FAIRFAX COUNTY
BOARD OF SUPERVISORS
June 5, 2018

AGENDA

8:30	**Held**	Reception for the Shark Tank Winners Recognition, J. Lambert Conference Center, Reception Area
8:30	**Held**	Reception for the 2018 Lord and Lady Fairfax Honorees, J. Lambert Conference Center, Forum
8:30	**Held**	Reception for the 45th Anniversary of Mount Vernon-Lee Enterprise Resolution, J. Lambert Conference Center, Conference Room 8
9:30	**Done**	Presentations
10:00	**Done**	Items Presented by the County Executive

ADMINISTRATIVE ITEMS

1	**Approved**	Authorization to Advertise a Public Hearing to Consider Adopting an Ordinance Expanding the Herndon Residential Permit Parking District, District 26 (Dranesville District)
2	**Approved**	Streets into the Secondary System (Sully and Hunter Mill Districts)
3	**Approved**	Extension of Review Period for 2232 Applications (Sully, Lee and Braddock Districts)
4	**Approved**	Authorization to Advertise a Public Hearing to Amend Articles 2 and 3 of Chapter 3 of the Code of the County of Fairfax Re: Employees' and Uniformed Retirement Systems – Elimination of the Social Security Offset to Service-Connected Disability Benefits
5	**Approved**	Authorization for the Fairfax-Falls Church Community Services Board to Apply for and Accept Grant Funding from the Department of Justice, Office of Justice Programs, Bureau of Justice Assistance for an Adult Drug Court Discretionary Grant
6	**Approved**	Authorization for the Fairfax-Falls Church Community Services Board to Apply for and Accept Grant Funding from the Department of Justice, Office of Justice Programs, Bureau of Justice Assistance for a Justice and Mental Health Collaboration Program Grant

FAIRFAX COUNTY
BOARD OF SUPERVISORS
June 5, 2018

ACTION ITEMS

1	**Approved**	Approval of the Project Agreement Between the Virginia Department of Rail and Public Transportation (DRPT) and Fairfax County for Fiscal Year (FY) 2018 Funding for the I-95 Transit and Transportation Demand Management Plan Operating Assistance (Lee, Mason and Mount Vernon Districts)
2	**Approved**	Approval of a Project Administration Agreement with the City of Fairfax, and George Mason University for the Implementation of a Bikeshare Feasibility Study (Providence, and Braddock Districts)
3	**Approved**	Approval of a Memorandum of Understanding (MOU) Between Fairfax County and the Town of Vienna Authorizing Fairfax County to Bill and Collect Local Current and Delinquent Registration Fees
4	**Approved**	Approval of a Parking Reduction for the Signet Property (Dranesville District)
5	**Approved**	Approval of an Agreement Between the Commonwealth of Virginia, Department of Transportation and Fairfax County for the Utilization of Congestion Mitigation and Air Quality Funds for Fiscal Year 2019 Transportation Demand Management Programs

INFORMATION ITEMS

1	**Noted**	Planning Commission Action on Application 2232-M17-43 – County Board of Arlington County, Virginia
2	**Noted**	Contract Award – Engineering Services RFP 2000002432
10:10	**Done**	Matters Presented by Board Members
11:00	**Done**	Closed Session

PUBLIC HEARINGS

3:30	**Approved**	Decision Only on RZ 2017-SP-029 (Christopher Land, LLC) (Springfield District)

FAIRFAX COUNTY
BOARD OF SUPERVISORS
June 5, 2018

	PUBLIC HEARINGS (Continued)	
3:30	**Public hearing deferred to 7/10/18 at 3:30 p.m.**	Public Hearing on PCA 1996-LE-047 (HD Development of Maryland, Inc.) (Lee District)
3:30	**Approved**	Public Hearing on PCA 1999-PR-060 (Rocks Tysons Two LLC) (Providence District)
3:30	**Public hearing deferred to 7/10/18 at 4:00 p.m.**	Public Hearing on SEA 99-P-046-02 (Flint Hill School) (Providence District)
3:30	**Public hearing deferred to 7/10/18 at 4:00 p.m.**	Public Hearing on SEA 84-P-105-04 (Flint Hill School) (Providence District)
3:30	**Approved**	Public Hearing on RZ 2017-PR-031 (Sunrise Development, Inc. and J127 Education Foundation D/B/A Merritt Academy) (Providence District)
3:30	**Approved**	Public Hearing on SEA 86-P-101-06 (Sunrise Development, Inc. and J127 Education Foundation D/B/A Merritt Academy) (Providence District)
4:00	**Approved**	Public Hearing on PCA 82-S-032-02 (Sterling Center LC) (Sully District)
4:00	**Approved**	Public Hearing on RZ 2017-MD-027 (Horsepen Run, LLC) (Dranesville and Sully Districts)
4:00	**Approved**	Public Hearing on SE 2017-MA-032 (Shirley Investors, LLC) (Mason District)
4:00	**Approved with amendment**	Public Hearing on a Proposed Zoning Ordinance Amendment Re: Articles 8, 10, 18, and Appendix 2 – Minimum Required Rear Yard Coverage Limitations for Single-Family Detached Dwellings

R E V I S E D

Fairfax County, Virginia

BOARD OF SUPERVISORS AGENDA

Tuesday
June 5, 2018

9:30 a.m.

PRESENTATIONS

Presentation of the Colors by the U.S. Army Continental Color Guard
and an element of the Old Guard Fife and Drum Corps

- PROCLAMATION – To designate June 9-16, 2018, as Army Week in Fairfax County. Requested by Chairman Bulova.

- CERTIFICATE – To recognize the Lord and Lady Fairfax honorees. Requested by Chairman Bulova.

- PROCLAMATION – To designate June 1-7, 2018, as CPR and AED Awareness Week in Fairfax County. Requested by Chairman Bulova.

- CERTIFICATE – To recognize the Fairfax Falcons Junior Prep Wheelchair Basketball Team for its performance at the National Wheelchair Basketball Association championships. Requested by Supervisor Cook.

— more —

Board Agenda Item
June 5, 2018

- PROCLAMATION – To designate June 2018 as Lesbian, Gay, Bisexual and Transgender Pride Month in Fairfax County. Requested by Chairman Bulova and Supervisor Foust.

- CERTIFICATE – To recognize the South County High School Boys Varsity Basketball team for winning its first state championship. Requested by Supervisors Storck and Herrity.

- CERTIFICATE – To recognize the winners of the "Shark Tank" Technology Challenge. Requested by Supervisor Herrity.

- RESOLUTION – To recognize the MVLE, also known as the Mount Vernon-Lee Enterprise, for its 45th anniversary. Requested by Supervisors McKay and Storck.

- PROCLAMATION – To designate June 2018 as Fatherhood Awareness Month in Fairfax County. Requested by Supervisor Hudgins.

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

Board Agenda Item
June 5, 2018

10:00 a.m.

Items Presented by the County Executive

Board Agenda Item
June 5, 2018

ADMINISTRATIVE - 1

Authorization to Advertise a Public Hearing to Consider Adopting an Ordinance Expanding the Herndon Residential Permit Parking District, District 26 (Dranesville District)

ISSUE:
Board authorization to advertise a public hearing to consider a proposed amendment to Appendix G of *The Code of the County of Fairfax, Virginia* (Fairfax County Code), to expand the Herndon Residential Permit Parking District (RPPD), District 26.

RECOMMENDATION:
The County Executive recommends that the Board authorize advertisement of a public hearing.

TIMING:
The Board should take action on June 5, 2018, to advertise a public hearing for July 10, 2018, at 4:00 p.m.

BACKGROUND:
Section 82-5A-4(a) of *The Code of the County of Fairfax, Virginia*, authorizes the Board to establish RPPD restrictions encompassing an area within 2,000 feet walking distance from the pedestrian entrances and/or 1,000 feet from the property boundaries of an existing or proposed high school, existing or proposed rail station, or existing Virginia college or university campus if: (1) the Board receives a petition requesting the establishment or expansion of such a District, (2) such petition contains signatures representing at least 60 percent of the eligible addresses of the proposed District and representing more than 50 percent of the eligible addresses on each block face of the proposed District, and (3) the Board determines that 75 percent of the land abutting each block within the proposed District is developed residential. In addition, an application fee of $10 per address is required for the establishment or expansion of an RPPD.

Staff has verified that the petitioning block is within 1,000 feet from the property boundary of Herndon High School, and all other requirements to expand the RPPD have been met.

FISCAL IMPACT:
The cost of sign installation is estimated to be $200. It will be paid from Fairfax County Department of Transportation funds.

ENCLOSED DOCUMENTS:
Attachment I: Proposed Amendment to the Fairfax County Code
Attachment II: Map Depicting Proposed Limits of RPPD Expansion

STAFF:
Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Eric Teitelman, Chief, Capital Projects and Traffic Engineering Division, FCDOT
Neil Freschman, Chief, Traffic Engineering Section, FCDOT
Henri Stein McCartney, Sr. Transportation Planner, FCDOT
Charisse Padilla, Transportation Planner, FCDOT

