY OF FAIRFAX

Hunter Mill District

PRECINCT 214: VIENNA NO. 2

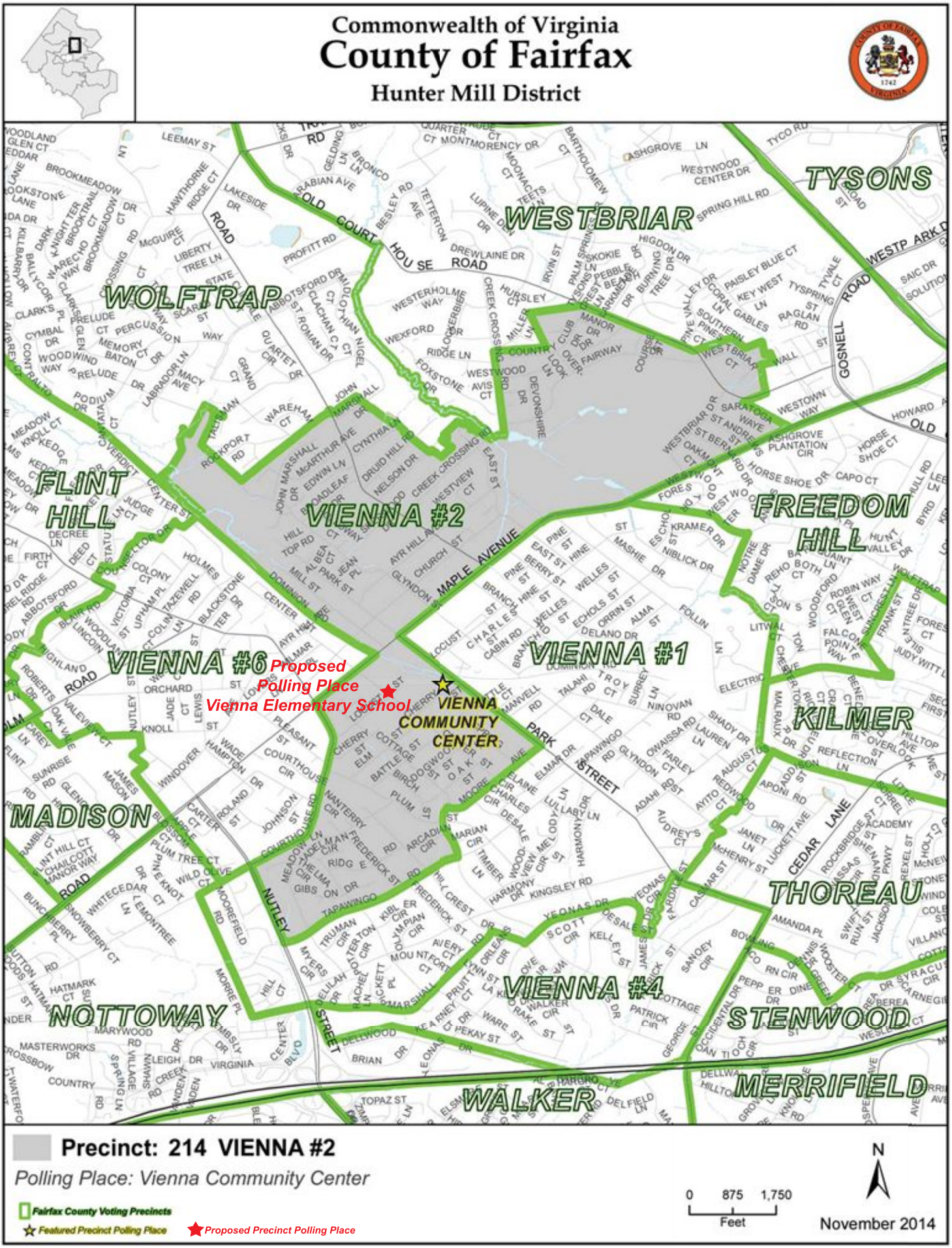
CONGRESSIONAL DISTRICT: **ELEVENTH**
VIRGINIA SENATORIAL DISTRICT: **THIRTY-FOURTH**
HOUSE OF DELEGATES DISTRICT: **THIRTY-FIFTH**

DESCRIPTION:
Beginning at the intersection of the Washington and Old Dominion Railroad Regional Park (trail) and the west corporate boundary of the Town of Vienna, thence with the corporate boundary of the Town of Vienna in a generally easterly direction to its intersection with Maple Avenue (Route 123), thence with Maple Avenue in a southwesterly direction to its intersection with Park Street, thence with Park Street in a southeasterly direction to its intersection with Moore Avenue, thence with Moore Avenue in a southwesterly direction to its intersection with Cottage Street, thence with Cottage Street in a southerly direction to its intersection with Tapawingo Road, thence with Tapawingo Road in a southwesterly direction to its intersection with Nutley Street, thence with Nutley Street in a northwesterly direction to its intersection with Courthouse Road, thence with Courthouse Road in a generally northeasterly direction to its intersection with Maple Avenue, thence with Maple Avenue in a northeasterly direction to its intersection with the Washington and Old Dominion Railroad Regional Park, thence with the Washington and Old Dominion Railroad Regional Park in a northwesterly direction to its intersection with the west corporate boundary of the Town of Vienna, point of beginning.

POLLING PLACE: ~~Vienna Community Center~~ Vienna Elementary School
~~120 Cherry Street, SE~~, 128 Center Street South, Vienna

MAP GRIDS: 28-4, 29-3, 38-1, 38-2, 38-4, 39-1, 48-2

NOTES: Established 1957
Combined with Vienna #3 - September 1992
The Washington and Old Dominion Railroad Regional Park (trail) is the abandoned Washington and Old Dominion Railroad right-of-way
Precinct description revised and readopted – March 2003
Polling place moved temporarily – June 2015


Commonwealth of Virginia
County of Fairfax
Hunter Mill District
TYSONS
WESTBRIAR
WOLFTRAP
FLINT HILL
VIENNA #2
FREEDOM HILL
VIENNA #6
Proposed Polling Place
Vienna Elementary School
VIENNA COMMUNITY CENTER
VIENNA #1
KILMER
MADISON
THOREAU
VIENNA #4
NOTTOWAY
STENWOOD
WALKER
MERRIFIELD
Precinct: 214 VIENNA #2
Polling Place: Vienna Community Center
Fairfax County Voting Precincts
Featured Precinct Polling Place
Proposed Precinct Polling Place
0 875 1,750
Feet
N
November 2014

AN ORDINANCE to amend Section 7-2-13 of the Fairfax County Code to reflect the temporary change in a polling place for the Vienna No. 2 precinct.

Be it ordained that the Board of Supervisors of Fairfax County:

1. That Section 7-2-13 of the Fairfax County Code are amended as follows:

Section 7-2-13. General provisions.

All references to election precincts shall refer to those precincts, together with the descriptions and maps of the boundaries and polling places for each of those precincts, which were adopted by the Board of Supervisors on March 24, 2003, as amended on March 8, 2004, March 21, 2005, March 27, 2006, March 26, 2007, September 10, 2007, March 10, 2008, January 12, 2009, March 9, 2010, July 27, 2010, April 26, 2011, July 26, 2011, January 10, 2012, July 10, 2012, March 19, 2013, ~~and~~ July 9, 2013, November 18, 2014, and April 7, 2015 and kept on file with the clerk to the Board of Supervisors. Whenever a road, a stream, or other physical feature describes the boundary of a precinct, the center of such road, stream, or physical feature shall be the dividing line between that precinct and any adjoining precinct.

2. That this ordinance shall become effective upon adoption.

GIVEN under my hand this _____ day of April, 2015.

_____
Catherine A. Chianese
Clerk to the Board of Directors

Board Agenda Item
April 7, 2015

ACTION – 1

Authorization to File Reply Comments in Response to the Federal Communications Commission Notice of Proposed Rulemaking in the Matter of 9-1-1 Governance and Accountability and Improving 9-1-1 Reliability

ISSUE:
Bond authorization to file reply comments with the Federal Communications Commission ("FCC") in response to a Notice of Proposed Rulemaking relating to 911 Governance and Accountability and Improving 911 Reliability ("NPRM").

RECOMMENDATION:
The County Executive recommends that the Board authorize staff to file reply comments in response to the FCC's NPRM.

TIMING:
Board action is requested on April 7, 2015, because reply comments in this rulemaking are due on April 21, 2015.

BACKGROUND:
In 2013 the FCC adopted rules that imposed new obligations on traditional 9-1-1 service providers, including a requirement to immediately notify all relevant parties of a 9-1-1 outage. The FCC's 2013 rulemaking was instituted after weaknesses in the reporting requirements were revealed during the 2012 Derecho storm that significantly impacted Fairfax County. Fairfax County filed comments with the FCC during that rulemaking process to ensure its interests were adequately represented. The 2013 rulemaking focused on traditional 9-1-1 service providers that deliver 9-1-1 service through dedicated delivery channels, such as the public switched telephone network ("PSTN").

Now in 2015, progress in NG9-1-1 is accelerating, and the rules promulgated in 2013 are proving to be drawn too narrowly. Therefore, the FCC requested comments on proposed rules that would expand the definition of what service providers are covered by the rules and that would impose additional requirements on such providers, in an effort to ensure that the rules properly encompass the variety of new services and entities that will play a role in the NG9-1-1 process. The draft Reply Comments on the proposed rules articulate principles that will require service providers to provide proper notifications to PSAPs and engage in critical tests that ensure reliability, while also ensuring that localities, such as Fairfax County, retain sufficient flexibility in their selection of service providers that offer the best solutions for their particular interests. A copy of the proposed Reply Comments is attached. The Reply Comments provide

additional background detail that explains the Department of Public Safety Communication's position in response to the NPRM.

FISCAL IMPACT:
None.

ENCLOSED DOCUMENTS:
Attachment 1: Reply Comments of Fairfax County in Response to the Matter of 9-1-1 Governance and Accountability and Improving 9-1-1 Reliability
Attachment 2: FCC Public Notice released January 22, 2015

STAFF:
Dave Rohrer, Deputy County Executive
Steve Souder, Director, Department of Public Safety Communications (DPSC)
Steve McMurrer, 9-1-1 Systems Administrator, DPSC
Daniel Robinson, Assistant County Attorney

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
9-1-1 Governance and Accountability	PS Docket No. 14-193
Improving 9-1-1 Reliability	PS Docket No. 13-75

REPLY COMMENTS OF FAIRFAX COUNTY, VIRGINIA

Steve Souder
Director
Steve McMurrer
9-1-1 System Administrator
Department of Public Safety Communications
4890 Alliance Drive
Fairfax, VA 22030

April 7, 2015

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SUMMARY

The Commission articulated two broad principles that it believes should guide every entity with a role in 9-1-1 call completion as they transition from the legacy 9-1-1 environment to a Next Generation 9-1-1 environment: (1) any new elements of 9-1-1 architecture or service should have the necessary redundancy and reliability safeguards, along with the appropriate governance mechanisms, to maximize reliability and protect public safety; and (2) significant changes in 9-1-1 service should be coordinated in a transparent manner with the Commission and with state and local authorities.[1]

Fairfax County concurs with these principles and endorses a continued development of standards and best practices that support and advance those guiding principles. These standards and practices should be incorporated into a defined term, "PSG 9-1-1," that would provide a standard for reliable and resilient 9-1-1 governance. This standard, which is detailed in Section III, *infra*, would provide Public Safety Answering Points with sufficient knowledge and flexibility to enter contracts with covered service providers that can provide the best service for the locality.

The Commission requests comment on proposed notification requirements for major changes to 9-1-1 service and for disruption of 9-1-1 service. These notifications should be provided directly to the Public Safety Answering Point or State 9-1-1 Board and should be addressed in the parties contract. This matter is addressed in more detail in Section IV.

Among the specific changes the Commission proposes to advance are changes to Rule 12.4 in light of the expected challenges as 9-1-1 undergoes a significant transition to Next

[1] In the Matters of 911 Governance and Accountability Improving 911 Reliability, 80 Fed. Reg. 3191, 3193 (proposed Jan. 22, 2015) (to be codified at 47 C.F.R. pt. 12). ("NPRM").

Generation 9-1-1.[2] Fairfax County comments specifically on those proposals in Section V, with specific recommendations of an expanded definition of covered entities under the modified Rule.

Finally, Fairfax County proposes additional actions the FCC could take in support of Next Generation 9-1-1 in Sections VI.

[2] *Id.* at 3193-94.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
9-1-1 Governance and Accountability	PS Docket No. 14-193
Improving 9-1-1 Reliability	PS Docket No. 13-75

REPLY COMMENTS OF FAIRFAX COUNTY, VIRGINIA

The County of Fairfax, Virginia, submits these reply comments in response to the Notice of Proposed Rulemaking ("NPRM") to ensure the reliability and resiliency of the communications infrastructure necessary for continued availability of the Nation's 9-1-1 system, during times of major disaster as well as when major technology changes are introduced into the public safety system as the transition to Next Generation 9-1-1 ("NG9-1-1") occurs. The NPRM proposes multiple possible approaches to address NG9-1-1 considerations as well as amendments to Part 12 of Title 47 of the Code of Federal Regulations.

I. BACKGROUND

Fairfax County is home to over 1,100,000 people.[3] More than 20% of the approximately five million residents of the metropolitan Washington, D.C., area live in Fairfax County.[4] The

[3] *Demographic Reports 2014*, County of Fairfax, Virginia, at II-2, *available at* http://www.fairfaxcounty.gov/demogrph/demrpts/report/fullrpt.pdf.

County is home to over half of the metropolitan area's Fortune 500 companies,[5] a major university,[6] and the headquarters of numerous federal intelligence agencies, including the Central Intelligence Agency, National Geospatial-Intelligence Agency, and the National Reconnaissance Office.

Fairfax County has made the provision of public safety services, including 9-1-1 service, to its residents, businesses and visitors one of its highest priorities. Fairfax County's 9-1-1 Call Center, the public safety answering point ("PSAP"), is the largest in the Commonwealth of Virginia and one of the ten largest in the United States. Besides the County's 1.1 million residents, the County's 9-1-1 Call Center also serves as the PSAP for the City of Fairfax, the Towns of Vienna and Herndon, and the Fort Belvoir U.S. Army Base. Fairfax County's 9-1-1 Call Center receives approximately one million calls per year.

II. NEED FOR COMMISSION ACTION

In 2013, the Commission adopted new rules to improve the reliability and resiliency of 9-1-1 communications and to require 9-1-1 service providers to give PSAPs timely and

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[4] *Our Changing Region: Highlights from the 2010 Decennial Census*, Metropolitan Washington Council of Governments, published July 23, 2011, at 1, *available at* http://www.mwcog.org/uploads/pub-documents/pV5eWV020111011135345.pdf.

[5] See Fortune 500 List compiled by the Fairfax County Economic Development Authority, *available at* http://www.fairfaxcountyeda.org/facts-and-figures/business-lists/fortune-500-list (last visited Feb. 24, 2015).

[6] George Mason University, located in the central part of Fairfax County, is the largest public university in the Commonwealth of Virginia. See http://about.gmu.edu/ (last visited February 24, 2015).

actionable notification of 9-1-1 outages. The Commission did so upon finding that voluntary measures alone have proven inadequate.[7]

The Commission's 2013 rulemaking focused on traditional 9-1-1 service providers that deliver 9-1-1 service through dedicated delivery channels, such as the public switched telephone network ("PSTN"). In delivering through these dedicated channels (such as telephony communication circuits) the 9-1-1 service provider utilizes components that are, by and large, under its control (*e.g.*, wire line central office ("CO") facilities and wireless mobile switching centers ("MSC")). Now that progress in Next Generation 9-1-1 ("NG9-1-1") is accelerating, the rules promulgated in 2013 are proving to be drawn too narrowly.

III. DEFINE PUBLIC SAFETY GRADE ("PSG") 9-1-1 AS THE STANDARD FOR RELIABLE AND RESILIENT 9-1-1 GOVERNANCE

Local jurisdictions currently have an abundance of best practice information for network reliability along with a growing array of service providers with solution offerings that purport to offer such a service. Various national industry associations including the National Emergency Number Association ("NENA") and Association of Public Safety Communications Officials ("APCO") and other similar organizations such as the National Public Safety Telecommunications Council ("NPSTC") have developed standards and practices for redundancy and reliability safeguards, as well as many other areas. The problem is not the availability of "best practices" and standards information. Certainly there are some additional best practices to be documented or revised for improved 9-1-1 reliability. The difficulty faced by localities is that there is no definitive means to determine which of these "best practices" are the

[7] Reliability and Continuity of Communications Networks, Including Broadband Technologies, PS Docket Nos. 13-75, 11-60, Report and Order, 28 FCC Rcd 17476, 17484-85, ¶ 24 (2013) ("911 Reliability Order").

most critical to implement and how they relate to the evolving standards for NG9-1-1 in order to minimize the impact of equipment or component failures. Nor is there a way to independently confirm that the offered solution meets the basic criteria in published standards or best practices for NG9-1-1 and/or that when implemented the proper application of industry best practices will continue to be applied and followed.

The Commission could assist PSAPs by facilitating the creation of a definition for Public Safety Grade ("PSG") 9-1-1. The Commission should coordinate and consult with NENA, APCO, NPSTC, Department of Homeland Security ("DHS") and other industry associations to define and publish a document that articulates PSG 9-1-1 standards using the industry developed existing standards and best practices as input to the consultation process. The Commission is a very capable clearinghouse for industry best practice information and a voice on standards adoption. The Commission, as a Federal agency, has the resources to facilitate the focused discussion and the provision of specific subject matter expertise (such as cyber security) in a more efficient manner than most states acting independently and it should utilize these resources to facilitate the creation and publication of the PSG 9-1-1 standards document. This PSG 9-1-1 document could be published by one of the industry standard setting associations and would set forth, in one place, a consolidated view of those "best practices" and the associated standards that are recognized across the industry. Service providers could then self-certify that they meet the PSG 9-1-1 requirements, which would provide PSAPs with sufficient knowledge to ensure that the service provider engages in the appropriate best practices.

The Commission should continue its use of the Communications Security, Reliability and Interoperability Council ("CSRIC"), which has been beneficial and has established a significant number of best practice recommendations that incorporate industry association standards in

multiple subject disciplines as well as international engineering association standards and guidelines that are applicable to 9-1-1. As one possibility for consideration in this PSG 9-1-1 process, the Commission might wish to refer to Annex 2 in a Centre for the Protection of National Infrastructure ("CPNI") document labeled *THE CPNI Good Practice Guide to Telecommunications Resilience Annex 2 – Twenty Questions to Ask Your Provider.*[8] Other self-assessment questions also exist in the same document that might stimulate discussion about certification. The definition of PSG 9-1-1 can be complex and multi-layered and, if adopted, the initial definition would likely be added to over time.

As a template to consider for the definition of PSG 9-1-1, the NPSTC Report,[9] which was prepared with a consortium of industry organizations and government liaison members, is an effective model to coalesce the primary best practices and standards that could be applied to PSG 9-1-1. The NPSTC Report was related to the guidance efforts for FirstNet and contains details which are not directly relevant to a PSG 9-1-1 definition, such as site hardening. Nevertheless, it provides valuable information that is applicable to any public safety system.

An initial working high level definition of PSG 9-1-1could be based on the NPSTC Report and articulate that PSG 9-1-1 is a communications system for 9-1-1 calls that minimizes the impact of, or eliminates entirely, equipment or component failures that result in a loss of call throughput and that PSG 9-1-1 communications systems and governance procedures are

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[8] CENTRE FOR THE PROTECTION OF NAT'L INFRASTRUCTURE, TELECOMMUNICATIONS RESILIENCE GOOD PRACTICE GUIDE VERSION 4 (March 2006), *available at* https://www.cpni.gov.uk/documents/publications/undated_pubs/1001002-guide_to_telecomms_resilience_v4.pdf.

[9] NAT'L PUB SAFETY TELECOMM. COUNCIL, DEFINING PUBLIC SAFETY GRADE SYSTEMS AND FACILITIES FINAL REPORT (May 22, 2014) *available at* http://www.npstc.org/download.jsp?tableId=37&column=217&id=3066&file=Public_Safety_Grade_Report_140522.pdf.

designed in a manner that promotes a quick return to optimal performance. At a minimum, Fairfax County recommends that the PSG 9-1-1 standard be initially defined to include requirements for Reliability and Resilience, Service Level Agreements, and Operational Reporting and Alarm.

The Commission asks "whether it may be appropriate to take further steps, in coordination with state and local authorities, to promote a national governance structure that proactively increases end-to-end accountability and produces measurable results."[10] The Commission proposes to "require covered 9-1-1 service providers that seek to offer new services that affect 9-1-1 call completions to certify to the Commission that they have the technical and operational capability to provide reliable 9-1-1 service."[11] Fairfax County supports a requirement, as set forth in Rule 12.4 and proposed Rule 12.6, that covered 9-1-1 service providers certify they have conducted a reliability and security risk analysis of the network components, infrastructure, and/or the software components that comprise the offered 9-1-1 service solution.

However, the Commission should not adopt a national governance structure that mandates best practices certification in all aspects of 9-1-1 service provision. 9-1-1 is primarily a state and local responsibility. Although *mandatory* certification is not appropriate, the establishment of a definition for PSG 9-1-1 could be coupled with a self-certification process that industry associations and other appropriate organizations could initiate to help clarify expectations and standards for reliable and resilient 9-1-1 service across the United States.

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[10] NPRM, 80 Fed. Reg. at 3193.

[11] *Id.* at 3196.

Assisting representative state and local parties with the creation of a definition of PSG 9-1-1 at a national level in coordination with, and not in replacement of, existing NENA, APCO, CSRIC best practices and/or other standards already in existence or development will strengthen the overall framework for NG9-1-1 and help mitigate cross-state outage impacts as multiple localities move toward a PSG 9-1-1 framework. Creation of the definition at the national level ensures a consistent understanding of what PSG 9-1-1 represents, while allowing the states and/or localities to decide whether PSG 9-1-1 certification is necessary ensures that the local entities retain sufficient flexibility when making decisions regarding "911 deployment, operations and cost recovery."[12]

IV. NOTIFICATION REQUIREMENTS RELATING TO TRANSPARENCY AND ACCOUNTABLITY FOR MAJOR 9-1-1 CHANGES AND SITUATIONAL AWARENESS AND COORDINATION DURING OUTAGES

a. Notification requirements for major changes

The Commission proposes to extend the requirements of section 251 of the Communications Act[13] to cover 9-1-1 service providers that are not Incumbent Local Exchange Carriers ("ILECs"). Currently, the Commission does not require these providers to file notifications when changes to their networks may affect 9-1-1 connectivity. We support an FCC requirement that ILECs or System Service Providers ("SSPs") who provide services directly to PSAPs under

[12] *Id.* at 3193.

[13] 47 U.S.C § 251(c)(5) (requiring telecommunications carriers "to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks").

a contractual agreement notify the PSAP directly of such changes, regardless of whether such change is undertaken by the ILEC or SSP, or it is introduced to the network by subcontractor or other entity to the ILEC or SSP in the course of its provision of service. Having a subcontractor or other entity report such changes to the PSAP will cause confusion. We would expect that notification system would also be a part of the contractual relationship between the provider and the PSAP, particularly since a "major" network change is likely to be a 9-1-1 service affecting change in services.

The Commission also sought comment in the NPRM on what changes should be considered "major" for notification purposes.[14] The Commission proposes that changes which impact 9-1-1 service in more than a single state should be considered major.[15] A more effective definition of a "major" change is one that interrupts 9-1-1 service to a PSAP (i.e., impedes the ability to answer a 9-1-1 call) or that has the potential to interrupt service to a PSAP. Such an interruption or potential interruption constitutes a "major" change whether it is across a state boundary or within a state boundary.

The Commission proposes to require 60 days of notice to the PSAP for such major changes.[16] While 60 days of notice generally would be sufficient, a "one size fits all" requirement is not sufficiently nuanced to account for the myriad of consequences that could flow from a major change. If the proposed "major" change requires a PSAP to engage in additional substantive action, such as procuring components to support the change, then 60 days may not be sufficient. In some circumstances, many months might be required to complete the procurement process.

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[14] NPRM, 80 Fed Reg. at 3195.

[15] *Id.*

[16] *Id.*

For that reason, the Commission should incorporate additional language in its notification requirements to require different notice periods when necessary for the PSAP to respond. Specifically, the requirement should ensure that PSAPs are provided with a longer notification time when procurement activities are or may be required in response to the proposed major change.

b. Notification requirements for system outages

We oppose the Commission's proposal to "establish a clearinghouse mechanism for critical information during major 9-1-1 outages and other significant degradations in service," with the express purpose "to address gaps in situational awareness and coordination when large-scale 9-1-1 outages affect multiple jurisdictions and service providers."[17] The Commission's proposal would establish a new class of covered 9-1-1 service providers called a "9-1-1 Network Operations Center (NOC)."

This is unnecessary. The responsibility for requiring better situational awareness and coordination should be established in the Service Level Agreement ("SLA") between the local jurisdiction/PSAP and its service provider. The SLA should establish the requirement for NOC services and the responsibility for monitoring services under the terms of the negotiated SLA. Such a comprehensive SLA could be included as an element of the PSG 9-1-1 certification process, which would result in consistent notification requirements across jurisdictions that utilize PSG 9-1-1 certified service providers. The means of alarm notifications would vary through any number of management consoles and systems at a NOC level. If a NOC provider is contractually obligated to inform the local jurisdiction of service outages, a requirement that the

[17] *Id.* at 3197.

NOC provider supply real-time reports to the FCC is unnecessary, duplicative and provides no benefit to the local jurisdiction. If other jurisdictions using the same provider are also impacted, their contractual arrangements should require notification of possible service outages as well. Therefore, Fairfax County does not support the Commission's proposal to establish a national reporting requirement.

V. REVISED DEFINITION OF COVERED 9-1-1 SERVICE PROVIDER

The Commission proposes to expand the scope of the definition of a covered 9-1-1 service provider.

Fairfax County generally supports the concept of extending the definition of a covered 9-1-1 service provider. However, the NPRM's proposed language is drafted too narrowly in some regards as it lists only one out of several elements in NG9-1-1 location functionality, and it lacks clarity and context in other areas.

A traditional 9-1-1 call was a simple voice call. Although the Commission's proposed rule 12.4 speaks to text messages as an additional type of "call" subject to the Commission rules, NG9-1-1 communications between emergency requestors and PSAPs will potentially involve more multi-media interactions than are presently possible in most PSAPs due to the presence of older technology. As PSAPs are upgraded with NG9-1-1 capable equipment, more multi-media data, such as pictures and streaming video of emergency scenes, will be transmitted along with the traditional voice communications. In addition, the concept of what constitutes a call will be expanded as the increased use of automatic alarms will likely increase the number of machine-to-machine interactions between an outside site and the PSAP. Therefore, the rule should clearly define what a 9-1-1 "call" is under NG9-1-1. The additional definitions proposed below should ensure that all potential communications are encompassed in the definition.

a. Proposed New Definitions

Fairfax County proposes several additional terms that would then be incorporated into a revised definition of "covered service provider." The addition of these terms will sharpen and clarify which entities the rules will apply to and what their specific responsibilities entail. Generally, Fairfax County's suggestions include:

(1) Adding definitions of "call", "location identification", "9-1-1 call chain", and "ESInet operator" to the definitions portion of Section 12.4; and,

(2) Proposing a modification to parts (i) (A) and (B) under 12.4 (4), the definition of a Covered Service Provider entity.

i. *Definition of Call*

Under Section 12.4 "Definitions" we propose to use a variation of the NENA definition of a "call":

> ***Call.*** A generic term used to include any type of Request For Emergency Assistance (RFEA) between an originator (caller) and a receiver (a receiver being a PSAP, statewide answering point or appropriate local emergency authority). A call is not limited to voice and may include a session established either by (1) signaling with two way real-time media involving a human making a request for help, or (2) an automated device acting as a caller sending a notification or other data to a receiver (whether human or another machine). The term "call" can refer to a "Voice Call", "Video Call", "Text Call" or "Data-only call".

Including a broader definition of the types of "calls" that are utilized through NG9-1-1 clarifies the types of information that will pass through NG9-1-1 networks and recognizes that new providers will contribute new functional elements in the delivery of 9-1-1 "calls."

ii. *Definition of Location Identification*

The NPRM proposes a definition of "covered service provider" that adds some NG9-1-1 terminology for location information functions by including newer terms in the definition such as

LIS and text-to-9-1-1. This additional terminology in the definition is also used for the sections dealing with "Database and Software Configuration and Testing" and "Situational Awareness and Information Sharing." However, it is more appropriate and accurate to include a complete set of currently used terms for location identification functions. The rule should separately define "Location Identification" as a term, which can then be used in the definitions of "covered service provider," "Database and Software Configuration and Testing," and "Situational Awareness and Information Sharing." This addition will make those definitions more accurate, complete, and simpler to read and understand. Separately defining "location identification" also simplifies the process of updating the rules if additional terms for location information functions are introduced to NG9-1-1 services.

With this background in mind, we propose the following definition of "location identification" under Section 12.4 "Definitions":

> ***Location Identification***. A generic term used to include any functional capability in a 9-1-1, E9-1-1, or NG9-1-1 system whose purpose is to locate the source of a call. This includes, but is not restricted to, legacy terms and functions for location identification and also newer NG9-1-1 terms of the functions for location identification, such as: automatic location information (ALI), automatic number identification (ANI), location information services (LIS), Location Validation Function (LVF), Emergency Call Routing Function (ECRF), Emergency Services Routing Proxy (ESRP), and any such future terms for equivalent location identification functions.

iii. *Definition of 9-1-1 Call Chain*

A 9-1-1 "call" passes through various physical and software network elements, each forming a link in a chain, from call initiation (Network Layer FE) to receipt at the PSAP (Call Handling FE). Service providers have traditionally been ILECs who supply network delivery capabilities and other third-party providers under contract to the ILECs who perform ancillary network capabilities in support of location identification functions (*e.g.*, ALI lookups). Under

NG9-1-1, a provider might only provide software functionality in a 9-1-1 call chain, through a contract with a system integrator that is the prime contractor for a PSAP. However, that software could perform a vital central function in the 9-1-1 call chain, such as routing the call to the correct PSAP under the Location Identification FE. A specific example would be a supplier that provides a 9-1-1 software solution component under a subcontract with a system integrator that performs the Emergency Call Routing Function ("ECRF") for a NG9-1-1 network. The system integrator, under a prime contract with a region or collection of PSAPs, provides the end-to-end ESInet solution (Network Layer FE) and makes provisions for the ESInet to be in place and operational. However, the system integrator utilizes the subcontractor's ECRF software solution (Location Identification FE) as the routing engine to functionally transfer calls across the network. In this limited example, both the subcontractor and the prime contractor (the system integrator) provide substantial functional components of the "9-1-1 call chain" that enable requests for emergency call services to be provided in a reliable and resilient fashion. PSAPs would benefit if these components of the "9-1-1 call chain" could self-certify that they are PSG 9-1-1 compliant. The inclusion of this proposed definition adds context and clarity to those entities that local jurisdictions would require be PSG 9-1-1 certified.

With this background we propose the following definition of "9-1-1 call chain" under Section 12.4 "Definitions":

> ***9-1-1 call chain***. A generic term used to include any functional capability in a 9-1-1, E9-1-1, or NG9-1-1 system whose purpose is to refer to the high level functional components that function together to comprise a call for emergency service from the initiation of a call ("the caller") to the receipt of the call at a PSAP, statewide default answering point, or appropriate local emergency authority ("the receiver"). The functional components of the call chain can be physical hardware components and/or software components provided by one provider or multiple providers in multiple combinations. Each functional component and provider provides an intrinsically vital element of the chain which links the initiation of the call from the caller at "Point A" to the receiver at "Point B". This 9-1-1 call chain includes, but is not limited to, the following functional

elements (FEs): Network Layer FE, Border Control Function FE, Location Identification FE, Outgoing Alerts FE, System Alarms FE, and Call Handling FE.

iv. *Definition of ESInet Operator*

Under Section 12.4 "Definitions" we propose the following definition of "ESInet operator":

> ***ESInet Operator***. A generic term used to include any entity that operates and or provides specialized Emergency Services Internet Protocol (IP) network connectivity (an ESInet) in support of the 9-1-1 call chain between a caller and a PSAP, statewide default answering point, or appropriate local emergency authority as such entities are defined in 47 C.F.R. § 64.3000(b), whether directly or indirectly as a contractor or agent to any other entity.

b. Revised Definition of Covered 9-1-1 Service Provider

With the above definitions established, Fairfax County proposes the following as the definition of a "covered 9-1-1 service provider" for 12.4(a)(4)(i):

A covered 9-1-1 service provider would be any entity that:

(A) Provides direct or indirect support of a call through the 9-1-1call chain to a public safety answering point (PSAP), statewide default answering point, or appropriate local emergency authority as such entities are defined in 47 C.F.R. § 64.3000(b), either as a contractor or an agent to any other entity, and/or

(B) Performs as an ESInet Operator or operates a central office that directly serves a public safety answering point (PSAP), statewide default answering point, or appropriate local emergency authority as such entities are defined in 47 C.F.R. § 64.3000(b). For purposes of this section, a central office or ESInet Operator directly serves a PSAP, statewide default answering point, or appropriate emergency authority if it hosts a selective router or the functional equivalent for location identification, or is the last service-provider facility through which a 9-1-1 trunk or administrative line passes before connecting to a PSAP.

VI. ADDITIONAL FCC ACTION TO SUPPORT NG9-1-1

Fairfax County strongly concurs with the Commission's decision that based on "significant questions of federalism" and "a strong consensus among commenters that the

Commission should not interfere with the internal operations of PSAPs,"[18] it should not impose reliability certification requirements on governmental authorities that provide their own 9-1-1 capabilities.

In response to the Commission's request for suggestions on how the federal government can be more proactive with leading and coordinating the transition to NG9-1-1, we recognize the Commission's recent establishment of a Task Force on defining the Optimal PSAP Architecture and concur that this level of participation and coordination, using a variety of industry and governmental subject matter experts, is a prudent and judicious exercise of the Commission's authority to assist the orderly transition to NG9-1-1. As discussed in Section III, *supra*, there are also other options that could permit the Commission to be proactive and supportive of NG9-1-1 through CSRIC and industry associations, all of which are productive and desired avenues for input.

The Commission could also assist with the transition toward NG9-1-1 through funding requests. Although the Commission does not have direct authority to set aside funding to assist the States and tribal organizations transition to NG9-1-1, we strongly encourage the Commission to utilize its public policy statements to advocate in support of NG9-1-1 and balance the scales of funding that Congress set aside out of The Middle Class Tax Relief and Job Creation Act of 2012 ("The Act"). The Act allocated $7 billion towards other high priority public safety initiatives for the implementation of critical public safety communication capabilities through the use of funds from spectrum auctions. Only $125 million was set aside for NG9-1-1, despite a

[18] 911 Reliability Order, 28 FCC Rcd at 17490-91, ¶ 41.

United States Department of Transportation ("USDOT") Study on NG9-1-1[19] that estimated the costs to implement NG9-1-1 to exceed $7 billion.

There may have been legitimate reasons to cap the estimated funding for NG9-1-1 implementation out of the spectrum auctions at $125 million, which is only 2% of USDOT's $7 billion estimate, when the legislation was enacted in 2012. However, given the AWS spectrum auctions' recent success, which obtained $44.9 billion compared to the original estimate of $18 billion, Fairfax County urges the FCC to petition all appropriate powers in Congress and the Executive Office to set aside additional funding out of the AWS spectrum auction to assist the states as they implement NG9-1-1.

VII. CONCLUSION

Fairfax County agrees with the Commission that all stakeholders must be proactive as the transition to NG9-1-1 occurs. The Commission can facilitate this transition by adopting clear definitions that clarify all parties' responsibilities in the provision of NG9-1-1 services. The Commission can assist states and localities by facilitating both the creation of broad definitional requirements for reliability that can be adopted by local authorities and self-certification standards for entities that seek to enter the NG9-1-1 market. Moreover, the Commission can exercise its influence to ensure adequate funding for NG9-1-1 implementation is distributed to states and localities. However, because the provision of 9-1-1 services remains a local function, Fairfax County believes the Commission should abstain from instituting a national governance structure that mandates certification for all aspects of 9-1-1 service and that it should not

[19] U.S. DEPT. OF TRANSP., NEXT GENERATION 9-1-1 (NG9-1-1) SYSTEM INITIATIVE, FINAL ANALYSIS OF COST, VALUE, AND RISK, VERSION 1.0, at 65 (March 5, 2009).

implement a national clearinghouse to report 9-1-1 outages. Such changes would add unnecessary steps to a complex process. Fairfax County looks forward to continued involvement in these efforts to improve 9-1-1 reliability by providing further input to the Commission as the NG9-1-1 transition continues.

Respectfully submitted,

_____

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April 7, 2015

PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: http://www.fcc.gov
TTY: 1-888-835-5322

DA 15-93
Released: January 22, 2015

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES COMMENT AND REPLY COMMENT DATES FOR 911 GOVERNANCE AND ACCOUNTABILITY NOTICE OF PROPOSED RULEMAKING

PS Docket Nos. 14-193 and 13-75

Comment Date: March 9, 2015
Reply Comment Date: April 7, 2015

On November 21, 2014, the Federal Communications Commission adopted a *Policy Statement and Notice of Proposed Rulemaking* (*NPRM*) regarding governance and oversight of 911 communications and accountability for reliable 911 service in light of changing technologies and the transition to Next Generation 911.[1] The *NPRM* set deadlines for filing comments and reply comments at 45 and 75 days after publication in the Federal Register.

On January 22, 2015, a summary of the *NPRM* appeared in the Federal Register.[2] Accordingly, comments will be due on or before March 9, 2015, and reply comments will be due on or before April 7, 2015. Complete comment filing instructions are set forth in the *NPRM*.

For further information regarding this proceeding, contact Eric Schmidt in the Public Safety and Homeland Security Bureau, at (202) 418-1214 or Eric.Schmidt@fcc.gov.

-FCC-

[1] *911 Governance and Accountability; Improving 911 Reliability*, PS Docket Nos. 14-193 and 13-75, Policy Statement and Notice of Proposed Rulemaking, FCC 14-186 (rel. Nov. 21, 2014), *available at* https://apps.fcc.gov/edocs_public/attachmatch/FCC-14-186A1.pdf.

[2] *See* 80 Fed. Reg. 3191 (Jan. 22, 2015), *available at* https://federalregister.gov/a/2015-00940.

Board Agenda Item
April 7, 2015

ACTION - 2

Approval of Revisions to Chapters 2, 4, 5, 6, 7, 12 and 17 of the Personnel Regulations, Providing Administrative Clarifications, Implementing the New Pay Structure, and Updating Performance Management Requirements

ISSUE:
Board approval of revisions to Chapters 2, 4, 5, 6, 7, 12 and 17 of the Personnel Regulations.

RECOMMENDATION:
The County Executive recommends the Board of Supervisors approve the proposed revisions to Chapters 2, 4, 5, 6, 7, 12 and 17 of the Personnel Regulations, providing administrative clarifications, implementing the new pay structure and updating performance management requirements. The Board's Personnel and Reorganization Committee reviewed these revisions at their February 3, 2015 meeting and adjustments have been made to reflect that discussion.

TIMING:
Routine.

BACKGROUND:
Periodically, the Department of Human Resources brings forward proposed revisions to the Personnel Regulations for Board consideration. The attached documents include proposed updates driven by the implementation of the new pay structure, non-public safety performance management updates, new recruitment system implementation, and administrative clarifications. Recruitment system changes in multiple chapters update terminology and the performance management changes document established policy and address concerns raised by employees and managers during the first year of the new evaluation process.

These proposed revisions incorporate input from those who served on the pay structure work team, staff and managers on the performance management system during its first year cycle, and employee group representatives. The following highlights proposed revisions (beyond universal terminology changes referenced above), by chapter.