ASSIGNED COUNCIL:
F. Hayden Codding, Assistant County Attorney

Attachment I

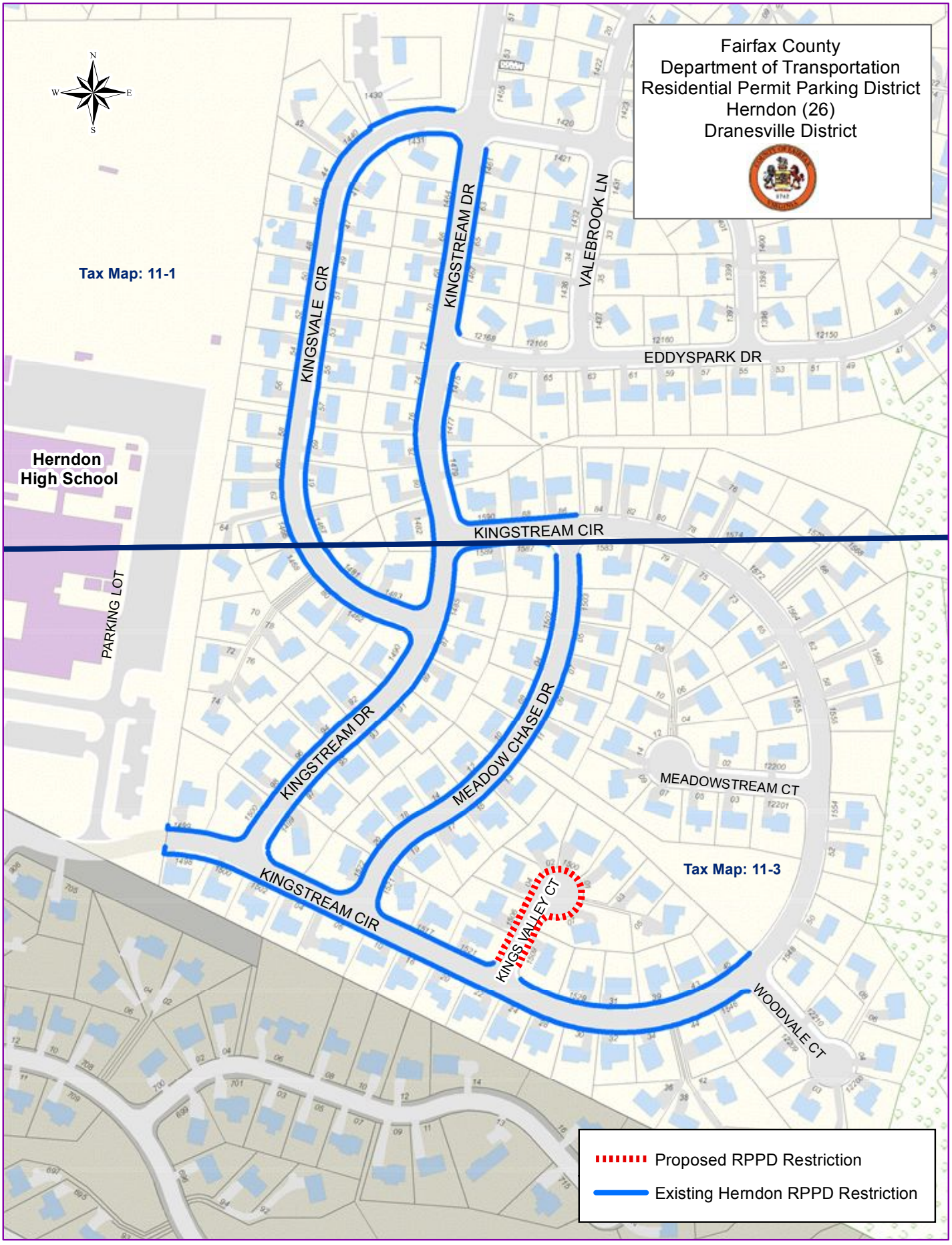
Proposed Amendment

Amend *The Code of the County of Fairfax*, *Virginia*, by adding the following streets in Appendix G-26, Section (b), (2), Herndon Residential Permit Parking District, in accordance with Article 5A of Chapter 82:

Kings Valley Court (Route 10369):

From Kingstream Circle to the cul-de-sac inclusive

Attachment II



Board Agenda Item
June 5, 2018

ADMINISTRATIVE – 2

Streets into the Secondary System (Sully and Hunter Mill Districts)

ISSUE:
Board approval of streets to be accepted into the State Secondary System.

RECOMMENDATION:
The County Executive recommends that the street(s) listed below be added to the State Secondary System.

Subdivision	**District**	**Street**
Fidelio Properties-Dulles Business Park (Centerview Drive)	Sully	Centerview Drive
Oak Hill Manors	Hunter Mill	Netherleigh Place

TIMING:
Routine

BACKGROUND:
Inspection has been made of these streets, and they are recommended for acceptance into the State Secondary System.

FISCAL IMPACT:
None.

ENCLOSED DOCUMENTS:
Attachment 1 – Street Acceptance Forms

STAFF:
Robert A. Stalzer, Deputy County Executive
William D. Hicks, P.E., Director, Land Development Services

Attachment 1

Print Form

Street Acceptance Form For Board Of Supervisors Resolution - June 2005

FAIRFAX COUNTY BOARD OF SUPERVISORS **FAIRFAX, VA** **Pursuant to the request to inspect certain streets in the subdivisions as described, the Virginia Department of Transportation has made inspections, and recommends that same be included in the secondary system.**	**VIRGINIA DEPARTMENT OF TRANSPORTATION - OFFICE OF THE ENGINEERING MANAGER, FAIRFAX, VIRGINIA** REQUEST TO THE ENGINEERING MANAGER, FOR INCLUSION OF CERTAIN SUBDIVISION STREETS INTO THE STATE OF VIRGINIA SECONDARY ROAD SYSTEM. **PLAN NUMBER:** 5611-SP-20 **SUBDIVISION PLAT NAME:** Fidelio Properties - Dulles Business Park (Centerview Drive) **COUNTY MAGISTERIAL DISTRICT:** Sully
ENGINEERING MANAGER: Houda A. Ali, PMP **BY:** Houda Alphonse	**FOR OFFICIAL USE ONLY** **DATE OF VDOT INSPECTION APPROVAL:** 04/11/2018

STREET NAME	LOCATION		LENGTH MILE
	FROM	TO	
Centerview Drive	Existing Centerview Drive - 1,247' N CL Skyhawk Drive (Route 7679)	780' N to Existing Centerview Drive	0.15
NOTES:		**TOTALS:**	0.15

4' Concrete Sidewalk on the North Side to be maintained by VDOT.

Print Form

Street Acceptance Form For Board Of Supervisors Resolution - June 2005

FAIRFAX COUNTY BOARD OF SUPERVISORS
FAIRFAX, VA

Pursuant to the request to inspect certain streets in the subdivisions as described, the Virginia Department of Transportation has made inspections, and recommends that same be included in the secondary system.

VIRGINIA DEPARTMENT OF TRANSPORTATION - OFFICE OF THE ENGINEERING MANAGER, FAIRFAX, VIRGINIA

REQUEST TO THE ENGINEERING MANAGER, FOR INCLUSION OF CERTAIN SUBDIVISION STREETS INTO THE STATE OF VIRGINIA SECONDARY ROAD SYSTEM.

PLAN NUMBER: 1851-SD-01

SUBDIVISION PLAT NAME: Oak Hill Manors

COUNTY MAGISTERIAL DISTRICT: Hunter Mill

ENGINEERING MANAGER: Houda A. Ali, PMP

BY: Nadia Alkhamis

FOR OFFICIAL USE ONLY

DATE OF VDOT INSPECTION APPROVAL: 03/15/2018

STREET NAME	LOCATION		LENGTH MILE
	FROM	TO	
Netherleigh Place	Existing Netherleigh Place - 154' SE CL Oak Farms Drive (Route 8825)	934' NE to CL Oak Shadow Drive (Route 8941)	0.18
		TOTALS:	0.18

NOTES:

5' Concrete Sidewalk on Both Sides to be maintained by VDOT.

Board Agenda Item
June 5, 2018

ADMINISTRATIVE – 3

Extension of Review Period for 2232 Applications (Sully, Lee and Braddock Districts)

ISSUE:
Extension of review period for 2232 applications 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 applications: 2232-Y17-42, FS-L18-1, and FSA-B01-12-2.

TIMING:
Board action is required on June 5, 2018, to extend the review period of the applications noted above before their 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." Subsection F of *Section* 15.2-2232 of the *Code of Virginia* states: "Failure of the commission to act on any such application for a telecommunications facility under subsection A submitted on or after July 1, 1998, within 90 days of such submission shall be deemed approval of the application by the commission unless the governing body has authorized an extension of time for consideration or the applicant has agreed to an extension of time. The governing body may extend the time required for action by the local commission by no more than 60 additional days. If the commission has not acted on the application by the end of the extension, or by the end of such longer period as may be agreed to by the applicant, the application is deemed approved by the commission." 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 applications should be extended:

2232-Y17-42	Fairfax County Park Authority Ellanor C. Lawrence Park 5040 Walney Road Chantilly, VA Sully District Accepted April 17, 2018 Extend to May 16, 2019
FS-L18-1	AT&T 6551 Loisdale Court Springfield, VA Lee District Accepted March 13, 2018 Extend to August 10, 2018
FSA-B01-12-2	Sprint 8996 Burke Lake Road Burke, VA Braddock District Accepted March 16, 2018 Extend to August 13, 2018

FISCAL IMPACT:
None.

ENCLOSED DOCUMENTS:
None.

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

Board Agenda Item
June 5, 2018

ADMINISTRATIVE - 4

Authorization to Advertise a Public Hearing to Amend Articles 2 and 3 of Chapter 3 of the Code of the County of Fairfax Re: Employees' and Uniformed Retirement Systems – Elimination of the Social Security Offset to Service-Connected Disability Benefits

ISSUE:
Authorization to advertise a public hearing to amend Articles 2 and 3 of Chapter 3 of the Code of the County of Fairfax, County Employees. These changes to the Employees' and Uniformed Retirement Systems revise service-connected disability retirement benefits by eliminating the 5% reduction of Social Security benefits.

RECOMMENDATION:
The County Executive recommends that the Board authorize advertisement of a public hearing regarding amendments to the Employees' and Uniformed Retirement Systems for the purpose of changing the level of service-connected disability benefits. The Boards of Trustees for the Employees' and Uniformed Retirement Systems were advised of and agreed with these recommended changes.

TIMING:
Board action is requested on June 5, 2018, to provide sufficient time to advertise the proposed public hearing on July 10, 2018 at 4:00p.m.

BACKGROUND:
As part of the approval of the *FY 2018 Third Quarter Review* and adoption of the FY 2019 budget, the Board approved funding to eliminate the 5% Social Security offset for service-connected disability retirement benefits for both the Employees' and Uniformed Retirement Systems.

The current service-connected disability benefit provisions for the Employees' and Uniformed Retirement Systems are summarized below.

For the Employees' Retirement System: The service-connected disability benefit is two-thirds (66 2/3%) of salary. This benefit is reduced by 5% of Social Security disability benefits received at any age, or, at age 62, by 5% of the age-based Social Security benefit.

For the Uniformed Retirement System: For those retired prior to December 9, 1996, the benefit level is two-thirds (66 2/3%) of salary. If retired after December 8, 1996, there are

two possible levels of benefit. The standard benefit is 40% of salary and a severe service-connected disability benefit is 90% of salary.

All three levels of benefits are offset to some extent by Social Security benefits. There is a 5% offset of disability benefits provided by Social Security. This offset occurs regardless of age unless the Social Security benefit is based on a disability other than that for which the employee was retired. If the retiree is not eligible for Social Security disability benefits and is eligible to receive a Social Security benefit based on age, for those with a 66 2/3% or a 90% benefit, there is a 5% offset of the age-based Social Security benefit that occurs at age 62, the first date of eligibility for Social Security benefits.

Benefits in both Systems are also offset by any workers' compensation benefits that are being received.

Proposed Revisions
The proposed amendments would enhance service-connected disability retirement benefits by eliminating the Social Security offsets, currently 5%, effective with the July 2018 retiree payroll.

FISCAL IMPACT:
Based on the final actuarial analysis, elimination of the 5% offset provisions would increase the liability of the Employees' and Uniformed Retirement Systems by a total of $1.5 million due to applying new provisions to past years of service. As required by the revised funding provisions adopted into the Fairfax County Code by the Board on July 28, 2015, this increase in liability must be fully funded with a one-time employer contribution to avoid creation of any unfunded liability. Total funding of $1.5 million was approved by the Board as part of the *FY 2018 Third Quarter Review* to address this one-time funding requirement based on preliminary actuarial estimates. In accordance with the Fairfax County Code, these increases to the employer contribution rates will be effective beginning in FY 2019. No increase in the employer contribution rates is necessary for FY 2019.

ENCLOSED DOCUMENTS:
Attachment 1: Amendment to Chapter 3, Article 2
Attachment 2: Amendment to Chapter 3, Article 3
Attachment 3: Cheiron Letter

STAFF:
Joseph Mondoro, Chief Financial Officer
Jeffrey Weiler, Executive Director, Fairfax County Retirement Systems

ASSIGNED COUNSEL:
Benjamin R. Jacewicz, Assistant County Attorney

ARTICLE 2. - Fairfax County Employees' Retirement System. [1]

Footnotes:

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7. Editor's note— Ord. No. 20-81-3 amended Art. 2 to read as set forth in §§ 3-2-1—~~3-2-51~~3-2-50. Formerly, Art. 2 consisted of §§ 3-2-1—~~3-2-48~~3-2-47, and was derived from the following legislation:

Ord. Nos. 6-15-55, §§ 1—20, 22—40; 5-8-63; 6-23-65; and 10-21-70; 1961 code, §§ 9-22—9-68; and Ord. No. 10-74-9.

Division 1. - Generally.

Section 3-2-1. - Fairfax County Employees' Retirement System established.

Under the authority of Section 51.1-801 of the *Virginia Code,* there is hereby established a retirement system for employees, formerly known as the Fairfax County Supplemental Retirement System, to be known henceforth as the "Fairfax County Employees' Retirement System," by and in which name it shall, pursuant to the provisions of this Article, transact all of the System's business. The Fairfax County Employees' Retirement System is intended to satisfy the requirements of Sections 401(a) and 414(d) of the Internal Revenue Code for qualified governmental pension plans. (20-81-3; 10-01-3; 50-13-3; 2-16-3.)

Section 3-2-2. - Definitions.

Unless provided otherwise in another Section, the following definitions shall apply to this Article:

(a) *Accrued sick leave credit* shall mean:

(1) For employees whose County or School Board employment commenced by reporting for work before January 1, 2013 (members of Plans A or B), the credit allowed a member with more than five years of service for purposes of determining retirement eligibility. Credit shall be allowed at the rate of one month for every 172 hours of accrued unused sick leave, and pro rata credit shall be allowed for each fraction thereof.

(2) For employees whose County or School Board employment commenced by reporting for work on or after January 1, 2013 (members of Plans C or D), the credit allowed a member with more than five years of service for purposes of determining retirement eligibility. Credit shall be allowed at the rate of one month for every 172 hours of accrued unused sick leave, and pro rata credit shall be allowed for each fraction thereof; however, for employees whose County or School Board employment commenced by reporting to work on or after January 1, 2013, notwithstanding the amount of the employee's accrued sick leave balance, the maximum amount of accrued sick leave credit that may be used for determining retirement eligibility and for computing the member's retirement allowances and benefits shall be the employee's accrued sick leave balance or 2,080 hours, whichever is less.

(b) *Accumulated contributions* shall mean the sum of all amounts deducted or picked up from the compensation of a member and credited to his or her individual account in the members' contribution account, any amounts transferred from another retirement plan pursuant to Section 3-2-24.1, together with interest credited on such amounts and any other amounts he or she shall have contributed, or transferred thereto, as provided in Section 3-2-28(c).

(c) *Actuarial equivalent* shall mean a benefit of equal value when computed upon the basis of such actuarial tables as are adopted by the Board.

(d) *Average final compensation* shall mean the average annual creditable compensation of a member during the 36 consecutive months (78 consecutive pay periods for members who are paid on a biweekly basis) in which the member received his or her highest creditable compensation.

(1) In the event that a member's creditable service is less than 36 months (78 pay periods), his or her average final compensation shall be his or her average monthly creditable compensation received during the entire period of creditable service multiplied by 12 (average biweekly creditable compensation multiplied by 26 for biweekly paid members).

(2) In determining average final compensation for members who retire after July 1, 1988, the member's accrued unused sick leave at the time of retirement may, at the option of the member, be substituted for an equivalent period of creditable service as if the member had continued to work at his or her final salary during the period of his or her accrued unused sick leave; provided, that in determining the average final compensation for members who became members of the System on or after January 1, 2013 (members of Plans C or D), no more than 2,080 hours of the member's accrued unused sick leave may be used for this purpose.

(3) For purposes of computing a service-connected disability retirement allowance under Section 3-2-36, a member's average final compensation shall be computed as if a member had received compensation (including salary increases which the Board determines would have been awarded to the member) for any period prior to retirement during which the member ceased employment on account of a disability for which he or she received compensation benefits under the Virginia Workers' Compensation Act.

(4) Notwithstanding the foregoing, whenever the Director of the Department of Human Resources, at the request of the Board, the member, or the member's beneficiary, determines that the member's receipt of a merit increment was delayed as a result of either or both of the amendments to Section 4.3-2 of the Personnel Regulations, effective July 13, 1991, and July 11, 1992, respectively, and that the member would otherwise have been entitled to such merit increment under the Personnel Regulations, based upon the Human Resources Director's review of the member's County personnel and payroll records, the Board shall calculate the member's average final compensation in a manner which approximates the average final compensation the member would have if the member had received the merit increment at the time he or she would have been entitled to receive such merit increment but for the aforesaid amendments to Section 4.3-2 of the Personnel Regulations. In performing such calculation, the Board shall utilize the following assumptions:

(A) If the employee was scheduled to receive a merit increment in fiscal years 1992 and/or 1993, then it was delayed.

(B) The employee received no promotions, demotions, reclassifications or regrades from the date of the delayed merit increment(s).

(C) The employee moved through the steps of the pay grade as quickly as possible according to his or her respective pay plan.

(D) The delayed merit increments and all future merit increments occurred on the day and the month which is the same day and month when the employee retires.

(E) The employee is in full employment each year if in full employment at the time of the delayed merit increment and also at the time of retirement.

A factor shall be derived utilizing these assumptions, and then used to calculate the increase, if any, in the member's final average compensation. If at the time of retirement, the employee has service credit for three years or more at the longevity step of the pay grade in which his or her position falls, then there shall be no adjustment to the member's average final compensation. This rule shall apply to all applications for allowances and benefits filed with the Board on or after July 13, 1991. The Board shall make any necessary retroactive adjustments to allowances and benefits.

(5) Notwithstanding the foregoing, in the case of any SESRP member, creditable compensation for each year after the effective date of the agreement referenced in Subsection (cc) shall equal 1.05634 times the SESRP member's unadjusted compensation.

(6) Periods of leave without pay under the federal Family and Medical Leave Act of 1993 (FMLA) shall be disregarded in determining periods of consecutive months or pay periods in calculating average final compensation.

(e) *Beneficiary* shall mean any person, other than a member, entitled to receive benefits as provided by the System. The Board shall provide a member with a form on which to designate in writing one or more beneficiaries of the member's benefits upon the member's death. The Board shall maintain any such written designation on file. A designated beneficiary may be changed from time to time by written notice by the member filed with the Board.

(f) *Board* shall mean the Board of Trustees of the System, as provided for in this Article.

(g) *Creditable compensation* shall mean the full compensation, including pick-up contributions, holiday hours worked, administrative emergency leave worked, shift differential paid and civilian roll call hours paid, but excluding all overtime pay except roll call hours paid, earned on or after July 1, 1993, and excluding performance bonuses, and amounts paid upon separation from employment which represent the unused portion of the employee's accrued annual leave. In cases where the compensation includes maintenance and other prerequisites, the Board shall fix the value of that portion of the compensation not paid in money. Effective for plan years after December 31, 1988, compensation in excess of $200,000.00, as indexed under Section 415(d) of the Internal Revenue Code, shall be disregarded. Notwithstanding the foregoing, effective for members whose County or School Board employment commenced by reporting for work on or after July 1, 1996, compensation in excess of the limit set forth in Section 401(a)(17) of the Internal Revenue Code shall be disregarded. In determining the compensation of an employee under this definition, the rules of Section 415(c)(3) of the Internal Revenue Code shall apply. Effective for plan years on or after January 1, 2001, an employee's compensation shall include amounts not includible in gross income by reason of Section 132(f)(4) of the Internal Revenue Code.

(h) *Creditable service* shall mean the sum of membership service credit, plus prior service credit, plus portability service credit purchased pursuant to Section 3-2-24.1, plus accrued sick leave credit.

(i) *DROP* shall mean the Deferred Retirement Option Program, as provided for by Section ~~3-2-57~~3-2-56.

(j) *Employee* shall mean any person regularly employed in rendering service to the County whose compensation is fully or partially paid directly or indirectly by the County. It shall also include all officers and other persons regularly employed by the School Board who are not eligible for membership in the Virginia Retirement System (VRS).