CHAPTER 2 – DEFINITIONS

A definition was added for the term Anniversary Date, the Minimum Wage definition was clarified, and the Performance Pay Bonus definition was eliminated as it is not needed under the new pay structure.

CHAPTER 4 – PAY PLAN, HOURS OF WORK AND OVERTIME

Section 4.3-3 With the implementation of the July 1 single anniversary date, a policy decision was needed to determine at what point new hires would be eligible for a July performance increase. Staff established April 1 as the cut-off; employees hired before April 1 would receive the full performance increase in July. Employees hired April 1 or later would not be eligible for a performance increase until July of the following year. EAC and SEIU representatives advocate prorating the increase for employees in their initial probationary period on a pay-period basis or eliminating the waiting period completely. While the number of affected employees is relatively small, increasing new hire salaries after less than three months of employment will exacerbate pay compression for existing staff. It is also difficult to justify performance pay increases for *brand new* hires; they are in their onboarding period and haven't had enough time to demonstrate satisfactory performance. In checking with others with single anniversary date systems, cut-offs were universal and varied from 1 to 6 months, with a three month cutoff period being the most common choice.

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Non-public safety longevity pay requirements were added to section 4.5, and section 4.9, was clarified to reflect current practice governing Animal Control Officer promotions.

CHAPTER 5 – RECRUITMENT AND EXAMINATION

A paragraph in section 5.8-4 was realigned to clarify content relationship. 5.3 is updated to reflect current practice.

CHAPTER 6 – CERTIFICATIONS AND ELIGILBLE LISTS

Section 6.4-8 was updated to reflect current practice related to removal of names from referral or eligible lists, and section 6.2-2 was deleted as it is covered in 6.2-1.

CHAPTER 7 – CERTIFICATION AND APPOINTMENT

Administrative updates.

CHAPTER 12 – PERFORMANCE MANAGEMENT

Language was updated to align training practice with policy; rename the work improvement plan to the performance improvement plan in response to employee and manager requests;

clarify the scope and intent of the three types of performance improvement plans, align 6-month and probationary period evaluation policies with current practice; clarify the reviewer's roles and responsibilities; clarify the relationship between disciplinary actions and performance improvement plans; promote accountability when issuing discipline associated with performance improvement plans by requiring approval of the Human Resources Director; establish the option to grieve the 120-day performance improvement plan; and eliminate the performance evaluation appeals process (that was established with the implementation of the prior pay for performance system) in favor of reliance on the existing grievance process.

EAC and SEIU representatives advocate prohibiting issuance of disciplinary actions while an employee is subject to the requirements of a performance improvement plan. Due to the many variable combinations of performance improvement plan/discipline scenarios that can occur, a blanket policy statement is impractical. The requirement for Human Resources Director approval prior to issuing discipline during an employee's performance improvement plan period has been added to allay the concerns raised. EAC and SEIU representatives also advocate expanding grievance rights to include all three performance improvement plans (coaching, 10 week advance notice and 120 day). Coaching performance improvement plans are developmental in nature, are not disciplinary actions and impose no adverse action. To make these developmental documents grievable would add an adversarial element that would not be productive. The 10 week advance notice performance improvement plan precedes the annual evaluation and if an employee is dissatisfied with his or her evaluation, that issue is already grievable. As a compromise, the 120 day performance improvement plan has been added as a grievable matter in Chapter 17. Additionally language was added to limit this performance improvement plan to no more than 120 days and ensure regular discussion and biweekly written progress reports.

Eliminating the performance evaluation appeals process (tied to the former pay for performance system) allows redirection of Alternative Dispute Resolution (ADR) staff resources to focus on performance management training and mediating/facilitating supervisor and employee performance improvement plan discussions. Changes to the ADR program have the support of the Civil Service Commission Executive Director and the employee group representatives.

Chapter 17 – GRIEVANCE PROCEDURE

The 120-day Performance Improvement Plan was added to the list of non-grievable complaints eligible to receive advisory decisions from a hearing officer. This change places additional emphasis on the importance of this employee support tool and increases managerial accountability for completing this action purposefully.

Decisions from performance evaluation appeals panels were removed from the list of non-grievable complaint as referenced in Chapter 12 revisions.

These changes support a broader performance management strategy designed to emphasize the importance of employee development, effectively implementing performance improvement techniques and conducting constructive coaching conversations. These changes are put forward with the concurrence of the Civil Service Executive Director, and were developed collaboratively between DHR and employee group representatives.

In accordance with the Merit System Ordinance, the proposed revisions were forwarded to the Civil Service Commission for public hearing. The public hearing was held on March 9, 2015 and the Commission's comments are included as Attachment 7. After hearing testimony from the President of the Police Benevolent Association regarding the proposed changes to Section 4.5 regarding longevity increments, the Commission is recommending that the "subject to available funding" clause be removed from individual sections of the Regulations and placed instead at the front of Chapter 4. Chapter 4 (attachment 2) has been modified accordingly. Other changes recommended by the Commission were administrative and have also been made as reflected in the attachments.

FISCAL IMPACT:
The FY 2016 costs associated with the implementation of the new pay structure for non-public safety employees are included in the FY2016 Advertised Budget Plan.

ENCLOSED DOCUMENTS:
Attachment 1: Proposed Revisions to Chapter 2 of the Personnel Regulations
Attachment 2: Proposed Revisions to Chapter 4 of the Personnel Regulations
Attachment 3: Proposed Revisions to Chapter 5 of the Personnel Regulations
Attachment 4: Proposed Revisions to Chapter 6 of the Personnel Regulations
Attachment 5: Proposed Revisions to Chapter 7 of the Personnel Regulations
Attachment 6: Proposed Revisions to Chapter 12 of the Personnel Regulations
Attachment 7: Proposed Revisions to Chapter 17 of the Personnel Regulations
Attachment 8: Civil Service Commission Memorandum

STAFF:
Susan Woodruff, Director, Department of Human Resources
Benjamin Jacewicz, Assistant County Attorney

Attachment #1

CHAPTER 2
Definitions

Allocation

The assignment of a position to its appropriate class in relation to duties performed.

Anniversary Date

The date on which an employee is appointed to start in a merit position. The anniversary date for public safety employees can change based on promotion dates, with exceptions noted in chapter four of these regulations.

Appeal

An application or procedure for review of an alleged grievance submitted or instituted by an employee to the Civil Service Commission or to other higher authority.

Appointing Authority

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 is generally responsible for personnel administration within a given department. As used in these regulations, the term "appointing authority" is synonymous with the term "department head."

Appointment

The offer to and acceptance by a person of a position.

Assembled Examination

An examination for which applicants are required to appear at a specific place for the purpose of taking a test.

Break in Service

Any separation from the service of Fairfax County whether by resignation, lay-off, dismissal, unsatisfactory service, disability, retirement, or absence without leave of three days or more when the employee is subsequently reemployed. An authorized leave without pay shall not be considered as constituting a "break in service."

Business Day

Calendar days exclusive of Saturdays, Sundays, and legal holidays.

Class

A group of positions, which are sufficiently alike in general duties and responsibilities to warrant the use of the same title, specification and pay range.

Class Series

A number of classes of positions which are substantially similar as to the types of work involved and differ only in rank as determined by the importance of the duties and degree of responsibility involved and the amount of training and experience required. Such classes constitute a series and each is usually given a designation either by Roman numerals, beginning with the lowest level as I, next level II, or by rank adjectives such as the junior, intermediate or senior level, etc.

Class Specification

A written description of a class consisting of a class title, a general statement of the level of work, a statement of the distinguishing features of work, some examples of work, and the minimum qualifications for the class.

Classification

The grouping of positions in regard to: (a) kinds of duties performed and responsibilities; (b) level of duties performed; (c) requirements as to education, knowledge and experience and ability; (d) tests of fitness; (e) ranges of pay.

Classification Review or Reclassification Review

An evaluation of the duties and responsibilities of a position performed by the Department of Human Resources to determine the appropriateness of the present class. Appropriateness will be determined on the basis of: (a) kinds of duties performed and responsibilities; (b) level of duties performed; (c) requirements as to education, knowledge and experience and ability; (d) tests of fitness; (e) ranges of pay. The review will result in the position retaining its present class assignment; or being assigned to an existing lower class, or being assigned to an existing higher class; or being assigned to a new class created by amendment to the Classification and Compensation Plans.

Classification Plan

Attachment #1

The official or approved system of grouping positions into appropriate classes, consisting of three parts: (1) a schematic index to the class specifications; (2) the class specifications; and (3) rules for administering the classification plan.

Compensation

The standard rates of pay, which have been established for the respective classes of work, as set forth in the compensation plan.

Compensation Plan

The official schedule of pay approved by the Board of Supervisors assigning one or more rates of pay to each pay grade.

Compensatory Leave

Time off in lieu of monetary payment for overtime worked.

Compensatory Time Eligible

Employees in pay grades S-26, P/O/C-27, F-31 or above and L-02 or above, excluding any classes designated as exceptions in a procedural memorandum issued by the Human Resources Director.

Competitive Promotion

A promotion based on a competitive examination with appointment to the higher-level position restricted to a specific number of persons receiving the highest ratings.

Competitive Service

All officers and positions in the service of Fairfax County as defined in the Merit System Ordinance.

Continuous Service

Employment without interruption, including merit service with the Fairfax County School System, except for absences on approved leave or absences to serve in the Armed Forces of the United States, or absences of less than one calendar year when followed by reemployment or reinstatement. Service prior to normal or early retirement from a County retirement system shall not be counted.

Deferred Retirement Option Plan (DROP)

An option in lieu of immediate retirement in which an employee remains employed by his/her department, but no longer contributes to his/her respective retirement system and must retire within 3 years of election to DROP. DROP participants retain the rights and privileges of merit employees.

Definition of Duties

The work requirements for each position in terms of the importance, difficulty, and extent of supervision and responsibility attaching thereto.

Demotion

Assignment of an employee from one class to another, which has a lower maximum rate of pay.

Department

An administrative branch including a line of work and a group of employees under the immediate charge of a chief executive officer or officers of a department, institution, court, board, or commission of the County government, which latter officer or officers shall be known as the department head.

Dismissal

Separation from County employment for cause.

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. As used in these regulations, the term "department head" is synonymous with the term "appointing authority."

Deputy

One or more individuals authorized to act in specific functional areas for the department head.

Eligible

A person who has successfully met required qualifications for a particular class.

Eligible List

The ranking of eligibles by class in order of score earned.

Attachment #1

Employee

An individual who is legally employed by the County and is compensated through the County payroll for his services. Individuals or groups compensated on a fee basis are not included.

Examination

The process of testing, evaluating or investigating the fitness and qualifications of applicants.

Exempt Service

Those positions not included in the competitive service as defined in the Merit System Ordinance.

Extended Family Including Household Member

Includes employee's spouse, son, daughter, parents, parent in-laws, siblings, grandparents, grandchildren, aunt, uncle, niece, nephew, employee's respective in-laws, first cousin, or children for whom the employee has legal guardianship or is designated as primary caregiver, and any person who resides in the employee's home.

Fire Protection Personnel

24-hour shift employees in the Fire and Rescue Department who perform suppression and rescue duties as defined in the Fair Labor Standards Act (29 CFR Sec. 553.3).

Fair Labor Standards Act (FLSA)

Legislation originally enacted by Congress in 1938, which establishes requirements with respect to minimum wage, overtime, compensation and record keeping.

FLSA Eligible (FLSA Non-exempt)

An employee who holds a position covered by the minimum wage, mandatory overtime, or recordkeeping provisions of the FLSA. FLSA Eligible employees must be compensated with overtime pay or compensatory time for all hours worked over the FLSA threshold for overtime, as outlined in the definition of overtime. FLSA Eligible employees are in pay grades S-21, P-23, O/C-21, F-22 and below. Exceptions are noted in a procedural memorandum issued by the Human Resources Director.

FLSA Exempt

An employee who holds a position that is not covered by the mandatory overtime provisions of the Fair Labor Standards Act.

Attachment #1

Full-Time Employee

Any employee who is regularly scheduled to work at least 2,080 hours in 12 consecutive months, or fire protection personnel regularly scheduled to work at least 2, 912 hours in 12 consecutive months.

Full-Time Position

Any position which is authorized to be filled for at least 2,080 hours in 12 consecutive months or fire protection personnel position authorized for at least 2,912 hours in 12 consecutive months.

Hourly Rate of Pay

The hourly rate of pay is shown on the County pay plans for the minimum, midpoint, and maximum of each pay range. Public safety pay plans shall include such intermediate rates as deemed appropriate. Hourly rates are carried out to four places after the decimal. The hourly rate is derived by dividing annual salary by 2,080, which is the number of scheduled hours for a full time employee. The hourly rate for fire protection personnel assigned to a 24-hour shift is derived by dividing the annual salary by 2,912, which is the number of scheduled hours for a full time fire protection employee.

Immediate Family Including Household Member

Includes employee's spouse, son, daughter, parents, parents-in-law, siblings, grandparents, children for whom the employee has legal guardianship or is designated as primary caregiver, and any person who resides in the employee's home.

Incumbent

An employee occupying a position in the County service.

Law Enforcement Personnel

Sworn employees of the Police Department (including animal control officers), Fire and Rescue Department, and Office of the Sheriff who are empowered to enforce laws, have the power of arrest and have undergone (or will be undergoing) on-the-job training or similar instruction as defined in the Fair Labor Standards Act (29 CFR Sec. 553.4). The term also includes security personnel in correctional institutions.

Lay-Off

Separation of an employee from a position to which he was legally certified and appointed as a result of the abolition of a position, lack of work or lack of funds.

Attachment #1

Longevity Pay Increment

An increase in compensation established in the compensation plan as a reward for long and faithful service for public safety employees. Longevity pay increments are granted in accordance with the conditions specified in Chapter 4 of the Personnel Regulations and are subject to Board of Supervisors appropriation.

Merit Employee

Any employee in the competitive service, as defined in the Merit System Ordinance.

Merit System

The system of personnel administration applicable to the competitive service. It includes the Merit System Ordinance, any applicable provisions of other County ordinances, Personnel Regulations, and all applicable and lawful personnel management directives of the Board of Supervisors, County Executive, or Human Resources Director.

Minimum Wage

The minimum hourly wage to be paid to employees as designated by the United States Department of Labor, or Commonwealth of Virginia (whichever is higher).

Multi Rater Option

The use of feedback from persons in addition to the immediate supervisor as part of the performance review process.

Negative Time Reporting

The time and attendance reporting method for employees only required to report exceptions to scheduled hours.

Open Examination

An examination open to the public and not limited to applicants in County service.

Overtime (FLSA)

Time worked or on paid leave by an employee (excluding employees in law enforcement and fire protection as defined herein) in excess of 40 hours during his/her seven consecutive days work period. Overtime for law enforcement personnel shall be time worked or on paid leave in excess of 86 hours (82 hours for sworn Police Officers, Animal Control Officers, and

Deputy Sheriffs scheduled to work a 40-hour week) during his/her 14 consecutive day work period. Overtime for fire protection personnel shall be time worked or on paid leave in excess of 212 hours during his/her 28 consecutive day work period.
Non-FLSA overtime includes hours worked in excess of the employee's scheduled hours but less than the eligibility requirement for FLSA overtime stated above.

Overtime Pay

Compensation paid to an employee for overtime work performed in accordance with these rules. The rate of pay for overtime compensation will be either 1 times the hourly rate or 1 and 1/2 times the regular rate of pay as prescribed in Section 4.15 of these rules.

Part-Time Employee

An employee who is not regularly scheduled to work at least 2,080 hours in 12 consecutive months, or fire protection personnel not regularly scheduled to work at least 2, 912 hours in 12 consecutive months.

Part-Time Position

Any position, which does not meet the definition of full-time position.

Pay Grade

A combination of letter and number symbol indicating the pay range on a county pay schedule assigned to one or more classes in the Compensation Plan.

Pay Grade Reallocation Review

An evaluation of a class performed by the Department of Human Resources to determine the appropriateness of the present pay grade. The review will result in the class retaining its present pay grade assignment; or being assigned a higher or lower pay grade requiring amendment to the Compensation Plan. Such a review may include, but is not limited to pay factors including prevailing area levels of pay, internal evaluation of the relative worth of the class and economic and related fiscal concerns.

Pay Period

The 14 consecutive calendar day period utilized for the calculation of paychecks and the crediting of leave earned.

Pay Range

Rates of pay assigned to a pay grade on a County pay schedule in the Compensation Plan.

For non-public safety employee classes, a pay range shall consist of the minimum and maximum rates of pay and the mid-point of the range. Pay ranges assigned to grades allocated to classes of public safety employees shall consist of the minimum (step 1) and maximum rates of pay (step 9) as well as intermediate and longevity steps.

Pay Rate

A specific dollar amount expressed as an annual rate, a bi-weekly rate, or an hourly rate, as shown in a County Pay Plan.

Pay Status

Any period in which an employee is actually working or using paid leave.

~~*Performance Pay Bonus*~~

~~A lump sum payment made to an employee who is earning the maximum salary in his/ her pay grade. A department head or designee may grant an employee who is earning the maximum salary in his/her pay grade following his or her annual performance review, a bonus of up to 5 % of his/her salary if he/she meets or exceeds the performance requirements set for the award of such bonuses. The award of such a bonus does not change the employee's salary.~~

Performance Pay Increase

An increase in compensation, which may be granted to an employee by his/her department head or designee for performance that meets the requirements specified for such pay increases.

Performance Pay Increase (PPI) Date

The date an employee's performance pay increase is effective. The PPI date for non-uniformed public safety employees will be at the start of the first full pay period at the beginning of the fiscal year, during years when performance pay increases are granted by the Board of Supervisors. Public safety employees' PPI dates will be the beginning of the first full pay period following the incumbent's anniversary date, during years when performance pay increases are granted.

Performance Review Period

The 12-month performance evaluation review period for non-uniformed public safety employees begins July 1 and concludes on June 30, each year. Review periods for public safety staff correspond to each incumbent's anniversary date.

Position

Any office or employment, whether occupied or vacant, full-time or part-time, consisting of duties and responsibilities assigned to one individual by competent authority.

Positive Time Reporting

The time and attendance reporting method for employees required to report all absences and hours worked.

Primary Position

When an employee holds more than one position with the County, one of the positions is designated as the primary and the other as the secondary for the purpose of calculating pay and benefits and tracking employment history. If the two positions are equal in pay and scheduled hours, the primary position is the one the employee occupied first. Otherwise, the primary position is the position with higher pay and/or hours.

Probationary Period

The working test or trial period of employment beginning with the date of appointment to a particular class.

Promotion

Assignment of an employee from one class to another, which has a higher maximum rate of pay.

Promotional Examination

A competitive examination restricted to persons who are on regular appointment in the County classified service or to persons who are eligible to reinstatement thereto.

Public Safety Employees

For the purposes of these regulations, public safety employees include all uniformed employees in the Police Department, Fire and Rescue Department and the Office of the Sheriff. It also includes all other job classes that are included on P/O/C/F pay scale~~s~~.

Qualifications

The minimum educational, experience and personal requirements, which must be fulfilled by a person preliminary to appointment or promotion.

Reduction in Rank

Assignment of an employee from one class to another class, which has a lower maximum rate of pay. Same as demotion.

Attachment #1

Reemployment

Reappointment of a former merit employee, who had completed the probationary period and was separated in good standing but did not retire, which is not considered a reinstatement as defined herein.

Reemployment List

A list of names of former County employees with a break in service of less than one calendar year, arranged in order of their right to reinstatement as defined in Section 2.60, or reemployment in lower classes of the same or similar series as that in which the employee was serving at the time of termination.

Regular Rate of Pay

The rate of pay to be utilized for the calculation of overtime pay in accordance with FLSA requirements. The regular rate is derived by dividing the total amount of eligible pay for the work period (including the hourly rate and shift differential) by the number of hours worked during the work period.

Reinstatement

Reappointment of a former merit employee who had completed the probationary period and was separated in good standing, but did not retire, after a break in service of less than one calendar year to the position or class formerly held.

Restoration

A return to a position in a class in which status was formerly held where there has been no break in service.

Scheduled Hours

The number of hours that an employee is scheduled to work on a recurring basis as reflected in the personnel record for the position occupied. Scheduled hours serve as the basis for planning and budgeting activities as well as leave calculation rules as specified in Chapter 10 of the Personnel Regulations.

Self-Assessment

The completion of a performance evaluation form by the employee to provide his/her

assessment of their performance during the review period.

Separation

Leaving a position including resignation, lay-off, dismissal, unsatisfactory service, disability, and death.

Straight Pay Eligible

Employees in pay grades S-22 to S-25, P-24 to P-26, O-22 to O-26, C-22 to C-26, F-25 to F-29 and L-01. Exceptions are noted in a procedural memorandum issued by the Human Resources Director.

Suspension

An enforced leave of absence without pay for disciplinary purposes or pending investigation of charges made against an employee.

Transfer

Assignment of an employee from one position to another position. Transfers can take place within a department, between departments, between positions of the same pay range, between positions of different pay ranges, between positions of the same class or between positions of different classes.

Unassembled Examination

An examination in which qualifications are evaluated on the basis of records or education and experience submitted by the applicants, supplemented by any information obtained by an investigation.

Vacancy

A position which has been newly established or which has been rendered vacant by the resignation, death or other removal of the previous incumbent.

Veteran

Any person who has received an honorable discharge and has (i) provided more than 180 consecutive days of full-time, active duty service in the armed forces of the United States or reserve components thereof, including the National Guard, or (ii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

Attachment #1

Workday

Days of the week and number of hours an employee is scheduled to work. Work schedules vary by operation and agency.

Workweek

The seven consecutive day period beginning at 12:00 a.m. Saturday and ending the following Friday at 11:59 p.m. during which an employee (excluding law enforcement and fire protection personnel as defined herein) is scheduled to work.

Work Period

The period during which an employee is scheduled to work. For all employees except law enforcement and fire protection personnel as defined herein, the work period shall be the work week which comprises one half of a pay period. The work period for fire protection personnel shall be a 28 consecutive calendar day period beginning at 12:00 a.m. Saturday and ending at 11:59 p.m. Friday and covering two pay periods. The work period for law enforcement personnel shall be a 14 consecutive calendar day period beginning at 12:00 a.m. Saturday, ending at 11:59 p.m. Friday, and covering one pay period.

CHAPTER 4

Pay Plan, Hours of Work and Overtime

4.1 *Pay ~~Ranges~~ ~~Plans~~*

-1 In preparing the pay plan, consideration shall be given to the duties and responsibilities of the various types of positions, the prevailing rates paid for comparable services in public and private employment and to experience in recruiting for such positions. Pay ranges shall include a minimum rate, a midpoint rate and a maximum rate for each class. Pay ranges assigned to classes consisting of public safety employees shall include such intermediate rates or steps as deemed necessary.

-2 The rate of pay set forth in the plan shall include total pay in every form, except that it shall not include allowance for actual and necessary travel expense authorized and included as incident to employment. If subsistence, quarters or other maintenance is furnished to an employee, the reasonable value thereof shall be deducted from the rate of pay set forth in the plan. Exceptions to this provision must be approved by the Board of Supervisors.

-3 When, in the opinion of the department head or deputy, following these rules results in an inequity, the Human Resources Director may authorize a salary adjustment if he /she concurs in the opinion of the department head or deputy.

-4 Except as provided in these rules, performance pay increase dates shall not be affected by the adoption of the new pay plan.

-5 Employee pay increases, to include performance pay increases and/or longevity increases, as provided in this chapter are subject to the conditions outlined in the appropriate section of the regulations and are subject to available funding

4.2 *Starting Rate of Pay*

-1 The minimum rate of pay for a class shall normally be paid upon appointment.

-2 Original appointment not to exceed the midpoint rate may be made if any of the following conditions exist:

a. The qualifications of the applicant significantly exceed the requirements for the class.

b. Difficulty of recruitment requires payment of a higher rate.

-3 Original appointment above the midpoint rate requires the approval of the Human Resources Director.

-4 A former employee being reinstated, as defined in Chapter 2, will be appointed at a rate of pay equal to or greater than the rate he/she was receiving at the time of his/her separation, adjusted to reflect any cost of living or market pay adjustments pay to that pay grade since his/her separation.

4.3 *Performance Pay Increase*

-1 Performance pay increases may be granted to those employees who meet the requirements specified for such increases. Employees considered not qualified for a performance pay increase shall be handled in accordance with the provisions of Chapter 12.

-2 Eligibility

A non-public safety employee receiving less than the maximum scheduled rate for his/her grade may be granted a percentage salary increase not to exceed the amount authorized by the Board of Supervisors. A performance pay increase for a public safety employee advances him/her to the next step in the grade. Eligibility for performance pay increases is subject ~~to available funding and~~ the following:

a. His/her work has met or exceeded the performance requirements established by his/her department head or designee to qualify for a pay increase. Public safety employees' performance must exceed the minimum performance standards to qualify for a performance pay increase. Effective August 1, 1990 employees who enlist, or are inducted into military service, or who are members of a reserve component of the armed forces of the United States who are ordered to active duty and return to County employment; upon their release from active duty and whose service is other than dishonorable shall be deemed to have satisfied this requirement for the period they are on active duty. The total length of active military service may not exceed five years.

b. A performance review period is 12 months. The only exception is for public safety employees who serve 2 years in step 8 before being eligible to move to step 9.

Notwithstanding the merit review periods listed above, effective July 13, 1991, the beginning of the first full pay period in FY 1992, all employees who have merit increment dates shall have their merit increment date extended by one year.

Thus, for example, an employee who had a merit increment date of the first day of payroll number 15 in 1991, which falls on July 13, 1991, would have a new increment date of the first day of payroll number 15 in 1992. An

employee who had a merit increment date of the first day of payroll number 15 in 1992, which falls on July 11, 1992, would have a new merit increment date of the first day of payroll number 15 in 1993, which falls on July 10, 1993. An employee who had a merit increment date of the first day of payroll number 15 in 1993, which falls on July 10, 1993, would have a new merit increment date of the first day of payroll number 15 in 1994, which falls on July 9, 1994.

Notwithstanding the merit review periods listed above, effective July 11, 1992, the beginning of the first full pay period in FY 1993, all employees who have merit increment dates shall have their merit increment date extended by one year. Thus, for example, an employee who had a merit increment date of the first day of payroll number 15 in 1992 which falls on July 11, 1992, would have a new merit increment date of the first day of payroll number 15 in 1993, which falls on July 10, 1993. An employee who had a merit increment date of the first day of payroll number 15 in 1993 which falls on July 10, 1993, would have a new merit increment date of the first day of payroll number 15 in 1994 which falls on July 9, 1994. An employee who had a merit increment date of the first day of payroll number 15 in 1994, which falls on July 9, 1994, would have a new merit increment date of the first day of payroll number 15 in 1995, which falls on July 8, 1995.

-3 Each employee shall have a performance pay increase date established when he/she is initially appointed to a merit position.

a. For uniformed public service employees, that date corresponds to the beginning of the pay period in which she or is appointed or promoted.

b. P~~; the p~~erformance pay increase date for other employees corresponds with the first full pay period of the fiscal year. Partial pay periods do not count towards the performance pay increase date and initial probationary employees must be hired prior to April 1 to be eligible to receive performance increases in the given year.

P~~p~~erformance pay increases are granted only as authorized by the Board of Supervisors.

-4 Creditable service in the completion of performance review periods includes:

a. Continuous employment in the competitive service not including overtime.

b. Period of involuntary separation initiated by the department head followed by reinstatement after appeal by the Civil Service Commission under the grievance procedure, for which the Commission determines that the employee is entitled to back pay.

c. Honorable service with the armed forces by employees who enlist or are inducted into military service or who are members of a reserve component of the United States who are ordered to active duty and who return to County employment upon their release from active duty. The total length of active military service, which can be credited, may not exceed five years.

4.4 *Outstanding Performance Award*

-1 An employee who has completed their initial probationary period and performs the duties and responsibilities of his/her position in an outstanding manner and whose work generally is well above expectations shall be eligible to be considered for an outstanding performance award.

-2 An outstanding performance award may be recommended by a department head or designee. Such outstanding performance award recommendation shall be in writing, shall state the reason for such recommendation and shall be submitted through the Deputy County Executive to the Human Resources Director, as appropriate, for implementation.

-3 Outstanding performance awards may be granted in any dollar amount not to exceed $1,000 the amount authorized by the Board of Supervisors.

4.5 *Longevity Pay Increments~~ for Public Safety Employees~~*

~~Subject to available funding,~~ Public Safety employees shall receive a longevity increment increase after 15 years of service and reaching top step in grade. A second longevity increase is awarded after 20 years of service and reaching top step in grade (step 9).

~~Subject to available funding, N~~~~n~~on-public safety employees may be eligible to receive longevity increases, in lieu of performance increases, after 20 and 25 years of service. These increases are awarded to employees who attain the required length of service before July 1 of the year funded.

4.6 *Within-Grade Adjustment*

When in the opinion of the County Executive, it is in the best interest of the County to do so, he/she may authorize a salary adjustment to encourage retention of highly qualified County employees and address pay inequities not to exceed the maximum rate of pay assigned to the employee's class.

4.7 *Pay Rate in Promotion, Demotion, Reallocation of Position or Transfer - Except Public Safety Employees*

If an employee other than a public safety employee is promoted, demoted, appointed to a reallocated position or transferred, his/her rate of pay for the new position shall be determined as follows:

-1 When a position is filled by promotion, the appointee shall receive a salary increase equal to 10% for one and two-grade promotions and 15% for promotions of three or more grades not to exceed the maximum rate of pay assigned to the new job class or the minimum rate of pay for the new job class whichever is greater.

-2 With the exception of disciplinary demotions or demotions during a promotional probationary period, when an employee is demoted, he/she shall be placed at the same salary in the new pay grade. If the employee's salary is greater than the maximum salary of the new pay grade he/she shall be placed at the maximum salary for the new pay grade.

When an employee is promoted or reinstated to his or her former job class within a year from the date of demotion, he or she shall remain at the same salary or be placed at the salary he or she was receiving prior to the demotion, whichever is greater.

-3 When an employee is demoted for disciplinary reasons he or she shall be placed at the salary in the new grade that is 5% less than his/her current salary not to exceed the maximum salary for the pay grade.

-4 When an employee is demoted during a promotional probationary period, the employee's former rate of pay shall be reinstated in the new lower pay grade, not to exceed the maximum salary for the pay grade.

-5 When an employee is transferred from a position of one class to a position of another class at the same level, he/she shall continue to be paid at the same rate of pay.

-6 Upon upward reclassification of a position, the incumbent shall receive a pay increase equal to 5% of the midpoint of the salary range for the new, higher pay job class or move to the minimum of the new range, which ever is greater not to exceed the maximum rate of pay for the new pay grade.

-7 Upon review of a job class to determine if a regrade is warranted, the incumbents in the job class may be entitled to a pay adjustment regardless of whether the job class is regraded or not. The determination of pay increase eligibility and the amount of such pay increase will be made in accordance with procedures approved by the County Executive and the Board of Supervisors. In no case shall the employee's salary be less than the minimum or greater than the maximum for the new pay range.

4.8 *Pay Rate in Promotion, Demotion, Reallocation of Position or Transfer - Public Safety Employees*

If a public safety employee is promoted, demoted, appointed to a reallocated position or transferred, his/her rate of pay for the new position shall be determined as follows:

-1 When a position is filled by promotion, except as noted elsewhere in this chapter, the appointee shall receive the greater amount of the minimum rate for the class of the new position or an amount in excess of one normal within grade increase in the pay grade of the class of the position held prior to promotion. Such increase shall not be less than 6% and if the promotion is three grades or more, the employee shall be placed in the new grade at a step closest to, but not in excess of a 15 % increase. The appointee shall receive a new performance pay increase date, which shall be calculated from the payroll number and year of his/her promotion.

-2 When an employee is demoted, he/she shall be placed in the pay step in the new pay grade, which represents the closest dollar amount that is less than the former pay. An employee may be placed in a longevity step under this provision only if the employee meets the length of service requirement for that step. The performance pay increase date shall not change.

When an employee is promoted or reinstated to his or her former job class within a year from the date of demotion, he or she shall remain at the same salary or be placed at the salary he or she was receiving prior to the demotion, whichever is greater and the performance pay increase date shall not change.

-3 When an employee is demoted to his or her former job class during a promotional probationary period, the employee's former grade and step shall be reinstated. When an employee is demoted to a job class other than that in which he/she was serving at the time of promotion, he/she shall be placed at the step in the lower grade that is closest to, but not less than the employee was making prior to promotion. If the employee's pre-promotion performance pay increase (PPI) date falls between the date of promotion and the date of the subsequent demotion, the promotion date will be retained as the PPI date; otherwise the pre-promotion PPI date shall be reinstated.

-4 When an employee is transferred from a position of one class to a position of another class at the same level, he/she shall continue to be paid at the same rate of pay.

-5 Upon upward reclassification/reallocation of a position, the incumbent shall receive the greater amount of either the minimum rate for the new grade or the next higher dollar rate in the new pay grade as compared to the dollar rate in the lower grade except in the following instances:

a. Employees who have served one year or more in a two year review period and who upon reclassification/reallocation, move to a step with a one year review period, shall receive an additional step upon reclassification/

reallocation to the new grade. The employee shall receive a new performance pay increase date, which shall be calculated from the payroll number and year of the reclassification/reallocation using the performance review period for the new step.

b. Except as noted above, the performance pay increase date shall not change unless the reclassification/reallocation moves the employee to a step with a shorter review period. In such cases, the year of the performance pay increase date is reduced if the time between the effective date of the reclassification/reallocation action and the employee's performance pay increase date is more than one year.

4.9 *Pay Rate in Promotion, Demotion, Reallocation of Position or Transfer - Police Officers, ~~and~~ Deputy Sheriffs and Animal Control Officers*

-1 A Police Officer I promoted to Police Officer II, ~~or~~ a Deputy Sheriff I promoted to Deputy Sheriff II, or an Animal Control Officer I to II shall receive an increase in pay not to exceed one within grade increase and the performance pay increase date will not change.

-2 A Police Officer II or Deputy Sheriff II who is receiving a proficiency pay adjustment and is promoted to Police Sergeant or Deputy Sheriff Sergeant respectively, shall receive an increase in pay not to exceed one within grade increase and the performance pay increase date will not change.

-3 In all other cases, the normal rules affecting promotion, demotion, reallocation of positions, and transfer for public safety employees shall apply.

4.10 *Allowances Granted Police Officers*

-1 Police Officers required to wear civilian clothes while on duty shall be granted a clothing allowance while such assignment lasts.

-2 A Police Officer II who has a minimum of five (5) years of service as a sworn officer with Fairfax County and who is certified by the Chief of Police or designee as demonstrating exemplary expertise in an authorized Police Officer II specialty, may be eligible to receive a police proficiency pay adjustment and assume the work title of "Master Police Officer".

a. A Police Officer II who is eligible for a police proficiency pay adjustment shall be reassigned to pay grade O-19 and shall receive an increase in pay not to exceed one within grade increase, and the performance pay increase date will not change.

b. The number of Police Officers receiving a proficiency pay adjustment shall at no time be greater than one-third of the total number of authorized and established Police Officer II positions.

4.11 *Allowances Granted Deputy Sheriffs*

-1 A Deputy Sheriff II who has a minimum of five (5) years of service as a sworn Deputy Sheriff with Fairfax County and who is certified by the Sheriff or designee as demonstrating exemplary expertise in an authorized Deputy Sheriff position, may be eligible to receive a proficiency pay adjustment and assume the work title of "Master Deputy Sheriff".

a. A Deputy Sheriff who is eligible for a proficiency pay adjustment shall be reassigned to pay grade C-19 and shall receive an increase in pay not to exceed one within grade increase and the performance pay increase date will not change.

b. The number of Deputy Sheriff II's receiving a proficiency pay adjustment shall at no time be greater than one-third of the total number of authorized and established Deputy Sheriff II positions.

4.12 *Allowances Granted Uniformed Fire Employees*

-1 A Fire Technician who has a minimum of five (5) years of service as a uniformed Fire employee with Fairfax County, and who is certified by the Chief of Fire and Rescue or designee as demonstrating exemplary expertise in an authorized Fire Technician specialty, may be eligible to receive a fire proficiency pay adjustment and assume the work title of "Master Firefighter."

a. A Fire Technician who is eligible for a fire proficiency pay adjustment shall be reassigned to pay grade F-20 and shall receive an increase in pay not to exceed one within grade increase, and the performance pay increase date will not change.

b. The number of Fire Technicians receiving a fire proficiency pay adjustment shall at no time be greater than one-third of the total number of authorized and established Fire Technician positions.

4.13 *Allowances Granted Animal Control Officers*

-1 An Animal Control Officer II who has a minimum of five (5) years of service as an Animal Control Officer with Fairfax County and who is certified by the Chief of Police or designee as demonstrating exemplary expertise in an authorized Animal Control Officer specialty, may be eligible to receive a proficiency pay adjustment and assume the work title of "Master Animal Control Officer."

a. An Animal Control Officer II who is eligible for a proficiency pay adjustment shall be reassigned to pay grade P-21 and shall receive an increase in pay not to exceed one within grade increase, and the performance pay increase date will not change.

b. The number of Animal Control Officer II's receiving a proficiency pay adjustment shall at no time be greater than one-third of the total number of authorized and established Animal Control Officer II positions.

4.14 *Hours of Work*

-1 The regular work period for all full-time County employees, excluding law enforcement and fire protection personnel, shall be 40 hours worked or on paid leave (excluding meal periods) within a seven consecutive calendar day period beginning and ending as defined in Chapter 2. The schedule of hours for the workweek shall be determined by the department head or designee.

-2 The regular work period for fire protection personnel shall be 28 consecutive calendar days, beginning and ending as defined in Chapter 2. The number of hours worked during the 28-day work period may vary depending on shift schedules and department needs.

-3 The regular work period for law enforcement personnel shall be 14 consecutive calendar days, beginning and ending as defined in Chapter 2. The number of hours worked during the 14-day work period may vary depending on shift schedules and department needs.

-4 The County Executive may authorize the inclusion of the meal period as actual work for shift positions.

-5 All employees in the Merit System shall be entitled to a 15 minute rest period for each four hours of assigned work, during a duty day, as scheduled by the department head or designee. Whenever possible, the rest period shall be scheduled at the middle of each such four-hour period of work.

-6 Shift Differential Premium Pay shall be authorized for all merit employees who are scheduled to work on fixed and/or rotating shifts that start at or after 1:00 P.M. wherein the hours scheduled on a shift after 4:00 P.M. are greater than the hours scheduled prior to 4:00 P.M., excluding employees who work flex-time schedules. If an employee whose regular shift schedule qualifies him/her for shift differential premium pay, reports to work prior to the start of their regular shift hours, he/she remains eligible for shift differential premium pay for all hours worked after 1:00 P.M. regardless of the time he/she actually begins working on that day. The hours worked before the beginning of the regular shift schedule are not eligible for shift differential.

-7 The Evening Shift shall encompass all shift schedules, which begin between the hours of 1:00 P.M. and 7:59 P.M. The premium pay rate established for the Evening Shift shall apply for all regularly scheduled hours actually worked between 1:00 P.M. and 7:59 P.M.

-8 The Night Shift shall encompass all shift schedules, which begin at 8:00 P.M. and thereafter. The premium pay rate established for the Night Shift shall apply for all regularly scheduled hours actually worked between 8:00 P.M. and 6:59 A.M.

-9 Employees assigned to 24-Hour Shift Schedules shall be paid Shift Differential Premium Pay for all regularly scheduled hours actually worked between the hours of 4:00 P.M. and 7:00 A.M. and in accordance with established payroll procedures.

-10 Employees are paid and earn leave based on data recorded in official time and attendance records. An "online" timesheet is used to document time worked and leave taken. There are two types of time and attendance reporting:

a. Employees required to use positive time reporting must record all absences and hours worked each pay period.

b. Employees required to use negative time reporting only record exceptions to their scheduled work hours. If no exceptions are entered, the employee is paid a biweekly amount based on their scheduled hours.