(k) *Employer* shall mean the School Board or an authority in the general County having the power to appoint an employee to office or employment paid directly or indirectly by the County and/or the Board of Trustees of the System.

(l) *Executive Director* shall mean the Executive Director of the Fairfax County Retirement Administration Agency.

(m) *Internal Revenue Code* shall mean the federal income tax statutes, as they may be amended or superseded from time to time in the future.

(n) *Medical Examining Board* shall mean the physician or physicians provided for by Section 3-2-9.

(o) *Member* shall mean any person included in the membership of the System as provided for by Section 3-2-19.

(p) *Membership service credit* shall mean credit for service rendered while a member of the System, or as otherwise provided in Section 3-2-23. Service rendered while a member of SESRP shall be treated without duplication as service rendered while a member of the System.

(q) *Normal retirement date* shall mean:

(1) For employees whose County or School Board employment commenced by reporting for work before January 1, 2013 (members of Plans A and B),

(A) The date on which a member in service attains the age of 50 years, provided said member's age while in service, combined with the years of his or her creditable service, equals at least the sum of 80 years; or

(B) The date on which a member attains the age of 65 years.

(2) For employees whose County or School Board employment commenced by reporting for work on or after January 1, 2013 (members of Plans C and D),

(A) The date on which a member in service attains the age of 55 years, provided age while in service, combined with the years of his or her creditable service, equals at least the sum of 85 years; or

(B) The date on which a member attains the age of 65 years.

(r) *Pick-up contributions* shall mean a member's regular contributions which is picked up, through a salary reduction by the County from the member's compensation for service rendered on or after December 22, 1984.

(s) *Plan A* shall mean the option effective July 1, 1981, available to employees whose County or School Board employment commenced by reporting for work on or before December 31, 2012, providing for current and new members to:

(1) Contribute four percent of compensation up to the taxable wage base and five and one-third percent of compensation in excess of the taxable wage base; and

(2) Receive normal (and early) service retirement benefits based on one and eight-tenths percent of average final compensation up to the social security breakpoint plus two percent of average final compensation in excess of the social security breakpoint times years of service.

(t) *Plan B* shall mean the option effective July 1, 1981, available to employees whose County or School Board employment commenced by reporting for work on or before December 31, 2012, providing for current and new members to:

(1) Contribute five and one-third percent of all compensation; and

(2) Receive normal (and early) service retirement benefits based on two percent of the average final compensation times years of service.

(u) *Plan C* shall mean the option effective beginning on January 1, 2013, providing for current and new members to:

(1) Contribute four percent of compensation up to the taxable wage base and five and one-third percent of compensation in excess of the taxable wage base; and

(2) Receive normal (and early) service retirement benefits based on one and eight-tenths percent of average final compensation up to the social security breakpoint plus two percent of average final compensation in excess of the social security breakpoint times years of service; subject to the definitions, terms and conditions applicable to Plan C set forth herein.

(v) *Plan D* shall mean the option effective beginning on January 1, 2013, providing for current and new members to:

(1) Contribute five and one-third percent of all compensation; and

(2) Receive normal (and early) retirement benefits based on two percent of the average final compensation times years of service; subject to the definitions, terms and conditions applicable to Plan D set forth herein.

(w) *Primary social security benefit* shall mean the primary insurance amount to which the member is entitled, for old age or disability, as the case may be, pursuant to the federal Social Security Act as in effect at his or her date of retirement, under the provisions of this Chapter, except as otherwise specifically provided.

(x) *Prior service credit* shall mean credit for service rendered prior to the establishment of the Fairfax County Supplemental Retirement System (the predecessor of this System) on July 1, 1955, as provided in Section 3-2-24.

(y) *Retirement allowance* shall mean the retirement payments to which a member is entitled as provided in this Article.

(z) *School Board* shall mean the Fairfax County School Board, a political subdivision of the Commonwealth of Virginia.

(aa) *Service* shall mean service as an employee for which compensation is paid by the employer, but shall not include time spent on leave without pay.

(bb) *SESRP* shall mean the former Fairfax County Senior Executive Service Retirement Plan.

(cc) *SESRP member* shall mean an individual who entered into an agreement with the County to participate in SESRP in lieu of further participation in the System and who was either still an active participant in SESRP or still receiving benefits under SESRP on January 1, 1996.

(dd) *Social security* shall mean the federal Social Security Act and its programs for old age, survivors and disability insurance and benefits, as applicable.

(ee) *Social security breakpoint* shall mean the average of the taxable wage base for the 35 calendar years ending with the year in which the member attains social security normal retirement age. In determining a member's social security breakpoint during any particular plan year, it is assumed that the taxable wage in effect at the beginning of the plan year shall remain the same for all future years.

(ff) *System* shall mean the Fairfax County Employees' Retirement System. When any part of this Article refers to multiple retirement systems, the Employees' Retirement System shall be referred to as "this System," rather than "the System."

(gg) *Taxable wage base* shall mean the maximum amount of wages received during the calendar year on which social security taxes are payable by a member and by the employer, as such amount is defined in Section 3121(a) of the Internal Revenue Code. (20-81-3; 5-85-3; 28-89-3; 27-90-3, § 1; 15-93-3; 22-93-3; 37-94-3; 25-95-3; 27-97-3; 14-00-3; 10-01-3; 18-01-3; 8-03-3; 8-04-3; 26-12-3; 2-16-3.)

Section 3-2-2.1. - Definitions elsewhere in County Code and in County Personnel Regulations.

Unless this Article provides otherwise, the definitions provided in Sections 1-1-2, 3-3-1, and 3-3-12 of the Code of the County of Fairfax, and Chapter 2 of the Fairfax County Personnel Regulations shall apply herein.(2-16-3.)

Section 3-2-3. - Duties of the employer.

The employer shall keep all necessary records relating to the hiring and employment of members and from time to time shall furnish such information as the Board may require in the discharge of its duties. Upon employment of a member, the employer shall inform the member of his or her duties and obligations in connection with the System as a condition of employment. (20-81-3; 2-16-3.)

Section 3-2-4. - Consent to provisions of Article required for employment.

By and upon acceptance of employment, every member shall be deemed to consent and agree to any deductions or employer pick-up of amounts from his or her compensation required by this Article and to all other provisions thereof. (20-81-3; 5-85-3; 2-16-3.)

Section 3-2-5. - Protection against fraud.

(a) In addition to any other provisions of law, any person who shall knowingly make any false statement, or shall falsify or permit to be falsified, any record or records of the System in any attempt to defraud the System shall be guilty of a misdemeanor and shall be punished accordingly.

(b) Any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of the System in an attempt to defraud the System shall forfeit all rights to the retirement allowance or benefit obtained by such misrepresentation. Making a false statement or falsifying or permitting to be falsified any record of the System, in an attempt to defraud the System shall constitute grounds for dismissal from service.

(c) Whenever the Board shall find, after notice and hearing, that a person has obtained a retirement allowance or benefit from the System by false statement or falsification of record, it shall immediately terminate the allowance or benefit if the entire allowance or benefit was obtained by such misrepresentation or the additional amount of the allowance or benefit so obtained by such misrepresentation. Any allowance or benefit or additional amount of an allowance or benefit obtained by false statement or falsification of a record shall be deemed to be an overpayment, and the Board shall take all necessary legal and administrative steps to recover the overpayment.

(d) The Board shall adopt rules and regulations pursuant to Section 3-2-15 to implement the provisions of this Section; provided, that the failure of the Board to do so shall not prevent the implementation of the sanctions called for by this Section. A final judgment of conviction by a court of competent jurisdiction in a prosecution under Subsection (a) of this Section shall be prima facie evidence of fraud under Subsections (b) and (c) of this Section; provided, that a conviction under Subsection (a) of this Section shall not be a prerequisite for action by the Board under Subsections (b) or (c) of this Section. The remedies provided the System under this Section are in addition and supplemental to any other remedies it may have under law. (20-81-3; 27-90-3, §1; 2-16-3.)

Section 3-2-6. - Benefits unassignable; non-attachable.

The right of any member to a retirement allowance, to the return of accumulated contributions or any other right accrued or accruing to any person under this Article and the money covered by this Article shall not be subject to execution, garnishment or attachment, and to the extent permitted by law, the operation of bankruptcy or insolvency law or any other process of law whatsoever except for administrative actions pursuant to Section 63.2-1900 et seq. of the *Virginia Code* or any court process to enforce a child or child and spousal support obligation, and shall be unassignable except as specifically provided in this Article. However, retirement benefits and assets created under this Article which are deemed to be marital property pursuant to Section 20-89.1 et seq. of the *Virginia Code* may be divided or transferred by the court by direct assignment to a spouse or former spouse pursuant to Section 20-107.3 of the *Virginia Code.* (20-81-3; 5-85-3; 13-92-3; 1-93-3; 2-16-3.)

Section 3-2-7. - Errors resulting in over or under-payment.

(a) Should any change or error in the records or in the computation of a member's or beneficiary's benefit or refund result in any member or beneficiary receiving from the System an amount more (overpayment) or less than he or she would have been entitled to receive had the records or computation error been correct, the Board shall have the power to correct such error and, as far as practicable, to adjust the payments in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid.

(b) An overpayment shall constitute a debt owed by the recipient to the System and the Board is authorized to use any and all legal action to collect the overpayment and any accrued interest.

(c) The Board is authorized to enter into written agreements with recipients of overpayments to provide for installment payments to recover the overpayment, the amount of accrued interest, and interest on any unpaid balance.

(d) The Board is authorized to compromise any disputed overpayment.

(e) Interest shall accrue on overpayments at the rate or rates established by the Board; provided, that no interest shall accrue if the Board has exercised its adjustment authority under Subsection (a) of this Section or under any other circumstances in which the Board, in its discretion, determines that interest shall not accrue. (20-81-3; 27-90-3, § 1; 2-16-3.)

Section 3-2-8. - Amendment of article.

The Board of Supervisors shall have the continuing right and power to amend or supplement this Article at any time, which right and power is hereby expressly reserved. But no amendment shall be made unless an actuarial report has been filed with the Board of Supervisors as to its effect upon the System and no amendment shall be adopted which shall reduce the then accrued benefits of members or beneficiaries below the extent they are then covered by accumulated reserves, which reserves shall constitute a trust fund for the payment of such benefits. At least 30 days prior to the public hearing before the Board of Supervisors on any proposed amendment, the Board of Trustees of the System shall be provided with the

text of the proposed amendment to provide it the opportunity to submit its comments on the proposed amendment to the Board of Supervisors; provided, this limitation shall not prevent the Board of Supervisors from adopting an emergency amendment under Section 15.2-504 of the *Virginia Code.* (20-81-3; 27-90-3, § 1; 2-16-3.)

Section 3-2-9. - Medical examining board.

The Medical Examining Board shall consist of the Director of the Health Department (or his or her designee) and, in the discretion of the Board, one or two other physicians designated by the Board. The duties of the Medical Examining Board shall be to arrange for and pass upon all medical examinations required under this Article or requested by the Board and to investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement. The members of the Medical Examining Board, who may act individually or collectively, shall report in writing to the Board their conclusions and recommendations upon all matters referred to it. (20-81-3; 27-97-3; 2-16-3.)

Division 2. - Board of Trustees.

Section 3-2-10. - Administration of system vested in Board of Trustees.

The general administration and the responsibility for the proper operation of the System and for making effective the provisions of this Article are hereby vested in the Board. The Board in its discretion, may, by rule or regulation adopted under Section 3-2-15(a), delegate authority to the Executive Director to perform certain duties and administrative responsibilities. (20-81-3; 27-90-3, § 12-16-3.)

Section 3-2-11. - Membership; term of office.

(a) The Board of Trustees of the System shall consist of the following members:

- Director of the Department of Finance, who shall be the Treasurer of the Board, or his or her permanent designee, sitting ex officio;
- Director of the Department of Human Resources, or his or her permanent designee, sitting ex officio;
- Assistant Superintendent for Human Resources for the Fairfax County Public Schools, or his or her permanent designee, sitting ex officio;
- Four persons appointed by the Board of Supervisors;
- One School Board employee elected by the members of the System;
- One County employee elected by members of the System who are County employees; and
- One retired member elected by retired members of the System.

Responsibility for the conduct of said elections shall rest with the County Executive.

(b) With the exception of the Director of the Department of Finance, the Director of the Department of Human Resources, and the Assistant Superintendent for Human Resources the term of office of the trustees shall be four years. The only persons eligible to be elected by County or School Board employees to the Board are County or School Board employees who are members of the System, respectively. The office of such trustees shall be vacated should such trustees separate from County or School Board service prior to completion of their term. (20-81-3; 27-90-3, § 1; 9-91-3; 2-93-3; 2-16-3.)

Section 3-2-12. - Vacancies in office.

If a vacancy occurs in the office of a trustee of the System, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled. (20-81-3; 2-16-3.)

Section 3-2-13. - Compensation of trustees.

Those trustees eligible for compensation under County policy may receive compensation at a rate set by the Board of Supervisors. (20-81-3; 2-16-3.)

Section 3-2-14. - Accountable to the Board of Supervisors.

The Board of Trustees of the System shall be accountable to the Board of Supervisors. (20-81-3; 2-16-3.)

Section 3-2-15. - Functions of the Board.

(a) Subject to the limitations of this Article, the Board shall, from time to time, establish rules and regulations for the administration of the System and for the transaction of its business, copies of which shall be made available to interested parties.

(b) The Board may employ and pay out of the System funds for all services as shall be required.

(c) The Board shall keep in convenient form such data as shall be necessary for an actuarial valuation of the System and for checking the experience of the System.

(d) The Board shall keep minutes of all its proceedings. These minutes shall be open to the public for inspection, unless applicable law provides otherwise.

(e) The Board shall submit to the Board of Supervisors annually an independent audit showing the fiscal transactions of the System for the preceding fiscal year, the amount of accumulated cash and securities of the System, and the last balance sheet indicating the financial condition of the System.

(f) Beginning on July 1, 1990, the Board shall cause an actuarial valuation to be made of the System annually.

(g) The Board shall review adverse decisions as provided by Section ~~3-2-49~~3-2-48. (20-81-3; 27-90-3, § 1; 2-16-3.)

Division 3. - Management of Funds.

Section 3-2-16. - Board trustee of funds; investment of same.

(a) The Board shall be the trustees of funds created by this Article and shall have full power to invest and re-invest such funds. Such investments and re-investments shall be conducted with bona fide discretion and in accordance with the laws of the Commonwealth of Virginia as such laws apply to fiduciaries investing such funds. The Board may, upon the exercise of bona fide discretion, employ investment counsel, who shall be subject to the same limitations herein provided for the Board. Subject to such limitations, the Board shall have full power to hold, purchase, sell, assign, transfer or otherwise dispose of any of the securities or investments in which any of the funds created herein have been invested, as well as the proceeds of such investments and any money belonging to such funds.

(b) No trustee shall be personally liable for losses suffered by the System on investments made under the authority of and in compliance with this Section. (20-81-3; 2-16-3.)

Section 3-2-17. - Treasurer fiscal officer of the Board.

The Treasurer of the Board shall be the custodian of all of its funds and securities or evidences of such when in the custody of a fiduciary agent. He or she shall give bond as a condition for the faithful performance of his or her duties and the proper accounting of all funds and securities coming into his or her hands. He or she shall deposit all money in the name of the Board and disburse the same only on vouchers signed by such person as is designated for the purpose by the Board. (20-81-3; 2-16-3.)

Section 3-2-18. - Prohibited interest of member or employee of Board.

(a) The State and Local Government Conflict of Interests Act, Section 2.2-3100 et seq., of the *Virginia Code,* shall apply to members and employees of the Board.

(b) No member or employee of the Board shall, directly or indirectly, for himself or herself or as an agent in any manner use the funds of the System, except to make such current and necessary payments as are authorized by the Board. (20-81-3; 2-16-3.)

Division 4. - Membership in System.

Section 3-2-19. - Membership composition.

(a) Membership shall be composed of the following:

(1) All persons who were members of the System on the effective date of this Article and all SESRP members; provided, that benefits under the System in the case of SESRP members shall be in lieu of, and not in addition to, benefits under SESRP.

(2) Future employees as hereinafter identified, except those listed in Subparagraphs (A) and (B) of this Subsection.

(A) Employees who are members of the Virginia Retirement System (VRS) and the Educational Employees' Supplemental Retirement System of Fairfax County (ERFC), the Fairfax County Police Officers Retirement System, or the Fairfax County Uniformed Retirement System and employees who are eligible to become members of those systems, are not eligible for membership in this System; provided, that an employee who is a member of such a system shall be eligible for membership in this System if he or she elects in writing to withdraw from such system, pursuant to the rules and regulations of this System and of the system of which he or she was previously a member. If the withdrawal from the other system occurs due to being employed in a different position by the same appointing authority, the employee shall be required to purchase service credit under this System for service rendered while a member of such other system, pursuant to the rules of Section 3-2-23.

If the withdrawal from the other system occurs due to being employed by a different appointing authority, the employee shall be permitted but not required to purchase service credit under this System for service rendered while a member of such other system, pursuant to the rules of Section 3-2-23. Exempt benefits eligible and exempt temporary employees are not eligible for membership in this System; provided, that any such employee who became a member of this System under the provisions of this Article in effect at the time he or she commenced his or her service with the County shall continue to be a member.

The following employees who elect, in writing at the time of their initial eligibility not to become members of the System, shall be exempted from the System: elected officials, including constitutional officers and persons appointed to fill vacancies in elective offices, and their appointed deputies or assistants.

(B) School Board employees who are members of the Virginia Retirement System (VRS) are not eligible for membership in this System. Substitute employees, food service employees whose assigned employment is less than three hours per day, and temporary employees are not eligible for membership in this System.

(3) Any employee, otherwise qualified, who elected not to or was unable to become a member of the System pursuant to any ordinance then in effect; provided, he or she pays into this System all contributions which would have been due from him or her had he or she been a member of the System during the period of his or her employment, plus interest on such contributions at the rate or rates established by the Board, for each of the years for which membership service credit is sought. Any election to purchase membership service credit under this Subsection through the payment of contributions for a prior period of employment shall be made within one year after the employee is first eligible to make such an election or by six months from the effective date of this amendment [September 17, 1990], whichever is later.

(b) Uniformed employees of the Department of Animal Control transferring to the Fairfax County Uniformed Retirement System.

(1) Members of this System who were uniformed employees of the Department of Animal Control, including the Director, on or after October 1, 1985, except those eligible to remain in this System pursuant to Subsection (d)(2) of this Section, are hereby transferred to membership in the Fairfax County Uniformed Retirement System effective the latter of October 1, 1985, or the date of their appointment.

(2) Those members subject to transfer to the Uniformed Retirement System pursuant to Subsection (d)(1) of this Section who as of the date of adoption of this Subsection [December 16, 1985] have attained normal retirement age under this System shall continue as members of this System unless within 30 days after the adoption of this Subsection they make an irrevocable election in writing to transfer into the Uniformed Retirement System pursuant to this Subsection.

(3) Members of this System being transferred to the Uniformed Retirement System pursuant to this Subsection shall, within 30 days of the adoption of this Subsection [December 16, 1985], make an irrevocable election in writing to either waive membership service credit in the Uniformed Retirement System based upon their service in this System or to purchase membership service credit in the Uniformed Retirement System based on their service in this System pursuant to the provisions of Section 3-3-24. Members who fail to make an election shall be deemed to have elected to waive membership service credit.

(4) Members with five or more creditable years of service with this System who elected to waive membership service credit in the Uniformed Retirement System pursuant to Subsection (d)(3) of this Section shall make at the same time an irrevocable election in writing whether to receive a refund of their accumulated contributions (with interest), reduced by the amount of any retirement allowances previously received by them under this Article, or to receive a deferred vested benefit from this System mutatis mutandis, under Section 3-2-38(b). Members who fail to make an election shall be deemed to have elected a refund. Members with less than five years of creditable service with this System who elect to waive membership service credit in the Uniformed Retirement System pursuant to Subsection (d)(3) of this Section shall be refunded their accumulated contributions (with interest) reduced by the amount of any retirement allowances previously received by them under this Article.