4.15 *Overtime, Compensatory Time, Call-Back Time, Consecutive Shift Time*

-1 Overtime.

FLSA overtime shall include all hours worked or on paid leave by an FLSA eligible employee (other than law enforcement and fire protection personnel) in excess of 40 hours in a work week.

Overtime for FLSA eligible law enforcement personnel (excluding sworn Police Officers, Animal Control Officers, and Deputy Sheriffs scheduled to work a 40 hour week) shall include all hours worked or on paid leave in excess of 86 hours in a 14-day work period. Overtime for FLSA eligible law enforcement personnel in the Police Department and Deputy Sheriffs scheduled to work a 40 hour week shall include all hours worked or on paid leave in excess of 82 hours in a 14-day work period. Overtime for FLSA eligible fire protection personnel shall include all hours worked or on paid leave in excess of 212 hours in a 28-day work period. Non-FLSA overtime includes hours worked in excess of the employee's scheduled hours but less than the eligibility requirement for FLSA overtime. Overtime shall be kept to a minimum and shall be used to relieve occasional excessive workloads or emergencies, and not to provide for constant recurring requirements. Overtime may be mandated when related to the health, welfare or safety of either the public or employees. Except in emergency situations, all overtime worked by an employee

shall be approved by the employee's supervisor or designee, verbally or in writing prior to the overtime being worked. Employees shall not work in excess of authorized scheduled hours without express approval of the supervisor.

-2 Eligibility.

Employees shall earn compensatory time or be paid for overtime hours actually worked in accordance with the following provisions:

a. FLSA eligible employees excluding law enforcement and fire protection personnel as defined in Chapter 2:

(1) shall be compensated at one and one-half times their regular rate of pay for all eligible hours worked or on paid leave in excess of 40 hours during the designated seven consecutive day work period. If requested by the employee and approved by the department head or designee, compensatory time at the rate of time and a half may be awarded in lieu of overtime pay. If the employee's compensatory leave balance is 240 hours or greater, overtime pay at one and one-half times the regular rate of pay must be awarded.

(2) shall earn straight compensatory time or be paid overtime at their hourly rate of pay, at the employee's discretion, for hours worked in excess of their scheduled hours wherein the time actually worked is less than forty hours in a seven day work period. If the employee's compensatory leave balance is 240 hours or greater, overtime pay at the hourly rate of pay must be awarded.

b. Straight pay eligible employees shall, at the discretion of the department head or designee, earn straight compensatory time or be compensated at their hourly rate of pay for all time worked in excess of their scheduled work hours.

c. Compensatory time eligible employees shall earn straight compensatory time for time worked in excess of their scheduled work hours.

d. FLSA eligible fire protection personnel:

(1) shall be compensated at one and one-half times their regular rate of pay for all eligible hours worked or on paid leave in excess of 212 hours during the 28 consecutive day work period. If requested by the employee and approved by department head or designee, compensatory time at the rate of time and a half may be awarded in lieu of overtime pay. If the employee's compensatory leave balance is 336 hours or greater, overtime pay at one and one-half times the regular rate of pay must be awarded.

(2) shall earn straight compensatory time or be paid overtime at their hourly rate of pay, at the employee's discretion, for hours worked in excess of their scheduled hours wherein the hours actually worked are less than 212 hours in a 28 day work period. If the employee's compensatory leave balance is 336 hours or greater, overtime pay at the hourly rate of pay must be awarded.

All other Fire and Rescue Department employees shall be treated as described in Section 4.15 - 2a, b, or c.

e. FLSA eligible law enforcement personnel:

(1) shall be compensated at one and one-half times their regular rate of pay for all hours worked or on paid leave in excess of 86 hours (82 hours for sworn Police Officers and Deputy Sheriffs scheduled to work a 40 hour week) during the 14 consecutive day work period. If requested by the employee and approved by the department head or designee, compensatory time at the rate of time and a half may be awarded in lieu of overtime pay. If the employee's compensatory leave balance is 240 hours or greater, overtime pay at one and one-half times the regular rate of pay must be awarded.

(2) shall earn straight compensatory time or be paid overtime at their hourly rate of pay, at the employee's discretion, for hours worked in excess of their scheduled hours wherein the hours actually worked are less than 86 hours (82 hours for sworn Police Officers and Deputy Sheriffs scheduled to work a 40 hour week) in a 14 day work period. If the employee's compensatory leave balance is 240 hours or greater, overtime pay at the hourly rate of pay must be awarded.

(3) shall be compensated at one and one-half times their hourly rate of pay for actual court time worked when such court time falls on the employee's scheduled day off or begins more than two hours prior to the employee's scheduled shift, regardless of the number of hours worked in a given work period.

All other public safety employees shall be treated as described in Section 4.15 - 2a, b, or c.

-3 Holiday/Emergency Administrative Leave.

Pro-rata adjustments shall be made for the holiday usage rate for shift schedules other than 40 hours per week to ensure compliance with the provisions of Chapter 10.

a. Part-time merit employees shall be granted holiday time off with pay on a pro-rated basis regardless of the number of hours scheduled on the day on which a holiday falls computed at the rate of one-tenth of an hour times the employees bi-weekly scheduled hours.

b. When an employee is required to work due to an emergency, staff shortage or hours worked that are a part of the regular work week on a holiday (actual or observed), the employee shall be compensated for the hours actually worked at the employee's hourly rate of pay or in accordance with the rules governing overtime, if applicable.

To receive holiday compensation on an actual holiday, an employee must be directed by his/her supervisor to work due to staff shortage or other operational necessity.

In addition, employees shall receive holiday compensation as follows:

(1) FLSA eligible employees shall, at the employee's discretion, be granted holiday compensatory time or be paid holiday pay not exceeding the employee's regularly scheduled hours or one half of the employee's regularly scheduled hours for a half-day holiday. If the employee's compensatory leave balance is 240 hours or greater, holiday pay at the employee's hourly rate must be granted.

(2) Straight pay eligible employees shall, at the discretion of the department head or designee, be granted holiday compensatory time or be paid holiday pay not exceeding the employee's regularly scheduled hours or one half of the employee's regularly scheduled hours for a half-day holiday) at the employee's hourly rate of pay.

(3) Compensatory time eligible employees shall be granted holiday compensatory time not exceeding the employee's regularly scheduled hours or one half of the employee's regularly scheduled hours for a half-day holiday) at the employee's hourly rate of pay.

c. When a holiday falls on an employee's scheduled day off, the employee shall be compensated as follows:

(1) FLSA eligible employees shall, at the employee's discretion, be granted holiday compensatory time or be paid holiday pay not exceeding eight hours (4 hours for a half-day holiday) at the employee's hourly rate of pay. If an employee's compensatory leave balance is 240 hours or greater, holiday pay at the employee's hourly rate must be granted.

(2) Straight pay eligible employees shall at the discretion of the department head or designee, be granted holiday compensatory time or be paid holiday pay not exceeding eight hours (4 hours for a half-day holiday) at the employee's hourly rate of pay.

(3) Compensatory time eligible employees shall be granted holiday compensatory time not exceeding eight hours (4 hours for a half-day holiday).

d. When a holiday falls on an employee's scheduled work day and the employee does not work, the employee shall receive holiday pay at the employee's hourly rate of pay. Full-time merit employees (other than Fire and Rescue Department employees on the 24-hour shift schedule) who are scheduled to work more than 8 hours due to departmental operational needs (this does not include employees who elect to work a compressed work week or flex schedule), shall be granted holiday time off with pay up to the regularly scheduled hours for a full holiday (or one-half of the regularly scheduled hours for a half holiday).

e. In the event of extreme inclement weather or other emergency, wherein the general County government is closed by the County Executive and all employees are granted Emergency Administrative Leave, those employees required to perform emergency services shall be compensated for the hours actually worked at the employee's hourly rate of pay or in accordance with the rules governing overtime. In addition, the employee shall be compensated as follows:

(1) FLSA eligible employees shall at the employee's discretion, be granted compensatory time or be paid at the employee's hourly rate of pay for the number of hours that coincide with the employee's work schedule for the day itself not to exceed the maximum amount granted by the County Executive. If the employee's compensatory leave balance is 240 hours (336 hours for fire protection personnel) or greater, the employee must be paid for these hours.

(2) Straight pay eligible employees shall, at the discretion of the department head or designee, be granted compensatory time or be paid at the employee's hourly rate of pay for the number of hours that coincide with the employee's work schedule for the day itself not to exceed the maximum amount granted by the County Executive.

(3) Compensatory time eligible employees shall be granted compensatory time for the number of hours that coincide with the employee's work schedule for the day itself not to exceed the maximum amount granted by the County Executive.

-4 Compensatory Time.

Compensatory time shall be earned and credited to an employee's records on the basis of actual hours worked in excess of the employee's scheduled hours. FLSA eligible employees who earn compensatory time for FLSA overtime hours worked (as defined 4.15 – 2 a(l), d(l), and e(l) shall accrue 1 1/2 hours of compensatory time for each overtime hour worked.

All other compensatory time shall be accrued on an hour for hour basis. Compensatory time off for overtime worked shall be granted upon request of the employee, when approved by the department head or designee.

a. In the event that an employee is granted compensatory time off in excess of the employee's accrued balance, the excess shall be charged against the employee's annual leave balance.

b. Compensatory time not to exceed 240 hours may be carried forward from one calendar year to the next calendar year.

c. County employees shall be awarded a terminal leave payment for any accrued compensatory time not to exceed a maximum of 240 hours (336 hours for fire protection personnel). This will be paid at the employee's current hourly rate of pay at the time of termination with the exception that FLSA eligible employees will be paid at the current regular rate or at the average regular rate for the last 3 years, whichever is greater.

d. Notwithstanding the provisions of this section or any other provision of these personnel regulations or of the procedural directives governing the exempt service, effective July 1, 1998, senior managers shall not be eligible to earn or accrue compensatory leave. For purposes of this section, “senior managers” are noted in a procedural memorandum issued by the Human Resources Director.

   Senior managers shall be credited with the amount of unused compensatory leave accrued as of July 1, 1998. Subject to the provisions of these regulations and any other applicable procedural directive, they may take such compensatory leave after July 1, 1998 until such leave balances are exhausted. Senior managers may carry over no more than 240 hours of previously accrued and unused compensatory leave into the 1999 calendar year. Upon separation, senior managers shall be granted a terminal leave payment for any such accrued and unused compensatory leave paid at the senior manager’s current rate of pay, on an hourly basis, at the time of separation not to exceed a maximum of 240 hours.

-5 Call-Back Time.

Call-back time refers to situations wherein an employee is off duty and is called to return to work after departing from the work place. It does not apply to those incidents where an employee is at work or has not departed from the work site and the work period is extended.

Employees called back to work shall be credited with a minimum of four hours overtime in each separate instance, excluding travel time, regardless of the hours actually worked.

(a) FLSA eligible employees shall, at the employee's discretion, be granted compensatory time (at the time and one-half rate) or be paid at one and one-half times their hourly rate of pay for call-back hours. If the employee's compensatory leave balance is 240 hours or greater, the employee must be paid.

(b) Straight pay eligible employees shall, at department head's or designee's discretion, earn straight compensatory time or be compensated at their hourly rate of pay for all call-back time.

(c) Compensatory time eligible employees on all pay scales shall earn straight compensatory time for all call-back time.

-6 Consecutive Shift Time.

Consecutive Shift time refers to situations wherein an employee has completed a full eight or more hour shift and is required to remain on duty a second consecutive shift to perform essential services during an emergency situation or to meet minimum State certification standards in the Department of Public Works and Environmental Services.

Employees required to perform 2nd consecutive shifts shall be compensated as follows:

(a) FLSA eligible employees shall, at the employee's discretion, be granted compensatory time (at the time and one-half rate) or be paid at one and one-half times their hourly rate of pay for consecutive shift hours. If the employee's compensatory leave balance is 240 hours or greater, the employee must be paid.

(b) Straight pay eligible employees shall, at the department head's or designee's discretion, earn straight compensatory time or be compensated at their hourly rate of pay for all consecutive shift time.

(c) Compensatory time eligible employees shall earn straight compensatory time for all consecutive shift time.

4.16 *Outside Employment; Violation of State Law on Conflict of Interests*

-1 Employees in the competitive service shall not engage in any employment, activity or enterprise, which has been or may be determined to be inconsistent, incompatible, or in conflict with duties, functions, or responsibilities of their County employment.

-2 No employee in the competitive service shall hold any other position in any other governmental jurisdiction or in private employment, when such other position may have the effect of reducing the efficiency of such employee in the competitive service.

-3 Employees in the competitive service who desire to accept outside employment in addition to their regular County positions shall inform their respective department head or designee of the nature and extent of such outside employment. The department head or designee shall thereupon determine whether or not the holding of such employment conflicts with the duties and responsibilities of said employee to the County.

-4 Violation of the County's rules on outside employment or the Virginia State and Local Government Conflict of Interests Act or any successor statute thereto may be grounds for dismissal.

4.17 *Application of Pay Policies to Deferred Retirement Option Plan (DROP) Participants*

Notwithstanding any provision of this chapter to the contrary, employees who are participating in the Deferred Retirement Option Plan (DROP) are considered as merit employees and the pay provisions included in this chapter continue to apply during their DROP participation.

Attachment #3

CHAPTER 5

Recruitment and Examination

5.1 *Overview of the Process*

-1 By law, appointments to positions in the competitive service of Fairfax County must be on a competitive basis, free of discrimination on the basis of race, color, national origin, religion, sex, age, political affiliation, disability, genetic information, veterans' status, or disabled veterans' status, and on the basis of ability, training and experience of the appointees which fit them for the work which they are to perform.

-2 To accomplish this end:

a. Positions in the competitive service are advertised periodically in a manner designed to reach a broad sector of qualified potential applicants. ~~Resumes~~ Applications are accepted for an individual position or specified group of positions.

b. In the case of positions for which vacancies occur with some frequency or periodically in large numbers, ~~resumes~~ applications may be accepted at intervals for specific classes rather than for specific positions and qualified applicants may be placed on eligibility lists and certified from such lists for consideration by department heads or deputies as vacancies occur;

c. Applicants are screened through a variety of processes which may include written, oral, and performance testing, and evaluation of education and experience. The best qualified are certified for only those positions advertised.

d. Applicants are selected from ~~certification~~referral lists for further screening, which usually includes either a personal or panel interview.

e. Successful applicants are appointed and serve a one-year probation period.

-3 When an adequate number of well qualified potential applicants for a position exist within the competitive service, competition may be restricted to County employees unless doing so would create or perpetuate a serious imbalance of the work force in terms of race or sex, in which case the position will be advertised for open competition. However, when there are an adequate number of well qualified applicants for a particular position in an agency, the Human Resources Director may restrict admission to the examination for that position to current employees of the department.

-4 The Human Resources Director is responsible for all aspects of the recruitment and ~~certification~~referral process, except those aspects delegated by him/her to department heads as authorized in these regulations; and for ensuring that all appointments to positions in the competitive service comply with the Merit System Ordinance and these regulations. Periodically, the Human Resources Director will offer training on laws, regulations and techniques pertinent to interviewing potential employees.

-5 Any applicant who believes that his/her failure to receive an appointment was the result of illegal discrimination as defined in the Merit System Ordinance has certain appeal rights defined herein.

5.2 *Announcement of Vacancies*

-1 In the interest of minimizing delay in filling vacancies, department heads or designee should inform the Human Resources Director of actual or impending vacancies as soon as this information becomes available.

a. This is accomplished by submission of an on-line personnel requisition including a job description, ~~and~~ a list of ~~any~~ special or preferred qualifications, and supplemental questions for the applicant ~~desired~~.

b. A vacancy may be advertised and applicants certified before the vacancy occurs, but no appointment may become effective more than three pay periods before the position is vacant unless dual encumbrance has been authorized by the County Executive or his/her designee.

-2 The announcement period for job vacancies shall be at least two weeks unless otherwise authorized by the Human Resources Director, or designee.

a. If, in the opinion of the Human Resources Director, or designee, there is an adequate pool of potential applicants and there is an urgent need to fill the position the announcement period may be reduced to one week but in no case shall the announcement period be less than five business days.

b. Except for public safety uniformed jobs the Human Resources Director may accept ~~resumes~~ applications after the closing date if the eligibility/referral ~~or certification~~ list for a position has not been issued.

c. Positions for which a continuing need for applicants exists or for which recruitment is particularly difficult may be announced with an open or indefinite closing date, and applicants may be placed on an ~~eligibility~~ referral list or certified at any time after the announcement has been open for five business days.

-3 Each announcement of a vacancy shall include information on the position (e.g., number of vacancies, title, salary, duties, minimum and preferred qualifications, supplemental questions, screening process, closing date) so applicants have sufficient information to be able to consider whether to apply for the position.

~~-4 Job announcements shall be available at the Department of Human Resources, all County Governmental Centers, all Fairfax County Public Libraries, and such other locations as the Human Resources Director may direct. Vacancies also may be announced in news media of general and special circulation, to include the internet, which are likely to reach a large and varied population.~~

5.3 *Evaluation of Applicants*

-1 The Human Resources Director or his/her designee may investigate any applicant's statements regarding their qualifications and experience to ensure their accuracy and completeness.

-2 The content of all evaluations, including interviews, shall be based on bona fide occupational qualifications pertinent to the duties to be performed. Department heads or deputies shall ensure that all interviewers are aware of legal restrictions on the types of questions, which may be asked of applicants.

-3 The Human Resources Director may delegate some or all of the actions described in this section to department heads.

5.4 *Disqualification of Applicants*

-1 In addition to failure to meet basic qualifications, a finding of any of the following facts may be cause for rejection of an applicant.

a. The applicant has falsely stated any material fact or has attempted to practice deception or fraud in his/her ~~resume/~~application.

b. The applicant has any disqualifying condition (mental or physical); although the mere finding of such shall not be disqualifying if reasonable accommodation can be made.

c. The applicant currently is a substance abuser, except that a history of substance abuse shall not in itself disqualify a person in recovery.

d. The applicant has been found guilty of a felony, misdemeanor, or crime involving moral turpitude, or has committed disgraceful conduct, such as to render him/her presently unfit, in the judgment of the Human Resources Director, for a position in the class for which he/she is applying or for County service.

e. The applicant has a recent record of previous unsatisfactory service in County employment or elsewhere of such a nature as to demonstrate unsuitability for employment in a position of the class for which he/she is applying.

f. The applicant has used or attempted to use, prior to, during or subsequent to the examination, fraud or pressure of any kind for the purpose of bettering his/her grade on the examination or to obtain certification to any position.

g. The applicant has received a dishonorable discharge from the Armed Forces resulting from conviction by a general court martial for an offense which renders him/her presently unfit, in the judgment of the Human Resources Director, for a position in the class for which he/she is applying or the County service.

h. The applicant has received a bad conduct discharge from the Armed Forces resulting from conviction by a special court martial for an offense which renders him/her presently unfit, in the judgment of the Human Resources Director, for a position in the class for which he/she is applying or for County service.

-2 When such finding is made, the Human Resources Director may reject the application and may cancel the eligibility of the applicant if he/she already has been certified or has attained a place on an eligible list. In the event the applicant has already received an appointment, the Human Resources Director may take appropriate action to remove him/her from the County service. The applicant shall be informed in writing of the action taken under this provision and of the reason therefore, and shall be advised of the method of appeal outlined in the following subsection.

-3 Any person whose ~~resume~~application is rejected by order of the Human Resources Director, whose eligibility is canceled or who is removed from any position under the provisions of this rule may make a written request to the Human Resources Director for reconsideration, giving his/her reasons therefore, within fifteen business days of the date on which he/she received notice of this action. The decision of the Human Resources Director is final, except that an employee in the competitive service who is dismissed in accordance with this section after having completed his/her initial probationary period may grieve his/her dismissal under the provisions of Chapter 17.

5.5 *Investigations and Fingerprinting*

-1 Department heads or their designees are responsible for verifying references and claimed veteran status of prospective appointees.

-2 Investigations of the backgrounds of candidates for public safety positions will be conducted by the various public safety agencies. The backgrounds of candidates for other sensitive positions may be investigated at the request of a department head or designee with the concurrence of the Human Resources Director.

-3 Selected candidates receiving a conditional offer of employment in a sensitive position will be fingerprinted and the prints forwarded to the Federal Bureau of Investigation for checking against its records. Any such candidate who refuses to be fingerprinted shall be disqualified. Candidates with a conviction or convictions on their record that are incompatible with the nature of employment in the sensitive position may be denied employment and the conditional offer of employment rescinded.

-4 All appointees will be required to present evidence of United States citizenship or, in the case of non-citizens, evidence of eligibility to work in the United States as required by law. All appointees who have claimed veteran status will be required to present evidence of the status claimed.

5.6 *Medical Examinations*

-1 The Human Resources Director shall designate classes for which a pre-employment medical examination shall be required.

-2 Candidates who fail such examinations shall be disqualified, but such failure shall not disqualify any individual from consideration for a position for which the physical qualification he/she failed to meet does not apply.

5.7 *Security and Retention of ~~Resume~~Applications and Related Records*

-1 ~~Resume~~Applications of successful candidates will be retained in their central personnel files. Copies may be retained by departments.

-2 ~~Resume~~Applications of unsuccessful candidates and related records shall be retained for at least five years.

-3 Retention of records may be in paper, photographic or electronic form.

5.8 *Promotional Public Safety/Uniformed Employee Examinations*

-1 Qualifying Scores

a. In establishing qualifying scores, the Human Resources Director or his/her designee may consider the following factors: projected staffing needs, minimum standards of job performance, distribution of candidates' raw scores in a particular examination, standard deviation of test scores, test reliability, adverse impact and standard error of measurement.

b. When an exam consists of several components, such as written, performance and physical portions, a candidate may be required to attain a qualifying score in each portion of the exam.

-2 Method of Breaking Ties

a. If two or more candidates attain the same final score, the tie shall be resolved in favor of the applicant who receives the highest score in the most heavily weighted portion of the examination. If a tie still exists, scores on the remaining portions of the examination will be considered in order of their relative weight. If a tie still exists, the tie shall be resolved in favor of the applicant, who is a veteran, if it is an initial hire opportunity for the veteran. If the tie is between an applicant who is a veteran and an applicant who is a veteran with a service-connected disability rating, the tie will be resolved in favor of the latter applicant if it is an initial hire opportunity for the veteran with a service-connected disability rating.

b. For promotional examinations for uniformed public safety job classes, if the tie extends beyond the procedure noted above, the tie shall be resolved in favor of the employee having the longest period of continuous service in the class series, beginning with date of appointment to the public safety class series (police, fire, sheriff).

-3 Notice of Examination Results for Public Safety Examinations

If an examination was conducted for the purpose of establishing a continuing eligibility list, all successful candidates will be advised of the results as soon as practicable after establishment of the list. Such notice shall include the following information:

a. The position class,

b. The length of time the list will be maintained,

c. The number of persons on the list, except in the case of open announcements where the individual's position on the list may change from time to time as other applicants are found eligible, and

d. The individual's position on the list as determined by applicable sections of Chapter 6 of these Regulations, except in the case of open announcements where the individual's position on the list may change from time to time as other applicants are found eligible.

-4 Examination Reevaluations

a. For written multiple choice exams that test the candidate's technical knowledge (such as departmental operating manuals, standard operating procedures, etc.), candidates may request a reevaluation of their examination papers with a view towards obtaining a higher score providing such request is made to the Human Resources Director within 15 business days following written notification of the examination results. Other types of written exams (including but not limited to situational judgment tests, multiple choice in-baskets, etc.) that measure other abilities are not subject to reevaluation.

b. When a request for reevaluation results in a candidate obtaining a higher score so that the relative standing of the candidate on an eligible/referral list is changed, the Human Resources Director shall review referrals made subsequent to the promulgation of the eligible list and determine whether or not the initial and incorrect score resulted in the candidate being incorrectly denied a referral. When, as a result of error, a referral has been lost to an eligible candidate, the Human Resources Director shall place the name of the candidate on a referral/eligibility list so that he/she benefits from the next certification. Appointments already made from such lists shall not be modified by such correction.

c. Reevaluation of performance-based examinations (including but not limited to practical examinations and assessment centers) shall not be allowed. However, candidates may request an explanation of their performance rating in such exams providing such request is made to the Human Resources Director within 15 business days following written notification of the examination results. The explanation shall be provided by the examining staff of the Employment Division and the Agency Test Evaluators, if any. Staff shall answer questions of the candidate, including information on how the test was graded and how scores were obtained in general. Staff shall not normally reveal individual scores on specific dimension ratings.

~~c. When a request for reevaluation results in a candidate obtaining a higher score so that the relative standing of the candidate on an eligible list is changed, the Human Resources Director shall review certifications made subsequent to the promulgation of the eligible list and determine whether or not the initial and incorrect score resulted in the candidate's losing certification. When, as a result of error, a certification has been lost to an eligible candidate, the Human Resources Director shall place the name of the candidate on the eligible list so that he/she benefits from the next certification. Appointments already made from such eligible lists shall not be affected by such correction.~~

-5 Eligible Lists

The names of applicants who meet minimum qualifications as determined by an examination, which is numerically scored, shall be placed on the appropriate eligible

list in order of their total scores or grouped into categories. In the event of a tie in scores, veterans, who are applying as initial hires, shall be listed ahead of non-veterans, and veterans with a service connected disability rating shall be listed ahead of other veterans. Within each category all eligibles will be considered tied.

Attachment #4

CHAPTER 6

~~Certification~~Referral and Eligible Lists

6.1 *Definitions*

-1 An eligible list is a list of applicants who meet the minimum qualifications for the class for which they applied, as determined under the provisions of Chapter 5.

-2 A ~~certification~~referral list is a list of applicants who have been determined to meet the minimum qualifications for the class for which they have applied, and who have also been determined to be among the best qualified for that specific job. A ~~certification~~referral list may either be a promotional list (based upon competition that is restricted to current Fairfax County employees as described in Chapter 5 or an open, competitive list based upon competition that is open to outside applicants as well as current County employees).

The format of the ~~certification~~referral list may take various forms, such as a spreadsheet, memorandum, computer generated format, etc., as long as the format has been issued by the Human Resources Director or designee.

6.2 *Reinstatement/Reemployment*

-1 A former merit employee who satisfactorily completed his/her probation period and was separated in good standing but did not retire may be eligible to be non-competitively reinstated to the position or class formerly held, or to be non-competitively reemployed in any class at the same or a lower grade for which he/she is qualified, for a period of one year from the date of separation. Reemployment eligibility of an employee who was laid off is governed by the provisions of Chapter 9.

~~-2 A non-competitive reinstatement or reemployment may be requested by the former employee but requires the approval of the department head or deputy.~~

~~a. Non-competitive reinstatements to the class formerly held do not require submission of a resume or certification of the former employee.~~

~~b. Non-competitive reemployments into a lower grade of the former class series do not require submission of a resume or certification of the former employee.~~

~~c. Non-competitive reemployment into a different class series than that formerly held requires submission of a resume and certification of the former employee.~~

6.3 *Duration of ~~Certification~~Referral Lists and Eligibility of Individuals*

- 1 R~~A certification~~eferral and~~/~~ eligible lists are ~~is~~ normally used to fill a vacancy/vacancies that currently exist, or that are expected to occur during the short term after it is established. However, a ~~certification~~referral or /eligible list may be used for up to one year after it has been established, in order to fill unanticipated vacancy/vacancies, with the approval of the Human Resources Director or designee. Factors that the Human Resources Director may consider in granting this approval include business necessity, whether the list is promotional or open, whether the list still contains a viable, diverse pool of certified applicants, difficulty of recruitment for the vacancy, etc.

- 2 At the request of a department head or designee and with respect to ~~certification and/or eligibility lists for~~referral and eligibility lists for positions, entirely under that department head, the Human Resources Director may extend the duration of a referral ~~n open competition~~ list to a maximum of two years and that of a promotion elibility list to a maximum of three years. No list may be extended beyond these time limits.

- 3 When an eligibility list is dissolved prior to the expiration date in the announcement, individuals remaining on the list shall be so notified.

6.4 *Removal of Certified Applicant From Job Consideration*

A certified applicant (from either a ~~certification~~referral or eligible list) may be ruled ineligible for job consideration for any of the reasons listed in the section on disqualification of applicants in Chapter 5 or for any of the following reasons:

-1 Appointment through ~~certification~~ a referral ~~from such~~ list to fill a merit position.

-2 Appointment through ~~certification~~ a referral ~~from a list~~ for another job class at the same or higher salary. At the request of the appointee, however, his/her name may be continued on any lists other than the one from which the appointment was made.

-3 Notification from the applicant that he/she desires his/her name removed from consideration.

-4 Refusal of appointment by the applicant under such conditions as he/she previously indicated he/she would accept.

-5 Inability to locate the applicant by mail or telephone within five business days.

-6 Failure by the applicant to reply to inquiry from the Human Resources Director or his/her designee within five business days of the date of such inquiry.

-7 Failure to accept appointment within three business days when offered, or to report for duty on the date prescribed by the department head or designee, provided that no candidate shall be required to report for duty less than two weeks from the date an appointment is offered.

~~-8 Failure to receive appointment after three certifications for the same class.~~

-8~~9~~ Separation of an employee on a promotional list from the County service.

-9~~10~~ Disability that prevents the applicant from performing satisfactorily the duties of the position even with reasonable accommodation.

Attachment #5

CHAPTER 7

~~Certification~~Referral and Appointment

7.1 *Appointments to the Competitive Service*

-1 Merit appointment indicates that the employee has been selected for appointment in accordance with the provisions of Chapters 5 and 6 of the Regulations. Merit employees shall receive annual and sick leave and other fringe benefits.

-2 Merit positions may be filled from within or outside the merit system. Appointments from within the system may be promotions, lateral transfers or demotions.

-3 Merit employees scheduled for 20 or more hours per week, including those in more than one merit position, shall have all the benefits of full-time merit employees, including:

A. Leave Accrual: Annual and sick leave will accrue as stated in Chapter 10 of the Fairfax County Personnel Regulations.

B. Health Benefits: Employees scheduled to work less than 31 hours per week may be subject to higher premium payments for certain benefits, in accordance with county benefits policy.

C. Performance Pay Increases: Employees holding more than one merit position are eligible to receive pay increases in all positions.

7.2 *Status of Employees and Positions*

-1 Merit employees normally occupy positions in the competitive service and exempt employees normally occupy positions in the exempt service. In exceptional circumstances, however, particularly when it is urgent that a position be filled without delay, a merit employee may occupy a position in the exempt service or an exempt employee may occupy a position in the competitive service.

-2 Except as provided in 7.2-3 below, a merit employee shall not have his/her status changed to exempt while assigned to a position in the exempt service when there has been no break in service. There shall be no change in the merit employee's rights and benefits entitlement while serving in an exempt service a position. When a merit employee is appointed to an exempt service a position, the personnel action request form shall indicate in what manner it is planned to return the employee to a merit position. The rules governing temporary acting promotion or demotion shall apply. Upon return to the merit position, the

employee's grade, salary and performance pay increase date shall be determined as if the exempt appointment had not occurred.

-3 A merit employee may occupy an exempt position without a change in status for no longer than ninety days. A merit employee who accepts an appointment in excess of ninety days to an exempt position loses his/her merit status, but may be reinstated to a position in the competitive service at his/her former merit grade and salary within one calendar year of the end of the exempt appointment.

7.3 *~~Certification~~Referral of Applicants*

-1 Upon receipt of a personnel requisition, the Human Resources Director or the Director's designee shall promptly announce the vacancy and refer~~certify~~ applicants following the procedures specified in Chapters 5 and 6.

-2 Following the closing date of the job announcement the Human Resources Director or designee will establish a referral list of qualified applicants and submit it to the agency contact.

~~-2~~ When creating the ~~certification~~referral list, in addition to the employment standards, necessary knowledge, skills and abilities as defined in the class specification, consideration shall be given to the following: the number of vacant positions to be filled from that list, applicant responses to supplemental application questions, preferred qualifications considered critical to successful performance in the job when approved by the Human Resources Director or designee, as well as the diversity needs as identified in the agency's Diversity Plan. Where possible, the ~~certification~~referral list should contain at least ten applicants.

-3 Applicants shall be certified in accordance with the following rules.

a. If a position has been announced exclusively as a promotional opportunity open only to current employees, only current County employees shall be certified.

b. Applicants shall be listed in alphabetical order on ~~certification~~referral lists furnished to departments. The ~~certification~~referral list shall identify the applicants who are veterans and veterans with a service connected disability rating.

-4 The Human Resources Director may delegate some or all of the actions described in this section to department heads**.**

7.4 *Selection and Appointment*

-1 Before making any appointment, the department head or his/her designee shall review the ~~resume~~applications of all certified applicants and shall interview at least one more than half of those certified.

-2 For the purpose of this subsection, the department head's designee may be either an individual or a panel. Department heads are encouraged to use panels for all positions. When panels are used, either to review ~~resume~~applications or to conduct interviews, they should be constituted with due regard for the demographic characteristics of the certified applicants. Due to the scope and rigorous nature of the selection procedures used for public safety job classes, interviews are not required for these job classes except when deemed appropriate at the discretion of the department head or deputy**.**

-3 The department head or his/her designee should review and consider the performance records of current and former employees who are finalists for a job vacancy.

-4 Department heads or deputies normally should complete the process of screening, interviewing and appointing within 30 calendar days of receipt of a ~~certification~~referral list. If a period longer than 30 days is required to make a selection, department heads or deputies shall consider the likelihood that the best qualified applicants may no longer be available. This subsection does not apply to applicants for uniformed public safety positions, who are required to undergo additional screening after initial ~~certification~~referral and whose appointments may be timed to coincide with the convening dates of training academy classes.

-5 Appointment to a vacancy in the competitive service shall be made by the proper department head or deputy from those applicants certified by the Human Resources Director. Such appointment shall be indicated by the completion of a personnel action request form.

-6 No applicant shall seek or attempt to use any political endorsement in connection with any merit system appointment and no consideration shall be given to political or partisan affiliation, activity or endorsement in selecting candidates for original or promotional appointment in the merit service.

-7 Every appointee shall be required to show proof of identity and proof of eligibility to work in the United States, before his/her appointment becomes effective.

7.5 *Probationary Period*

-1 Except as noted in 7.5-2 below every merit appointee shall serve a probationary period of twelve months after original appointment (initial probationary period) or promotion (promotional probationary period). The probationary period shall be used for closely observing the employee's work, for obtaining the most effective

adjustment of a new employee to his/her position, and for separating any new employee or demoting any promoted employee whose performance does not meet the performance requirements.

-2 Sworn police officers, animal control officers**,** deputy sheriffs and uniformed firefighters shall serve an initial probationary period of twelve months commencing with the date of graduation from the appropriate training academy. Public safety communicators shall serve an initial probationary period of twelve months commencing upon graduation from the Department of Public Safety Communications Academy and the completion of a 10 week on the job training program. The performance pay increase date shall be determined by the date of original appointment. For all other merit employees, the initial probationary period shall commence with the date of appointment.

-3 With the approval of the Human Resources Director, a department head or deputy may extend the initial or promotional probationary period in limited circumstances situations where the employee has been unable to perform the duties for which he or she was hired due to extended absence or extended period of restricted duty for medical reasons due to FMLA for a period not to exceed 120 calendar days.

Requests for extension of the probationary period must be made in writing to the Human Resources Director stating the specific facts and circumstances justifying the request. The request for extension must be made in advance of the expiration of the employee's probationary period and may be granted under the following circumstances:

(1) when an employee is absent from work on an approved absence in excess of 30 calendar days during the probationary period;

(2) when an employee is unable to perform the assigned duties of the job for which he/she was hired for a period in excess of 30 days, such as when serving in a temporary light duty assignment to accommodate a medical condition.

b. Such extension shall commence on the date the employee resumes the assigned duties of the job for which he/she was hired.

-4 An employee serving in the initial probationary period is eligible to apply for, be certified to, and be appointed to a class of a higher level. Under such circumstances, a promotional probationary period begins with the date of the promotion but the initial probationary period expires twelve months from initial appointment date unless extended in accordance with the provisions of this action.

-5 Unless alleging illegal discrimination, an employee serving an initial appointment probationary period including extensions authorized in accordance with this

section has no right to grieve or appeal under these rules. Any employee who has satisfactorily completed an initial probationary period and who is serving a probationary period following promotion retains his/her grievance rights.

7.6 *Underfill Appointments*

-1 With the approval of the Human Resources Director, an applicant who does not meet all the employment qualifications for a merit class may be appointed competitively to fill a position in that class at a lower grade than that of the class under the conditions specified in this section.

-2 Underfills are appropriate under the following circumstances:

a. When recruitment difficulties exist for a class at the authorized grade.

b. When appointees require specialized training and work experience within a particular function to meet the performance standards for the position at the authorized grade.

c. When underfilling a position is part of an upward mobility program for career employees.

-3 When it is planned or likely that a position will be underfilled, the vacancy announcement will so state.

-4 Before making a formal offer of an underfill appointment, the department head or deputy shall prepare a written underfill agreement, which must be approved by the Human Resources Director or designee in advance of the offer. The agreement shall include at least the following information:

a. The specific training and experience requirements the employee must meet before promotion to the authorized grade.

b. The manner in which they are to be met and the time frame within which the appointee is expected to meet the performance standards for the position, which standards shall be included as an appendix to the agreement.

c. A statement to the effect that promotion will be made without further competition when the appointee meets the terms of the agreement and the performance standards of the position; and that if the appointee fails to do so within the allotted time the department head or deputy will effect a transfer, demotion, dismissal or unsatisfactory service separation or a statement to the effect that after successfully completing the terms of the agreement, the employee will be required to compete for promotion to the

higher level position and if not selected, the department head or deputy will effect a transfer, demotion, dismissal or unsatisfactory service separation.

-5 Underfill agreements normally will be for a period of not more than one year but may be for periods of up to four years in multi-tiered underfill agreements. The department head or deputy may extend an underfill agreement if the employee necessarily is absent for more than 30 consecutive calendar days because of the unavailability for required training. The department head or deputy must inform the Human Resources Director of all such extensions.

7.7 *Appointment of Family Members, Members of Household or Extended Relationships*

-1 Except as provided herein, no applicant/employee shall be hired, reinstated, reemployed, transferred, promoted or demoted to a position which places him/her in a direct supervisory line as defined herein or otherwise permits them to participate in any personnel action relative to a family member or members of his/her household or extended relationships.

-2 This prohibition may also be extended to positions, in which the duties involve access, review, verification, authorization, or approval of the transactions of family members, members of household, or extended relationships in financial, personnel, purchasing, or other sensitive matters, even though the respective functions are in different departments. Such positions will be identified by an affected department head or designee, with the approval of the Human Resources Director.

-3 For the purposes of this regulation, "family member" is defined by the following relationships, including those legalized by adoption:

aunt	grandparent	sister-in-law
brother	half brother	son-in-law
brother-in-law	half sister	spouse
child	mother-in-law	stepbrother
daughter-in-law	nephew	stepchild
father-in-law	niece	stepparent
first cousin	parent or parent-in-law	stepsister
grandchild	sister	uncle

-4 For the purposes of this regulation, "Extended Relationships" is defined as those personal relationships creating a potential conflict of interest or having the possibly of creating adverse impact (actual or perceived) on supervision, safety, and security. Additionally, a direct supervisory line is defined as those situations where an employee, regardless of job description or title, has authority to hire,

transfer, promote, assign, reward, discipline or terminate other employees or has responsibility to direct their work or conduct their performance evaluation. This also includes those situations where an employee effectively is able to recommend these actions where such recommendations are given substantive weight in the final decisions being made.

-5 If a change occurs which causes employees to be in conflict with this regulation, one of the employees shall be transferred to a vacant position within the County. In the absence of an agreement which is satisfactory to all the concerned parties, the employee with the lower grade, or, if they are of the same grade, the employee with the fewer years of County service shall be transferred.

-6 Requests for exceptions to this policy shall be submitted in writing to the Human Resources Director, who has the authority to waive this regulation when it is in the best interest of the County to do so.

7.8 *Applicant Right of Appeal on Discriminatory Practices*

-1 An applicant who is not employed by the County at the time of his/her application and who believes he/she has been discriminated against on the basis of race, sex, color, religion, national origin, age, disability, political affiliation, genetic information or his or her status as a veteran or disabled veteran during the selection process may file an appeal on the alleged discriminatory practice. A bona fide occupational requirement for any position, the minimum age qualifications for public safety occupations, and the exclusion of family members, members of household, or extended relationships as defined in Section 7.7 shall not be appealable except as provided in Sec. 7.7-6.

-2 Such an appeal stating the alleged discriminatory practice and the corrective action desired must be filed in writing with the Director of the Office of Human Rights and Equity Programs within fifteen business days of the date the applicant knew or should have known that he/she was not selected for employment.

-3 The Director of the Office of Human Rights and Equity Programs shall investigate the allegations and respond in writing to the applicant within twenty business days.

-4 Should the applicant believe the Director of the Office of Human Rights and Equity Programs' response to be unsatisfactory, the applicant may file a written request for a hearing with the Civil Service Commission. The applicant's request for a hearing must contain a complete statement of the alleged discriminatory practice and the corrective action desired, and must be filed within fifteen business days of receipt of the Director of the Office of Human Rights and Equity Programs' response.

-5 The Civil Service Commission shall set a time and place for such hearing to be held not more than thirty workdays after receipt of such request. At its discretion, the Commission may appoint a hearing officer to hear the appeal.

-6 The hearing shall be conducted in accordance with hearing procedures adopted by the Civil Service Commission.

-7 After the hearing, the Commission shall forward an advisory finding on the merit of the appeal and disposition of the case to the County Executive. The Commission does not have the authority to award or recommend monetary damages.

Attachment #6

CHAPTER 12

Performance Management

12.1 *Introduction*

Performance management is a continuing process for establishing a shared understanding between the supervisor and the employee about what is expected on the job and how it is to be achieved. Performance management promotes improved job performance, encourages skill development, and fosters performance at the highest level while increasing the probability of success for the employee and the workgroup through enhanced communication. The process has defined roles for both the employee and the supervisor.

-1. In performance management, the supervisor:

a. Sets performance expectations for all positions under his/her control through accurate job descriptions.

b. Discusses the employee's position description, his/her evaluation and performance expectations.

c. Coaches each employee on their performance at regular intervals throughout the rating period, helps set goals for performance improvement, and supports professional development.

d. Evaluates each employee's performance in writing at least annually.

e. Assists in identifying training and developmental solutions to support maximum performance in the current position, and, career development opportunities to support future career advancement.

-2. To actively participate in the performance management process, the employee:

a. Ensures an understanding of expectations and responsibilities by reviewing the position description and evaluation.

b. Solicits performance feedback, periodically, throughout the year, including discussions of any obstacles or challenges that might hinder performance.

c. Completes the self-assessment evaluation.

d. Participates in the review discussion with his/her supervisor.

e. Is accountable for his/her own improvement and development.

12.2 Authority and Responsibility

-1. Responsibility

a. Department heads have authority for implementing and administering performance management and career development within their agencies to the same extent that they are responsible for other aspects of agency management.

b. The immediate supervisor has responsibility for day-to-day performance management including coaching and formal evaluation of the employee. In unusual circumstances, department heads or designee may designate a higher-level supervisor to perform the function of the immediate supervisor when warranted.

- 2 Training

a. Employees:

1) Shall attend mandatory training, to include ~~the~~ performance management training~~module~~, and

2) Shall certify that they understand their role and responsibilities in the performance management process.

b. Supervisors and Reviewers:

1) Shall attend mandatory training in performance management, offered periodically by the Department of Human Resources, as soon as possible after appointment to a supervisory role.

2) Shall certify that they understand their role in performance management, including the process, proper form use, coaching, expectation setting, and career management support as soon as possible after appointment to a supervisory role.

3) Shall ensure his or her subordinate staff attend mandatory training, including ~~the~~ performance management training~~module~~.

c. Department heads shall ensure that all supervisors understand Fairfax County's performance and career management philosophies and procedures.

12.3 ***Performance Management Cycle***

Performance management is a year-round collaborative process between the employee and his/her immediate supervisor. The process involves planning, coaching, developing, and reviewing job performance throughout the year. Performance management takes into consideration "what" the employee accomplishes during the performance cycle and "how" the employee accomplishes the work. The ongoing, two-way communication between an employee and his/her supervisor assists the employee in maximizing his/her job performance and career potential.

-1 Planning

-a. During the planning phase, both the employee and supervisor discuss job requirements and performance to ensure a common understanding of the evaluation criteria.

-b. During the planning phase, employees work with their supervisors to define, clarify and understand their performance expectations using the class specifications and position descriptions for guidance.

1) Class specifications provide an overview of the typical duties associated with a job classification, as well as, outline the minimum qualifications and necessary knowledge, skills and abilities for each job class.

2) Positions descriptions list requirements and job duties that are unique to each established position. Each department head or designee must maintain current position descriptions and performance requirements for all positions under his/her control.

-2 Coaching

a. The coaching phase is a continuous cycle of observation, feedback, and redirection to ensure that the employee is on track to achieve the defined performance expectations. Coaching supports the employee in his or her efforts to perform at the optimal level.

c. At any time during the review period, if the supervisor assesses the employee's overall performance as unsatisfactory or any component of

performance as needing improvement; a coaching ~~work~~ performance improvement plan (Coaching P~~W~~IP) should ~~may~~ be initiated. A Coaching PIP is a document which identifies employee performance and/or behavioral issues requiring improvement and the specific changes required for the employee to demonstrate passing performance in these areas on the next performance evaluation.

d. Coaching PIPs are documents designed to support the employee and are not disciplinary documents. Supervisors are responsible for issuing Coaching PIPs in a timely manner. Ideally the Coaching PIP will be completed early enough in the review cycle to enable the employee time to improve performance to an overall satisfactory level in each evaluation category. The length of the Coaching PIP ~~work improvement~~ period and when it is issued will vary based on the individual circumstances.

During the coaching performance improvement period, the employee and supervisor shall meet regularly to discuss performance progress; the employee shall be given written progress reports at least monthly.

-3 Reviewing

During the reviewing phase, the supervisor and the employee discuss the employee's job performance throughout the rating period concluding with the formal written performance evaluation to be retained in the employee's personnel file. A critical component of the performance management process is ensuring that evaluations are conducted as required.

a. Timing of Formal Performance Evaluations

1) The Human Resources Director shall establish guidelines on how agencies will be informed that employee performance reviews are due. The Human Resources Director shall also establish guidelines to ensure that performance reviews are completed timely in accordance with these regulations. These guidelines shall be distributed to all department heads so they can inform the managers and supervisors within their respective departments.

2) Formal written performance evaluations must be conducted as follows:

a) Probationary

The initial probationary period is the working test or trial period of employment as set forth in section 7.5 of these regulations. If performance circumstances so warrant, a department head may

terminate a probationary employee whose performance is unsatisfactory at any point during the initial probationary period.

i. Non-Public Safety

Newly appointed county employees, other than police officers, deputy sheriffs, animal control officers, public safety communicators and firefighters, shall receive a written evaluation before the end of the first sixth months in the position and again during the annual performance review period.

The six-month performance review should assess the employee's performance and formally advise the employee if improvement is needed in order to complete the probationary period successfully. The designated performance evaluation form is used for this 6 month evaluation.

Successful completion of the 12-month probationary period must be documented ~~in the employee's personnel file on a form prescribed by the Director, Department of Human Resources, and maintained in the employee's personnel file.~~using the designated performance evaluation form. After completion of the initial probationary period, employees will continue to be ~~are~~ evaluated at the conclusion of each ~~during the~~ annual performance review period.

ii. Public Safety

At the discretion of the Chief of Police, the Sheriff and the Chief of Fire and Rescue, the performance of newly appointed police officers, animal control officers, deputy sheriffs and firefighters may be reviewed formally in writing upon graduation from the Criminal Justice Academy or Fire and Rescue Academy, at which point their probationary periods begin. They also shall be reviewed during their probationary periods as specified above for other newly appointed employees. Because the Performance Pay Increase (PPI) date is determined by the date of appointment to the respective training academy, the first PPI date will occur before the probationary period ends. These employees therefore will be reviewed not less than two weeks before the PPI date and need not be reevaluated at the end of the probationary period unless

a negative determination rating was given at the PPI date or is to be made at the end of the probationary period.

iii DPSC

At the discretion of the Director, Department of Public Safety Communications, the performance of newly appointed public safety communicators may be reviewed formally in writing upon graduation from the Department of Public Safety Communications Academy and completion of a 10 week on the job training program at which point their probationary periods begin. They also shall be reviewed during their probationary periods as specified above for other newly appointed employees. Because the PPI date is determined by the date of appointment to the academy, the first PPI date will occur before probation is ended. Therefore, these employees will be reviewed not later than two weeks before the PPI date. They do not need to be reevaluated at the end of the probationary period unless a negative determination rating was given at the PPI date or is to be made at the end of the probationary period.

b) Non-Probationary

All non-probationary, non-uniform public safety employees shall be evaluated in writing, at least annually, during the performance review period. Annual evaluation is required whether or not the employee is otherwise eligible for a performance pay increase.

c) Newly Promoted

Non-uniformed public safety employees who are promoted shall serve a 12-month promotional probationary period. Such employees shall be reviewed before the end of the sixth month following the date of the promotion and will be reviewed again during the annual performance review period. Additionally, successful completion of the 12-month probationary period must be documented on a form prescribed by the Director, Department of Human Resources, and maintained in the employee's personnel file.

d) Evaluations required due to transfer of employee or supervisor changes (change of rater):

1) Non-Public Safety

Except as otherwise noted in this chapter, if an employee's supervisor changes during the review period, the employee shall be reviewed by the incumbent supervisor prior to the supervisor's departure if he or she has supervised the employee for four months or more. When the new supervisor submits the next review, the time period covered will begin upon the transfer of supervisory responsibility.

In instances where a non-public safety employee is rated by more than one supervisor during the rating period, if the current supervisor has supervised the employee for eight months or more, the current supervisor's rating will be used as the final rating. If the current supervisor has supervised the employee for less than eight months, the final rating shall be calculated by weighting the ratings of all supervisors (who have supervised the employee for four months or more) during the rating period based on the number of months covered by their individual reviews.

2) Public Safety

Because internal transfers often occur in the lower ranks, the public safety department heads or designees may establish procedures to determine how evaluations will be performed. These procedures will affect police first lieutenants, sheriff sergeants, fire captains and uniformed personnel of lesser ranks having two or more supervisors in a twelve-month period. They will be rated jointly by all supervisors who had the individual under their command for two months or longer.

In the case of Police, Sheriff or Fire and Rescue personnel in higher ranks, where an employee is rated by more than one supervisor during the rating period, the final rating by the current supervisor shall be used for purposes of determining pay increase eligibility. When the current supervisor has supervised for less than three months, the evaluation shall be made after consideration of ratings conducting by previous supervisors.

12.4 ***Evaluation Completion Process***

Standardized forms for formal performance evaluations are provided for both public safety and non-public safety employees.

-1 Preparation

a. Non-Public Safety

1) Self-Assessment/Employee

Employees shall be encouraged to complete a self-assessment performance evaluation, including the development plan for his or her current position. Unless the multi rater option is being used, this self-assessment is used for discussion purposes only and does not count as part of the final rating.

2) Draft Evaluation by Supervisor

The supervisor prepares the draft evaluation and consults with the reviewing authority as needed. The draft evaluation must identify any mandatory development areas.

b. Public Safety

Each public safety agency will conduct evaluations in accordance with the department's operating procedures. Although not required, employees may be invited to submit a self-evaluation for their job class or function as part of the annual evaluation process.

-2 Discussion

a. Non-Public Safety

During the initial discussion, the employee and supervisor meet to discuss the employee's self-assessment as well as the supervisor's preliminary assessment of the employee's performance for the review period. This provides an opportunity for the supervisor and employee to clarify their mutual understanding of job tasks and performance requirements. It also enables them to jointly set performance goals for the coming evaluation period.

Employee strengths as well as areas needing improvement should be discussed. Ideas from the employee about how the supervisor can better support the employee in achieving his/her performance expectations and career objectives can also be discussed at this time.

The employee and supervisor should jointly determine the development plan for the upcoming year.

b. Public Safety

Public safety employees and supervisors should meet to discuss performance requirements and accomplishments during the rating period. Employees may be invited to submit a self-evaluation as part of that process.

-3 Completion of Performance Evaluation Form

Supervisor finalizes the evaluation form based on input from the employee's self-assessment and/or the discussion with the employee.

-4 Review of Completed Performance Evaluation Forms

a. Reviewer's Role

Each completed performance evaluation form shall be reviewed by a higher level supervisor designated by the department head or designee. Usually, the immediate supervisor of the evaluator serves as the reviewing authority. In all cases, the reviewing authority shall be at least one level above the supervisor who prepared and signed the evaluation. In no case shall the evaluator and reviewing authority be the same person.

b. Reviewer's Revision Rights

1) Non Multi-Rater Option

If the reviewing authority does not agree with the supervisor's rating, where possible, differences will be resolved between the reviewing authority and supervisor prior to issuing the final evaluation to the employee. Additionally, the reviewing authority may choose to revise the original rating(s) on the evaluation which would supersede the supervisor's ratings. Changes must not obscure the original supervisor's rating and must be initialed by the reviewer. In addition, the reviewer should provide an explanation for the changes.

2) Multi-rater option

When the multi-rater option is utilized, the reviewing authority's role will be defined by the operating procedures of the agency.

-4 Final Evaluation Discussion

The final evaluation (including the development plan) is then presented to the employee for signature and additional discussion. This discussion is an important part of the performance management process and should be used to provide any additional clarity needed to support the employee in the next review period.

At the end of the discussion, the employee is asked to sign the evaluation. The employee's signature attests only to the fact that the employee has seen and discussed the evaluation. It does not affect the employee's right to appeal if he or she disagrees with the evaluation. If the reviewer has made changes, the employee shall be afforded the opportunity to discuss the changes with the reviewer.

12.5 Advance Notice of Possible Negative Determination (10-Week Advance Notice)

-1 Negative Determination Definition

The term "negative determination" refers to a decision by a supervisor, with the concurrence of the reviewing authority, that an employee's performance is unsatisfactory and she or he is not eligible ~~performance falls below the level of performance that would qualify him/her~~ for a~~n~~ performance pay increase; or a public safety employee who is ineligible for a PPI due his/her step in grade, whose performance is rated below the level that would otherwise be necessary to qualify him/her for a PPI.

- 2 Ten Week Advance Notice and ~~Work~~ Performance Improvement Plan

Ten Week PIPs are documents designed to support the employee and are not disciplinary documents. When a supervisor determines that an employee might receive a negative determination, the supervisor shall consult with the reviewing authority. If the reviewing authority concurs, the supervisor shall notify the employee in writing at least 10 weeks in advance of the PPI date. The advance notice shall include a ~~work~~ performance improvement plan that identifies the performance deficiencies and related improvements in performance or changes in behavior required to obtain a satisfactory performance rating. A copy of the 10-week notice with the attached performance ~~work~~ improvement plan should be forwarded to Employee Relations staff in the Department of Human Resources.

During the 10-week performance improvement period, the employee and supervisor shall meet regularly to discuss performance progress; the employee shall be given written progress reports, at least monthly.

If the behaviors/events causing the negative determination occurred less than ten weeks before the due date or in those cases where timely advance notice is not given, the supervisor should follow the procedures in Section 12.5-3.

In those agencies where the multi-rater option is used, the ten-week advance notice requirement applies only to that percentage of the review assigned to the supervisor. It does not include the other raters in the multi-rater option.

- 3 Untimely Advance Notice And 10-week Performance Improvement Plan

In the event that a supervisor does not give the employee written notice of a possible negative determination at least ten weeks before the annual evaluation due date, the following procedures shall be followed:

a. The written ten-week notice should be given as soon as possible stating the performance deficiencies and improvements required.

b. The department head or designee shall advise the Human Resources Director, in writing, as to why the prescribed notice was not given to the employee ten weeks prior to due date, and, if appropriate, what measures have been taken to prevent recurrence.

c. A copy of the 10-week notice with the attached ~~work~~ performance improvement plan should be forwarded to the Department of Human Resources.

d. After completion of the ten-week period, an evaluation must be given as specified in 12.3-3.

12.6 ***Annual Evaluation Following 10-Week Advance Notice***

The employee's evaluation should be given ten weeks after the written notice of a possible negative determination.

-1 Satisfactory Determination

a. If, in the supervisor's, reviewing and/or appointing authority's opinion, the employee's performance has improved sufficiently, a satisfactory determination is made and the evaluation is entered into the human

resources information system. The evaluation shall be forwarded to the Department of Human Resources.

b. If the 10-week notice was given timely, the Performance Pay Increase (PPI) will be processed as scheduled, if applicable.

-2 *Negative Determination*

If, in the supervisor's, reviewing and/or appointing authority's opinion, the employee's performance has *not* improved sufficiently to warrant a satisfactory determination at the end of the ten-week notice period, a negative determination is made and the evaluation is entered into the human resources information system. The evaluation shall be forwarded to the Department of Human Resources.

a. The PPI is not processed and a follow-up 120-day evaluation date is generated.

b. A 120-day ~~work~~ performance improvement plan is given to a non-probationary employee who receives a negative determination on the annual evaluation.

1) 120-day PIPs are documents designed to support the employee and are not disciplinary documents.

2) This plan shall be in writing and shall identify the performance deficiencies and related improvements in performance or changes in behavior required to obtain a performance rating that would qualify the employee for a salary increase (if employee is otherwise eligible).

3~~2~~) During this 120-calendar day ~~work~~ performance improvement period, the employee and supervisor shall meet regularly to discuss performance progress; the employee shall be given written ~~monthly~~ progress reports, at least monthly.

12.7 ***Follow-up to 120-Day Evaluation***

At the end of the 120-calendar day ~~work~~ performance improvement period, an additional evaluation must be conducted.

- 1. Satisfactory Evaluation
The employee will receive the appropriate pay increase effective the first full pay period after the date of the 120 calendar day review if the advance notice

was given timely. The PPI will be awarded retroactively to the PPI due date if the advance notice was not given in a timely manner.

- 2. Negative Determination
The employee will receive no pay increase and will not be eligible for further consideration for a pay increase until his or her next annual performance pay increase date. Additionally, the supervisor, working with the department head or designee, will determine what additional employment action, if any, is appropriate.

12.8 *Disciplinary Actions Issued To Employees On Performance Improvement Plans*

The county is committed to working productively with employees to improve performance and/or behavioral problems. All PIPs are intended to facilitate such improvement.

However, participation in a PIP does not preclude employees from receiving disciplinary actions, up to and including proposed dismissal from county employment. Such disciplinary actions shall be issued in accordance with Chapter 16 of these regulations.

Involuntary demotions, suspensions and separation from county employment, issued concurrently with a PIP, while the employee is subject to the conditions of a PIP, or closely following the completion of a PIP require the advance approval of the Human Resources Director.

12.~~8~~9 *Signature Requirements*

Both the supervisor and the reviewer must sign the evaluation prior to the presentation of the final review to the employee for signature. Prior to entering the evaluation in the human resources information system, the employee must have been presented the evaluation with the opportunity to sign it, except when the employee is unavailable due to extended absence. If the employee elects *not* to sign the evaluation, the supervisor should note the date the employee was given the evaluation and that the employee opted not to sign.

12.10~~9~~ *Distribution of and Access to Completed Evaluation Forms*

Evaluations provide a permanent record of employee performance and serve as a basis and documentation for a variety of formal personnel actions.

-1 Distribution

Completed performance evaluation forms shall be distributed as follows:

a. One signed copy to the Department of Human Resources for permanent retention in the employee's official personnel file.

b. One signed copy to the employee.

c. One signed copy to be filed within the agency at an organizational level designated by the department head or designee. Large agencies may retain an additional copy to permit filing both at a central point and at a remote sub-unit within the agency.

-2 Confidentiality

Performance evaluation forms are confidential records. Access to them shall be restricted to the following:

a. The employee rated.

b. The department head and personnel within the department specifically authorized access to such records by the department head or designee.

c. The Human Resources Director, who may make them available when needed in connection with personnel actions related to the employee.

d. The Civil Service Commission in connection with any appeal or grievance where such records are pertinent to the matter before the Commission.

e. The Office of the County Attorney in connection with any personnel actions, grievances, appeals, charges of discrimination filed with the U. S. Equal Opportunity Commission, or any other matters related to the employee's employment in which the County Attorney's Office is providing advice, legal counsel or representation.

f. The Office of Human Rights and Equity Programs in connection with any personnel actions, grievances, appeals, charges of discrimination filed with the U. S. Equal Opportunity Commission, or any other federal or state agencies, or any other matters referred to it for investigation, recommendation or mediation.

Except as provided above, in no case shall any evaluator, reviewing authority or other person with access to completed forms show any such form to any person other than the employee evaluated thereon without specific permission from the employee, appointing authority, or the Human Resources Director. Failure to

maintain confidentiality of personnel records may result in disciplinary action. Department heads are responsible for establishing the necessary security for locally held copies of evaluations.

No public disclosure of information from such records shall be made except with the approval of the Human Resources Director after a determination that such disclosure is in the public interest and is allowable under the law.

12.11~~0~~ ***Employee Right of Appeal***

-1 An employee who feels that an evaluation is inaccurate or unfair should first attempt to resolve the matter during the discussion with the supervisor mandated by Sec. 12.4-4 and/or discuss the concern with the reviewing authority.

-2 If t~~h~~he employee remains dissatisfied, he/she may appeal the evaluation ~~appeal~~ under the grievance ~~grievance~~ procedure set forth in Chapter 17 of these regulations.

~~Additionally, eligible employees may opt to participate in the performance evaluation appeals process if, upon prevailing, their overall rating would change~~

-3~~2~~ Non-public safety employees who have completed their initial probationary period and are not satisfied with their ~~final rating on either an annual evaluation or an evaluation following a~~ 120-day performance ~~work~~ improvement plan that followed a negative determination on a performance review~~period~~, may appeal the 120 day performance improvement plan under the grievance procedure set forth in Chapter 17 of these regulations.~~request a hearing before an employee appeal panel in accordance with the procedures established for the panel by the County Executive or his/her designee. Such appeals must be filed in writing within ten business days from the date the employee receives the evaluation signed by the supervisor and reviewing authority~~. ~~Decision of the appeal panel is binding on the supervisor.~~

~~-3 Employees not satisfied with the appeal panel decision may further appeal under the grievance procedure set forth in Chapter 17 by filing a formal grievance within 20 workdays of his/her receipt of the appeals panel decision.~~

~~If the formal grievance procedure is used, Step 1 will consist of a discussion with the supervisor who made the evaluation. Step 2 will be addressed to the reviewing official (or at the department head's discretion another higher-level supervisor) unless that official also is the department head, in which case Step~~

~~2 and Step 3 will be combined. Step 3 will be addressed to the department head.~~

~~If the grievance is carried to the Civil Service Commission, the decision will be advisory to the County Executive, unless the grievance qualified for a binding decision under the conditions listed in Sec. 17.3-2.~~

Attachment #7

CHAPTER 17

GRIEVANCE PROCEDURE

17.1 *Purpose*

The purpose of the grievance procedure is to provide a fair, detailed process whereby employees may voice complaints concerning issues related to their employment with the County. The objective is to improve employee-management relations through a prompt and fair method of resolving problems.

17.2 *Coverage of Personnel*

-1 All merit employees in the competitive service of the County who have satisfactorily completed their initial probationary period are eligible to file complaints under this procedure.

-2 Excluded from the grievance procedure are the following:

a. Employees in the exempt service, except as specifically provided otherwise in the procedural directives for the administration of the exempt service issued by the County Executive with the approval of the Board of Supervisors pursuant to Fairfax County Code § 3-1-2(c);

b. Employees serving their initial probationary periods unless their complaints include allegations of discrimination as defined in Section 17.3-2d and 17.3-2e;

c. Sworn police employees who have elected to proceed under the "Law-Enforcement Officers Procedural Guarantee Act." Such employees shall be given written notification of their right to initiate a grievance under the County's Grievance Procedure. They may choose to file the grievance under either procedure, but not both.

17.3 *Types of Complaints*

-1 Employee complaints will be classified at the point of grievability determination (see Section 17.5-4) as one of the following:

a. Grievable, with a binding decision from a hearing panel of the Civil Service Commission;

b. Nongrievable but eligible for a hearing and an advisory decision from a

hearing officer appointed by the Chair of the Civil Service Commission;

c. Nongrievable with no hearing.

-2 Grievable complaints which receive binding decisions from a three-member panel of the Civil Service Commission hearing the appeal include:

a. Dismissals, unsatisfactory service separations, demotions and suspensions;

b. The application of specific County personnel policies, procedures, rules and regulations;

c. Acts of retaliation as a result of utilization of this procedure, ~~the performance evaluation appeals procedure,~~ or for participation in the grievance of another county employee;

d. Discrimination against an employee, including a probationary employee, on the basis of race, color, creed, religion, age, disability, national origin, sex, political affiliation, marital status, union affiliation, genetic information, veterans status, or disabled veterans status;

e. Discrimination or retaliation against an employee, including a probationary employee, because of participation in political activities permitted under state law and County ordinances or failure to participate in political activities, whether permitted or not by state law or County ordinance;

f. Acts of retaliation because the employee (i) has complied with any law of the United States or of the Commonwealth, (ii) has reported any violation of such law to a governmental authority, (iii) has sought any change in law before the Congress of the United States or the General Assembly (iv) has reported an incidence of fraud, abuse, or gross mismanagement to the Board of Supervisors Audit Committee, the Auditor to the Board, his/her department head, or to any other federal, state, or County government authority, such as the Commonwealth's Attorney for the County of Fairfax, or the U.S. Attorney for the Eastern District of Virginia.

g. For the purpose of sub-paragraphs (c) and (f) of this section, there shall be a rebuttable presumption that increasing the penalty that is the subject of the grievance at any level of the grievance shall be an act of retaliation.

-3 Nongrievable complaints eligible to receive advisory decisions from a hearing officer appointed by the Chair of the Civil Service Commission include:

a. The physical plant;

b. The methods and conditions of the specific job;

c. Relations with fellow employees;

d. Performance appraisals;

e. Written reprimands;.

f. 120-day Performance Improvement Plans (as defined in section 12.6-2(b) and provided for in 12.11-2 of these regulations).

17.4 *Nongrievable Complaints*

-1 Complaints that are not grievable under this procedure include:

a. The establishment and revision of wages or salaries, position classification, employee benefits;

b. Oral reprimands;

c. The contents of ordinances, statutes, or established personnel policies, procedures, rules and regulations;

d. Failure to promote, except where the employee contends that established promotional policies or procedures were not followed or applied fairly;

e. Discharge, lay-off or suspension from duties because of lack of work or reduction-in-work-force, except where such actions affect an employee who has been reinstated within the previous six months by the Civil Service Commission as the result of the final determination of a grievance. In such cases, the department must show that there was a valid business reason for the action and that the employee was notified of such reason in writing prior to the effective date of the action;

f. Management of County employees including the right to make personnel appointments in accordance with adopted selection policies and techniques, to establish rules and regulations governing work performance and performance evaluations, to transfer and assign employees within the County, to determine the need for shift operation and rotation of the workweek, to assign overtime, to determine job training and career development, and to determine duties or actions in emergency situations.

~~g. Decisions of performance evaluation appeals panel, except in accordance with the provisions of Chapter 12.~~

-2 Appeals of position classification are handled in accordance with the criteria set forth in Section 3.6.

17.5 *Steps of the Procedure*

-1 Step 1: Immediate Supervisor

An employee who has a complaint shall discuss the problem directly with his/her supervisor within twenty (20) business days of the date the employee should have reasonably gained knowledge of the event giving rise to the complaint.

A verbal reply by the Supervisor shall be made to the complaint during the discussion or within five business days following the meeting.

-2 Step 2: Division Supervisor

If the complaint is not resolved after the first step meeting and where there is a division supervisor, the employee may reduce the complaint to writing on "Complaint Form - Second Step." All grievance forms are obtainable from the Department of Human Resources.

The employee shall specify the relief sought through the use of this procedure. The fully completed Complaint Form shall be delivered by the employee to the division supervisor within five (5) business days of the first step meeting or the supervisor's reply, if given at a later date. The division supervisor shall meet with the employee within five business days of receipt of the Complaint Form.

A written reply by the division supervisor shall be made to the complaint within five business days following the meeting.

-3 Step 3: Department Head

If the reply from the second step meeting is not acceptable to the employee, or where no division supervisor exists, the employee may appeal the last response to the department head.

"Complaint Form - Third Step" shall be completed by the employee and delivered to the department head within five business days of receipt of the last response. The department head shall meet with the employee within five business days of receipt of the Complaint Form.

A written reply by the department head shall be made to the complaint within five business days following the meeting.

-4 Step 4: Grievability Determination

a. When a complaint cannot be satisfactorily resolved pursuant to Steps 1 through 3 above, the employee shall request on the appropriate form a determination concerning the grievability of the complaint within ten business days of receipt of the third step reply.

b. All requests for grievability determination shall be submitted to the County Executive. The County Executive will determine whether the employee is entitled to access to the grievance procedure and if the complaint is grievable, and if so, based upon the criteria set forth in Section 17.3, establish whether the grievant shall receive a binding or an advisory decision. Grievability and access determinations by the County Executive shall be made within ten calendar days of receipt of such request.

c. Decisions regarding grievability and access are appealable only to the Fairfax County Circuit Court. Such appeals shall be made by filing a notice of appeal with the County Executive within ten calendar days from the date of receipt of the decision. The County Executive, or his/her designee, shall transmit to the Clerk of the Circuit Court a copy of the County Executive's decision, a copy of the notice of appeal, and the exhibits constituting the record of the grievance within ten calendar days of receipt of the notice of appeal. A list of the evidence furnished to the County shall also be provided to the grievant.

d. The Circuit Court shall have a hearing on the issue of grievability and/or access within thirty (30) days of receipt of the record of the grievance by the Circuit Court Clerk. The Court may affirm, reverse or modify the decision of the County Executive.

e. The decision of the Circuit Court is final and is not appealable. Procedures governing the review by the Circuit Court are found in Virginia Code §15.2-1507(a)(9).

f. In no case shall the County or Commonwealth's Attorney be authorized to decide the issue of grievability.

-5 Step 5: Appeal to the Civil Service Commission

a. If the complaint has been determined to be grievable, with a binding decision

or nongrievable with an advisory decision as provided herein, the employee may file a request for hearing on the appropriate form with the Fairfax County Civil Service Commission. The employee shall file the request within ten business days following the receipt of the determination that the complaint is grievable.

b. Appeals of complaints that have been determined to be grievable shall be heard by a three-member panel of the Commission (hearing panel or panel) as soon as possible after receipt of the employee's appeal request. Appeals of complaints that have been determined to be non-grievable but entitled to an advisory and non-binding opinion shall be heard by a hearing officer or by the Executive Director of the Commission when the parties are not represented by counsel, as soon as possible after the receipt of the employee's appeal request. The Executive Director of the Commission in scheduling hearings on appeals shall give priority on its docket to dismissal and unsatisfactory service separation cases. The Executive Director of the Commission shall notify the employee and the department head in writing of the time and place of the appeal hearing.

c. The jurisdiction and authority of the hearing panels of the Civil Service Commission shall be confined exclusively to those complaints previously determined to be grievable as provided herein. While a panel of the Commission hearing the appeal has authority to determine the appropriate application of an existing rule or policy, they do not have the authority to add to, detract from, alter, amend or modify in any way County or department policy or procedure, and its findings shall be consistent with all applicable laws and ordinances.

d. No member of the Civil Service Commission or an appointed hearing officer shall hear a grievance if he/she has direct involvement with the grievance being heard, or with the complaint or dispute giving rise to the grievance. The following relatives of a participant in the grievance process or a participant's spouse are prohibited from hearing said grievance: spouse, parent, child, descendants of a child, sibling, niece, nephew and first cousin.

17.6 *Remedies*

-1 The panel of the Commission hearing the appeal is empowered to uphold or reverse the action being grieved or, in appropriate circumstances, choose a modified remedy.

-2 In grievances entitled to a binding decision the following guidelines pertaining to remedial action shall apply:

a. Dismissals - The panel of the Commission hearing the appeal may deny

relief, reinstate the employee while imposing lesser disciplinary actions such as demotion or suspension, or reinstate the employee.

b. Disciplinary Demotions pursuant to Personnel Regulation 16.5-5 - The panel of the Commission hearing the appeal may deny relief, impose lesser disciplinary sanctions, or revoke the disciplinary demotion.

c. Suspensions - The panel of the Commission hearing the appeal may deny relief, impose a lesser suspension, instruct that a written reprimand be substituted for the suspension, or revoke the disciplinary suspension.

d. Unsatisfactory Service Separations - The panel of the Commission hearing the appeal may deny relief; reinstate with a demotion to the employee's previously held class, or in the case where an employee's class is part of a class series, reinstate with a demotion to the next lower class in the series; reinstate with a new probationary period with or without a demotion; or reinstate the employee in the class he was in at time of separation.

e. Back Pay and Restoration of Benefits in Appeals of Dismissals, Demotions, Suspensions, and Unsatisfactory Service Separations:

i If an employee is reinstated, he/she shall be given back pay for the period of separation contingent upon his/her making full disclosure of all earnings he/she received during separation, which shall be an offset against back pay. In the event the employee fails to provide to the panel of the Commission hearing the appeal such evidence as it deems necessary to determine the amount of the offset, the employee shall forfeit his/her right to back pay.

ii In cases of suspension, the employee shall be entitled to back pay for the period of suspension revoked by the panel of the Commission hearing the appeal under the same conditions as sub-section (1).

iii A lesser sanction in dismissal cases shall include a suspension without pay covering some or all of the period of separation, notwithstanding any other provision of the Personnel Regulations.

iv In the event that the panel of the Commission hearing the appeal imposes a demotion in lieu of an unsatisfactory service separation or dismissal, back pay may be awarded, at the discretion of the panel of the Commission hearing the appeal, for the period of separation at the rate of pay for the lower level classification.

v Back pay shall be computed on the basis of the employee's regularly

scheduled hours of work and shall not include any overtime that the employee might have earned.

vi For any period of time that an employee is entitled to receive back pay, he/she shall be given service credit towards retirement and shall be reinstated in the appropriate retirement system with his/her previous plan election, provided that he/she repays into the system all contributions that he/she withdrew on separation. The employer shall ensure that all contributions and deductions attributable to such service are made.

vii Similarly, for purposes of accruing leave, the employee shall be given credit towards his/her total years of service for any period of time that he/she is entitled to back pay. The employee shall also be credited with any leave that he/she would have accrued during that period.

viii Upon reinstatement, the employee shall be placed in the health plan that he/she was in at the time of separation with the same options that he/she had previously elected. The effective date of coverage will be the first of the month following reinstatement. A reinstated employee may opt for retroactive coverage in the event that it would be to his or her advantage. The employee must pay his or her share of retroactive coverage premiums. Claims expenses incurred for the retroactive period will be adjusted upon payment of the premium and the employee will be reimbursed for out-of-pocket costs above those he or she will have incurred had the coverage been in effect. The employee may be reimbursed for monies expended by the employee to obtain medical insurance during the period of separation up to the amount of the employer's contribution that would have been incurred had the employee been in service during the period of separation. In no event shall the employee be entitled to reimbursement for medical costs incurred during the period of separation. In the event the employee elected to continue his or her County health insurance under COBRA during the period if separation, the employee shall be reimbursed the difference between the premium he or she paid under COBRA and what he or she would have paid had he or she continued to be employed during the period of separation. In no event shall the employee be entitled to reimbursement for medical costs during the period of separation, except as provided above.

Upon reinstatement, an employee's salary shall be adjusted to reflect any performance pay increases that would have been received had the employee not been separated. f.Promotions - The panel of the Commission hearing the appeal may deny relief, order the promotional procedure redone, order a

retroactive promotion, order the grievant promoted immediately if there is an available vacancy or promoted to the next available vacancy.

-3 In cases other than dismissals, unsatisfactory service separations, demotions, suspensions, or performance evaluations, the panel of the Commission hearing the appeal may deny the relief sought by the employee or grant such relief as is necessary to place the employee in the situation he/she would have been in had the Personnel Regulations or policies been properly interpreted and/or applied in the first instance. In no event shall the employee be awarded any damages, nor shall the relief granted by the panel of the Commission hearing the appeal affect the rights of other employees.

-4 Acts of Reprisal and Discrimination - Where the panel of the Commission hearing the appeal determines that any act of reprisal or discrimination as defined in this chapter is the reason for the adverse employment action grieved by the employee, the panel of the Commission hearing the appeal shall have the authority to revoke the adverse employment action. In the event the adverse employment action is one of the actions described in Sections 2 or 3 of this section, the panel of the Commission hearing the appeal may apply the remedial actions provided under those subsections. The panel of the Commission hearing the appeal shall also affirm such adverse employment actions taken to the extent that they were not the result of reprisal or discrimination.

-5 Damages, Attorney's Fee and Costs - The panel of the Commission hearing the appeal shall have no authority to order the payment of damages of the grievant's or the County's attorney's fees or costs.

-6 Recommendations - Regardless of whether the panel of the Commission hearing the appeal grants the individual grievant any relief, such panel may make whatever recommendations to the Board of Supervisors or County Executive it deems appropriate.

17.7 *Conduct of Grievance Step Meetings*

-1 Personal face-to-face meetings are required at all steps. The employee and the County management may have a representative present at all steps. If the employee is represented by legal counsel, management likewise has the option of being represented by counsel. The parties to the grievance may by mutual agreement waive any or all intermediate steps or meetings, with the exception of the initial complaint, reducing the complaint to writing and the request for grievability determination. Upon written request from the grievant to the Department head, County management shall waive the first and second step grievance meetings in cases of termination, suspension, or demotion. Time spent attending grievance step meetings, Circuit Court hearings or a hearing before a panel of the Civil Service

Commission during the grievant's regularly scheduled hours shall be considered work time and the use of personal leave is not required.

-2 At all steps, appropriate witnesses also may be asked to provide information. Witnesses shall be present only while actually providing testimony.

-3 In any complaint involving a charge of discrimination, at the request of any party to the grievance, the Director of the Office of Equity Programs, or his/her designee, may attend step meetings.

17.8 *Grievant's Expenses*

-1 The grievant must bear any cost involved in employing representation or in preparing or presenting his/her case.

-2 Whenever possible, grievances will be handled during the regularly scheduled workhours of the parties involved. Civil Service Commission hearings are held during the County's business day whenever possible.

-3 A panel of the Civil Service Commission has no authority to award legal fees or punitive damages.

17.9 *Extension of Time*

-1 The parties to the grievance, by mutual agreement, or the County Executive or his/her designee, upon the request of one of the parties and showing of just cause, may extend any or all of the time periods established in this procedure.

17.10 *Compliance with Procedural Requirements of this Procedure*

-1 After the initial filing of a written complaint, failure of either the employee or the respondent to comply with all substantial procedural requirements of the grievance procedure without just cause shall result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the noncompliance within five workdays of receipt of written notification by the other party of the compliance violation. Such written notification by the grievant shall be made to the County Executive, or his/her designee.

-2 The County Executive, or his/her designee, may require a clear written explanation of the basis for just cause extensions or exceptions to any of the substantial procedural requirements. The County Executive, or his/her designee, shall determine all compliance issues.

-3 Any party aggrieved by the determination of the County Executive or his/her designee on a compliance issue may obtain judicial review of the determination by filing a petition with the Fairfax County Circuit Court within thirty days of the compliance determination.