(5) With respect to each member electing to purchase membership service credit in the Uniformed Retirement System pursuant to Subsection (d)(3) of this Section, the Board shall transfer the funds in the member's contribution account as well as those funds in the retirement allowance account attributable to the member's service to the Board of Trustees of the Uniformed Retirement System, who shall credit such funds to the appropriate accounts of the Uniformed Retirement System.

(6) The Board shall transfer to the Board of Trustees of the Uniformed Retirement System any employee or employer contributions received by it attributable to members transferring to the Uniformed Retirement System pursuant to Subsection (d)(1) or (2) of this Section for service rendered after the effective date of the members' transfer. The Board of Trustees of the Uniformed Retirement System shall credit such funds to the appropriate accounts of the Uniformed Retirement System.

(c) Certain employees of the Public Safety Communications Center in the job classes of Public Safety Communications Squad Supervisor, Public Safety Communications Assistant Squad Supervisor, Public Safety Communicator III, Public Safety Communicator II, or Public Safety Communicator I transferring to the Fairfax County Uniformed Retirement System.

(1) Members of this System who are in one of the job classes identified in this Subsection, on or before June 30, 2005, shall have the opportunity to transfer to membership in the Fairfax County Uniformed Retirement System, effective the start of the first pay period beginning on or about October 1, 2005.

(2) Members of this System who are eligible for transfer to the Uniformed Retirement System pursuant to Subsection (e)(1) of this Section may elect to maintain their membership in this System and not transfer to the Uniformed Retirement System.

(3) Members of this System who are eligible for transfer to the Uniformed Retirement System pursuant to Subsection (e)(1) of this Section and elect to do so, shall, after the adoption of Subsection (e) of this Section, on or before September 1, 2005, make an irrevocable election in writing to transfer to the Uniformed Retirement System. Members electing to transfer to the Uniformed Retirement System may elect to transfer to the Uniformed Retirement System but not purchase membership service credit in the Uniformed Retirement System based upon their service in this System, or may elect to purchase membership service credit in the Uniformed Retirement System based on their service in this System pursuant to the provisions of Section 3-3-24. Transferring members who fail to make an election shall be deemed to have elected to waive the opportunity to purchase membership service credit in the Uniformed Retirement System.

(4) Members with five or more creditable years of service with this System who elect to waive membership service credit in the Uniformed Retirement System shall make at the same time an irrevocable election in writing whether to receive a refund of their accumulated contributions with interest reduced by the amount of any retirement allowance previously received by them under this Article, or to receive a deferred vested benefit from this System mutatis mutandis, under the provisions of Section 3-2-38(b). Members who fail to make an election shall be deemed to have elected not to receive a deferred vested benefit. Members with less than five years of creditable service with this System who elect to waive membership service credit in the Uniformed Retirement System pursuant to Subsection (e)(3) of this Section shall be refunded their accumulated contributions (with interest) reduced by the amount of any retirement allowances previously received by them under this Article.

(5) With respect to each member electing to purchase membership service credit in the Uniformed Retirement System pursuant to Subsection (e)(3) of this Section, the Board shall transfer the funds in the member's contribution account as well as those funds in the retirement allowance account attributable to the member's service to the Board of Trustees of the Uniformed Retirement System, who shall credit such funds to the appropriate accounts of the Uniformed Retirement System. Members electing to purchase membership service credit in the Uniformed Retirement System shall have the option of paying to the Board of Trustees of the Uniformed Retirement System the difference between the employee contributions that would have been required under the Uniformed Retirement System plus interest, and their employee contributions plus interest to this System for the period for which membership service credit is sought. Members who elect to pay the difference between the employee contributions plus interest that would have been required under the Uniformed Retirement System and their employee contributions plus interest to this System, shall not be eligible to enter the DROP under the Uniformed Retirement System until the entire amount of the difference in employee contributions plus interest has been paid to the Uniformed Retirement System and the member otherwise meets the eligibility requirements to enter the DROP under the Uniformed Retirement System. In lieu of paying the difference between the employee contributions that would have been required under the Uniformed Retirement System plus interest and their employee contributions plus interest to this System, a member may elect to have the amount of membership service credit transferred to the Uniformed Retirement System actuarially reduced based on the amount that would have been required.

(6) The Board shall transfer to the Board of Trustees of the Uniformed Retirement System any employee or employer contributions received by it attributable to member's transfer to the Uniformed Retirement System pursuant to Subsection (e)(1) or (2) of this Section for service rendered after the effective date of the member's transfer. The Board of Trustees of the Uniformed Retirement System shall credit such funds to the appropriate accounts of the Uniformed Retirement System.

(7) Members of this System in one of the job classes identified in this Subsection who elect to enter the DROP on or before September 1, 2005, are not eligible for transfer to the Uniformed Retirement System.

(d) Notwithstanding any other provision of this Chapter or Article to the contrary, an active member of either the Fairfax County Uniformed Retirement System or the Fairfax County Police Officers Retirement System who has more than five years of creditable service in such system and who is appointed to serve as a Deputy County Executive shall remain a member of the system to which he or she belonged, whether the Uniformed Retirement System or the Police Officers Retirement System, prior to his or her appointment as a Deputy County Executive, and shall not become a member of this System as a result of such appointment.

(e) Persons receiving a normal or early service retirement allowance from this System, the Fairfax County Uniformed Retirement System, or Fairfax County Police Officers Retirement System are eligible for membership only under the terms and conditions set forth in Section 3-2-43. (20-81-3; 34-81-3; 23-85-3; 36-86-3; 14-87-3; 27-90-3, § 1; 45-93-3; 23-05-3; 26-12-3; 2-16-3.)

Section 3-2-19.1. - Interest rates for purchases for membership service credit.

The Board may at any time and from time to time, establish a new interest rate or rates which shall be applicable to purchases of membership service credit under Subsection (c) of Section 3-2-19. (2-16-3.)

Section 3-2-20. - Cessation of membership.

The membership of any person in the System shall cease:

(a) If he or she ceases to be an employee for a period of five years, having had less than five years of creditable service on his or her date of separation from the County or School Board; or

(b) Upon separation and withdrawal of his or her accumulated contributions; or

(c) If a member, as defined in Section 3-2-19(b)(1), gives the Board written notice of his or her withdrawal from the System; or

(d) Upon death. (20-81-3; 4-81-3; 2-16-3.)

Division 5. - Service Credit.

Section 3-2-21. - Statement to be filed with Board.

Under such rules and regulations as are adopted by the Board, each member or someone on his or her behalf shall file with the Board in such form as the Board may prescribe, a statement of the facts pertaining to his or her status as a member, which shall include a statement of all service rendered as an employee and such other information as the Board may require. Until such statement is filed, no member or his or her beneficiary shall be eligible to receive any benefits under this Article. (20-81-3; 2-16-3.)

Section 3-2-22. - Year of service.

The Board shall determine by appropriate rules and regulations how much service in any year is the equivalent of a year of service, but in no case shall it allow credit for more than one year of service for all service rendered in any period of 12 consecutive months. (20-81-3; 2-16-3.)

Section 3-2-23. - Membership service credit.

(a) Each member shall receive membership service credit for periods in which he or she received compensation and was a member of the System, provided that any former member of the System who ceased his or her County or School Board employment and withdrew his or her accumulated member contributions from the System may purchase membership service credit by paying into the System all accumulated contributions that would have been collected from him or her during his or her prior period or periods of membership, plus interest at the rate or rates established by the Board, for the entirety of any period of prior service for which membership service credit is sought; a member may not purchase credit for only a portion of any prior period of service, but may only purchase credit for an entire prior period of service. In the event that a member of either Plan A or Plan B who ceased his or her County or School Board employment and withdrew his or her accumulated member contributions from the System seeks, on or after January 1, 2013, to purchase credit for periods during which he or she received compensation as a member of the System, he or she may only become a member of, and purchase membership service credit in, either Plan C or Plan D, by paying into the System all accumulated contributions which would have been collected from him or her during his or her prior period or periods of membership, plus interest at the rate or rates established by the Board, for the entirety of any period of prior service for which membership service credit is sought; however, notwithstanding the foregoing, a member of any of the four Plans (A, B, C or D) that are part of the System who ceased his or her County or School Board employment, but who left his or her accumulated member contributions in the System, shall, upon his or her return to County or School Board employment, rejoin the Plan to which he or she formerly belonged. Such member may satisfy some or all of the amount due from him or her for the purchase of such service through a rollover from an individual retirement account if the entire amount in that account is attributable to a rollover from the System. Such member may also satisfy some or all of the amount due from him or her for the purchase of such service through a direct trustee-to-trustee transfer from an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code maintained by an eligible employer described in Section 457(e)(1)(A), or through a direct trustee-to-trustee transfer from an annuity contract described in Section 403(b) of the Internal Revenue Code.

(b) Members in service shall also receive membership service credit for periods of service-connected disability retirement from the System.

(c) Members whose service is terminated to enter into the armed forces of the United States and who subsequently return to service shall be granted membership service credit for the period of their service in the armed forces of the United States to the extent required under federal and state law.

(d) A member who transfers from a position in the service of the Fairfax County Public Schools (FCPS) in which he or she was a member of the Virginia Retirement System (VRS) and the Educational Employees' Supplemental Retirement System of Fairfax County (ERFC) to a position in the County service shall receive membership service credit for periods that he or she had been employed by FCPS and was a member of VRS and ERFC, if such service shall not be considered in the calculation of any retirement allowance or benefit from VRS or ERFC, and if such member pays into this System all contributions that would have been due from him or her had he or she been a member of this System, plus interest at the rate or rates established by the Board, for each of the years for which membership service credit is sought.

(e) The Board may at any time, and from time to time, establish a new interest rate or rates which shall be applicable to Subsections (a) and (d) of this Section. Any election to purchase membership service credit under Subsections (a) or (d) of this Section may be made at any time by a member of the System while in service. The Board may enter into agreements with members purchasing membership service credit under the provisions of Subsections (a) and (d) of this Section to pay the member contributions due from them in installments, provided that such members shall not be entitled to such membership service credit until all payments under such agreements have been made.