17.11 *Resolution Prior to Hearing*

Any grievance shall be considered settled at the completion of any step if all parties are satisfied. In fact, it is expected that the great majority of grievances will be settled at the first or second step. However, nothing in this procedure should be construed as limiting the employee's right to exhaust the remedies provided by this procedure.

17.12 *Hearings*

-1 Hearings shall be conducted as described in Addendum 1 to Chapter 17.

-2 Hearings shall be open to the public. However, upon request of either party, the hearing shall be private. The hearing officer or the panel of the Commission hearing the appeal, by majority vote, may close a hearing to the public if the testimony about to be presented might impugn the personal reputation of a party or witness to said hearing, or if the right to privacy of such party or witness requires that the hearing be closed. Parties and their representatives shall be allowed to attend the hearing at all times. All witnesses shall be excluded from the hearing, except when testifying, at the request of either party.

-3 Failure of either party without just cause to comply with all substantial procedural requirements at the hearing shall result in a decision in favor of the other party in accordance with the procedures under Pers. Reg. §17.10.

-4 The decision of the panel of the Commission hearing the appeal shall be announced after the deliberations by that hearing panel at the conclusion of the hearing and shall be filed in writing by the Chairperson of that hearing panel of the Civil Service Commission or by the Hearing Officer with the parties not later than ten business days after the completion of the hearing. Copies of the decision shall be transmitted to the Human Resources Director, the employee, the employee's department head and the County Executive. The Hearing Officer also shall transmit a copy of the advisory decision to the Executive Director of the Civil Service Commission.

-5 The majority decision of the panel of the Commission hearing the appeal shall be final and binding. Either party may petition the Fairfax County Circuit Court for an order requiring implementation of a binding decision from the panel of the Commission hearing the appeal. Notwithstanding any other provision of this chapter to the contrary, a final decision of a panel of the Civil Service Commission hearing

the appeal rendered under this procedure which would result in the reinstatement of any employee of the Sheriff's Department, who had been terminated for cause, may be reviewed by the Fairfax County Circuit Court upon the petition of the County. Such review by the Circuit Court shall be limited to the question of whether the decision of the panel of the Civil Service Commission hearing the appeal was consistent with the provisions of law and written policy.

-6 The decision of the Hearing Officer shall be advisory to the County Executive.

-7 All decisions in the grievance procedure shall be consistent with the provisions of law and written policy. Any challenge to the relief granted by the decision of a panel of Civil Service Commission hearing the appeal on the grounds of inconsistency with written policy shall be submitted by either party within five (5) workdays to the County Executive, or his/her designee, who is empowered to decide such questions and to direct reconsideration by the Commission, where appropriate. If the County Executive or his/her designee has a direct involvement in the grievance the decision shall be made by the Commonwealth's Attorney. Notwithstanding the above, after receipt of a decision of a hearing panel of the Civil Service Commission the County Executive or his/her designee, may on his/her own action, within ten business days, remand to the panel of the Commission that heard the appeal for further consideration a decision in which the relief granted appears to be inconsistent with written policy.

17.13 Severability

Should any article, section, subsection, sentence, clause, or phrase of these regulations, procedures and/or addenda, 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, individuality, and each such section shall stand alone, if necessary, and be in force regardless of the determined invalidity of any other section or provision.

Attachment #7

ADDENDUM NUMBER 1

PROCEDURE FOR GRIEVANCE HEARINGS AND APPEALS

Preamble

The panel of the Commission hearing the appeal shall not be bound by Statutory or Common Law rules of pleading or evidence. Hearings will be conducted so as to ascertain the rights of the parties accurately and expeditiously.

The Commission

The Commission consists of twelve members who will sit in rotating panels of three to hear grievance appeals. Panels will be randomly assigned to a schedule as needed to conduct appeal hearings. When a hearing is scheduled, the next three Commissioners on the schedule will be contacted to participate in that hearing. If a Commissioner is unable to participate in an assigned hearing, the next available member on the schedule will fill in when the absence of a scheduled panel member cannot be avoided, as no hearing can be conducted by a panel unless all three members designated to hear that appeal are present throughout the hearing. If an appeal is settled or withdrawn prior to the scheduled hearing, the panel members assigned to hear that appeal will be assigned to the next appeal scheduled. The schedule and the assigned panel members are considered confidential. The names of the panel members will not be released prior to a scheduled hearing.

The Commission consists of twelve members who will sit in panels of three to hear grievance appeals. Each of the four panels of three members will meet as needed to conduct appeal hearings. The member and chair of each hearing panel hearing the appeals will rotate on a monthly basis according to a set schedule. Three members of the Commission will be designated as "on call" each quarter to fill in when the absence of a scheduled panel member cannot be avoided as no hearing can be conducted by a panel unless all three members designated to hear that appeal are present throughout the hearing. The members designated as "on call" will rotate each quarter according to a set schedule. Each member of the Commission will receive his or her schedule in advance for a three month period.

Appeals of complaints that have been determined to be grievable shall be heard by a three-member panel of the Commission (hearing panel or panel) as soon as possible after receipt of the employee's appeal request. Appeals of complaints that have been determined to be non-grievable but entitled to an advisory and non-binding opinion shall be heard by a hearing officer or, by the Executive Director of the Commission when the parties are not represented by counsel, as soon as possible after receipt of the employee's appeal request.

A simple majority of the hearing panel will prevail in any decision made by the panel. The panel

hearings will be held during the County's normal business hours continuing until all evidence has been heard and arguments made. Upon the conclusion of the evidence and argument, the hearing panel will recess the hearing while it deliberates in closed session and makes its findings. Upon the conclusion of the panel's deliberations, the panel will come out of closed session and resume the hearing to cast the panel members' individual votes, state the findings of the panel, and conclude the hearing. A written decision prepared by the Hearing Officer and signed by the chair of the panel that heard the appeal will be filed with the Executive Director and distributed to the parties within ten days of the conclusion of the hearing.

The Hearing Officer

The Hearing Officer is an independent attorney retained by the Commission to conduct hearings on grievances which receive advisory decisions and to advise the panel of the Commission hearing the appeal concerning legal and procedural matters in cases in which the parties are represented by counsel. The Hearing Officer does not vote on matters before the panel of the Commission hearing the appeal and participates in deliberations only to the extent of advising the panel of the Commission hearing the appeal concerning legal and procedural matters. The Hearing Officer is responsible for conducting hearings in an orderly and expeditious fashion; and makes rules on evidentiary and procedural questions. The rulings are advisory and may be overturned by the panel of the Commission hearing the appeal.

In hearings before the panel of the Commission hearing the appeal in which the parties are not represented by counsel, and at all prehearing conferences, the Executive Director of the Commission shall act as hearing officer.

A. *Prehearing Requirements*

A Prehearing Conference will be held by the Prehearing Officer prior to a panel hearing or the Hearing Officer. The following matters will be addressed:

1. Definition of the scope of the case, the specific issues to be presented to the panel of the Commission hearing the appeal, and the specific regulations and/or ordinances allegedly violated.

2. Stipulations and agreements which will expedite the hearing are greatly encouraged, including but not limited to (1) stipulations of fact; (2) stipulations as to evidence which will be admitted without objection; (3) stipulations with respect to testimony which will be admitted in written form.

3. All exhibits and documents will be exchanged at or before the Prehearing Conference. Documents shall be marked for identification and tabbed for ease of reference. Any exhibit not provided at or before the Prehearing Conference will not be admitted as evidence, absent a showing of good

cause. If as a result of the Prehearing Conference there is an outstanding request for the production of documents, such request must be complied with not later than ten business days prior to the date of the hearing. Any objection to the admissibility of a proposed exhibit or document shall be raised at the Prehearing Conference and if not resolved, the issue will be clearly defined by the Prehearing Officer for consideration by the panel of the Commission hearing the appeal or the Hearing Officer.

4. Witness lists will be exchanged at or before the scheduled Prehearing Conference. Any witness not so designated will not be permitted to testify, absent a showing of good cause. If as a result of the Prehearing Conference, there are to be deletions or additions to the witness lists, such changes will be submitted no later than ten business days prior to the date of the hearing. Witness lists shall include the name, address and telephone number of each witness identified and a brief statement of the substance of the expected testimony. If, upon the petition of a party, the County Executive finds that a witness who is listed by a party and who is a County employee has relevant, material, and non-cumulative testimony and that the party seeking to call the witness at the panel hearing has been unable to secure attendance of the witness before the hearing panel despite the party's reasonable and diligent efforts, the County Executive shall order the County employee witness to appear at the hearing to give testimony. Upon such order to appear being issued by the County Executive to a County employee, any County employee so ordered who fails to appear at the hearing may be subject to disciplinary action as provided in Chapter 16.

5. County management shall provide the Commission with copies of the grievance record prior to the hearing. A copy of the grievance record shall be provided to the grievant by County management at the same time but in no event any later than ten days prior to the hearing before the panel of the Commission hearing the appeal.

6. The hearing date(s) will be set at the Prehearing Conference in accordance with the time estimates provided by both parties.

B. *Continuances*

Requests for continuances shall be in writing with a copy to the opposing party and submitted to the panel of the Commission hearing the appeal and/or Hearing Officer at least five workdays prior to the hearing date. The panel of the Commission hearing the appeal and/or Hearing Officer may grant such requests only where good cause is shown.

C. *Hearing Procedure*

Attachment #7

Hearings on appeals will be heard by the panel of the Commission hearing the appeal or the Hearing Officer in accordance with the following order and procedures:

1. Opening statement by the moving party. (The County shall be considered as the moving party in suspensions, demotions and dismissals. In all other cases, the employee is considered to be the moving party.)

2. Opening statement by the responding party.

3. Presentation of moving party's case by direct examination.

4. Cross-examination.

5. Questions, if any, by members of the hearing panel or the Hearing Officer.

6. Redirect and recross examination.

7. Presentation of responding party's case by direct examination.

8. Cross-examination.

9. Questions, if any, by members of the hearing panel or the Hearing Officer.

10. Redirect and recross examination.

11. Presentation of rebuttal witnesses, if any, by moving party by direct examination may be presented in documentary form. Rebuttal testimony should ordinarily be included in the party's original presentation. However, rebuttal evidence may be permitted where, in the judgment of the panel of the Commission hearing the appeal or the Hearing Officer, it is necessary to the party to rebut new material, which could not reasonably have been anticipated. The panel of the Commission hearing the appeal or the Hearing Officer will judge the necessity of rebuttal testimony on the basis of a proffer or statement by the party seeking to introduce the rebuttal.

12. Cross-examination, questions, if any, by members of the hearing panel or the Hearing Officer, redirect and recross examination of rebuttal witnesses. If rebuttal evidence is in documentary form, provision shall be made for response by opposing party.

13. Closing statement by moving party. Proposed findings of fact and conclusions of law may be submitted at the party's option or at the request of the panel of the Commission hearing the appeal or the Hearing Officer.

14. Closing statement by responding party. Proposed findings of fact and conclusions of

law may be submitted at the party's option or at the request of the panel of the Commission hearing the appeal or the Hearing Officer.

15. The hearing record may be held open upon request of either party or upon the panel of the Commission hearing the appeal or the Hearing Officer's own motion for the receipt of additional exhibits or documentary evidence which in the opinion of the panel of the Commission hearing the appeal or the Hearing Officer are necessary for a full and complete hearing. Any opposing party shall be allowed a period of ten calendar days after such receipt to respond thereto. If the panel of the Commission hearing the appeal or the Hearing Officer finds that additional oral testimony is necessary, a hearing may be recessed for scheduling of such testimony.

16. The panel of the Commission hearing the appeal may alter the foregoing procedures in a hearing it if deems it necessary to afford the parties a full and equal opportunity to all parties for the presentation of their evidence.

D. *Record of Hearing*

Recorded tapes will serve as the formal record of grievance hearings. Any party to the appeal may obtain a copy upon payment of reproduction and administrative costs.

E. *Posthearing Procedures*

1. Reopening Hearing

A hearing may be reopened by the panel of the Commission hearing the appeal or the Hearing Officer at any time prior to final decision on the ground of newly discovered evidence or for other good cause shown and if the panel of the Commission hearing the appeal or the Hearing Office finds that reopening the hearing is required for a full and true disclosure of facts or to assure that the parties receive a fair hearing in accordance with the relevant law and regulations. Petitions for reopening shall set forth the specific newly discovered evidence or other good cause, and will be granted only under exceptional circumstances. If a party files a petition for reopening the hearing, the opposing party shall file a response to said petition within five calendar days of service of the petition.

2. Reconsideration

The Hearing Officer or the panel of the Commission hearing the appeal, upon majority vote, may reconsider a Decision prior to the actual implementation of that decision. The panel of the Commission hearing the appeal or the Hearing Officer will only reconsider on the ground of newly discovered evidence or other good cause shown. Petitions for reopening shall set forth the specific newly discovered evidence or other good cause, and will be granted only under exceptional circumstances.

Attachment #7

Petitions for reconsideration must be filed with the panel of the Commission hearing the appeal and or the Hearing Officer within five calendar days of receipt of the decision. The opposing party shall file a response to said petition within five calendar days of service of the petition.

County of Fairfax, Virginia

MEMORANDUM

DATE: March 11, 2015

TO: Susan Woodruff, Director
Department of Human Resources

FROM: Sara J. Simmons, Executive Director
Civil Service Commission

SUBJECT: Public Hearing on Proposed Revisions to the Personnel Regulations - Chapters 2, 4, 5, 6, 7, 12, and 17

Following an advertised public hearing held on March 9, 2015, the Civil Service Commission considered the above referenced proposed revisions to the Personnel Regulations. Members of the Commission present at the public hearing included: Ron Copeland; Broderick Dunn; Robert Frye; Tom Garnett; John Harris; Lee Helfrich; and Audrey Morton.

Susan Woodruff, Director, Department of Human Resources (DHR) gave an overview regarding the proposed changes for each chapter. Leslie Amiri, Resource Development and Training Manager, DHR provided assistance. The proposed changes are the result of changes to the performance management system, the implementation of a new e-recruiting system, and some "housekeeping" changes to update the Regulations and ensure consistency of the language throughout.

There was one speaker, Joseph Woloszyn, Police Benevolent Association, signed up in advance of the public hearing; no additional speakers asked to present at the public hearing. Mr. Woloszyn addressed the Commission and expressed his concerns about the language in Chapter 4 – specifically the words "subject to available funding" added to Section 4.5, in Chapter 4 discussing longevity steps (page 4-4 in the package). Several department human resource managers were also in attendance, although they did not testify.

Chapter 2
The members of the Civil Service Commission present at the public hearing voted unanimously to recommend that the Board of Supervisors approve the proposed changes as drafted for Chapter 2 as advertised.

Chapter 4
The members of the Civil Service Commission present voted unanimously to recommend that the Board of Supervisors approve the proposed changes as drafted for Chapter 4 with the following revisions:

Civil Service Commission
12000 Government Center Parkway, Suite 258
Fairfax, Virginia 22035
Phone 703-324-2930 Fax 703-653-9431
www.fairfaxcounty.gov

4.3 *Performance Pay Increase*

-1 Performance pay increases may be granted to those employees who meet the requirements specified for such increases. Employees considered not qualified for a performance pay increase shall be handled in accordance with the provisions of Chapter 12.

-2 Eligibility

A non-public safety employee receiving less than the maximum scheduled rate for his/her grade may be granted a percentage salary increase not to exceed the amount authorized by the Board of Supervisors. A performance pay increase for a public safety employee advances him/her to the next step in the grade. ~~Eligibility for performance pay increases is subject to available funding and the following:~~

4.5 *Longevity Pay Increments*

~~Subject to available funding~~, Public Safety employees shall receive a longevity increment increase after 15 years of service and reaching top step in grade. A second longevity increase is awarded after 20 years of service and reaching top step in grade (step 9). ~~Subject to available funding,~~ Non-public safety employees may be eligible to receive longevity increases, in lieu of performance increases, after 20 and 25 years of service. These increases are awarded to employees who attain the required length of service before July 1 of the year funded.

The Civil Service Commission members present suggested that a "footnote" or description be inserted at the beginning of Chapter 4, which would state:

> Performance pay increases and / or longevity increases shall be granted to those employees who meet the requirements specified for such increases and are subject to available funding.

Chapter 5

The members of the Civil Service Commission present voted unanimously to recommend that the Board of Supervisors approve the proposed changes as drafted for Chapter 5 as advertised.

Chapter 6

The members of the Civil Service Commission present voted unanimously to recommend that the Board of Supervisors approve the proposed changes as drafted for Chapter 6 as advertised.

Chapter 7

The members of the Civil Service Commission present voted unanimously to recommend that the Board of Supervisors approve the proposed changes as drafted for Chapter 7 with the following revisions in order to provide consistency throughout the Chapter:

7.3 *Referral of Applicants*

-1 Upon receipt of a personnel requisition, the Human Resources Director or the Director's designee shall promptly announce the vacancy and refer applicants following the procedures specified in Chapters 5 and 6.

-2 Following the closing date of the job announcement, the Department of Human Resources ~~staff~~ Director or the Director's designee will establish a referral list of qualified applicants and submit it to the agency contact.

Chapter 12

The members of the Civil Service Commission present voted unanimously to recommend that the Board of Supervisors approve the proposed changes as drafted for Chapter 12 with the following revisions:

12.5 Advance Notice of Possible Negative Determination (10-Week Advance Notice)

-1 Negative Determination Definition

The term "negative determination" refers to a decision by a supervisor, with the concurrence of the reviewing authority, that an employee's performance is unsatisfactory and she or he is not eligible for ~~an~~ a performance pay increase; or a public safety employee who is ineligible for a PPI due his/her step in grade, whose performance is rated below the level that would otherwise be necessary to qualify him/her for a PPI.

Chapter 17

The members of the Civil Service Commission present voted unanimously to recommend that the Board of Supervisors approve the proposed changes as drafted for Chapter 17 with the following revisions:

17.3 ***Types of Complaints***

-2 Grievable complaints which receive binding decisions from a three-member panel of the Civil Service Commission hearing the appeal include:

a. Dismissals, unsatisfactory service separations, demotions and suspensions;

b. The application of specific County personnel policies, procedures, rules and regulations;

c. Acts of retaliation as a result of utilization of this procedure~~, the performance evaluation appeals procedure,~~ or for participation in the grievance of another county employee;

If the Commission can be of further assistance in clarifying these proposed changes, please let me know.

cc: Board of Supervisors
Commissioners, Civil Service Commission
Randy Creller, Chair, Employee Advisory Council
Joe Wilhelm, President, Fairfax County Government Employee's Union
John Niemiec, President, Fairfax County Professional Firefighters & Paramedics Union/ Local 2068
Marshall Thielen, President, Fairfax County Police Coalition/Local 5000
Mike Scanlon, President, Fraternal Order of Police/ Lodge 77
Joseph Woloszyn, President, Fairfax Chapter of the Virginia State Police Benevolent Association

Board Agenda Item
April 7, 2015

ACTION – 3

Approval of a Memorandum of Agreement (MOA) Between the United States Department of Transportation, the Federal Highway Administration and the County of Fairfax for $210,000 Related to the Route 1 Widening Project (Mount Vernon District)

ISSUE:
Board of Supervisors' authorization for the County Executive to sign the Memorandum of Agreement (MOA) between the United States Department of Transportation (USDOT), Federal Highway Administration (FHWA) and the County of Fairfax, Virginia. The agreement provides a mechanism for reimbursement to the County for staff time required for management and oversight of the project to widen U.S. Route 1 through Fort Belvoir from four lanes to six lanes between Telegraph Road and Mount Vernon Memorial Highway, including bicycle and pedestrian accommodations, and reservation of right-of-way for a future transit system.

RECOMMENDATION:
The County Executive recommends that the Board approve the execution of the MOA, so the County can receive reimbursement from the FHWA for management and oversight of the project.

TIMING:
The Board of Supervisors should act on this item on April 7, 2015, so FHWA can begin the process of reimbursing the County for its expenses for this project.

BACKGROUND:
In November 2011, the County was successful in obtaining an invitation to make a formal application for $180 million in federal funding for transportation improvements to improve patient access to the new Fort Belvoir Community Hospital, constructed as one of the 2005 recommendations of Base Realignment and Closure Commission (BRAC). Improvements to Route 1 are now under construction, beginning south of the Telegraph Road intersection with U.S. Route 1 and continuing north to the intersection of new Jeff Todd Way (Old Mill Road) with U.S. Route 1 and Mount Vernon Memorial Highway, totaling approximately 3.4 miles of roadway.

The County, VDOT, Fort Belvoir, and FHWA entered into an agreement for the administration and execution of the Project on November 30, 2012 (Project Memorandum of Agreement) in which the responsibilities and expectations of each party are defined (Attachment 2).

The County's responsibility for management and oversight includes the assignment of staff to represent Fairfax County in all the activities during design and construction of the Route 1 Widening project. The proposed agreement allows Fairfax County to recover the staff costs associated with these efforts.

The project is being implemented as a Design-Build project, administered by the Federal Highway Administration, Eastern Federal Lands Division. Project completion date is February 2016.

FISCAL IMPACT:
The federal grant will reimburse Fairfax County $210,000 in expenses associated with the development and oversight of this project. This project will have no impact on the County's General Fund.

ENCLOSED DOCUMENTS:
Attachment 1 – Memorandum of Agreement between the United State Department of Transportation, Federal Highway Administration and the County of Fairfax, Virginia
Attachment 2 – 2012 Memorandum of Agreement among the Department of the Army and the Department of Transportation, Federal Highway Administration and the Virginia Department of Transportation and the County of Fairfax for the Design and Construction of Transportation Improvements on Fort Belvoir and U.S. Route 1 between Telegraph Road and Mount Vernon Memorial Highway in Fairfax County, Virginia

STAFF:
Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Todd Wigglesworth, Acting Chief, Coordination and Funding Division, FCDOT
Noelle Dominguez, Coordination and Funding Division, FCDOT
Patricia McCay, Assistant County Attorney
Jane Rosenbaum – Transportation Planner, PE
Malcolm Watson, Transportation Planner

Memorandum of Agreement No. DTFH71-15-X-50013
between
The United States Department of Transportation, Federal Highway Administration
Eastern Federal Lands Highway Division
and
The County of Fairfax, Virginia

I. Recitals

WHEREAS, the County of Fairfax, Virginia (the County) and Federal Highway Administration's Eastern Federal Lands Highway Division (FHWA) are cooperating on a project to widen US Route 1 through Fort Belvoir from four lanes to six lanes (Project);

WHEREAS, the County, VDOT, the Department of the Army, and FHWA entered into an agreement for administration and execution of the Project on November 30, 2012 (Project Memorandum of Agreement (MOA) -DTFH71-13-X-50003) in which the responsibilities and expectations of and from each party are defined (Attachment A);

WHEREAS, the County requires reimbursement for staff time required for Management and Oversight of the Project;

WHEREAS, the County's BRAC Grant for operational support, which covers salaries, fringe benefits, and indirect costs, among other things, expired on September 30, 2013;

WHEREAS, the County has expended and expects to expend, on average, 20 hours per week beginning October 1, 2013 through March 2016 (130 weeks). Using an average billing rate of $50 per hour plus the FY14 Fringe Benefit Rate and FY14 Indirect Cost Rate the value of the effort by the County is $210,000 for the duration of the Project (see Attachment B). It is understood that effort will be more intense during design, right of way acquisition and permitting, and will decline through construction and acceptance; and

NOW, THEREFORE,

II. The County will

a. Perform Management and Oversight activities as defined in the Project MOA dated November 30, 2012 (Attachment A).

b. Maintain records of time spent engaged in Management and Oversight of the Project and make such records available to FHWA upon reasonable request by FHWA.

c. Submit quarterly reimbursement requests to FHWA to document the time spent engaged in Management and Oversight of the Project. The requests shall be substantially in the form of Attachment C.

d. Provide FHWA 30 day advance notice, and work with FHWA to amend this Agreement, in the event additional funding is required to complete the activities anticipated by the Project MOA.

e. Report annual changes in the approved Fringe Benefit Rate and Indirect Cost Rate as they may be modified by the County and approved by federal oversight agencies.

f. Upon completion of the Work, as defined in the Project MOA, provide written notice to FHWA that all work is complete along with a final reimbursement request, together with a complete documentation of the County's cost over the life of the Project. "Complete documentation" shall include only that information contained in the quarterly reimbursements requests.

III. FHWA will

a. Within 30 days of receipt of the County's quarterly request for reimbursement, reimburse the County for allowable costs associated with Project management and oversight activities using Project funds.

b. Work with the County to amend this Agreement in the event additional funding is required to complete the activities anticipated by the Project MOA.

IV. Financial Points of Contact for this MOA are

a. For FHWA:
Raju Mooney, State Programs Manager
Planning and Programs
Eastern Federal Lands Highway Division
Federal Highway Administration
21400 Ridgetop Circle
Sterling, Virginia 20166
703-404-6290

b. For the County:
Tom Biesiadny, Director
Fairfax County Department of Transportation
4050 Legato Road, Suite 400
Fairfax, Virginia 22033-2865
Phone: 703-877-5663

V. FUNDING

After the execution of this MOA, the County and the FHWA will enter into a reimbursable agreement in order to pay the County for staff time required for Management and Oversight of the Project. The agreement will serve as the vehicle for reimbursing the County.

VI. DURATION, MODIFICATION, AND TERMINATION

a. This MOA shall be in effect from the date of execution until the date that all work associated with this agreement has been completed. The date of execution is the date of the last signature affixed to this MOA.

b. This MOA may be modified by written consent of both the FHWA and the County.

c. This MOA may be terminated in writing by either the FHWA or the County.

VII. REQUIRED AND STANDARD CLAUSES

a. Nothing in this MOA shall be construed as limiting or affecting the legal authorities of the Parties, or as requiring the Parties to perform beyond their respective authorities.

b. Pursuant to the Anti-Deficiency Act, 31 U.S.C. §1341(a)(1) (1994), nothing contained in this MOA shall be construed as binding the United States to expend any sum in excess of appropriations made by Congress, or as involving the United States in any contract or other obligation for the further expenditure of money in excess of such appropriations.

c. This MOA is subject to all laws governing Federal procurement and to all regulations and rules promulgated thereunder. Nothing in this MOA shall be construed as in any way impairing the general powers of the Parties for supervision, regulation, and control of its property under such applicable laws, regulations, and rules.

d. This MOA shall not be construed as creating any personal liability on the part of any officer, employee, agent of the parties, nor shall it be construed as giving any rights or benefits to anyone other than the parties hereto.

e. This MOA shall not be construed as a waiver of the sovereign immunity of Fairfax County.

f. All requirements for funds to be borne by Fairfax County shall be subject to annual or other lawful appropriations by the Fairfax County Board of Supervisors.

g. Except as modified by this agreement, all terms and conditions of the Project MOA dated November 30, 2012, shall remain in full force and effect.

VIII. KEY OFFICIALS

a. For FHWA:

Karen A. Schmidt
Director, Program Administration
Eastern Federal Lands Highway Division
Federal Highway Administration
21400 Ridgetop Circle
Sterling, Virginia 20166
Phone: 703-404-6276

b. For the County:

Edward L. Long Jr.
County Executive
12000 Government Center Parkway
Suite 552
Fairfax, VA 22035
703-324-2536

IN WITNESS WHEREOF, the parties hereto have caused this MEMORANDUM OF AGREEMENT to be executed by their proper and duly authorized officers.

COUNTY OF FAIRFAX, VIRGINIA

_____

Edward L. Long Jr. Date
County Executive

DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
EASTERN FEDERAL LANDS HIGHWAY DIVISION

_____

Karen A. Schmidt Date
Director, Program Administration

ATTACHMENT A
MOA - DTFH71-13-X-50003

ATTACHMENT B
Cost Calculation for Management and Oversight by Fairfax County
(Fringe Benefit Rate and Indirect Cost Rate are for FY 2014)

Average Hours per Week		20
Average Hourly Rate	$	50.00
Project Duration (weeks)		130
Subtotal, Salaries	$	130,000.00
Fringe Benefit Rate		41.90%
Fringe Benefits	$	54,470.00
Subtotal, Salaries and Fringe Benefits	$	184,470.00
Indirect Cost Rate		13.54%
Indirect Costs	$	24,977.24
Total	$	209,447.24
Say	$	210,000.00

Attachment C

Sample Invoice for quarterly reimbursement request to FHWA

Edit Parked Customer Invoice 1300044767 FFX1 2015

Tree on | Company Code | Simulate | Save as completed | Post | Editing options

Transactn: Invoice

Bal. 0.00

Basic data | Payment | Details | Workflow | Tax | W.

Customer	4000000059	SGL Ind	
Invoice date	11/05/2014	Reference	40
Posting Date	11/05/2014	Period	5
Document Type	Customer Invoice	DocumentNo	1300044767
Amount	102,338.26	USD	Calculate tax
Tax Amount			
Text	UPC 94287 PE Phase Billing Period 9/1/13-10/31/14		
Paymt terms	Due immediately		
Baseline Date	11/05/2014		
Company Code	FFX1 Fairfax Fairfax		
Lot No.			

Customer

Address

VA DEPT OF TRANSPORTATION (V...
NORTHERN VIRGINIA DISTRICT
4975 Alliance Dr
Fairfax VA 22030-6664
703 383 8368

OIs

Bank data: not available

1 Items (No entry variant selected)

S...	G/L acct	Short Text	D/C	Amount in d...	Cost center	Order	WBS elem...	Func. Area	Fund	Business ...
✔	432570	Fed Ps Thru...Cr...		102,338.26	G404001001	AA1400...		100000000...	500-C5...	1000

Federal Highway Administration
Federal Lands Highway
REIMBURSABLE AGREEMENT
(for use with non-federal agencies only)

PARTIES TO THE AGREEMENT

Reimbursing Organization	Organization to be Reimbursed
Federal Highway Administration *(insert address of FLH Division Office)*	

Appropriation Chargeable	DUNS Number

POINTS OF CONTACT FOR THE AGREEMENT

Reimbursing Organization Finance Point of Contact	Organization to be Reimbursed Finance Point of Contact
Name: Address: Phone: E-mail:	Name: Address: Phone: E-mail:

Reimbursing Organization Program Point of Contact	Organization to be Reimbursed Program Point of Contact
Name: Address: Phone: E-mail:	Name: Address: Phone: E-mail:

PERIOD OF PERFORMANCE	LEGAL AUTHORITY
From To (mmddyyy) (mmddyyy)	23 U.S.C. 204(b)(2)

TOTAL AGREEMENT AMOUNT	PAYMENT TERMS AND SCHEDULE
$_____	(invoiced to ESC after expenses are incurred on a monthly, quarterly, etc. basis)

DESCRIPTION OF SUPPLIES, SERVICES, AND DELIVERABLES
(continue on separate sheet or add attachment if needed)

AUTHORIZED APPROVALS

For Reimbursing Organization	For Organization to be Reimbursed
Signature Date Title Contracting Officer	Signature Date Title

Version 1.0, 3/18/2013

AGREEMENT NO. DTFH71-13-X-50003

MEMORANDUM OF AGREEMENT

AMONG

THE DEPARTMENT OF THE ARMY

AND

THE DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

AND

THE COMMONWEALTH OF VIRGINIA
VIRGINIA DEPARTMENT OF TRANSPORTATION

AND

THE COUNTY OF FAIRFAX, VIRGINIA

FOR THE DESIGN AND
CONSTRUCTION OF TRANSPORTATION IMPROVEMENTS ON
FORT BELVOIR AND U.S. ROUTE 1
BETWEEN
TELEGRAPH ROAD & MOUNT VERNON MEMORIAL HIGHWAY

IN

FAIRFAX COUNTY, VIRGINIA

WHEREAS, if all proposals exceed available project funds, the Parties will jointly seek additional funding prior to award of the contract, jointly agree to phase the project based upon available project funds prior to the notice to proceed, or award on a phase or option of a contract, such phasing of the Project being subject to DoD review and concurrence; and

WHEREAS, as it is the expectation of the Parties that all obligations of the Parties arising under this Agreement will be fully funded, the Parties agree to seek sufficient funding through their budgetary processes to fulfill their obligations under this Agreement. Pursuant to the Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1) (1994), nothing contained in this Agreement shall be construed as binding the Army or the FHWA to expend any sum in excess of appropriations made by Congress for the purposes of this Agreement, or as involving the United States in any contract or other obligation for the further expenditure of money in excess of such appropriations. Nothing in this agreement shall be construed as binding the Commonwealth or VDOT to expend any sum in excess of appropriations made by the Virginia General Assembly and allocations made by the Commonwealth Transportation Board for the purposes of this Agreement. Nothing in this agreement shall be construed as binding the County to expend any sum in excess of appropriations made by the Fairfax County Board of Supervisors for the purposes of this Agreement; and

WHEREAS, the Army is authorized to enter into this Agreement pursuant to 10 U.S.C. § 3001 *et seq.* and is the agency with administrative jurisdiction, custody, and control over Fort Belvoir; and

WHEREAS, 23 U.S.C. § 308(a) authorizes the FHWA to perform engineering and other services in connection with the survey, design, construction, and improvements of highways for other federal or state cooperating agencies; and

WHEREAS, the FHWA will be the lead federal agency with administrative, financial, and project implementation and management oversight of the Project and shall administer the project on behalf of DoD, the County, and VDOT; and

WHEREAS, the Commissioner of Highways, acting pursuant to the decision of the Commonwealth Transportation Board, is authorized to enter into this Agreement pursuant to §§ 33.1-12 and 33.1-13 of the Code of Virginia. VDOT is the state agency with administrative oversight, maintenance, and jurisdictional authority for the Project once the Project is completed and accepted into the systems of state highways; and

WHEREAS, in recognition of the participation of the County in this project, including, but not limited to, the County's voluntary commitments to advance up to $3 million for the Environmental Documentation and Preliminary Engineering now underway and to fund all activity on the Project until such time as the $180 million is transferred from DoD to FHWA, the Parties to this MOA agree that in return the County

shall have the right to approve any project related improvements prior to construction of such improvements in consultation with the FHWA, the Army and VDOT; and

WHEREAS, on August 26, 2010, the Army and the Commonwealth executed an Agreement entitled "Memorandum of Agreement between the Department of the Army and the Commonwealth of Virginia Department of Transportation for Construction of Roadway Improvements at the Intersections of Pohick Road and Belvoir Road with Richmond Highway/Route 1 and Construction of a New Five-Lane Bridge on Gunston Road Over Richmond Highway/Route 1 and Construction of the Route 1 Widening Project," which specified, among other things, the existing easements previously granted to VDOT by the Army for the construction, operation, and maintenance of Route 1, and the easement to be granted to VDOT by the Army for this Project to widen Route 1;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

ARTICLE I: SCOPE OF WORK

A. The Army agrees to:

1. Assign and designate an individual as the Project point of contact so that all communication regarding the design and construction of the Project will be coordinated through such person;

2. The designation of the FHWA as the lead agency for compliance with § 106 of the National Historic Preservation Act (16 U.S.C. § 470s) in accordance with 36 CFR § 800.2(a)(2);

3. To the extent authorized by law, participate in a Congestion Management Plan developed for the Northern Virginia Region by FHWA, or its designee, in cooperation with VDOT and the County, to address traffic congestion caused by the construction of transportation projects in the region;

4. Do the following:

   a. Prior to beginning construction and prior to the conveyance of an interest (easement) in Fort Belvoir property to the Commonwealth:

      i. Perform all environmental investigations, property assessments, and studies for munitions and explosives of concern (MEC), munitions constituents (MC) (collectively MEC/MC), releases of petroleum, or any hazardous substance on the Project right-of-way on land owned by the Army (Army Land) that are necessary to complete the Project as specified in the approved plan , or

modifications thereto, as required under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. § 9601 *et seq.)* and other applicable federal and state laws and regulations. The Army will provide the reports of these investigations, assessments, or studies to FHWA, VDOT, and the County;

ii. To perform environmental response to any discovery or release of MEC/MC and releases of petroleum or any hazardous substances on the Project right-of-way on Army Land as required under CERCLA and other applicable federal and state laws and regulations as necessary for completion of design, construction, maintenance, and operation of the Project in accordance with the Project schedule; and

iii. If, during construction of the Project, the FHWA takes response action for discoveries or release of hazardous materials on the Army Land, the Army shall be responsible for reimbursement for those costs attributable to discoveries and releases of hazardous materials resulting from Army activities, to include Army-contracted and Army-directed activities. The Army shall not be responsible for reimbursement of those costs attributable to releases caused by FHWA or other non-Army contractors or for existing right-of-way contamination caused by highway users. Any reimbursement must be based on an auditable accounting.

b. During construction or after conveyance of the interest in property to the Commonwealth, for discoveries of MEC/MC, and Army releases of petroleum or any hazardous substances, whether on or off Army Land:

i. Upon any notification of discovery of a discovery or release of MEC/MC, and any Army releases of petroleum or any hazardous substances, the Parties agree to immediately confer to determine the scope of any investigation and the requisite response action; and

ii. The Army will perform timely response and remediation in accordance with CERCLA and other applicable federal and state laws and regulations; or

iii. Should the Parties deem it more feasible and practical, the FHWA, in coordination with the Army, may take all response action as required under CERCLA and other applicable federal and state laws and regulations. The Army shall bear the cost of any such

response action. Reimbursement must be based on an auditable accounting.

5. Convey to the Commonwealth an interest in property (easement) necessary for the maintenance and operation of the completed Project;

6. When required by the issuer of the permit, and in conjunction with the FHWA, VDOT, and the County, fulfill the obligations as "owner" of Army Land for obtaining any environmental permits, regulatory clearances, or approvals necessary under applicable federal, state, or local law or regulation for construction of the Project;

7. Make Army-required modifications or additions subject to the approval of FHWA, VDOT, and the County in accordance with applicable American Association of State Highway and Transportation Official (AASHTO) and VDOT standards, regulations, and guides, and the Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, current edition, as amended;

8. Participate in decisions associated with improvements to Army land or where Army interests are involved, including, but not limited to, the relocation and establishment of new alignments of Route 1 and related secondary roads and utilities as necessary to implement the Project;

9. As a cooperating agency, participate in National Environmental Policy Act (NEPA) studies and documentation activities, design activities, right-of-way transfers, public involvement, and any other Project activities as applicable;

10. Cooperate in the FHWA's activities as necessary to provide and obtain the required final environmental and historical clearances and the requisite coordination and approval processes, and assist the FHWA in obtaining permits and rights-of-entry for the Project;

11. Assist with the relocation of Army-owned utilities and non-Army owned utilities that are on Army land;

12. Participate in all design and construction field reviews and other project development activities and milestones on Army property in accordance with the project development schedule and cooperate to maintain the project schedule and funding established for the Project, as applicable;

13. Conduct its required processes and activities in accordance with this Project concurrent and in accordance with the project development schedule and

cooperate to maintain the project schedule and funding established for the Project; and

14. Participate in the final inspection of the constructed facility.

B. The FHWA agrees to:

1. Assign and designate a Project point of contact for the Project so that all communication regarding the design and construction of the Project will be coordinated and managed through such person;

2. Provide full federal oversight for the Project;

3. Prepare a Financial Plan that shall: (i) address all transfers and expenditures of all funds; (ii) include funding sources and yearly needs in order to complete the Project with the goal of acceptance of the Project into the Commonwealth's system of highways by 2017; and (iii) be updated annually. Within 90 days of the completion of each phase of design or construction, as requested for that phase, the FHWA will provide the DoD, VDOT, and the County an auditable accounting of all funds expended for that phase;

4. Expeditiously proceed with the environmental review process. The funding for this activity has been provided under separate agreement between the County and FHWA;

5. Procure a D-B contractor in accordance with the following:

   a. FHWA will conduct a two-part process to secure a D-B contractor with the first step being a Request for Qualifications (RFQ), and the second step being a Request for Proposal (RFP) from firms deemed qualified through the RFQ process;

   b. Prior to issuance of either the D-B RFQ or the D-B RFP, FHWA will convene a meeting to review proposed documents and solicit input from VDOT, the County, and the Army in the form of written comments. FHWA will incorporate comments by VDOT and the County into the RFQ and RFP as appropriate;

   c. FHWA will conduct review and selection of qualified contractors based on responses to the RFQ. At least one representative of VDOT and one representative of the County will participate as voting members in the selection process;

d. FHWA will conduct review and selection of the D-B Contractor based on responses to the RFP. At least one representative of VDOT and one representative of the County will participate as voting members in the selection process; and

e. Complete the design and construction for the Project in accordance with applicable AASHTO and VDOT standards and guides and specifications in cooperation with VDOT and the County.

6. Do the following:

a. Prior to beginning construction on any portion of the Project off Army Land:

i. Perform all environmental investigations, property assessments, or studies for MEC/MC, petroleum, or any hazardous substances on all properties located off Army Land that are necessary to complete the Project as specified in the approved plan, as required under CERCLA and other applicable federal and state laws and regulations and as appropriate under the standards of environmental due diligence. Provide copies of the reports of these investigations, assessments, or studies, along with any recommendations to VDOT and the County prior to commencement of right-of-way acquisition;

ii. Perform environmental response to discoveries or releases of MEC/MC, and to releases of petroleum or any hazardous substances, as required under CERCLA and other applicable federal and state laws and regulations on the properties located off Army Land required for the completion of the design and construction of the Project. This obligation does not apply if a release of MEC/MC, petroleum, or hazardous substance off Army Land has been caused by the Army. In that event, the Army is responsible for response and remediation under section A(4)(b) of this Agreement. If, as permitted by subsection A(4)(b)(iii) of this Agreement, environmental response is conducted by the FHWA, FHWA agrees to perform such response;

iii. Perform asbestos inspection, demolition, and abatement in or on any structure or fixture located on or off Army Land as necessary for the construction of the Project, as required by applicable federal or state law and regulations; and

iv. The costs of investigation, assessment, study, and response required by this paragraph shall be paid from Project funds.

b. During construction:

i. Notify the Army, VDOT, the County, and, in accordance with state and federal law, appropriate state and federal agencies upon discoveries or releases of MEC/MC, and release of petroleum or any hazardous substances during the course of construction. Provide VDOT and the County with a description of remediation/disposal activities undertaken to address such MEC/MC, and release of petroleum or any hazardous substances;

ii. For a discovery or release of MEC/MC, and for a release of petroleum or any hazardous substances off Army Land, not caused by the Army, then the FHWA shall take all response action as required under CERCLA and other applicable federal and state laws and regulations;

iii. For discovery or release of MEC/MC, and for a release of petroleum or any hazardous substances caused by the Army, coordinate with the Army all required response activities required by CERCLA and other applicable federal and state laws and regulations. Provide plans for required waste management and remediation activities to VDOT and the County for review. If the FHWA takes response action for contamination on off-Army Land property caused by the Army, the Army shall be responsible for reimbursement for those costs. Any reimbursement must be based on an auditable accounting;

iv. Except as otherwise provided in this document, for properties located off-Army Land, if agreed to by VDOT and the County, FHWA shall take all response action related to discoveries or releases of MEC/MC, releases of petroleum or any hazardous substances, abatement of asbestos, and demolition of any structures or fixtures existing on the off-Army Land properties. If the FHWA takes response action, Project funds shall be utilized for reimbursement for those costs. Any reimbursement must be based on an auditable accounting; and

v. Perform any asbestos and/or lead-based paint inspections and abatement as required by federal, state, and local laws and regulations for any structures present on or off-Army Land properties, and demolish such structures as required for the

construction of the Project. The costs for such inspection, abatement, and demolition will be paid out of Project funds.

7. Obtain written comments and concurrence from the Parties for the following activities and/or products:

    a. RFQ and RFP (for D-B contract);

    b. Design reviews as appropriate for design-build;

    c. Plan changes—including plans, specifications, and estimates;

    d. Schedules and schedule updates;

    e. Budget and budget updates;

    f. Completed construction project; and

    g. Contract modifications.

8. Prepare and provide plans and plats for the acquisition of right-of-way by VDOT;

9. Coordinate with utility owners and the other Parties to the Agreement, prepare utility relocation plans, obtain utility agreements, and relocate utilities as required for the Project. FWHA shall prepare deeds and plats as required for transfer of easements for County-owned utilities (sanitary sewer, water, storm water);

10. Apply for and obtain all required environmental permits, including for compensatory mitigation, and approvals in coordination with Army, VDOT, and the County as required;

11. Award Project contracts in accordance with federal procurement laws and regulations;

12. Conduct and document the final inspection, with the other Parties to the Agreement in attendance, and provide final inspection documentation;

13. Provide as-built plans to the Parties to the Agreement;

14. Prepare a deed, a metes and bounds description, and survey plat of the interest in property to be conveyed to the Commonwealth. Mark all property corners with permanent survey markers;

15. Be responsible for the administrative settlement or adjudication of claims arising from contracts awarded by the FHWA and covered by this Agreement in accordance with the Federal Acquisition Regulation and the Transportation Acquisition Manual and subject to the availability of Project funds. Settlements shall be subject to VDOT and County approval when settlement would be paid out of Project funds;

16. Prepare monthly written status reports on the Project for all Parties;

17. Hold regular meetings with all Parties on the Project regarding the status of the Project. Include all Parties in the partnering meetings with the Contractor;

18. Allow VDOT and the County, or its consultants, access to the Project throughout the procurement, design, right-of-way acquisition, and construction process and to participate in field reviews, onsite inspections, and records reviews and to monitor the entire process;

19. Prepare and submit detailed monthly performance and financial reports for DoD as required by inter-agency agreement for eligible Project expenditures as outlined in this Agreement. Include all necessary documentation required by the Interagency Agreement for Project funds Transfer between DoD and FHWA. Provide copies of all submissions to VDOT and the County;

20. Provide DoD, VDOT, and the County all design and other work performed by FHWA or its contractor on the Project which have been paid with Project funds in the event that FHWA does not award contracts for the construction of the Project;

21. Design future replacement of the existing railroad transit corridor bridge with a bridge consistent with the Real Property Master Plan Digest, Fort Belvoir Virginia, dated December 2009, which requires "Conversion of the abandoned railway into a transit corridor—either as BRT or light-rail system to connect to Franconia-Springfield Metrorail Station and VRE Station." At the time of design, FHWA will coordinate with Fort Belvoir to determine if a more recent Master Plan information is available, and shall use the latest Fort Belvoir adopted Master Plan to prepare a Type, Size, and Location design for the bridge;

22. Administer contract modifications using the following procedure:

    a. All potential contract modifications will be evaluated for impacts to scope (design and construction), cost, schedule, and risk, using a standard form to be established by FHWA;

    b. Contract modifications will be reviewed and approved by all Parties (Army, FHWA, VDOT, and County for Army property; FHWA, VDOT,

and County for non-Army property) before direction is given to the designer of record and/or the contractor to implement changes;

c. FHWA shall maintain a log of all contract modifications from the date of approval of the design documents through completion of the Project; and

d. Project changes will be evaluated on individual and aggregate basis to maintain Project budget and schedule.

23. Prepare and maintain a Project schedule throughout the project. Prepare an initial schedule for review and approval by the Parties and, on approval, establish baseline. Provide monthly updates of the Project schedule with explanations for variations in planned activities. The schedule shall be developed prior to contract award and shall include consideration of interim milestones that could allow portions of the project to be completed in advance to provide incremental improvements in capacity and/or functionality during construction;

24. Manage risk using a process by which FHWA, in cooperation with VDOT and the County, will identify, score, and rank risks to the Project. The risk register shall be developed to include the risk, comment and mitigation, probability, impact, and risk score, defined as the product of the probability and the impact. The risk register shall be sorted with the greatest risk listed first with others listed in decreasing order based on risk score. FHWA shall develop risk mitigations simultaneously with current activities to ensure project progress based on evaluation of level of risk, cost of mitigation, and other factors as appropriate. The risk register will be reviewed monthly at the regular progress meetings and probability and impacts re-evaluated as necessary;

25. Enter into a separate Federal-Aid Project Agreement (PR-2) with VDOT to provide funding to complete tasks that are assigned to VDOT in this Agreement;

26. Enter into a separate Federal-Aid Project Agreement with the County to provide funding to complete tasks that are assigned to the County in this Agreement;

27. In accordance with VDOT's Road and Bridge Standards and the Project D-B RFP, maintain, or cause to be maintained, all Project facilities constructed within VDOT right-of-way or easement until accepted by VDOT;

28. Conduct, to the extent reasonably possible, its construction on roadways in such a manner so as to not unreasonably disrupt the movement of pedestrian and vehicular traffic. The FHWA will maintain access to operating businesses to the extent permitted by construction based on approved plans;

29. Install signs and associated structures, pavement markings, lighting and barricades in accordance with plans approved by VDOT and County in compliance with all applicable standards and requirements used by VDOT and County, including but not limited to: the most current respective edition of the Manual on Uniform Traffic Control Devices (MUTCD), Virginia Work Area Protection Manual, VDOT Northern Virginia District Traffic Engineering Design Guidelines for Traffic Control Devices, VDOT Road and Bridge Specification, and VDOT Road and Bridge Standards. FHWA shall be responsible for maintaining the items installed until accepted by VDOT for maintenance;

30. Conduct and document the final inspection, with the other Parties to the Agreement in attendance, and provide final inspection documentation after obtaining written concurrence of the other Parties;

31. Provide special provisions and notice of restrictions to its contractors that are acceptable to VDOT for roads maintained by VDOT that are affected by the Project. These shall be listed as performance requirements in the construction contract documents and will serve as the basis for the traffic maintenance (control) plans prepared prior to the issuance of VDOT land use permits;

32. Provide all right-of-way services for the Project and include in the scope of services to be provided by the D-B contractor all right-of-way services required to complete the Project. Through the D-B contractor, provide all necessary right-of-way functions and activities to acquire Project right-of-way both on-Army Land and off-Army Land. Services shall be provided in accordance with the provisions of "Appendix B: Right-of-Way Acquisition by Design-Builder;"

    a. Any property remaining as residue parcels after completion of design and acquisition shall be deeded to the Parties to the Agreement or adjacent owners as mutually agreed by the Parties to the Agreement. Residue parcels shall be used, in order of priority:

        i. To provide for Project requirements (storm water management, access, utilities, etc.),

        ii. To provide permanent space for maintenance of improvements constructed by the Project,

        iii. To reduce Project Cost by offsetting impacts to property owners whose property was either given or taken in order to complete the Project, or

        iv. Other Reasons

C. VDOT agrees to:

1. Assign and designate a Project point of contact so that all communication regarding the design and construction of the Project will be coordinated and managed through such person;

2. Enter into a separate Federal-Aid Project Agreement (PR-2) with FHWA to receive funding to complete tasks that are assigned to VDOT in this Agreement;

3. Coordinate with FHWA and its contractors on all right-of-way services for the Project:

   a. Provide support, in coordination with FHWA, for all necessary right-of-way functions and activities by FHWA to acquire Project right-of-way both on-Army Land and off-Army Land required for the construction of the Project. Review federal lands transfer and/or right-of-way and/or easement documents for both federal and non-federal lands as applicable. Plans, plats, and metes and bounds descriptions will be provided by FHWA. Review and approve documents required for right-of-way acquisition including, but not limited to, rights-of-entry, title reports, appraisals, owner/tenant relocations, property owner negotiations, property closings, and preparation of Certificates of Take. In the event a property owner is not willing to convey property for the Project, execute condemnation packages prepared by FHWA including filing with the circuit court any Certificates of Take. Review all subsequent Agreement After Certificates. VDOT will pursue cases requiring court action with assistance from the FHWA and its contractor, until final case resolution;

   b. VDOT will either assign VDOT staff to work on the Route 1 Widening Project, or will hire a contractor to represent VDOT to work on the Route 1 Widening Project. This staff or contractor will serve as VDOT's Route 1 right of way Coordinator, and will manage the right-of-way services contractor and coordinate all right-of-way functions and activities to maintain project schedule and clear right-of-way for construction. Expenses for VDOT's staff and/or Route 1 R/W Coordinator will be paid for using Project funds;

   c. The VDOT Route 1 right of way Coordinator will coordinate with the County's R/W coordinator to determine what, if any, proffers may exist within the project limits that would result in the dedication of right-of-way to the project, rather than purchase or take;

   d. Coordinate with FHWA and the County to establish objectives for negotiation;

e. For those properties deemed necessary to be acquired through the power of eminent domain, prepare, review, and approve condemnation packages and execute condemnation. Record the appropriate Certificate of Deposit or Certificate of Take. Assign cases to fee counsel approved by the Office of the Attorney General, Commonwealth of Virginia, review and approve invoices, and provide copies of all invoices to FHWA and the County. Approved invoices provided to FHWA for payment will be paid within 30 days of receipt from Project funds;

f. Provide written monthly progress reports to FHWA and the County detailing the status of condemnation proceedings including impacts to schedule and cost;

g. Any property remaining as residue parcels after completion of design and acquisition shall be deeded to the Parties to the Agreement or adjacent owners as mutually agreed by the Parties to the Agreement. Residue parcels shall be used, in order of priority:

   i. To provide for Project requirements (storm water management, access, utilities, etc.);

   ii. To provide permanent space for maintenance of improvements constructed by the Project;

   iii. To reduce Project cost by offsetting impacts to property owners whose property was either given or taken in order to complete the Project; or

   iv. Other reasons.

h. Grant read-only access to FHWA and the County, and grant full access to the design-builder, to VDOT's Right of Way and Utilities Management System (RUMS) to manage and track the acquisition process. Training in the use of RUMS and technical assistance will be provided by VDOT.

4. Participate in all design and construction field reviews, including pre-construction and progress meetings, and other Project development activities and milestones as applicable;

5. When required by the issuer of the permit, and in conjunction with the FHWA, fulfill the obligations as "owner" of the off-Army Land property for obtaining any environmental permits, regulatory clearances, or approvals necessary under

applicable federal, state, or local law or regulation for construction of the Project on off-Army Land property;

6. After approval of Project construction plans, and upon receipt of complete permit applications from the FHWA, issue land use permits for access necessary for construction on the off-Army Land parcels;

7. If the completed Project improvements, or any phase of independent utility, meet VDOT standards and specifications, approve the Project, or any phase of independent utility within 60 days of its completion;

8. Within 90 days of approval of the completed Project, or any phase of independent utility, and upon receipt of the metes and bounds description, accept an interest in property (in the form of an easement) in order to allow VDOT to operate and maintain the completed Project, or any phase of independent utility, and initiate the acceptance of the road as part of the systems of state highways to be maintained by VDOT;

9. Regulate and control future access connections to Route 1 through review and approval of proposed future connections to ensure that the roadway continues to operate in a manner acceptable to VDOT and the County;

10. Issue land use permits or provide easements as appropriate for utilities under or across Route 1 and connecting to adjacent properties as required for the development of the Project. FHWA or its designee will coordinate with VDOT and the County to ensure agreement on location of the facilities and the method of construction;

11. Participate in the final inspection of the constructed Project; and

12. Upon FHWA completion of environmental cleanup obligations as stipulated herein and when VDOT has certified that the completed Project meets or exceeds VDOT and FHWA requirements and standards in order to allow VDOT to approve, operate, and maintain the completed Project, accept conveyance of an interest in property (a roadway easement) (hereinafter "an interest in property") as necessary to operate and maintain the roadway; and initiate the acceptance of the road as part of the systems of state highways to be maintained by VDOT.

D. The County agrees to:

1. Assign and designate a Project point of contact for the project so that all communication regarding the Project will be coordinated and managed through such person;

2. FHWA administering design and construction of the Project;

3. FHWA designing and constructing modifications or additions to the Project, which are beyond the design of the approved plan. All required modifications or additions will be subject to the approval of the Army (for Army property), FHWA, VDOT, and the County in accordance with applicable American Association of State Highway and Transportation Officials (AASHTO) and VDOT standards, regulations and guides, and the Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, current edition, as amended;

4. Enter into a separate Federal-Aid Project Agreement (PR-2) with FHWA to receive funding to complete tasks that are assigned to the County in this Agreement;

5. Act as a cooperating agency and be responsible for guiding decisions associated with improvements to County land or where County interests are involved, including but not limited to the relocation and establishment of new alignments of Route 1 and related secondary roads, and utilities as necessary to implement the Project;

6. Cooperatively participate in NEPA environmental studies and documentation activities, design activities, right-of-way transfers, public involvement, and any other project activities as applicable;

7. Approve the final designs for all improvements related to County-owned facilities when the final designs are satisfactory to the County;

8. Cooperate in the FHWA's activities as necessary to provide and obtain the required final environmental and historical clearances and the requisite coordination and approval processes, and assist the FHWA in obtaining permits for the Project;

9. Review and provide comments on the utility relocation plans and assist with the relocation of County-owned utilities;

10. Participate in all design and construction field reviews and other project development activities and milestones as applicable;

11. Cooperate in applicable project activities, including right-of-way acquisition, in accordance with the Project Management Plan, to ensure satisfactory completion of the project;

12. Conduct its required processes and activities in accordance with this project concurrent and in accordance with the project development schedule and cooperate to maintain the project schedule and funding established for the project subject to appropriations made by the Board of Supervisors of Fairfax County, Virginia, in its sole discretion; and

13. Participate in the final inspection of the constructed facility.

ARTICLE II: DESCRIPTION OF THE CONVEYANCE

A. The interest in property to be conveyed to the Commonwealth lies generally along the existing alignment of Route 1 between Telegraph Road and Mount Vernon Memorial Highway. Existing Route 1 is generally within an existing 80' wide easement. The proposed improvements will be contained within a 148' wide base easement, with additional easement granted for intersection turn lanes, slopes, utilities, drainage improvements, etc., which alignment is located both on Army land and privately held land.

B. Both the Army and private land owners shall convey the interest in property to the Commonwealth by a good and sufficient deed in a form agreed upon in good faith by the Parties.

C. The interest in property conveyed to the Commonwealth shall be subject to the following encumbrances:

1. Existing easements, reservations, and restrictions of record;

2. Institutional controls, conditions, notices, reservations, or restrictions necessary to ensure the health, welfare, and safety of the public or protection of the environment; provided that in imposing any conditions and restrictions, the Army shall make a good faith effort to use reasonable means, without significant additional cost to the Army, to avoid and/or minimize interference with VDOT's operation and maintenance of the roadway;

3. Existing building or zoning laws, as applicable; and

4. Land use permits as appropriate for utilities under or across Route 1 at the time of the conveyance.

D. In exercising its rights and authorities under this Agreement or any easements, reservations, restrictions, or encumbrances existing, reserved, or requested by the Army pursuant to this Agreement and/or the deed conveying an interest in property, the Army will notify and consult with VDOT to minimize interference with roadway operation or maintenance.

E. The Parties acknowledge that conveyance to the Commonwealth of an interest in property through the Army Land has been determined by VDOT to be necessary to complete the widening of Route 1. The Parties further acknowledge that the final "on-the-ground" alignment of the Project may differ somewhat from the alignment contemplated in the preliminary drawings available at the time of this Agreement. Accordingly, to ensure that the minimal area needed to support long-term operation and maintenance of the has been conveyed to the Commonwealth, the Parties agree to collaboratively review and determine whether a boundary adjustment of the parcel in which the interest in property is to be conveyed is practicable and warranted. Such review will be conducted after construction of the Project is completed but prior to conveyance of the interest in property. Agreed upon adjustments to the boundary will be reflected in the Deed.

F. The interest in the Property is to be conveyed in accordance with 10 USC 2668 for use as a highway and related purposes. The Commonwealth, for itself and its successors and assigns, covenants and agrees that the use of the interest in property across the Army Land shall be limited to use for highway, transit, and related purposes. These uses may include, if agreed to, other transportation demand- related improvements.

ARTICLE III: NOTICES

Any notice, request, demand, instruction, or other document to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be delivered personally, including by messenger or a nationally recognized overnight delivery service, or sent by United States registered or certified mail, return receipt requested, postage prepaid, or by courier, postage prepaid and addressed to the Parties at their respective addresses set forth below, and the same shall be effective upon receipt if delivered personally or by messenger or two business days after deposit in the mails, if mailed. A Party may change its address for receipt of notices by service of notice of such change in accordance herewith.

If to the Army:

Garrison Commander
Headquarters, United States Army Garrison, Fort Belvoir
9820 Flagler Road, Suite 213
Fort Belvoir, VA 22060-5928
Phone: 703-805-2052

With a copy to:

William L. Sanders
Director of Public Works
U.S. Army Garrison
9430 Jackson Loop, Suite 100
(Building 1442)
Fort Belvoir, VA 22060-5130
Phone: 703-806-3017
Email: Bill.Sanders1@us.army.mil

If to FHWA:

Karen Schmidt
Director of Program Administration
Department of Transportation
Federal Highway Administration
Eastern Federal Lands Highway Division
21400 Ridgetop Circle
Sterling, Virginia 20166
Phone: (703) 404-6276
Fax: (703) 404-6217
email: karen.schmidt@dot.gov

With a copy to:

Mr. Robert Morris
Senior Project Manager
Department of Transportation
Federal Highway Administration
Eastern Federal Lands Highway Division
21400 Ridgetop Circle
Sterling, Virginia 20166
Phone: (703) 404-6302
Fax: (703) 404-6217
email: robert.morris@dot.gov

If to VDOT:

Mal Kerley
Chief Engineer
Virginia Department of Transportation

Richmond, VA 23219
Phone: 804-786-4798
Email: Mal.Kerley@vdot.virginia.gov
With a copy to:

Tom Fahrney
Commonwealth BRAC Coordinator
Virginia Department of Transportation
4975 Alliance Drive
Fairfax, VA 22030
Phone: 703-259-2381
Email: Tom.Fahrney@vdot.virginia.gov

If to the County:

Tom Biesiadny
Director, Fairfax County Department of Transportation
4050 Legato Road, Suite 400
Fairfax, VA 22033
Phone: (703) 877-5663
Fax: (703) 877-5723
email: tom.biesiadny@fairfaxcounty.gov

With a copy to:

Laura Miller
County BRAC Coordinator
Fairfax County Department of Transportation
4050 Legato Road, Suite 400
Fairfax, VA 22033
Phone: (703) 877-5686
Fax: (703) 877-5723
email: laura.miller@fairfaxcounty.gov

ARTICLE IV: GENERAL TERMS AND CONDITIONS

A. No part of the Project funds shall be used by FHWA to pay for the following:

1. Unless otherwise agreed to by the Parties in writing, design or construction of the Project to a standard less than the preferred alternative resulting from the

NEPA process, generally as shown in the Fairfax County Comprehensive Plan;

2. Installation of new utilities or other improvements, including related right-of-way costs, for the development of Army Land by the Army;

3. Costs incurred as a result of discovery or releases of hazardous substances, petroleum, or MEC/MC on the Army Land including, but not limited to, Army response costs, contractor delay claims, contractor work order claims, or any re-design costs of the Project necessary to avoid or mitigate discovery of such materials;

4. Relocation or modification of groundwater monitoring wells or any other remedial monitoring device installed on the Army Land within the Project right-of-way;

5. Costs incurred as result of the discovery or releases of hazardous substances, petroleum, or MEC/MC off of Army Land but caused by the Army, the FHWA, or their contractors; and

6. Payment of contractor claims for delay determined by the FHWA or a Court of competent jurisdiction to be the result of an act or omission or the result of events under the control of the FHWA.

B. This Agreement contains the entire agreement and understanding of the Parties, and may not be amended, modified, or discharged nor may any of its terms be waived except by an instrument in writing signed by all of the Parties.

C. The failure of a Party to insist in any instance upon strict performance of any of the terms, conditions, or covenants contained, referenced, or incorporated into this Agreement shall not be construed as a waiver or a relinquishment of the Party's rights to the future performance of such terms, conditions, or covenants.

D. The headings and captions herein are inserted for convenient reference only and the same shall not limit or construe the articles, paragraphs, sections, or subsections to which they apply or otherwise affect the interpretation thereof.

E. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of the Agreement shall be valid and be enforced to the fullest extent permitted by applicable law.

F. Nothing set out in this Agreement shall constitute a waiver of the Parties' rights to seek any and all damages to the extent authorized by law, nor shall anything in this Agreement limit any defenses that the Parties may have with respect to such claims for damages.

G. Nothing in this Agreement shall be construed as creating any rights of enforcement by any person or entity that is not a Party hereto, nor any rights, interest, or third party beneficiary status for any entity or person other than the Parties hereto.

H. Unless otherwise expressly provided herein, terms used in this Agreement are defined as they are in CERCLA or in regulations promulgated under CERCLA and shall have the meaning assigned to them in CERCLA or in such regulations.

I. This Agreement has been drafted jointly by the Parties hereto. As a result, the language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent and no rule of strict construction shall be applied against any Party.

J. All Parties will be afforded the opportunity to inspect, review and comment on, at any time, work in progress, the financial records, and any other supporting documentation related to this Agreement; and to participate in all meetings and field reviews.

K. This Agreement is assignable; however, no transfer or assignment of this Agreement, or any part thereof or interest therein, directly or indirectly, voluntarily or involuntarily, shall be made unless such transfer or assignment is first approved in writing by all Parties, which approval shall not be unreasonably withheld.

L. The Parties accept full responsibility for any property damage, injury, or death caused by the acts or omissions of their respective employees, acting within the scope of their employment, or their contractors' scope of work, to the extent allowed by the law. All claims shall be processed pursuant to applicable governing law.

M. Any claim filed alleging an injury during the performance of this Agreement, which may be traced to a Party, shall be received and processed by the Party having responsibility for the particular injury-causing condition, under the law that governs such Party.

N. Nothing in this Agreement shall be construed as limiting or affecting the legal authorities of the Parties, or as requiring the Parties to perform beyond their

respective authorities. Nothing in this Agreement shall be deemed to bind any Party to expend funds in excess of available appropriations.

O. The Parties shall not discriminate in the selection of employees or participants for any employment or other activities undertaken pursuant to this Agreement on the grounds of race, creed, color, sex, or national origin, and shall observe all of the provisions of Titles VI and VII of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000(d) et. seq.). The Parties shall take positive action to ensure that all applicants for employment or participation in any activities pursuant to this Agreement shall be employed or involved without regard to race, creed, color, sex, or national origin.

P. No member of, or Delegate to, or Resident Commissioner in Congress shall be admitted to any share or part of this Agreement, or to any benefits that may arise therefrom, unless the share or part or benefit is for the general benefit of a corporation or company.

Q. The Parties will abide by the provisions of 18 U.S.C. § 1913 (Lobbying with Appropriated Monies).

R. Contracts entered into by any federal agency pursuant to this Agreement are subject to all laws governing federal procurement and to all regulations and rules promulgated there under, whether now in force or hereafter enacted or promulgated, except as specified in this Agreement.

S. Nothing in this Agreement shall be construed as in any way impairing the general powers of the Parties for supervision, regulation, and control of its property under such applicable laws, regulations, and rules.

T. Because the interest in property conveyed to the Commonwealth will be an easement, the Parties to this Agreement shall take all necessary acts to ensure the Commonwealth obtains concurrent jurisdiction over the Project on the Army Land upon approval of the Project by VDOT as part of the process of accepting the roadway into the systems of state highways for operation and maintenance by VDOT. This requirement is not applicable to the conveyance of a fee simple interest.

ARTICLE V: FUNDING LIMITATIONS

It is the expectation of the Parties to this Agreement that all obligations of the Army, FHWA, VDOT, and the County arising under this Agreement will be fully funded. The Parties agree to seek sufficient funding through the budgetary process to fulfill their obligations under this Agreement.

The obligation of the Army and the FHWA to expend, pay, or reimburse any funds under this Agreement is subject to the availability of appropriated funds, and nothing in this Agreement shall be interpreted to require obligations or payments by the Army or the FHWA in violation of the Anti-Deficiency Act, 31 U.S.C. 1341.

VDOT's obligation to expend, pay, or reimburse any funds under this Agreement is subject to the availability of appropriations by the Virginia General Assembly and allocations by the Commonwealth Transportation Board.

The County's obligation to expend, pay, or reimburse any funds under this Agreement is subject to the availability of appropriations by the Fairfax County Board of Supervisors, such appropriations to be made or not in the sole discretion of the Board of Supervisors.

ARTICLE VI: DISBURSEMENT OF FUNDS

A. DoD funds (in aggregate up to $180 million) will be provided directly from the DoD Office of Economic Adjustment to FHWA in accordance with an Interagency Agreement for use on the Project. All funds and activities are subject to the requirements of Title 23 and standard Federal-aid procedures.

B. FHWA and its contractors shall make direct payments of benefits to property owners for negotiated settlements, relocation benefits, and payments to be deposited with the court. VDOT will process vouchers and issue State Warrants for all payments and send to the FHWA and its contractors, who will be responsible for disbursement and providing indefeasible title to VDOT.

C. VDOT will be reimbursed for costs in connection with the Project through FHWA's Rapid Approval and State Payment System in accordance with standard Federal-Aid procedures from federal funds provided directly to FHWA for activities such as cooperative participation in FHWA's efforts to obtain necessary environmental and historical clearances and permits and to implement treatment measures, acquisition of right-of-way, roadway abandonment, and acceptance activities on the Project.

D. For the initial request for funds, or if additional federal funds are needed by VDOT for project activities from funds provided to FHWA, VDOT will prepare, execute, and forward a Project Agreement, PR-2 to request funding for applicable work activities, including a schedule and costs, to FHWA and the County for review and approval. FHWA will authorize and execute the project amount based on the PR-2. VDOT may invoice the FHWA under normal FHWA current billing procedures as work progresses for reimbursement. The PR-2 may also be modified as necessary to cover abandonment and acceptance activities. The VDOT will submit a monthly progress report to FHWA and the County describing the activities performed and expenses billed. Upon completion of the

applicable project activities, the Project Agreement, PR-2 will be modified and closed.

E. The County currently receives federal aid in the form of a grant from DoD to mitigate impacts from BRAC 2005 relocations within the County. It is expected that the DoD grant will cover County costs associated with the development of the Project. In the event the DoD grant does not cover the County's cost for its cooperative participation in the project, the County will be reimbursed for costs in connection with the Project in accordance with standard federal aid procedures from federal funds directly allocated to FHWA for activities such as cooperative participation in FHWA's efforts to obtain necessary environmental and historical clearances and permits and to implement treatment measures, acquisition of right-of-way, roadway abandonment and acceptance activities on the Project. At the request of FHWA, the County will direct that remaining federal aid funds be de-allocated and returned to FHWA and reallocated by the FHWA for design or construction of the Project.

F. For the initial request for funds, or if additional federal funds are needed by the County for project activities from funds provided to FHWA, the County will prepare, execute, and forward a Project Agreement to request funding for applicable work activities, including a schedule and costs, to FHWA and VDOT for review and approval. FHWA will authorize and execute the project amount based on the submittal. The County may invoice the FHWA under normal FHWA current billing procedures as work progresses for reimbursement. The County will submit a monthly progress report to FHWA and VDOT describing the activities performed and expenses billed. Upon completion of the applicable project activities, the Project Agreement, PR-2 (or similar document) will be modified and closed.

ARTICLE VII: DISPUTE RESOLUTION

Any dispute between the Parties that cannot be resolved by the Project point of contacts shall be formally presented in writing to the Chief Engineer of VDOT, the Garrison Commander for Fort Belvoir, the Division Engineer for EFLHD-FHWA, and the Director of the Fairfax County Department of Transportation for review and resolution. Any resolution of the dispute shall be reduced to writing signed by the reviewers.

If the dispute cannot be resolved by the second level of review, then the matter may be presented to the Commissioner of Highways, the Assistant Secretary of the Army (Installations and Environment), the Administrator of the FHWA, and the County Executive of Fairfax County.

IN WITNESS WHEREOF, the Parties have executed this Agreement, as verified by their signatures below.

Memorandum of Agreement
Design and Construction of Route 1 Improvements
Between Telegraph Road & Mount Vernon Memorial Highway
Fairfax County, Virginia

UNITED STATES OF AMERICA
DEPARTMENT OF THE ARMY

By: _____ 27 Nov 2012
Date

Gregory D. Gadson, Colonel, US Army, Commanding

Memorandum of Agreement
Design and Construction of Route 1 Improvements
Between Telegraph Road & Mount Vernon Memorial Highway
Fairfax County, Virginia

UNITED STATES OF AMERICA
FEDERAL HIGHWAY ADMINISTRATION

By: Karen A. Schmidt 13 NOV 2012
Date

Printed Name, Title, and Date of Signature:

KAREN A. SCHMIDT, DIRECTOR OF PROGRAM ADMINISTRATION

Memorandum of Agreement
Design and Construction of Route 1 Improvements
Between Telegraph Road & Mount Vernon Memorial Highway
Fairfax County, Virginia

COMMONWEALTH OF VIRGINIA
DEPARMENT OF TRANSPORTATION

By: Gregory A. Whirley 11/30/12
Date

Printed Name, Title, and Date of Signature:

Gregory A. Whirley Commissioner of Highways

Board Agenda Item
April 7, 2015

ACTION – 4

Adoption of a Resolution to Designate a Portion of the Laurel Hill Adaptive Reuse Area as a "Revitalization Area" for the Purpose of Empowering the Virginia Housing Development Authority to Provide Financing (Mount Vernon District)

ISSUE:
On July 29, 2014, the Board approved a Comprehensive Agreement with The Alexander Company for the adaptive reuse of certain former prison buildings located on an 80-acre portion of the former Lorton Correctional Complex property known as Laurel Hill. The Alexander Company must secure financing to redevelop the former prison buildings for residential and non-residential uses. Section 36-55.30:2 of the *Code of Virginia* permits the Virginia Housing Development Authority ("VHDA") to finance adaptive reuse projects which include Non-Housing Uses provided that such projects meet certain criteria established for sites designated as revitalization areas in need of rehabilitation. The VHDA charter allows the financing of both market rate housing as well as commercial uses, incidental to the affordable housing, in revitalization areas and qualified census tracts identified for affordable tax credit programs. Since the adaptive reuse area is not within a qualified census tract, a Revitalization Area Designation from the County is needed.

RECOMMENDATION:
The County Executive recommends the Board adopt the attached resolution.

TIMING:
Board action is requested on April 7, 2015, to allow for the closing of the bond transaction between VHDA and The Alexander Company.

BACKGROUND:

On July 11, 2002, the County acquired approximately 2,323 acres of land located in Fairfax County, Virginia from the United States of America, acting by and through the Administrator of General Services. The property was a portion of the property formerly known as the Lorton Correctional Complex. The County property is now referred to as Laurel Hill. The development of Laurel Hill is governed by, *inter alia*, covenants requiring the County to adaptively reuse certain prison structures as part of any County development of the Laurel Hill Adaptive Reuse Area.

In 2012, the Board approved a Comprehensive Plan amendment that reflected the recommendations of the approved Master Plan. On June 3, 2014, the Board approved RZ 2012-MV-008.

Financing of the project includes a proposed $24,400,000 in bond financing from VHDA under the 4% Low Income Housing Tax Credit Bond Program. Since the project is not in a census tract, a Revitalization Area Designation from the County is needed, as described in Section 36-55.30:2 of the *Code of Virginia*.

The Department of Planning and Zoning has determined that the Adaptive Reuse Area meets the criteria for a Revitalization Area Designation, as established in Section 36-55.30:2 of the *Code of Virginia*, to the extent that the Adaptive Reuse Area, if not rehabilitated, is likely to deteriorate by reason that the buildings, improvements or facilities are obsolete. The Department of Planning and Zoning further determined that private enterprise and investment are not reasonably expected, without assistance, to produce the construction or rehabilitation of decent, safe and sanitary housing and supporting facilities that will meet the needs of low and moderate income persons and families in the Adaptive Reuse Area and induce other persons and families to live within such area and thereby create a desirable economic mix of residents in such area.

FISCAL IMPACT:
None

ENCLOSED DOCUMENTS:
Attachment 1: Resolution

STAFF:
Robert A. Stalzer, Deputy County Executive
Joe LaHait, Debt Coordinator, Department of Management and Budget
Fred Selden, Director, Department of Planning and Zoning
Chris Caperton, Laurel Hill Project Coordinator, Department of Planning and Zoning
Cathy Muse, Director of Purchasing and Supply Management
Alan Weiss, Assistant County Attorney

Attachment 1

County Resolution

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Fairfax County Government Center at Fairfax, Virginia, on April 7, 2015, at which meeting a quorum was present and voting, the following resolution was adopted:

RESOLUTION DESIGNATING LAUREL HILL ADAPTIVE REUSE AREA AS A REVITALIZATION AREA IN ACCORDANCE WITH SECTION 36-55.30:2.A OF THE CODE OF VIRGINIA

WHEREAS, the Board of Supervisors of Fairfax County, Virginia ("Board") is the owner of certain real property identified on the Fairfax County Tax Map as Parcel 107/1((01))-0009 consisting of former prison dining hall and cell block buildings, a power plant, former chapel, and baseball grandstand and dugouts (collectively, the "Adaptive Reuse Area") which property was acquired from the United States of America as part of the Board's acquisition of the Lorton Correctional Complex.

WHEREAS, the deed conveying the Adaptive Reuse Area requires that certain prison structures located thereon be maintained in accordance with covenants applicable to the property.

WHEREAS, on July 29, 2014, the Board approved a comprehensive agreement ("Comprehensive Agreement") with The Alexander Company for, inter alia, the adaptive reuse of the former prison buildings in the Adaptive Reuse Area.

WHEREAS, the Comprehensive Agreement contemplated The Alexander Company securing financing for the development of the Adaptive Reuse area, including the redevelopment of the power plant, former chapel, future community room, pool facility and baseball grandstand and dugouts ("Non-Housing Uses").

WHEREAS, The Alexander Company has made an application to the Virginia Housing Development Authority ("VHDA") to enable the redevelopment of the Adaptive Reuse Area in accordance with the terms of the Comprehensive Agreement.

WHEREAS, Section 36-55.30:2 of the Code of Virginia permits VHDA to finance adaptive reuse projects which include Non-Housing Uses (as defined in the Code), provided that such projects meet certain criteria established for sites that are designated as revitalization areas in need of rehabilitation.

WHEREAS, Section 36-55.30:2 of the Code of Virginia expressly empowers the governing body of any city or county to designate by resolution an area as a "revitalization area" for the sole purpose of empowering VHDA to provide financing to such revitalization area in need of rehabilitation.

WHEREAS, the staff of the Fairfax County Department of Planning and Zoning has determined that the Adaptive Reuse Area meets the criteria as established in Section 36-55.30:2 of the *Code of Virginia*.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby makes the following determination:

(1) The Adaptive Reuse Area, if not rehabilitated, is likely to deteriorate by reason that the buildings, improvements or facilities in such area are obsolete; and

(2) Private enterprise and investment are not reasonably expected, without assistance, to produce the construction or rehabilitation of decent, safe and sanitary housing and supporting facilities that will meet the needs of low and moderate income persons and families in the Adaptive Reuse Area and induce other persons and families to live within such area and thereby create a desirable economic mix of residents in such area.

BE IT FURTHER RESOLVED that based on the foregoing determination and pursuant to Section 36-55.30:2.A of the Code of Virginia, the Adaptive Reuse Area is hereby designated as a revitalization area.