(f) (1) Under such rules and regulations as are adopted by the Board, any employee who has been a member of the Virginia Retirement System (VRS) and the Educational Employees' Supplemental Retirement System of Fairfax County (ERFC), the Fairfax County Police Officers Retirement System, or the Fairfax County Uniformed Retirement System, and who withdraws therefrom and becomes a member of this System, may purchase membership service credit for service rendered while a member of such other system by paying into this System all contributions that would have been due from him or her had he or she been a member of this System for each of the years for which membership service credit is sought. (A member may purchase membership service credit for prior service while a member of VRS only for service due to employment by the Fairfax County Public Schools (FCPS).)

(2) The amount due from a member for such purchase of membership service credit shall be satisfied, to the extent possible, (a) by directing the trustees of the system from which he or she is withdrawing to transfer his or her accumulated member contributions in such system directly to this System, without distribution to such employee, if such transfers are available under such system, or (b) through (i) a rollover from the system from which he or she is withdrawing (if the member would be eligible for a refund from such system), (ii) a rollover from an individual retirement account in which all contributions were derived from a rollover from such system, or (iii) a direct trustee-to-trustee transfer from an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code maintained by an eligible employer described in Section 457(e)(1)(A), or through a direct trustee-to-trustee transfer from an annuity contract described in Section 403(b) of the Internal Revenue Code. To the extent that a rollover or direct transfer permitted under this Subsection is insufficient to purchase the necessary membership service credit, other arrangements permitted by the rules and regulations adopted by the Board shall be made for purchasing such membership service credit. (20-81-3; 5-85-3; 27-90-3, § 1; 45-93-3; 36-94-3; 7-00-3; 10-01-3; 8-03-3; 26-12-3; 2-16-3.)

Section 3-2-24. - Prior service credit.

(a) Prior service credit may be granted to persons who were members of the Fairfax County Supplemental Retirement System on July 1, 1955, or who were employees who previously left service to enter directly into the armed forces of the United States and who were still in the armed forces on or after that date as provided in Subsection (b) of this Section.

(b) Each member shall receive membership service credit for military leave, provided he or she returns to full employment within 90 days of discharge and such discharge is other than dishonorable. This Subsection shall be applied retroactively to January 1, 2003. (20-81-3; 27-90-3, § 1; 30-09-3; 2-16-3.)

Section 3-2-24.1. - Portability service credit.

(a) Definitions.

(1) *Accepting plan* shall mean the retirement plan or system which is receiving membership assets from another retirement plan or system in order to permit a current member to purchase portability service credit in the accepting plan through the use of his or her membership contributions in the transferring plan.

(2) *Portability service credit* shall mean service credit purchased in an accepting plan by the transfer of membership assets from the transferring plan.

(3) *Transferring plan* shall mean the retirement plan or system which is transferring membership assets to an accepting plan to enable a former employee of the transferring plan to purchase portability service credit in the accepting plan through the use of his or her membership contributions in the transferring plan.

(b) The Board of Supervisors may enter into agreements with the Virginia Retirement System (VRS) or with any political subdivision of the Commonwealth of Virginia to permit any vested member of VRS or any vested member of a retirement plan or system of a political subdivision of the Commonwealth of Virginia to purchase portability service credit in this System; provided, that the Board of Supervisors may only enter into such agreements with political subdivisions of the Commonwealth of Virginia whose retirement plans or systems constitute defined benefit plans, or eligible deferred compensation plans described in Section 457(b) of the Internal Revenue Code maintained by an eligible employer described in Section 457(e)(1)(A).

(c) The purchase of portability service credit in the System pursuant to this Section may only be made within 18 months of the date when a member commences employment in a position covered by the System, or, for employees who are members of the System on March 24, 2003, within 18 months of this date.

(d) In order to purchase portability service credit in the System, the member shall be a vested member of the transferring plan and the transferring plan shall be holding member contributions that are subject to transfer. A member desiring to purchase portability service credit shall make written application for the purchase of such credit to the System. The System shall determine from the transferring plan the amount of the member's assets that would be subject to transfer to the System. Based upon the amount subject to transfer, the Board shall determine the amount of portability service credit that would be actuarially equivalent to the amount of the assets to be transferred to the System; this amount shall represent the maximum amount of portability service credit that can be purchased. The Board shall communicate the amount of portability service credit that can be purchased to the member in writing; however, in no event shall the amount of portability service credit that can be purchased exceed the duration of the member's employment in a position that was covered by the transferring plan. The member shall have 30 days from the date of the letter advising him or her of the amount of portability service credit that can be purchased to determine whether to proceed with the purchase or to withdraw his or her application for the purchase of portability service credit.

(e) In the event that the assets transferred are not sufficient to purchase portability service credit in the System equivalent to five years of service, the member shall not become vested in the System until his or her creditable service equals five years.

(f) The purchase of portability service credit in the System shall be accomplished upon the transfer of assets from the transferring plan to the System. Upon the completion of such transfer, the member shall lose all rights to any allowances and benefits from the transferring plan, and shall only be entitled to receive allowances and benefits from the System.

(g) When a vested member of this System leaves his or her covered employment and enters a position covered by the Virginia Retirement System (VRS) or by a defined benefit retirement plan of a political subdivision of the Commonwealth of Virginia with which the Board of Supervisors has entered into a portability agreement, the former member of this System may purchase portability service credit in VRS or the retirement system of the political subdivision of the Commonwealth for whom he or she shall then work. In order to purchase such portability service credit, the member must make application

in writing to this System, requesting that his or her membership assets be transferred to the accepting plan. The amount of assets subject to transfer shall be an amount equal to the greater of (i) the member's accumulated member contributions with interest thereon, or (ii) an amount representing the present value of the member's accrued benefits with this System. Upon the transfer of membership assets from this System to the accepting plan, the member shall lose all rights to any allowances or benefits from this System based upon the service giving rise to the assets transferred to the accepting plan by this System. Should such a person resume service in a position covered by this System in the future, he or she may purchase service credit for such prior service or purchase portability service credit, if eligible to do so, in accordance with the provisions of this Article at the time he or she again becomes a member of this System. (18-01-3; 8-03-3; 2-16-3.)

Division 6. - Contributions.

Section 3-2-25. - Member contributions.

(a) There shall be picked up from the compensation of each member for each and every payroll period ending subsequent to December 22, 1984, the contribution payable by such member as provided in this Section; provided, that no contributions shall be required or permitted of any SESRP member. The Board of Supervisors may, from time to time, revise the rates of member contributions to the System.

(b) Except as provided in Subsection (a) of this Section, all present and future members, otherwise qualified, who, on or before December 31, 1981, and upon approval of the Board, or within 30 days of appointment as employees:

(1) Do not agree in writing to the terms set forth in Subsection (b)(2) of this Section and Section 3-2-32(a)(2) shall be considered participants in Plan A and contributions shall be made for each pay period for which he or she received compensation equal to four percent of his or her creditable compensation until his or her annual creditable compensation during the calendar year exceeds the taxable wage base. When such a member's annual creditable compensation during the calendar year exceeds the taxable wage base, contributions shall be made equal to five and one-third percent of his or her creditable compensation.

(2) Agree in writing to the terms set forth in this Subsection and Section 3-2-32(a)(2) shall be considered participants in Plan B and contributions shall be made for each pay period for which he or she receives compensation subsequent to the election of Plan B equal to five and one-third percent of his or her creditable compensation.

(c) Notwithstanding any other provision of this Section, no pick-up shall be made from any member's compensation if the employer's contribution required hereunder is in default.

(d) The Board may modify the method of collecting the pick-up contributions of members so that the employers, departments, institutions, and agencies required to remit to the Treasurer of the Board as provided in Subsection (b) of this Section may retain the amounts picked up by them with respect to members' salaries and have a corresponding amount deducted from County funds otherwise payable to them.

(e) The Board may approve written requests to change the offered optional plan selected under Subsection (b) of this Section when such requests are made not later than December 31, 1981.

(f) All contributions required to be made under Subsections (b) and (c) of this Section with respect to current services rendered by an active member on or after December 22, 1984, shall be picked up by the County, and shall be treated as the employer's contribution in determining tax treatment under Section 414(h)(2) of the Internal Revenue Code. For all other purposes under this Chapter and otherwise, such pick-up contributions shall be treated as contributions made by a member in the same manner and to the same extent as contributions made by a member prior to December 22, 1984. All picked-up amounts shall be included in compensation for purposes of calculating member benefits under Division 8. The County shall pay such picked-up amounts from the same source of funds which is used in paying earnings to the employee. (20-81-3; 34-81-3; 36-83-3; 5-85-3; 2-16-3.)

Section 3-2-26. - Employer contributions.

(a) Each employer shall contribute at an annual rate to be fixed by the Board of Supervisors.

(b) The aggregate present value of future employer contributions payable into the retirement allowance account shall be sufficient when combined with the amount then held in the members' contribution account and the retirement allowance account together with the present value of future employee contributions, to provide the estimated prospective benefits payable. The annual employer contribution rate shall be fixed as equal to the employer normal cost plus an expense rate, as long as the System's funding ratio (actuarial value of the System's assets divided by actuarial accrued liability of the System) remains within a corridor, the lower measurement of which is described below and the upper measurement of which is 120 percent. The employer normal cost and System actuarial accrued liability are to be measured using the entry age normal funding method.

- To the extent that the System's funding ratio exceeds 120 percent, a credit shall be established equal to the amount of assets in excess of 120 percent of the actuarial accrued liability.
- To the extent that the System's funding ratio is lower than the lower measure of the corridor, a charge shall be established equal to the difference between the lower measure plus the actuarial accrued liability and the assets.

The employer contribution shall be adjusted by a 15 year amortization of the credit or charge described in this Subsection, to be paid until the funding ratio re-enters the corridor, at which time it shall cease.

Effective with the fiscal year 2016 County contribution rate, the lower measure of the corridor shall be established at 95 percent. The 95 percent threshold shall be increased until it reaches 100 percent, no later than by the year 2020. Once the lower measurement of the corridor reaches 100 percent, the 15 year amortization described above shall be over a fixed 15 years with additional 15 year amortization layers created annually. Once the System's funding ratio reaches 100 percent, such amortizations shall cease.