AND BE IT HEREBY FURTHER DETERMINED that the following buildings, as identified in the Comprehensive Agreement, which buildings are intended to be financed by VHDA and are Non-Housing Uses, are appropriate for the revitalization of the Adaptive Reuse Area:

- Former Dining Hall Building for conversion to a Community Room, Fitness Areas and Leasing Offices (6,206 SF)
- Former Cell Block Buildings for conversion to a Pool Facility (2,017 SF)
- Former Chapel (13,960 SF)
- Grandstand & Dugouts (13,960 SF)
- Former Power Plant (7,680 SF)

A Copy Teste:

_____

Clerk to the Board of Supervisors

(Seal)

Board Agenda Item
April 7, 2015

INFORMATION - 1

Consolidated Plan Certification for the Fairfax County Redevelopment and Housing Authority Moving to Work Annual Plan for Fiscal Year 2016

On April 8, 2015, the Fairfax County Redevelopment and Housing Authority (FCRHA) is expected to give final approval for the submission of its Moving to Work (MTW) Annual Plan for Fiscal Year 2016 to the U.S. Department of Housing and Urban Development (HUD). As part of the required MTW submission due to HUD by April 15, 2015, the County must certify that the plan is consistent with the Fairfax County Consolidated Plan. County policy requires that the Board be informed of Consolidated Plan certifications.

The Moving to Work Annual Plan articulates the FCRHA's mission for serving the housing needs of low-income and very low-income households, and the FCRHA's strategy for addressing those needs. The plan is presented in a HUD-mandated format and has had extensive review by the FCRHA and the public. The FCRHA made the plan available for public comment from February 2, 2015 through March 19, 2015 and held the required public hearing on March 19, 2015.

The draft plan, as released by the FCRHA, is available at www.fairfaxcounty.gov/rha/mtw.htm.

The County Executive will sign the Consolidated Plan certification and provide it to the FCRHA for inclusion in the Moving to Work Annual Plan for Fiscal Year 2016 to be submitted to HUD.

ENCLOSED DOCUMENTS:
Attachment 1: Certification of Consistency with the Consolidated Plan

STAFF:
Patricia Harrison, Deputy County Executive
Kurt Creager, Director, Department of Housing and Community Development (HCD)
Robert Easley, Deputy Director, HCD
Russell Lee, Director, Rental Services Division, HCD

Certification of Consistency with the Consolidated Plan

U.S. Department of Housing and Urban Development

ATTACHMENT 1

I certify that the proposed activities/projects in the application are consistent with the jurisdiction's current, approved Con solidated Plan.
(Type or clearly print the following information:)

Applicant Name: Fairfax County Redevelopment and Housing Authority

Project Name: THRIVE: Moving to Work Plan for FY 2016

Location of the Project: Fairfax County, Virginia

Name of the Federal Program to which the applicant is applying: Moving to Work

Name of Certifying Jurisdiction: Fairfax County, Virginia

Certifying Official of the Jurisdiction Name: Edward L. Long Jr

Title: County Executive

Signature: _____

Date: _____

Board Agenda Item
April 7, 2015

10:40 a.m.

Matters Presented by Board Members

Board Agenda Item
April 7, 2015

11:30 a.m.

CLOSED SESSION:

(a) Discussion or consideration of personnel matters pursuant to Virginia Code § 2.2-3711(A) (1).

(b) Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body, pursuant to Virginia Code § 2.2-3711(A) (3).

(c) Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, and consultation with legal counsel regarding specific legal matters requiring the provision of legal advice by such counsel pursuant to Virginia Code § 2.2-3711(A) (7).

1. *Angela Pledger v. Fairfax County*, Case No. 14-1590 (U.S. Ct. of App. for the Fourth Cir.)

2. *Gerard Morrison, et al., v. County of Fairfax, Virginia*, Case No. 14-2308 (U.S. Ct. of App. for the Fourth Cir.)

3. *Antjuan Proctor v. Fairfax County, Virginia*, Case No. 1:13-CV-1427 CMH/JFA (E.D. Va.)

4. *Christopher Alipui v. Biggs J. Byerson, John Doe (White Male Officer), John Doe (White Male Officer), John Doe (Duty Sergeant), John Doe (Lady Detective)*, Case No. 1:14-cv-103 (E.D. Va.)

5. *Dora E. Caudle v. Christopher D. Colandene, David P. Bobzien, the Fairfax County Retirement Administration Agency, and Does 1 through 20*, Case No. 5:14cv00031 (W.D. Va.)

6. *Victoria Monroe v. Earit Powell, Tonny Kim, John Doe Police Officers Nos. 1-4, and Fairfax County*, Civil Action No.1:14-cv-1703 (E.D. Va.)

7. *David T. Clenney v. Officer V.R. Swartz*, Case No. 1:14CV1702 (E.D. Va.)

8. *Ross A. Fiorani v. Fairfax County Police, Officer Feigleson, Navy Federal Credit Union, Robert Berger, Karen Compher, John Steiner, Kim Lilly, SIA, and Thema Scott*, Civil Action No. 1:15-cv-291(E.D. Va.)

9. *Oscar Benitez v. Fairfax County Risk Management and Herbert Michael Napper*, Case No. CL-2014-0015788 (Fx. Co. Cir. Ct.)

10. *Kaveh Sari v. Jack Weyant, Bijan Sistani, and Cynthia McNeal*, Case No. CL-2015-0002378 (Fx. Co. Cir. Ct.) (Mount Vernon District)

11. *Wilson Haywood Phillips v. Wayne Brissey, Jane and John Doe, Fairfax County Park Authority*, Case No. CL-2014-0013890 (Fx. Co. Cir. Ct.)

12. *Ramatu Bangura v. Fairfax County, Fairfax County School Board, and John Doe*, Case No. CL-2014-0009790 (Fx. Co. Cir. Ct.)

13. *Harold Elam v. Fairfax County Police Officer C.J. Chamberlain*, Case No. 2014-0004203 (Fx. Co. Cir. Ct.)

14. *Surety Trustees, LLC, Substitute Trustee v. Fairfax County Redevelopment and Housing Authority, the Board of Supervisors of Fairfax County, Eyad El Ramly, and Hamida El Rawashda*, Case No. CL-2015-0002989 (Fx. Co. Cir. Ct.) (Sully District)

15. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Enrique Lopez*, Case No. CL-2006-0004984 (Fx. Co. Cir. Ct.) (Mount Vernon District)

16. *Leslie B. Johnson, Fairfax County Zoning Administrator v. George Daamash*, Case No. CL-2011-0000818 (Fx. Co. Cir. Ct.) (Mount Vernon District)

17. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Joyce P. Borden*, Case No. CL-2014-0008508 (Fx. Co. Cir. Ct.) (Mount Vernon District)

18. *Jeffrey L. Blackford, Property Maintenance Code Official for Fairfax County, Virginia v. Brian N. Walsh*, Case No. CL-2014-0001509 (Fx. Co. Cir. Ct.) (Mount Vernon District)

19. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Sergio Andrade*, Case No. CL-2008-0016277 (Fx. Co. Cir. Ct.) (Sully District)

20. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Hillbrook Real Estate Holdings, LLC*, Case No. CL-2010-0013770 (Fx. Co. Cir. Ct.) (Mason District)

21. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Nicolas D. Parada and Louisa A. Parada*, Case No. CL-2012-0008793 (Fx. Co. Cir. Ct.) (Lee District)

22. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Robert E. Willkie*, Case No. CL-2014-0014330 (Fx. Co. Cir. Ct.) (Providence District)

23. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Jose S. Portillo and Francisca E. Portillo*, Case No. CL-2014-0016150 (Fx. Co. Cir. Ct.) (Providence District)

24. *Starr Construction, LLC v. Fairfax County* (Fx. Co. Bd. of Bldg. Code App.) (Dranesville District)

25. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Falls Church Hospitality, Inc.*, Case No. CL-2015-0002063 (Fx. Co. Cir. Ct.) (Providence District)

26. *KyAnna Sheldon v. David Kroll*, Case No. GV14-008300 (Pr. Wm. Co. Gen. Dist. Ct.)

27. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Vernon Kirby and Maria Kirby*, Case No. GV14-023115 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)

28. *Sunhae Ok, individually and as parent and next friend of J.O. and J.Y.O. v. Stephen Thomas and Fairfax County*, Case No. GV15-001423 (Fx. Co. Gen. Dist. Ct.)

29. *The Imperial Empress, Miss Joyce Little v. Fairfax County and David Bobzien*, Case No. GV15000723-00 (Fx. Co. Gen. Dist. Ct.)

30. *Melissa Rioja v. Fairfax County Park Authority and Howard Abasto*, Case No. GV14-014434 (Fx. Co. Gen. Dist. Ct.)

31. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Ephrem Gurara*, Case No. GV15-000716 (Fx. Co. Gen. Dist. Ct.) (Mason District)

32. *Ingrid Vasquez Sunun v. Officer I. Letorrie*, Case No. GV15-000424 (Fx. Co. Gen. Dist. Ct.)

33. *Phillip Francis Wiafe v. OFC G.S Roberts # 315348*, Case No. GV15-003339 (Fx. Co. Gen. Dist. Ct.)

34. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. 8222 Frye Road, LLC*, Case No. GV14-022610 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)

35. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Tysons Springhill Limited Partnership, and Nancy Griswold d/b/a Jazzercise McLean Tyson's Corner Fitness Center*, Case No. GV15-002036 (Fx. Co. Gen. Dist. Ct.) (Providence District)

36. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Zhong Qi and Ping Yun*, Case No. GV15-003404 (Fx. Co. Gen. Dist. Ct.) (Dranesville District)

37. *Lauren Brown v. Dihn Tuong Tran*, Case No. GV15-002233 (Fx. Co. Gen. Dist. Ct.)

38. *Francis Philip Wiafe v. Bruce Patrick*, Case No. GV15-003296, (Fx. Co. Gen. Dist. Ct.)

39. *State Farm Fire & Casualty Company as subrogee of Santos Ramirez v. Daniel V. Holton, Jr.*, Case No. GV15-004265 (Fx. Co. Gen. Distr. Ct.)

40. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Jorge N. Arroyo*, Case No. GV15-004526 (Fx. Co. Gen. Dist. Ct.) (Lee District)

41. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Jean Marie Maria*, Case No. GV-15-004528 (Fx. Co. Gen. Dist. Ct.) (Mason District)

42. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Jean Marie Maria*, Case No. GV15-004527 (Fx. Co. Gen. Dist. Ct.) (Mason District)

43. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Adilio Folgar Lopez and Delmi Ortiz Lopez*, Case No. GV15-004523 (Fx. Co. Gen. Dist. Ct.) (Mason District)

44. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Malte M. Nikcevich and Andrea Acker*, Case No. GV15-004524 (Fx. Co. Gen. Dist. Ct.) (Mason District)

45. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Ivan Ramos and Yuvis R. Alvarado*, Case No. GV15-004525 (Fx. Co. Gen. Dist. Ct.) (Mason District)

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Board Agenda Item
April 7, 2015

2:30 p.m.

Public Hearing SE 2014-LE-062 (Bila Hamdael Crane / Bila's Child Care) to Permit a Home Child Care Facility, Located on Approximately 1,600 Square Feet of Land Zoned PDH-4 and NR(Lee District)

This property is located at 7739 Sullivan Circle, Alexandria 22315. Tax Map 99-2 ((10)) (4) 325 A.

PLANNING COMMISSION RECOMMENDATION:
On Wednesday, March 25, 2015, the Planning Commission voted 10-0 (Commissioners de la Fe and Sargeant were absent from the meeting) to recommend to the Board of Supervisors approval of SE 2014-LE-062 subject to the Development Conditions dated February 3, 2015.

ENCLOSED DOCUMENTS:
Attachment 1: Planning Commission Verbatim Excerpt
Staff Report previously furnished and available online at:
http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdwf/4476946.PDF

STAFF:
Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Mike Van Atta, Planner, DPZ

Planning Commission Meeting Attachment 1
March 25, 2015
Verbatim Excerpt

SE 2014-LE-062 – BILA HAMDAEL CRANE/BILA'S CHILD CARE

After Close of the Public Hearing

Chairman Murphy: Public hearing is closed; recognize Mr. Migliaccio.

Commissioner Migliaccio: Thank you, Mr. Chairman. Can I have the applicant, please, back to – yes – to the podium and, just on the record, do you agree and understand the development conditions dated February 3rd in the staff report?

Bila Hamdael Crane, Owner, Bila's Child Care: Yes.

Commissioner Migliaccio: Thank you very much. Thank you, Mr. Chairman. This case is for a home daycare. It has our professional staff's support, it has our Lee District Land Use Committee support, and it has my support. Therefore, I MOVE THAT PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF SE 2014-LE-062, SUBJECT TO – TO DEVELOPMENT CONDITIONS DATED FEBRUARY 3RD, 2015.

Commissioner Ulfelder: Second.

Chairman Murphy: Seconded by Mr. Ulfelder. Is there any discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve SE 2014-LE-062, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

//

(The motion carried by a vote of 10-0. Commissioners de la Fe and Sargeant were absent from the meeting.)

JN

Board Agenda Item
April 7, 2015

2:30 p.m.

Public Hearing AR 92-V-001-02 (Belmont Bay Farms, LTD) Application Renewal to Permit Renewal of a Previously Approved Agricultural and Forestal District, Located on Approximately 287.65 Acres of Land Zoned R-E (Mount Vernon District)

This property is located at 10622 Belmont Boulevard Lorton, 22079. Tax Map 117-2 ((1)) 2Z, 4Z, and 15Z.

PLANNING COMMISSION RECOMMENDATION:
On Thursday, March 26, 2015, the Planning Commission voted 10-0 (Commissioners Litzenberger and Sargeant were absent from the meeting) to recommend to the Board of Supervisors approval of AR 92-V-001-02 and that Appendix E of the Fairfax County Code be amended to renew the Belmont Bay Farms Statewide Agricultural and Forestal District, subject to the Ordinance Provisions consistent with Appendix 1 of the staff report.

ENCLOSED DOCUMENTS:
Attachment 1: Planning Commission Verbatim Excerpt
Staff Report previously furnished and available online at:
http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdwf/4476945.PDF

STAFF:
Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Mike Lynskey, Planner, DPZ

AR 92-V-001-02 – CHARLES R. HOOFF/BELMONT BAY FARMS

After Close of the Public Hearing

Chairman Murphy: Without objection, the public hearing is closed. Recognize Mr. Flanagan.

Commissioner Flanagan: Thank you, Mr. Chairman. I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT AR 92-V-001-02 BE APPROVED AND APPENDIX E OF THE FAIRFAX COUNTY CODE BE AMENDED TO RENEW THE BELMONT BAY FARMS STATEWIDE AGRICULTURAL AND FORESTAL DISTRICT, SUBJECT TO THE ORDINANCE PROVISIONS CONSISTENT WITH APPENDIX 1 OF THE STAFF REPORT.

Commissioners Hedetniemi and Lawrence: Second.

Chairman Murphy: Seconded by Mr. Lawrence and Ms. Hedetniemi. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve AR 92-V-001-02, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Thank you very much.

//

(The motion carried by a vote of 10-0. Commissioners Litzenberger and Sargeant were absent from the meeting.)

JLC

Board Agenda Item
April 7, 2015

2:30 p.m.

Public Hearing SE 2014-PR-001 (7799 Leesburg Pike, LLLP) to Permit a Hotel, Located on Approximately 1.62 Acres of Land Zoned C-4 and HC (Providence District)

This property is located at 7799 Leesburg Pike Falls Church, 22043. Tax Map 39-2 ((1)) 45D pt. (Concurrent with RZ 2014-PR-025)

and

Public Hearing RZ 2014-PR-025 (7799 Leesburg Pike, LLLP) to Rezone from C-2 and HC to C-4 and HC to Permit a Hotel, Located on Approximately 15,482 Square Feet of Land (Providence District)

This property is located on the South Side of Leesburg Pike Approximately 500 Feet East of its Intersection with the Capital Beltway. Tax Map 39-2 ((1)) 45 D pt. (Concurrent with SE 2014-PR-001)

PLANNING COMMISSION RECOMMENDATION:
On Thursday, March 16, 2015, the Planning Commission voted 10-0 (Commissioners Litzenberger and Sargeant were absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of RZ 2014-PR-025;
- Approval of SE 2014-PR-001, subject to the Development Conditions dated March 26, 2015;
- Approval of a waiver to permit loading spaces for the hotel to be located at the front of the building, as shown on the SE Plat; and
- Approval of a modification to allow trees located above any proposed percolation trench or bio-retention areas to count toward county tree cover requirements, as depicted on the SE Plat.

ENCLOSED DOCUMENTS:
Attachment 1: Planning Commission Verbatim Excerpt
Staff Report previously furnished and available online at:
http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdwf/4479928.PDF

STAFF:
Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Bob Katai, Planner, DPZ

RZ 2014-PR-025/SE 2014-PR-001 – 7799 LEESBURG PIKE, LLLP

After Close of the Public Hearing

Chairman Murphy: Public hearing is closed – Mr. Lawrence, please.

Commissioner Lawrence: Thank you, Mr. Chairman. Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF RZ 2014-PR-025.

Commissioner Flanagan: Second.

Chairman Murphy: Seconded by Mr. Flanagan. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve RZ 2014-PR-025, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Mr. Lawrence.

Commissioner Lawrence: Mr. Chairman, I request that the applicant confirm for the record his agreement to the proposed development conditions dated March 11th, 2015. Mr. Pritchard, could we ask you to do that please?

Evan Pritchard, Applicant's Agent, Walsh, Colucci, Lubeley & Walsh, PC: Yes – so confirmed.

Commissioner Lawrence: Can you also agree to the amendment – further amendment adding the condition about bird-friendly design by Board time?

Mr. Pritchard: Absolutely.

Commissioner Lawrence: Thank you, Mr. Pritchard. Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVE SE 2014-PR-001, SUBJECT TO THE DEVELOPMENT CONDITIONS DATED MARCH 11TH, 2015, AND AS AMENDED THIS EVENING.

Commissioner Flanagan: Second.

Chairman Murphy: Seconded by Mr. Flanagan. Discussion? All those in favor of the motion to recommend to the Board of Supervisors that it approve SE 2014-PR-001, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Lawrence: I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF the following – first, A WAIVER TO PERMIT LOADING SPACES FOR THE HOTEL TO BE LOCATED AT THE FRONT OF THE BUILDING, AS SHOWN ON THE SE PLAT.

Commissioner Flanagan: Second.

Chairman Murphy: Seconded by Mr. Flanagan. Discussion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Lawrence: Finally, A MODIFICATION TO ALLOW TREES LOCATED ABOVE ANY PROPOSED PERCOLATION TRENCH OR BIO-RETENTION AREAS TO COUNT TOWARD COUNTY TREE COVER REQUIREMENTS, AS DEPICTED ON THE SE PLAT.

Commissioner Flanagan: Second.

Chairman Murphy: Seconded by Mr. Flanagan. Discussion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Lawrence: Thank you very much, Mr. Chairman.

Chairman Murphy: Thank you very much.

//

(Each motion carried by a vote of 10-0. Commissioners Litzenberger and Sargeant were absent from the meeting.)

JLC

Board Agenda Item
April 7, 2015

2:30 p.m.

Public Hearing RZ 2014-BR-019 (Christopher At Kenilworth, LLC) to Rezone from R-1 to PDH-3 to Permit Single Family Detached with an Overall Density of 2.5 du/acres, Located on Approximately 3.59 Acres of Land, Comprehensive Plan Recommendation Residential 2-3 du/acres (Braddock District)

This property is located on South Side of Braddock Road approximately 150 feet West of the Intersection with Dequincey Drive. Tax Map 69-1 ((1)) 29.

PLANNING COMMISSION RECOMMENDATION:
On Thursday, March 26, 2015, the Planning Commission voted 10-0 (Commissioners Litzenberger and Sargeant were absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of RZ 2014-BR-019, subject to the execution of proffers consistent with those dated March 25, 2015; and

- Direct the Director of the Department of Public Works and Environmental Services to permit a deviation from the tree preservation target percentage in favor of the proposed landscaping shown on the CDP/FDP and as proffered.

In a related action, the Planning Commission voted voted 10-0 (Commissioners Litzenberger and Sargeant were absent from the meeting) to approve FDP 2014-BR-019 subject to the Board's approval of RZ 2014-BR-019.

ENCLOSED DOCUMENTS:
Attachment 1: Planning Commission Verbatim Excerpt
Staff Report previously furnished and available online at:
http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdwf/4476411.PDF

STAFF:
Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
William O'Donnell, Planner, DPZ

RZ/FDP 2014-BR-019 – CHRISTOPHER AT KENILWORTH, LLC

After Close of the Public Hearing

Chairman Murphy: Public hearing is closed – Ms. Hurley.

Commissioner Hurley: Thank you, Mr. Chairman. Rosemary Ryan from Supervisor John Cook's staff and Mr. O'Donnell are to be commended for their usual exemplary work in assisting this application through the entire process. And with that, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF RZ 2014-BR-019, SUBJECT TO THE EXECUTION OF PROFFERS CONSISTENT WITH THOSE DATED MARCH 25TH, 2015.

Commissioner Hedetniemi: Second.

Chairman Murphy: Seconded by Ms. Hedetniemi. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve RZ 2014-BR-019, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hurley: I MOVE THAT THE PLANNING COMMISSION APPROVE FDP 2014-BR-019, SUBJECT TO THE BOARD'S APPROVAL OF THE CONCURRENT REZONING APPLICATION.

Commissioner Hedetniemi: Second.

Chairman Murphy: Seconded by Ms. Hedetniemi. Is there a discussion of that motion? All those in favor of the motion to approve FDP 2014-BR-019, subject to the Board's approval of the rezoning, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hurley: And finally, I MOVE THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS DIRECT THE DIRECTOR OF DPWES TO PERMIT A DEVIATION FROM THE TREE PRESERVATION TARGET PERCENTAGE IN FAVOR OF THE PROPOSED LANDSCAPING SHOWN ON THE CDP/FDP AND AS PROFFERED.

Commissioner Hedetniemi: Second.
Chairman Murphy: Seconded by Ms. Hedetniemi. Is there a discussion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

//

(Each motion carried by a vote of 10-0. Commissioners Litzenberger and Sargeant were absent from the meeting.)

JLC

Board Agenda Item
April 7, 2015

3:00 p.m.

Public Hearing on the FY 2016 Effective Tax Rate Increase

ISSUE:
Because the assessed value of existing property has increased by one percent or more, Virginia Code Section 58.1-3321 requires the Board to hold a public hearing on the real estate tax rate.

RECOMMENDATION:
The County Executive recommends that the Board of Supervisors maintain the real estate tax rate at the FY 2015 level of $1.090 per $100 of assessed value. Action on the tax rate is recommended to take place on April 28, 2015 as part of the annual adoption of the tax rate resolution, after the public hearings on the FY 2016 Advertised Budget Plan beginning on April 7, 2015, and the Board markup on April 21, 2015.

TIMING:
On March 3, 2015, the Board authorized advertisement of a public hearing to be held on April 7, 2015, at 3:00 p.m.

BACKGROUND:
The FY 2016 Advertised Budget Plan is based on a real estate tax rate of $1.090 per $100 of assessed value. The tax rate being proposed remains the same as FY 2015. Although no numerical change in the Real Estate tax rate is being proposed; the total assessed value of existing property has increased by more than one percent. Under such circumstances, Virginia Code Section 58.1-3321 requires that the Board advertise a public hearing and take action to adopt the proposed FY 2016 rate rather than the rate computed by the statutory formula. It should be noted that the total increase in assessed value of existing properties is expected to be 2.4 percent, including an increase of 3.4 percent for residential real property and a decrease of 0.6 percent for non-residential real property. As a result, most property owners will experience an increase in their real estate tax bill.

The following language, based on Virginia Code, describes the effective tax increase due to appreciation and a constant tax rate.

1. Assessment Increase: Total assessed value of real property, excluding additional assessments due to new construction or improvements to property, exceeds last year's total assessed value of real property by 2.4 percent.

2. Lowered Rate Necessary to Offset Increased Assessment: The tax rate which would levy the same amount of real estate tax as last year, when multiplied by the new total assessed value of real estate with the exclusions mentioned above, would be $1.0644 per $100 of assessed value. This rate will be known as the "lowered tax rate."

3. Effective Rate Increase: Fairfax County, Virginia, proposes to adopt a tax rate of $1.090 per $100 of assessed value. The difference between the lowered tax rate and the proposed rate would be $0.0256 per $100, or 2.4 percent. This difference will be known as the "effective tax rate increase."

   Individual property taxes may, however, increase at a percentage greater than or less than the above percentage.

4. Proposed Total Budget Increase: Based on the proposed real property tax rate and changes in other revenues, the total budget of Fairfax County, Virginia, will exceed last year's by 2.9 percent[1].

FISCAL IMPACT:
The advertised FY 2016 real estate tax rate of $1.090 per $100 of assessed value results in the revenue projections outlined in the FY 2016 Advertised Budget Plan. If the tax rate is lowered to a rate of $1.0644 per $100 of assessed value as described by Virginia Code Section 58.1-3321, then the revenue projection set forth in the FY 2016 Advertised Budget Plan would decrease by $57.9 million.

ENCLOSED DOCUMENTS:
None

STAFF:
Edward L. Long Jr., County Executive
Susan W. Datta, Chief Financial Officer and Director, Department of Management and Budget
Kevin C. Greenlief, Director, Department of Tax Administration
Patricia McCay, Assistant County Attorney

[1] The total budget increase is based on all revenues received by the General Fund of Fairfax County. Projected FY 2016 disbursements as shown in the FY 2016 Advertised Budget Plan reflect an increase of 0.9 percent over the FY 2015 level.

Board Agenda Item
April 7, 2015

3:00 p.m.

Public Hearing on a Sewer Ordinance Amendment to Revise the Sewer Service Charges and the Base Charges and to Maintain the Availability Charges

ISSUE:
The Board of Supervisors' adoption of the proposed sewer ordinance amendment is requested to increase the Base Charges and the Sewer Service Charges, and to maintain the Availability Charges. The proposed amendments are consistent with the Wastewater Management Program's "Revenue Sufficiency and Rate Analysis" (the Rate Study) for the Sewer System, prepared in cooperation with its consultant, Public Resources Management Group, Inc. (PRMG). The effects of these revisions will be as follows:

1. To re-affirm and establish FY 2015 through FY 2019 Sewer Service Charges
2. To re-affirm and establish the Base Charges for FY 2015 through FY 2019
3. To re-affirm and establish the Availability Charges for FY 2015 through FY 2019

Although the Sewer Service Charge schedule in the sewer ordinance is multi-year, all Sewer Service Charges are reviewed, adjusted as necessary, and adopted annually to ensure Sewer Service Charges are accurately priced.

RECOMMENDATION:
The County Executive recommends that the Board adopt the proposed sewer ordinance amendment.

TIMING:
Public Notices of the sewer ordinance revisions were advertised March 6, 2015 and March 13, 2015. Decision on the sewer ordinance revisions will coincide with the markup and adoption of the FY 2016 Advertised Budget Plan. FY 2016 new charges will become effective on July 1, 2015, as outlined above.

Board Agenda Item
April 7, 2015

BACKGROUND:
In December 2014, the Wastewater Management Program and its consultants, Public Resources Management Group, completed the Rate Study. To adequately support the Program, $190,328,746 in revenues will be needed to allow the Program to continue to meet all of the regulatory requirements, maintain competitive rates with neighboring utilities, maintain financial targets, and continue to preserve a AAA sewer revenue bond rating. A 3.6 percent revenue increase will be needed in FY 2016 to meet the revenue requirements of the Program. This will result in an increase of $19.32 in the annual cost to a typical residential customer.

The following proposed rate amendments will meet the revenue requirements by increasing both the Base Charge and Sewer Service Charge, which is the industry practice. This allows for recovering a portion of the Program's fixed costs through the Base Charge and recovering the remaining required revenues through the Sewer Service charge, based on the volume of water consumed.

The current Base Charge of $15.86 per bill recovers 11.0 percent of the Program's fixed costs. Fixed cost recovery through Base Charge is equitably shared by all customers, as the system is available for use by all customers regardless of the amount of water consumed. It is proposed to increase the Base Charge by $4.29 per quarter for FY 2016 for a total Base Charge of $20.15 per quarterly bill. The proposed Base Charge will recover 13.5 percent of the fixed cost in FY 2016. Industry practice is to recover 25 percent of the total fixed costs through a Base Charge. In order to strive towards such recovery rate, a phase-in approach is being proposed through FY 2019, as shown in the following table.

To generate the remaining amount of required revenues, it is proposed to increase the Sewer Service Charge by $0.03 from the current rate of $6.62 to $6.65 per 1,000 gallons of water consumed. The proposed rate increase will fund inflationary increases and the cost of rehabilitating facilities at wastewater treatment plants to maintain compliance with discharge requirements imposed by the state and the Chesapeake Bay Program.

Year	Current and Proposed Sewer Service Charge Per 1,000 gallons water consumed	Proposed Increase in Base Charge Per Quarterly Bill	New Base Charge Per Quarterly Bill	Percent Fixed Cost Recovered
2015	$6.62	$ 3.07	$15.86	11.0%
2016	$6.65	$ 4.29	$20.15	13.5%
2017	$6.68	$ 4.53	$24.68	16.1%
2018	$6.75	$ 2.94	$27.62	17.9%
2019	$6.82	$2.21	$29.83	19.1%

Base Charges for customers who require a larger water meter than the standard ¾" meter for residential connections would be based on meter size because the meter size determines how much capacity the sewer system has to reserve for that customer. Despite the increase in Base Charge, customers with larger meters should not see a significant difference in their overall bill because Sewer Service Charges will increase only nominally.

The County's Sewer Service Charges, Base Charges and Availability Charges remain very competitive on a local basis. Below are average annual sewer service billings and Availability Charges per Single Family Residential Equivalent (SFRE) for Fairfax County compared to other regional jurisdictions, as of January 2015 (FY 2015). Average sewer service billings for the other regional jurisdictions have been developed by applying each jurisdiction's equivalent base charge and sewer service rate to appropriate SFRE water usage determined from Fairfax Water's average water usage for SFREs.

Comparison of Average Service Charges and Availability Charges for SFREs as of January 2015 (FY 2015)
***Based on 18,000 gallons per quarter for all jurisdictions**

Jurisdiction*	Average Annual Sewer Service Billing	Sewer Availability Fees
Loudoun Water	$ 426	$ 7,658
Fairfax County	540	7,750
WSSC	543	3,500
DCWASA	710	----
Prince William County	562	10,300
City of Alexandria	669	7,937
Arlington County	644	4,732

The table below outlines base charges by other regional utilities for comparison to Fairfax County's current Base Charge of $15.86 and the proposed Base Charge of $20.15 per quarter, as of January 2015 (FY 2015):

Quarterly Base Charges for Sewer Service for Residential Customers	
Alexandria Renew Enterprises	$ 25.15
Prince William County Service Authority	$ 22.50
Washington Suburban Sanitation Commission	$ 11.00
DC Water	$ 28.02
Loudoun Water	$ 29.70
Fairfax County	**$ 15.86**
Neighboring Utilities Average	**$ 23.27**

PROPOSED BASE CHARGE AND SEWER SERVICE CHARGE SCHEDULES

BASE CHARGE SCHEDULE Cost ($) per Quarterly Bill Proposed New and Revised Rates in **Bold**					
Type of Connection	Current Rate	**Revised Rates**			**New Rate**
	FY 2015	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**
Residential (3/4" meter)	$15.86	**$20.15**	**$24.68**	**$27.62**	**$29.83**
All customers based on meter size					
3/4" and smaller, or no meter	$15.86	**$20.15**	**$24.68**	**$27.62**	**$29.83**
1"	$39.65	**$50.38**	**$61.70**	**$69.05**	**$74.58**
1 1/2"	$79.30	**$100.75**	**$123.40**	**$138.10**	**$149.15**
2"	$126.88	**$161.20**	**$197.44**	**$220.96**	**$238.64**
3"	$237.90	**$302.25**	**$370.20**	**$414.30**	**$447.45**
4"	$396.50	**$503.75**	**$617.00**	**$690.50**	**$745.75**
6"	$793.00	**$1,007.50**	**$1,234.00**	**$1,381.00**	**$1,491.50**
8"	$1,268.80	**$1,612.00**	**$1,974.40**	**$2,209.60**	**$2,386.40**
10" and larger	$1,823.90	**$2,317.25**	**$2,838.20**	**$3,176.30**	**$3,430.45**

SEWER SERVICE CHARGE SCHEDULE Per 1,000 gallons of water consumption Proposed New and Revised Rates in **Bold**					
	Current Rate	**Revised Rates**			**New Rate**
	FY 2015	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**
Sewer Service Charge	$6.62	**$6.65**	**$6.68**	**$6.75**	**$6.82**

PROPOSED AVAILABILITY CHARGE SCHEDULE

The County has completed reviewing the adequacy of the amount of the Availability Charge. Based upon the results of this review, the Availability Charge will remain the same as the FY 2015 rate. The revised, five-year rate schedule for the Availability Charge for a single-family residence is as follows:

Availability CHARGE SCHEDULE Proposed New and Revised Rates in **Bold**					
	Current Rate	**Revised Rates**			**New Rate**
	FY 2015	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**
Availability Charge	$7,750	**$7,750**	**$7,750**	**$7,750**	**$7,750**

Availability Charges for all nonresidential uses will be computed as the number of fixture units (including roughed-in fixture units) in accordance with Part I of the current Virginia Uniform Statewide Building Code, Section 101.2, Note 1, which incorporates by reference the 2009 International Plumbing Code (Chapter 7, Section 709), times the fixture unit rate with a minimum charge equivalent to one (1) single family detached dwelling per premises.

FISCAL IMPACT:
In FY 2016, assuming a water usage for a typical residential customer of 18,000 gallons/quarter (or 72,000 gallons/year), the annual sewer bill will be approximately $560 per year, which is an increase of $19.32 (or $1.61 per month) over the FY 2015 sewer bill. In FY 2016, approximately $7.1 million in additional revenues will be generated with the proposed Sewer Service Charge and the Base Charge, and an additional $1.2 million will be generated from the Availability Charges due to the anticipated growth of the system. Revenues from the collection of Sewer Service Charges, Base Charges, and Availability Charges are recorded in Fund 690-C69000, Sewer Revenue Fund.

Board Agenda Item
April 7, 2015

ENCLOSED DOCUMENTS:
Attachment I - The Proposed Amendment to Chapter 67.1 Article 10 (Charges), Section 2 of the Code of the County of Fairfax

STAFF:
Robert A. Stalzer, Deputy County Executive
James W. Patteson, Director, Department of Public Works and Environmental Services (DPWES)
Randy Bartlett, Deputy Director, DPWES
Shahram Mohsenin, Director, Wastewater Planning and Monitoring Division, DPWES

ATTACHMENT I

Fairfax County Code

CHAPTER 67.1. - Sanitary Sewers and Sewage Disposal.

ARTICLE 10. Charges.

Section 67.1-10-1. Generally.

Any person who is connected or who shall hereafter connect the sewerage facilities of any premises to the Facilities of the County shall pay or cause to be paid sums as hereinafter provided for the availability of, connection to, and/or use of such Facilities of the County. (39-93-67.1; 36-95-67.1; 6-98-67.1; 15-99-67.1; 16-00-67.1; 12-01-67.1; 21-02-67.1; 19-03-67.1; 15-04-67.1; 19-05-67.1; 09-06-67.1; 13-07-67.1; 29-08-67.1; 28-09-67.1; 11-10-67.1.)

Section 67.1-10-2. Availability, Connection, Lateral Spur and Service Charges.

(a) *Availability Charges.*

(1) *Residential uses:* The following schedule of availability charges for residential uses desiring to connect to the Facilities of the County is hereby established and imposed:

		Fiscal Year (July 1-June 30)				
	Customer Class	FY ~~2014~~2015	FY ~~2015~~2016	FY ~~2016~~2017	FY ~~2017~~2018	FY ~~2018~~2019
(A)	Single Family Detached	$7,750	$7,750	$7,750	$7,750	$7,750
(B)	Lodging House, Hotel, Inn or Tourist Cabin	7,750	7,750	7,750	7,750	7,750
(C)	Townhouse	6,200	6,200	6,200	6,200	6,200
(D)	Apartment	6,200	6,200	6,200	6,200	6,200
(E)	Mobile Home	6,200	6,200	6,200	6,200	6,200
(F)	Any other residential dwelling unit	6,200	6,200	6,200	6,200	6,200
(G)	Hotel, Motel, or Dormitory rental unit	1,938	1,938	1,938	1,938	1,938

All availability fees paid after February 24, 1976, will be updated by or refunded without interest to the current property owners whose properties have not been connected to public sewer within five years of the initial date of payment or any subsequent payment update(s). (See Section 10-5(d), "Refunds Updates".)

(2) *Commercial and all other uses:* The following schedule of fixture unit rates for computing availability charges for all nonresidential uses is hereby established and imposed:

	Fiscal Year (July 1-June 30)				
	FY ~~2014~~2015	FY ~~2015~~2016	FY ~~2016~~2017	FY ~~2017~~2018	FY ~~2018~~2019
Fixture unit rate	$401	$401	$401	$401	$401

The availability charge will be computed as the number of fixture units (including roughed-in fixture units) in accordance with Part I of the current Virginia Uniform Statewide Building Code (as amended), Section 101.2, Note 1, which incorporates by reference the ~~2009~~ 2012 International Plumbing Code (Chapter 7, Section 709) ("VUSBC"), times the fixture unit rate with a minimum charge equivalent to one single-family detached dwelling per premises. For Significant Industrial Users with wastewater discharge permits authorizing discharge into the Integrated Sewer System and other industrial or commercial Users determined by the Director to have processes generating significant wastewater flows, the availability fee will be calculated on the basis of equivalent units. One equivalent unit is equal to 320 gallons per day and rated equal to one single-family detached dwelling unit. Therefore, the availability charge for Significant Industrial Users and other industrial or commercial Users determined by the Director to have processes generating significant flow will be equal to the current rate for a single family detached dwelling unit times the number of equivalent units associated with the permitted flow. The number of equivalent units is equal to the permitted or projected flow in gallons per day divided by 320 gallons per day. Fixture unit counts, for Users having fixtures discharging continuously or semi-continuously to drainage system leading to the County sanitary sewer facilities, shall be increased by two fixture units for each gallon per minute of such continuous or semi-continuous discharge. The rate of such discharge shall be deemed to be that rate certified by the manufacturer of the fixture or other equipment, or such other rates as the Director shall determine.

(3) *Effective date:* The rate will change on July 1st of each new fiscal year. The rate applicable to each fiscal year is subject to annual review by the Board of Supervisors.

(b) *Connection Charges.*

(1) *Residential and community uses:* Except as otherwise provided herein, [t]here is hereby established and imposed a connection charge of $152.50 per front foot of premises (with a minimum of $7,625 and a maximum of $15,250 for the connection of single-family detached and attached dwellings, churches, schools, fire stations, community centers or other such similar community uses to the Facilities of the County.

(A) The above Connection Charges are effective beginning on July 1, 2011, for all Facilities of the County constructed after July 1, 2011. During the period of July 1, 2011, through June 30, 2012, Connection Charges for connections to Facilities of the County constructed prior to July 1, 2011, will be $6.00 per front foot of premises (with a minimum of $300.00 and a maximum of $600.00). Provided, however, the Director may extend the deadline for connection to Facilities of the County

from July 1, 2012, to December 31, 2012, if the Director determines that for reasons beyond the control of the owner of the premises, at least one of the following conditions are met:

(i) All applicable fees and charges have been paid to the County and other appropriate governmental agencies prior to June 30, 2012;

(ii) All applicable permits have either been applied for or obtained prior to June 30, 2012;

(iii) The owner of the premises can show diligent and active efforts to connect to the Facilities of the County prior to June 30, 2012;

(iv) The owner has been delayed by the actions of a third party, e.g., delays in the issuance of permits or inspections by any government agency or other party; or

(v) The delays have been caused by an Act of God.

(B) Connection Charges for connection to the Facilities of the County in the County's Extension and Improvement (E&I) Program that were under design for construction on or before April 12, 2011, and that were not completed on or before that date, will be $6.00 per front foot of premises (with a minimum of $300.00 and a maximum of $600.00) provided all of the following conditions are met:

(i) property owners in the E&I project area agree to grant all required easements within four months from the completion of the design;

(ii) 50 percent of the property owners in the E&I project area pay the required Availability Charges within four months from the completion of the design; and

(iii) connections to the Facilities of the County are made by no later than June 30, 2012, or within one year from the completion of the construction of the E&I project, whichever comes last, provided, however, the Director shall have [the] power to extend this deadline [by up to six months] for the hardship reasons set forth in subsections (A)(i) through (A)(v), above [, provided, however, that in lieu of the date June 30, 2012, the operative date for such extensions shall be one year from the date of completion of construction of the E&I project for which a connection is requested].

(2) *All other uses:* There is hereby established and imposed a connection charge of $152.50 per front foot of premises (with a minimum charge of $15,250) for the connection of all other uses to the Facilities of the County.

(3) The connection charges established and imposed above shall not apply to premises to be connected to the Facilities of the County if such Facilities of the County are constructed totally at private expense.

(4) For the purposes of Section 67.1-10-2 (b), front foot of premises will be determined by measuring the frontage of the premises located on the street address side of the premises.

(c) *Lateral spur charges:* There is hereby established and imposed a lateral spur charge of $600.00 for the connection of all uses to a lateral spur, where such lateral spur has been installed by the County at the expense of Fairfax County.

(d) *Service charges:* There are hereby established and imposed the following sanitary sewer service charges:

Sewer Service Charges - Fiscal Year (July 1 - June 30)					
	FY ~~2014~~2015	FY ~~2015~~2016	FY ~~2016~~2017	FY ~~2017~~2018	FY ~~2018~~2019

Sewer Service Charge, $/1,000 gallons	$6.~~55~~62	$6.~~62~~65	$6.~~65~~68	$6.~~68~~75	$6.~~75~~82

(e) *Base charges:* There are hereby established and imposed the following quarterly base charges in addition to the sewer service charge:

BASE CHARGE Cost ($) per Quarterly Bill Proposed New and Revised Rates in Bold					
	Current Rate	Revised Rates			New Rate
	FY ~~2014~~2015	FY ~~2015~~2016	FY ~~2016~~2017	FY ~~2017~~2018	FY ~~2018~~2019
Residential Base Charge	$~~12.79~~15.86	$~~15.86~~20.15	$~~20.15~~24.68	$~~24.68~~27.62	$~~27.62~~29.83
Commercial: (meter size)					
¾" and smaller, or no meter	$15.86~~$12.79~~	**$20.15**~~$15.86~~	**$24.68**~~$20.15~~	**$27.62**~~$24.68~~	**$29.83**~~$27.62~~
1"	$39.65~~$31.98~~	**$50.38**~~$39.65~~	**$61.70**~~$50.38~~	**$69.05**~~$61.70~~	**$74.58**~~$69.05~~
1½"	$79.30~~$63.95~~	**$100.75**~~$79.30~~	**$123.40**~~$100.75~~	**$138.10**~~$123.40~~	**$149.15**~~$138.10~~
2"	$126.88~~$102.32~~	**$161.20**~~$126.88~~	**$197.44**~~$161.20~~	**$220.96**~~$197.44~~	**$238.64**~~$220.96~~
3"	$237.90~~$191.85~~	**$302.25**~~$237.90~~	**$370.20**~~$302.25~~	**$414.30**~~$370.20~~	**$447.45**~~$414.30~~
4"	$396.50~~$319.75~~	**$503.75**~~$396.50~~	**$617.00**~~$503.75~~	**$690.50**~~$617.00~~	**$745.75**~~$690.50~~
6"	$793.00~~$639.50~~	**$1,007.50**~~$793.00~~	**$1,234.00**~~$1,007.~~	**$1,381.00**~~$1,234.~~	**$1,491.50**~~$1,381.~~

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8"	$1,268.80$1,023.20	**$1,612.00**$1,268.80	**$1,974.40**$1,612.00	**$2,209.60**$1,974.40	**$2,386.40**$2,209.60
10" and larger	$1,823.90$1,279.00	**$2,317.25**$1,823.90	**$2,838.20**$2,317.25	**$3,176.30**$2,838.20	**$3,430.45**$3,176.30

If requested, the Base Charge for non-residential customers who have sub-meters for irrigation and other water uses that do not enter the sewer system will be adjusted based on their sub-meter size per above table. In no case the Base Charge will be smaller than that for ¾" and smaller meter.

(1) *Effective date:* The Service charges and Base charges will change on July 1st of each new fiscal year. For metered accounts, the change is effective with meter readings beginning October 1st of each year. For unmetered accounts, the change is effective with billings beginning October 1st of each year.

(2) *Premises having a metered water supply:*

Category of Use	Service Charges
(A) Single-family detached and single-family attached dwellings such as townhouses, duplexes, multiplexes, semi-detached, rowhouses, garden court and patio houses with a separate water service line meter.	For each 1,000 gallons of water, based on winter-quarter consumption or current quarterly consumption, as measured by the service line meter, whichever is lower, a charge equal to the effective unit cost rate ($/1,000 gallons).
(B) All other uses.	For each 1,000 gallons of water as measured by the water service line, a charge equal to the effective unit cost rate ($/1,000 gallons).
(C) All users.	Base charge per billing as established in Section 67.1-10-2(e).

(D) The winter-quarter-maximum consumption is determined as follows:

(i) The quarterly-daily-average consumption of water is the consumption, measured by the water service line meter for the period between meter readings divided by the number of days elapsed between meter readings.

(ii) The quarterly consumption is 91.5 times the quarterly-daily-average consumption of water in leap years or 91.25 times the quarterly-daily-average consumption in non-leap years.

(iii) The winter quarterly consumption is the quarterly consumption determined at the water service line meter reading scheduled between February 1 and April 30. The winter-quarter-consumption of each respective year shall be applicable to the four quarterly sewer billings rendered in conjunction with the regular meter reading scheduled after the next May.

(iv) All water delivered to the premises, as measured by the winter quarter-consumption for single-family dwellings and townhouses or the meter of all other Users, shall be deemed to have been discharged to the Facilities of the County. However, any person may procure the installation of a second water service line meter. Such person may notify the Director of such installation, in which event the Director shall make such inspection or inspections as may be necessary to ascertain that no water delivered to the premises or only the water delivered through any such additional meter may enter the Facilities of the County. If the Director determines that water delivered through an additional meter may not enter the Facilities of the County, no charge hereunder shall be based upon such volume of water delivery. If the Director determines that only the water delivered through an additional meter may enter the Facilities of the County, only the water recorded on the additional meter shall be charged. In the alternative, any person may procure the installation of a sewage meter which shall be of a type and installed in a manner approved by the Director, who shall make periodic inspection to ensure accurate operation of said meter; in such event, the charge imposed hereunder shall be based upon the volume measured by such meter. The cost of all inspections required by the foregoing provisions for elective metering, as determined by normal cost accounting methods, shall be an additional charge for sanitary sewer service to the premises on which such meter or meters are installed.

(E) For single-family premises as in (e)(2)(A) not able to register valid meter readings for the measurement of winter-quarter-consumption the following billing method shall apply:

(i) Premises not existing, unoccupied or occupied by a different household during the applicable winter quarter, or which due to unfavorable weather, meter failure or for any other reason of meter inaccuracy cannot register valid meter readings, shall not be considered to have a valid meter reading for the purpose of winter-quarter-consumption measurement.

(ii) Such premises may be billed on the basis of the average winter-quarter-consumption for similar dwelling units or the current quarterly consumption, as registered by water service line meter, or based on historical water usage. Accounts for single-family premises established by a builder for sewerage service during construction shall be considered a nonresidential use.

(3) Premises not having metered water supply or having both well water and public metered water supply:

(A) Single-family dwellings, as in (e)(2)(A). An amount equal to the average winter-quarter-consumption, during the applicable winter quarter, of similar dwelling units, times the effective unit cost rate ($/1,000 gallons). In the alternative, any such single-family residential customer may apply to the County, via the water supplier providing water service to the area in which the residential customer is located, for special billing rates, based on average per capita consumption of water in similar type units.

(B) All other uses: The charge shall be based upon the number of fixture units and load factor in accordance with the VUSBC, Table I and Table II. There shall be an additional charge equal to the effective unit cost ($/1,000 gallons) for the volume discharged by fixtures discharging continuously

or semi-continuously. Volume of continuous or semi-continuous discharge shall be deemed to be that used in determining availability charge.

TABLE I. Table of Fixture Units

Type of Fixture or Group of Fixtures	DrainageFixture Unit Value(d.f.u.)
Commercial automatic clothes washer (2" standpipe)	3
Bathroom group consisting of water closet, lavatory and bathtub or shower stall (Residential):	
Tank type closet	6
Bathtub (with or without overhead shower)	2
Combination sink-and-tray with food disposal unit	2
Combination sink-and-tray with 1½" trap	2
Dental unit or cuspidor	1
Dental lavatory	1
Drinking fountain	½
Dishwasher, domestic	2
Floor drains with 2" waste	2
Kitchen sink, domestic, with one 1½" waste	2
Kitchen sink, domestic, with food waste grinder and/or dishwasher	2
Lavatory with 1¼" waste	1
Laundry tray (1 or 2 compartments)	2

Shower stall	2
Sinks:	
Surgeon's	3
Flushing rim (with valve)	6
Service (trap standard)	3
Service (P trap)	2
Pot, scullery, etc.	4
Urinal, pedestal, syphon jet blowout	6
Urinal, wall lip	4
Urinal stall, washout	4
Urinal trough (each 6-ft. section)	2
Wash sink (circular or multiple) each set of faucets	2
Water closet, tank-operated	4
Water closet, valve-operated	6
Fixture drain or trap size:	
1¼ inches and smaller	1
1½ inches	2
2 inches	3
2½ inches	4

3 inches	5
4 inches	6

TABLE II.
Fixture Units and Load Factors for All Other Premises
Quarterly Service Charges
Fiscal Year (July 1 - June 30)

Fixture Units	Load Factor	~~2014~~2015	~~2015~~2016	~~2016~~2017	~~2017~~2018	~~2018~~2019
20 or less	1.00	165.50 ~~163.75~~	166.25 ~~165.50~~	167.00 ~~167.00~~	168.75 ~~168.75~~	170.50 ~~163.75~~
21 to 30	1.25	206.88 ~~204.69~~	207.81 ~~206.88~~	208.75 ~~208.75~~	210.94 ~~210.94~~	213.13 ~~204.69~~
31 to 40	1.45	239.98 ~~237.44~~	241.06 ~~239.98~~	242.15 ~~242.15~~	244.69 ~~244.69~~	247.23 ~~237.44~~
41 to 50	1.60	264.80 ~~262.00~~	266.00 ~~264.80~~	267.20 ~~267.20~~	270.00 ~~270.00~~	272.80 ~~262.00~~
51 to 60	1.75	289.63 ~~286.56~~	290.94 ~~289.63~~	292.25 ~~292.25~~	295.31 ~~295.31~~	298.38 ~~286.56~~
61 to 70	1.90	314.45 ~~311.13~~	315.88 ~~314.45~~	317.30 ~~317.30~~	320.63 ~~320.63~~	323.95 ~~311.13~~
71 to 80	2.05	339.28 ~~335.69~~	340.81 ~~339.28~~	342.35 ~~342.35~~	345.94 ~~345.94~~	349.53 ~~335.69~~
81 to 90	2.20	364.10 ~~360.25~~	365.75 ~~364.10~~	367.40 ~~367.40~~	371.25 ~~371.25~~	375.10 ~~360.25~~
91 to 100	2.30	380.65 ~~376.63~~	382.38 ~~380.65~~	384.10 ~~384.10~~	388.13 ~~388.13~~	392.15 ~~376.63~~
101 to 110	2.40	397.20 ~~393.00~~	399.00 ~~397.20~~	400.80 ~~400.80~~	405.00 ~~405.00~~	409.20 ~~393.00~~
111 to 120	2.55	422.03 ~~417.56~~	423.94 ~~422.03~~	425.85 ~~425.85~~	430.31 ~~430.31~~	434.78 ~~417.56~~
121 to 130	2.65	438.58 ~~433.94~~	440.56 ~~438.58~~	442.55 ~~442.55~~	447.19 ~~447.19~~	451.83 ~~433.94~~

Formatted Table

131 to 140	2.75	455.13 ~~450.31~~	457.19 ~~455.13~~	459.25 ~~459.25~~	464.06 ~~464.06~~	468.88 ~~450.31~~
141 to 150	2.85	471.68 ~~466.69~~	473.81 ~~471.68~~	475.95 ~~475.95~~	480.94 ~~480.94~~	485.93 ~~466.69~~
151 to 160	2.95	488.23 ~~483.06~~	490.44 ~~488.23~~	492.65 ~~492.65~~	497.81 ~~497.81~~	502.98 ~~483.06~~
161 to 170	3.05	504.78 ~~499.44~~	507.06 ~~504.78~~	509.35 ~~509.35~~	514.69 ~~514.69~~	520.03 ~~499.44~~
171 to 180	3.15	521.33 ~~515.81~~	523.69 ~~521.33~~	526.05 ~~526.05~~	531.56 ~~531.56~~	537.08 ~~515.81~~
181 to 190	3.25	537.88 ~~532.19~~	540.31 ~~537.88~~	542.75 ~~542.75~~	548.44 ~~548.44~~	554.13 ~~532.19~~
191 to 200	3.35	554.43 ~~548.56~~	556.94 ~~554.43~~	559.45 ~~559.45~~	565.31 ~~565.31~~	571.18 ~~548.56~~
201 to 210	3.45	570.98 ~~564.94~~	573.56 ~~570.98~~	576.15 ~~576.15~~	582.19 ~~582.19~~	588.23 ~~564.94~~
211 to 220	3.55	587.53 ~~581.31~~	590.19 ~~587.53~~	592.85 ~~592.85~~	599.06 ~~599.06~~	605.28 ~~581.31~~
221 to 230	3.65	604.08 ~~597.69~~	606.81 ~~604.08~~	609.55 ~~609.55~~	615.94 ~~615.94~~	622.33 ~~597.69~~
231 to 240	3.75	620.63 ~~614.06~~	623.44 ~~620.63~~	626.25 ~~626.25~~	632.81 ~~632.81~~	639.38 ~~614.06~~
241 to 250	3.85	637.18 ~~630.44~~	640.06 ~~637.18~~	642.95 ~~642.95~~	649.69 ~~649.69~~	656.43 ~~630.44~~
251 to 260	3.90	645.45 ~~638.63~~	648.38 ~~645.45~~	651.30 ~~651.30~~	658.13 ~~658.13~~	664.95 ~~638.63~~
261 to 270	4.00	662.00 ~~655.00~~	665.00 ~~662.00~~	668.00 ~~668.00~~	675.00 ~~675.00~~	682.00 ~~655.00~~
271 to 280	4.05	670.28 ~~663.19~~	673.31 ~~670.28~~	676.35 ~~676.35~~	683.44 ~~683.44~~	690.53 ~~663.19~~
281 to 290	4.10	678.55 ~~671.38~~	681.63 ~~678.55~~	684.70 ~~684.70~~	691.88 ~~691.88~~	699.05 ~~671.38~~
291 to 300	4.15	686.83 ~~679.56~~	689.94 ~~686.83~~	693.05 ~~693.05~~	700.31 ~~700.31~~	707.58 ~~679.56~~
301 to 310	4.20	695.10 ~~687.75~~	698.25 ~~695.10~~	701.40 ~~701.40~~	708.75 ~~708.75~~	716.10 ~~687.75~~
311 to 320	4.30	711.65 ~~704.13~~	714.88 ~~711.65~~	718.10 ~~718.10~~	725.63 ~~725.63~~	733.15 ~~704.13~~

321 to 330	4.40	728.20 ~~720.50~~	731.50 ~~728.20~~	734.80 ~~734.80~~	742.50 ~~742.50~~	750.20 ~~720.50~~
331 to 340	4.50	744.75 ~~736.88~~	748.13 ~~744.75~~	751.50 ~~751.50~~	759.38 ~~759.38~~	767.25 ~~736.88~~
341 to 350	4.60	761.30 ~~753.25~~	764.75 ~~761.30~~	768.20 ~~768.20~~	776.25 ~~776.25~~	784.30 ~~753.25~~
351 to 360	4.70	777.85 ~~769.63~~	781.38 ~~777.85~~	784.90 ~~784.90~~	793.13 ~~793.13~~	801.35 ~~769.63~~
361 to 370	4.80	794.40 ~~786.00~~	798.00 ~~794.40~~	801.60 ~~801.60~~	810.00 ~~810.00~~	818.40 ~~786.00~~
371 to 380	4.90	810.95 ~~802.38~~	814.63 ~~810.95~~	818.30 ~~818.30~~	826.88 ~~826.88~~	835.45 ~~802.38~~
381 to 390	5.00	827.50 ~~818.75~~	831.25 ~~827.50~~	835.00 ~~835.00~~	843.75 ~~843.75~~	852.50 ~~818.75~~
391 to 400	5.10	844.05 ~~835.13~~	847.88 ~~844.05~~	851.70 ~~851.70~~	860.63 ~~860.63~~	869.55 ~~835.13~~
401 to 410	5.20	860.60 ~~851.50~~	864.50 ~~860.60~~	868.40 ~~868.40~~	877.50 ~~877.50~~	886.60 ~~851.50~~
411 to 420	5.30	877.15 ~~867.88~~	881.13 ~~877.15~~	885.10 ~~885.10~~	894.38 ~~894.38~~	903.65 ~~867.88~~
421 to 430	5.40	893.70 ~~884.25~~	897.75 ~~893.70~~	901.80 ~~901.80~~	911.25 ~~911.25~~	920.70 ~~884.25~~
431 to 440	5.50	910.25 ~~900.63~~	914.38 ~~910.25~~	918.50 ~~918.50~~	928.13 ~~928.13~~	937.75 ~~900.63~~
441 to 450	5.60	926.80 ~~917.00~~	931.00 ~~926.80~~	935.20 ~~935.20~~	945.00 ~~945.00~~	954.80 ~~917.00~~
451 to 460	5.70	943.35 ~~933.38~~	947.63 ~~943.35~~	951.90 ~~951.90~~	961.88 ~~961.88~~	971.85 ~~933.38~~
461 to 470	5.80	959.90 ~~949.75~~	964.25 ~~959.90~~	968.60 ~~968.60~~	978.75 ~~978.75~~	988.90 ~~949.75~~
471 to 480	5.90	976.45 ~~966.13~~	980.88 ~~976.45~~	985.30 ~~985.30~~	995.63 ~~995.63~~	1,005.95 ~~966.13~~
481 to 490	6.00	993.00 ~~982.50~~	997.50 ~~993.00~~	1,002.00 ~~1,002.00~~	1,012.50 ~~1,012.50~~	1,023.00 ~~982.50~~
491 to 500	6.10	1,009.55	1,014.13	1,018.70	1,029.38	1,040.05

		~~998.88~~	~~1,009.55~~	~~1,018.70~~	~~1,029.38~~	~~998.88~~
501 to 525	6.25	1,034.38 ~~1,023.44~~	1,039.06 ~~1,034.38~~	1,043.75 ~~1,043.75~~	1,054.69 ~~1,054.69~~	1,065.63 ~~1,023.44~~
526 to 550	6.50	1,075.75 ~~1,064.38~~	1,080.63 ~~1,075.75~~	1,085.50 ~~1,085.50~~	1,096.88 ~~1,096.88~~	1,108.25 ~~1,064.38~~
551 to 575	6.75	1,117.13 ~~1,105.31~~	1,122.19 ~~1,117.13~~	1,127.25 ~~1,127.25~~	1,139.06 ~~1,139.06~~	1,150.88 ~~1,105.31~~
576 to 600	7.00	1,158.50 ~~1,146.25~~	1,163.75 ~~1,158.50~~	1,169.00 ~~1,169.00~~	1,181.25 ~~1,181.25~~	1,193.50 ~~1,146.25~~
601 to 625	7.25	1,199.88 ~~1,187.19~~	1,205.31 ~~1,199.88~~	1,210.75 ~~1,210.75~~	1,223.44 ~~1,223.44~~	1,236.13 ~~1,187.19~~
626 to 650	7.50	1,241.25 ~~1,228.13~~	1,246.88 ~~1,241.25~~	1,252.50 ~~1,252.50~~	1,265.63 ~~1,265.63~~	1,278.75 ~~1,228.13~~
651 to 675	7.75	1,282.63 ~~1,269.06~~	1,288.44 ~~1,282.63~~	1,294.25 ~~1,294.25~~	1,307.81 ~~1,307.81~~	1,321.38 ~~1,269.06~~
676 to 700	8.00	1,324.00 ~~1,310.00~~	1,330.00 ~~1,324.00~~	1,336.00 ~~1,336.00~~	1,350.00 ~~1,350.00~~	1,364.00 ~~1,310.00~~
701 to 725	8.20	1,357.10 ~~1,342.75~~	1,363.25 ~~1,357.10~~	1,369.40 ~~1,369.40~~	1,383.75 ~~1,383.75~~	1,398.10 ~~1,342.75~~
726 to 750	8.40	1,390.20 ~~1,375.50~~	1,396.50 ~~1,390.20~~	1,402.80 ~~1,402.80~~	1,417.50 ~~1,417.50~~	1,432.20 ~~1,375.50~~
751 to 775	8.60	1,423.30 ~~1,408.25~~	1,429.75 ~~1,423.30~~	1,436.20 ~~1,436.20~~	1,451.25 ~~1,451.25~~	1,466.30 ~~1,408.25~~
776 to 800	8.80	1,456.40 ~~1,441.00~~	1,463.00 ~~1,456.40~~	1,469.60 ~~1,469.60~~	1,485.00 ~~1,485.00~~	1,500.40 ~~1,441.00~~

801 to 825	9.00	1,489.50 ~~1,473.75~~	1,496.25 ~~1,489.50~~	1,503.00 ~~1,503.00~~	1,518.75 ~~1,518.75~~	1,534.50 ~~1,473.75~~
826 to 850	9.20	1,522.60 ~~1,506.50~~	1,529.50 ~~1,522.60~~	1,536.40 ~~1,536.40~~	1,552.50 ~~1,552.50~~	1,568.60 ~~1,506.50~~
851 to 875	9.35	1,547.43 ~~1,531.06~~	1,554.44 ~~1,547.43~~	1,561.45 ~~1,561.45~~	1,577.81 ~~1,577.81~~	1,594.18 ~~1,531.06~~
876 to 900	9.50	1,572.25 ~~1,555.63~~	1,579.38 ~~1,572.25~~	1,586.50 ~~1,586.50~~	1,603.13 ~~1,603.13~~	1,619.75 ~~1,555.63~~
901 to 925	9.65	1,597.08 ~~1,580.19~~	1,604.31 ~~1,597.08~~	1,611.55 ~~1,611.55~~	1,628.44 ~~1,628.44~~	1,645.33 ~~1,580.19~~
926 to 950	9.80	1,621.90 ~~1,604.75~~	1,629.25 ~~1,621.90~~	1,636.60 ~~1,636.60~~	1,653.75 ~~1,653.75~~	1,670.90 ~~1,604.75~~
951 to 975	9.95	1,646.73 ~~1,629.31~~	1,654.19 ~~1,646.73~~	1,661.65 ~~1,661.65~~	1,679.06 ~~1,679.06~~	1,696.48 ~~1,629.31~~
976 to 1,000	10.15	1,679.83 ~~1,662.06~~	1,687.44 ~~1,679.83~~	1,695.05 ~~1,695.05~~	1,712.81 ~~1,712.81~~	1,730.58 ~~1,662.06~~
1,001 to 1,050	10.55	1,746.03 ~~1,727.56~~	1,753.94 ~~1,746.03~~	1,761.85 ~~1,761.85~~	1,780.31 ~~1,780.31~~	1,798.78 ~~1,727.56~~
1,051 to 1,100	10.90	1,803.95 ~~1,784.88~~	1,812.13 ~~1,803.95~~	1,820.30 ~~1,820.30~~	1,839.38 ~~1,839.38~~	1,858.45 ~~1,784.88~~
1,101 to 1,150	11.30	1,870.15 ~~1,850.38~~	1,878.63 ~~1,870.15~~	1,887.10 ~~1,887.10~~	1,906.88 ~~1,906.88~~	1,926.65 ~~1,850.38~~
1,151 to 1,200	11.70	1,936.35 ~~1,915.88~~	1,945.13 ~~1,936.35~~	1,953.90 ~~1,953.90~~	1,974.38 ~~1,974.38~~	1,994.85 ~~1,915.88~~
1,201 to	12.00	1,986.00	1,995.00	2,004.00	2,025.00	2,046.00

1,250		~~1,965.00~~	~~1,986.00~~	~~2,004.00~~	~~2,025.00~~	~~1,965.00~~
1,251 to 1,300	12.35	2,043.93 ~~2,022.31~~	2,053.19 ~~2,043.93~~	2,062.45 ~~2,062.45~~	2,084.06 ~~2,084.06~~	2,105.68 ~~2,022.31~~
1,301 to 1,350	12.70	2,101.85 ~~2,079.63~~	2,111.38 ~~2,101.85~~	2,120.90 ~~2,120.90~~	2,143.13 ~~2,143.13~~	2,165.35 ~~2,079.63~~
1,351 to 1,400	13.00	2,151.50 ~~2,128.75~~	2,161.25 ~~2,151.50~~	2,171.00 ~~2,171.00~~	2,193.75 ~~2,193.75~~	2,216.50 ~~2,128.75~~
1,401 to 1,450	13.25	2,192.88 ~~2,169.69~~	2,202.81 ~~2,192.88~~	2,212.75 ~~2,212.75~~	2,235.94 ~~2,235.94~~	2,259.13 ~~2,169.69~~
1,451 to 1,500	13.50	2,234.25 ~~2,210.63~~	2,244.38 ~~2,234.25~~	2,254.50 ~~2,254.50~~	2,278.13 ~~2,278.13~~	2,301.75 ~~2,210.63~~
1,501 to 1,600	14.05	2,325.28 ~~2,300.69~~	2,335.81 ~~2,325.28~~	2,346.35 ~~2,346.35~~	2,370.94 ~~2,370.94~~	2,395.53 ~~2,300.69~~
1,601 to 1,700	14.60	2,416.30 ~~2,390.75~~	2,427.25 ~~2,416.30~~	2,438.20 ~~2,438.20~~	2,463.75 ~~2,463.75~~	2,489.30 ~~2,390.75~~
1,701 to 1,800	15.15	2,507.33 ~~2,480.81~~	2,518.69 ~~2,507.33~~	2,530.05 ~~2,530.05~~	2,556.56 ~~2,556.56~~	2,583.08 ~~2,480.81~~
1,801 to 1,900	15.70	2,598.35 ~~2,570.88~~	2,610.13 ~~2,598.35~~	2,621.90 ~~2,621.90~~	2,649.38 ~~2,649.38~~	2,676.85 ~~2,570.88~~
1,901 to 2,000	16.25	2,689.38 ~~2,660.94~~	2,701.56 ~~2,689.38~~	2,713.75 ~~2,713.75~~	2,742.19 ~~2,742.19~~	2,770.63 ~~2,660.94~~
2,001 to 2,100	16.80	2,780.40 ~~2,751.00~~	2,793.00 ~~2,780.40~~	2,805.60 ~~2,805.60~~	2,835.00 ~~2,835.00~~	2,864.40 ~~2,751.00~~
2,101 to 2,200	17.35	2,871.43 ~~2,841.06~~	2,884.44 ~~2,871.43~~	2,897.45 ~~2,897.45~~	2,927.81 ~~2,927.81~~	2,958.18 ~~2,841.06~~

2,201 to 2,300	17.90	2,962.45 ~~2,931.13~~	2,975.88 ~~2,962.45~~	2,989.30 ~~2,989.30~~	3,020.63 ~~3,020.63~~	3,051.95 ~~2,931.13~~
2,301 to 2,400	18.45	3,053.48 ~~3,021.19~~	3,067.31 ~~3,053.48~~	3,081.15 ~~3,081.15~~	3,113.44 ~~3,113.44~~	3,145.73 ~~3,021.19~~
2,401 to 2,500	19.00	3,144.50 ~~3,111.25~~	3,158.75 ~~3,144.50~~	3,173.00 ~~3,173.00~~	3,206.25 ~~3,206.25~~	3,239.50 ~~3,111.25~~
2,501 to 2,600	19.55	3,235.53 ~~3,201.31~~	3,250.19 ~~3,235.53~~	3,264.85 ~~3,264.85~~	3,299.06 ~~3,299.06~~	3,333.28 ~~3,201.31~~
2,601 to 2,700	20.10	3,326.55 ~~3,291.38~~	3,341.63 ~~3,326.55~~	3,356.70 ~~3,356.70~~	3,391.88 ~~3,391.88~~	3,427.05 ~~3,291.38~~
2,701 to 2,800	20.65	3,417.58 ~~3,381.44~~	3,433.06 ~~3,417.58~~	3,448.55 ~~3,448.55~~	3,484.69 ~~3,484.69~~	3,520.83 ~~3,381.44~~
2,801 to 2,900	21.20	3,508.60 ~~3,471.50~~	3,524.50 ~~3,508.60~~	3,540.40 ~~3,540.40~~	3,577.50 ~~3,577.50~~	3,614.60 ~~3,471.50~~
2,901 to 3,000	21.75	3,599.63 ~~3,561.56~~	3,615.94 ~~3,599.63~~	3,632.25 ~~3,632.25~~	3,670.31 ~~3,670.31~~	3,708.38 ~~3,561.56~~
3,001 to 4,000	26.00	4,303.00 ~~4,257.50~~	4,322.50 ~~4,303.00~~	4,342.00 ~~4,342.00~~	4,387.50 ~~4,387.50~~	4,433.00 ~~4,257.50~~
4,001 to 5,000	29.50	4,882.25 ~~4,830.63~~	4,904.38 ~~4,882.25~~	4,926.50 ~~4,926.50~~	4,978.13 ~~4,978.13~~	5,029.75 ~~4,830.63~~
5,001 to 6,000	33.00	5,461.50 ~~5,403.75~~	5,486.25 ~~5,461.50~~	5,511.00 ~~5,511.00~~	5,568.75 ~~5,568.75~~	5,626.50 ~~5,403.75~~
6,001 to 7,000	36.40	6,024.20 ~~5,960.50~~	6,051.50 ~~6,024.20~~	6,078.80 ~~6,078.80~~	6,142.50 ~~6,142.50~~	6,206.20 ~~5,960.50~~
7,001 to	39.60	6,553.80	6,583.50	6,613.20	6,682.50	6,751.80

8,000		~~6,484.50~~	~~6,553.80~~	~~6,613.20~~	~~6,682.50~~	~~6,484.50~~
8,001 to 9,000	42.75	7,075.13 ~~7,000.31~~	7,107.19 ~~7,075.13~~	7,139.25 ~~7,139.25~~	7,214.06 ~~7,214.06~~	7,288.88 ~~7,000.31~~
9,001 to 10,000	46.00	7,613.00 ~~7,532.50~~	7,647.50 ~~7,613.00~~	7,682.00 ~~7,682.00~~	7,762.50 ~~7,762.50~~	7,843.00 ~~7,532.50~~
10,001 to 11,000	48.85	8,084.68 ~~7,999.19~~	8,121.31 ~~8,084.68~~	8,157.95 ~~8,157.95~~	8,243.44 ~~8,243.44~~	8,328.93 ~~7,999.19~~
11,001 to 12,000	51.60	8,539.80 ~~8,449.50~~	8,578.50 ~~8,539.80~~	8,617.20 ~~8,617.20~~	8,707.50 ~~8,707.50~~	8,797.80 ~~8,449.50~~
12,001 to 13,000	54.60	9,036.30 ~~8,940.75~~	9,077.25 ~~9,036.30~~	9,118.20 ~~9,118.20~~	9,213.75 ~~9,213.75~~	9,309.30 ~~8,940.75~~
13,001 to 14,000	57.40	9,499.70 ~~9,399.25~~	9,542.75 ~~9,499.70~~	9,585.80 ~~9,585.80~~	9,686.25 ~~9,686.25~~	9,786.70 ~~9,399.25~~
14,001 to 15,000	60.00	9,930.00 ~~9,825.00~~	9,975.00 ~~9,930.00~~	10,020.00 ~~10,020.00~~	10,125.00 ~~10,125.00~~	10,230.00 ~~9,825.00~~

NOTES:

(1) Baseline water use for 20 fixture units is 25 TG/Qtr.

(2) Base charge is not included in rates above.

Board Agenda Item
April 7, 2015

3:30 p.m.

Public Hearing on SE 2014-DR-052 (Trinity Land LLC) to Permit Residential Cluster Subdivision, Located on Approximately 28.94 Acres of Land Zoned R-1 and HD (Dranesville District)

This property is located at 11801 Leesburg Pike, Herndon, 20170. Tax Map 6-3 ((1)) 33 and 33A.

PLANNING COMMISSION RECOMMENDATION:
On Thursday, March 12, 2015, the Planning Commission voted 10-0-1 (Commissioner Hurley abstained from the voted and Commissioner Sargeant was absent from the meeting) to recommend that the Board of Supervisors approve SE 2014-DR-052, subject to the Development Conditions dated March 12, 2015.

ENCLOSED DOCUMENTS:
Attachment 1: Planning Commission Verbatim Excerpt
Staff Report previously furnished and available online at:
http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdwf/4478297.PDF

STAFF:
Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Mike Van Atta, Planner, DPZ

Planning Commission Meeting Attachment 1
March 12, 2015
Verbatim Excerpt

SE 2014-DR-052 – TRINITY LAND, LLC

Decision Only During Commission Matters
(Public Hearing held on March 4, 2015)

Commissioner Ulfelder: Thank you, Mr. Chairman. On March 4th, we had a hearing on an application, SE 2014-DR-052, Trinity Land, LLC, and since then - - we deferred the decision until tonight. Since then, we have developed a revised set of proposed development conditions I think addressing most of the issues that the Planning Commission recommended - - concern – or commented on. There are a couple of issues: one involving the offset of the fair share of the Park Authority fund fee and that is still under discussion but I think that will be resolved fully before the board of supervisors' hearing, which I think is now scheduled for April 7th, and taken care of, I think, and in a way that will be acceptable to everyone; and the other issue that was – that was raised were some safety concerns about Sugarland Road, particularly about the intersection with Route 7. And the concern about adding traffic from this proposed 30 lot subdivision. And there were questions raised about some of the testimony that was given at the public hearing. I think the bottom line is that VDOT and the Fairfax County Department of Transportation are satisfied with and happy with the option that being used here, which is accessed to and from the site from Sugarland Road. One, it will save a considerable amount of the RPA that rests between Route 7 and the site; it will eliminate a current cut along Route 7 which is in the process of being widened in anticipation of even more traffic over the next 10 to 20 years; and that – that it will be a better option overall. In the meantime, the Dranesville Supervisor's office is working on taking a close look at the safety issues and concerns that were raised at the public hearing by the residents and going to be trying to work with Fairfax County DOT and eventually VDOT to address some of those issues for the residents to give them some assurances. So, with that, I think we're ready to proceed. Can we have a representative of the applicant –

Stuart Mendelsohn, Esquire, Holland & Knight LLP: Good evening, Mr. Chairman and members of the Commission. My name is Stuart Mendelsohn with the law firm of Holland and Knight, here on behalf of the applicant.

Commissioner Ulfelder: Mr. Mendelsohn, is the applicant – does the applicant agree to the revised development conditions - - or the proposed development conditions that are now dated March 12th, 2015?

Mr. Mendelsohn: We do.

Commissioner Ulfelder: Okay, thank you. With that being done, Mr. Chairman, I'm prepared to MOVE TO THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVAL OF SE 2014-DR-052, SUBJECT TO DEVELOPMENT CONDITIONS DATED MARCH 12TH, 2015.

Commissioner Migliaccio: Second.

Chairman Murphy: Seconded by Mr. Migliaccio. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve SE 2014-DR-052, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hurley: Abstain.

Chairman Murphy: Hurley abstains.

Commissioner Ulfelder: I move that the planning commission recommend to the board of supervisors approval of a waiver of the service drive requirement along Leesburg pike per Paragraph 3(a) of Section 17-201 of the Zoning Ordinance.

Commissioner Migliaccio: Second.

Chairman Murphy: Seconded by Mr. Migliaccio. Discussion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries; same abstention.

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(The motion carried by a vote of 10-0-1. Commissioner Hurley abstained; Commissioner Sargeant was absent from the meeting.)

JN

Board Agenda Item
April 7, 2015

3:30 p.m.

Public Hearing on PCA 77-D-025 (Fairfax County Park Authority PCA) to Amend the Proffers for RZ 77-D-025, Located on Approximately 14.26 Acres of Land Zoned R-3 (Dranesville District)

This property is located on Sugarland Run Stream Valley Park, North of Wiehle Avenue East of Cliveden Court. Tax Map 11-1 ((8)) (4) A.

PLANNING COMMISSION RECOMMENDATION:
On Wednesday, February 25, 2015, the Planning Commission voted 10-0 (Commissioners Hurley and Sargeant were absent from the meeting) to recommend to the Board of Supervisors approval of PCA 77-D-025, subject to proffers dated January 13, 2015.

ENCLOSED DOCUMENTS:
Attachment 1: Planning Commission Verbatim Excerpt
Staff Report previously furnished and available online at:
http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdwf/4476794.PDF

STAFF:
Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Mike Van Atta, Planner, DPZ

PCA 77-D-025 – FAIRFAX COUNTY PARK AUTHORITY

After Close of the Public Hearing

Chairman Murphy: Public hearing is closed – Mr. Ulfelder.

Commissioner Ulfelder: Well, another simple and straight-forward matter from the Dranesville District.

Chairman Murphy: Watch your woodchips.

Commissioner Ulfelder: Pardon?

Chairman Murphy: Watch your woodchips.

Commissioner Ulfelder: Yeah right. I'm going to go ahead and move to approve this evening. The key here is – even though they apparently backed into it literally, the basketball court is not functional. And I think in the long run it's better that it be – the asphalt be removed and that steps be made to return that small area to its natural state. On the other hand, I think that there are some issues that came up this evening and I know that they will follow through with them with the homeowners association and take a look at that. So therefore, Mr. Chairman, I'M GOING TO MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF PCA 77-D-025, SUBJECT TO PROFFERS DATED JANUARY 13, 2015.

Commissioner Migliaccio: Second.

Chairman Murphy: Seconded by Mr. Migliaccio. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve PCA 77-D-025, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Thank you very much.

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(The motions carried by a vote of 10-0. Commissioners Hurley and Sargeant were absent from the meeting.)

JLC

Board Agenda Item
April 7, 2015

4:00 p.m.

Public Hearing on the County Executive's Proposed FY 2016 Advertised Budget Plan, the Advertised Capital Improvement Program for Fiscal Years 2016-2020 (CIP) (With Future Fiscal Years to 2025) and the Current Appropriation in the FY 2015 Revised Budget Plan

ENCLOSED DOCUMENT:
None. Board Members will receive the Planning Commission's recommendations on the FY 2016 – FY 2020 Advertised Capital Improvement Program (With Future Fiscal Years to 2025) prior to the April 7, 2015, public hearing.

Board Members are requested to bring to the meeting the following documents previously forwarded to them:

1. FY 2015 Third Quarter Review
Sent electronically (no hard copies) on March 2, 2015
http://www.fairfaxcounty.gov/dmb/third_quarter/fy2015/third_quarter.htm
2. FY 2016 Advertised Budget Plan, Volumes 1 & 2 and the Budget Overview
Sent electronically February 17, 2015, hard copies February 24, 2015
http://www.fairfaxcounty.gov/dmb/fy2016/advertised/fy2016-advertised-budget.htm
3. FY 2016 – FY 2020 Advertised Capital Improvement Program (With Future Fiscal Years to 2025)
Sent electronically February 17, 2015 hard copies February 24, 2015
http://www.fairfaxcounty.gov/dmb/fy2016/advertised/cip.htm

STAFF:
Edward L. Long Jr., County Executive
Susan W. Datta, Chief Financial Officer and Director, Department of Management and Budget