In the event of an ordinance change that affects benefits, the employer contribution rate shall be changed effective with the July 1 coincident with or next following the date of adoption of the ordinance change. The employer normal cost component shall be adjusted to the level required by the ordinance change and there shall be an additional component to the employer cost equal to the increase in actuarial accrued liability. Any additional actuarial accrued liability which does not reduce the funding level below 120 percent shall be excluded from this component. (20-81-3; 27-90-3; 16-02-3; 28-15-3, § 1; 2-16-3.)

Division 7. - Assets of System.

Section 3-2-27. - Assets to be credited to one of two accounts.

All of the assets of the System shall be credited, according to the purpose for which they are held, to one of two accounts, namely, the members' contribution account, and the retirement allowance account. (20-81-3; 2-16-3.)

Section 3-2-28. - Members' contribution account.

(a) The members' contribution account shall be the account to which all members' contributions, pick-up contributions and interest allowances as provided in this Article shall be credited. In the case of any SESRP member, the member's contribution account shall consist of the amount in the Severance Account as defined in the provisions of SESRP effective on January 1, 1996, and the member's accumulated contributions to the System in existence at the time the member elected to participate in the SESRP. After January 1, 1996, the member's contribution account of any SESRP member shall annually be credited with the difference between the SESRP member's creditable compensation and the member's unadjusted compensation. From this account shall be paid the accumulated contributions of a member required to be returned to him or her upon withdrawal or paid in the event of his or her death before retirement.

(b) Each member's contribution and pick-up contributions provided for in Section 3-2-25 shall be credited to the individual account of that member.

(c) Each individual account of the members' contribution account shall be credited annually with interest at a rate or rates established by the Board; provided, that interest shall accrue on any such contribution beginning at the end of the calendar year in which each such contribution was made, and further provided that interest shall not be accredited or accumulated to the individual accounts of members who have ceased to be employees for a period of more than five years. The Board may at any time,

and from time to time, establish a new interest rate or rates which shall be applicable under this Section.

(d) Upon the retirement of a member, his or her accumulated contributions shall be transferred from the members' contribution account to the retirement allowance account.

(e) Upon receipt of a completed application, the Board shall refund the individual accounts of members who have ceased to be employees after completing fewer than five years of creditable service. The completed application shall include an election by the member directing the System to refund the individual account directly to the member or to directly transfer the account to another plan as permitted under the Internal Revenue Code. (20-81-3; 5-85-3; 27-90-3; 40-08-3; 2-16-3.)

Section 3-2-29. - Retirement allowance account.

(a) The retirement allowance account shall be the account in which shall be accumulated all employer contributions, amounts transferred from the members' contribution account, and to which all income from the invested assets of the System after all expenses for required services shall be credited. This account shall pay retirement allowances, other benefits payable after a member's retirement, and necessary expenses of the System.

(b) The amount of interest allowances provided for in Section 3-2-28 shall be transferred each year from the retirement allowance account to the members' contribution account. (20-81-3; 2-16-3.)

Section 3-2-30. - Deposits.

For the purpose of meeting disbursements the Board shall maintain sufficient cash equivalents. (20-81-3; 2-16-3.)

Division 8. - Benefits.

Section 3-2-31. - Service retirement.

(a) Normal service retirement. Any member, in service at his or her normal retirement date or within 90 days prior thereto, and who has completed five years of creditable service, may retire at his or her normal retirement date or thereafter upon written notice to the Board, made by the member or his or her duly appointed agent, and stating the time the retirement is to become effective. However, such effective date shall be subsequent to the filing of such notice.

(b) Early service retirement. Any member who has completed 25 years of creditable service and attained the age of 50 years, or any member who has completed at least ten years of creditable service and whose age, when combined with the years of his or her creditable service equals at least the sum of 75 years, may retire pursuant to the procedures set forth in Subsection (a) of this Section. (20-81-3; 14-87-3; 2-16-3.)

Section 3-2-32. - Service retirement allowance and other benefits.

(a) Normal service retirement.

(1) Upon normal service retirement after July 1, 1981, a member participating in either Plan A or Plan C shall receive an annual retirement allowance payable monthly for life consisting of an amount equal to one and eight-tenths percent of his or her average final compensation not in excess of his or her social security breakpoint plus two percent of the average final compensation in excess of his or her social security breakpoint, said sum multiplied by the number of years of creditable service.

(2) Upon normal service retirement after July 1, 1981, and after undergoing the additional cost deductions through December 31, 1981, a member participating in either Plan B or Plan D shall receive an annual retirement allowance payable monthly for life consisting of an amount equal to two percent of his or her average final compensation, said amount multiplied by the number of years of creditable service. In the event a participant in Plan B retires before December 31, 1981, the accumulated additional deductions in excess of four percent of pay not in excess of the taxable wage base shall be refunded and the member's retirement allowance shall be determined in accordance with Subsection (a)(1) of this Section.

(3) Pre-62 compensating benefit. In addition to the allowance provided in Subsections (a)(1) and (2) of this Section, any member who had retired prior to the age of 62 years and before July 1, 2000,

shall receive except as provided in Subsection (a)(4) of this Section an additional monthly benefit equal to one percent of the average final compensation not in excess of his or her social security breakpoint times years of service until such member attains the age of 62 years.

(4) Pre-social security benefit. In addition to the allowance provided in Subsections (a)(1) and (2) of this Section, any member who retires on or after July 1, 2000, or any member who had retired prior to the age of 62 years, before July 1, 2000 and who had not attained the age of 62 years as of July 1, 2000, shall receive an additional monthly benefit equal to one percent of the average final compensation not in excess of his or her social security breakpoint times years of service until the first month after such member is entitled to an unreduced social security benefit. Any member who retired on or after July 1, 2000, and before February 26, 2001, and was at least 62 years of age but not yet entitled to an unreduced social security benefit as of the date of his or her retirement, shall receive the pre-social security benefit, without interest, retroactive to the effective date of his or her retirement. However, the pre-social security benefit provided herein shall not be credited to the DROP accounts of members of Plans C or D who elect to participate in the DROP; however, upon the completion of the member's DROP period, the member shall be entitled to receive the pre-social security benefit provided herein if he or she is not then entitled to an unreduced social security benefit until the first month after such member is entitled to an unreduced social security benefit. The term *unreduced social security benefit* shall mean a social security benefit not reduced as a result its receipt before the normal retirement age for receiving social security benefits, as defined by applicable federal statute and regulation.

(b) Early service retirement. Upon early service retirement, a member shall receive an amount which shall be determined in the same manner as for retirement at his or her normal retirement date under Subsections (a)(1) and (a)(2) of this Section, with years of creditable service and average final compensation being determined as of the date of his or her actual retirement and the amount of the retirement allowance so determined being reduced on an actuarial equivalent basis for the period that the actual retirement date precedes the date the member shall attain the age of 65 years.

(c) Joint and last survivor option. A member may elect to receive a decreased retirement allowance during his or her lifetime and to have such retirement allowance, or a specified fraction thereof, continue after his or her death to his or her spouse, for his or her spouse's lifetime. Such election may be made or changed at any time up to the member's actual retirement date. After the member's actual retirement date, such election may not be changed except as permitted in Subdivisions (1) and (2) of this Subsection. The amount of any retirement allowance for a spouse provided by this Subsection shall be determined on an actuarial equivalent basis and shall be calculated at the member's actual retirement date using the actuarial adjustment factors in Table 1.

(1) In the event a retired member has elected a reduced retirement allowance in consideration of a continued allowance to his or her spouse after the member's death, and the member and such spouse are divorced after the retirement date, the member may discontinue the allowance to the spouse, and the member's retirement allowance may be increased to that amount to which the member would have been entitled had no election been made, if the spouse's right to the allowance has been extinguished pursuant to a final decree of divorce or a final property order entered in connection with a divorce case. The increase in the member's retirement allowance shall take effect as of the date of the final decree of divorce or final property order or July 1, 1988, whichever is later.

(2) In the event a retired member has elected a reduced retirement allowance in consideration of a continued allowance to his or her spouse after the member's death, and such spouse predeceases the member, such member's retirement allowance shall be increased to that amount to which the member would have been entitled had no election been made. The increase in the member's retirement allowance shall take effect as of the day following the date of the spouse's death.

TABLE 1

FAIRFAX COUNTY EMPLOYEES' RETIREMENT SYSTEM

Actuarial Adjustment Factors That Would Apply to Members with a Normal or Early Service Retirement Allowance Determined Under Section 3-2-32 Who Elect a Joint and Last Survivor Option.

Percent of Allowance Continued to Spouse Upon Member's Death	Factor for Equal Ages	Increase/Decrease For Each Full Year Beneficiary is Older (Younger) Than Employee	Maximum Factor
100%	85%	0.7%	96%
75%	89%	0.6%	97%
66.67%	90%	0.5%	98%
50%	92%	0.4%	99%

(d) Minimum benefit.

(1) In no event shall the annual retirement allowances for a member retiring after December 31, 1970, be less than that determined under the System as in effect prior to such date nor shall any member's annual retirement allowance be less than $300.00.

(2) If the retirement allowance of any member who retires during a calendar year beginning on or after January 1, 1979, to December 31, 1981, inclusive, would have been larger if computed as of December 31 of the calendar year preceding the member's retirement, the member shall be entitled to the larger retirement allowance. A member who elects to receive such an allowance shall also be eligible for a refund of his or her contributions accumulated from January 1 of the year of his or her retirement through the date of his or her actual retirement. (20-81-3; 34-81-3; 36-88-3; 11-00-3; 10-01-3; 26-12-3; 50-13-3; 2-16-3.)

Section 3-2-33. - Ordinary disability retirement.

(a) Any member who is in service or who is within one year of the date that he or she ceased being in service and who has five or more years of creditable service may retire on account of disability, not compensable under the provisions of Section 3-2-35, upon written application to the Board, made by the member or his or her employer, setting forth at what time the retirement is to become effective; provided, that such effective date shall be after the last day of service, but shall not be more than 90 days prior to the execution and filing of such application; and provided further, that the Medical Examining Board, after a medical examination of such member, shall certify that such member is, and has been continuously since such effective date if prior to the filing of the application, mentally or physically incapacitated for further employment by the employer, that such incapacity is likely to continue into the indefinite future, and that such member should be retired.

(b) Any member who has not been in service for more than a year at the time of application who is otherwise eligible for ordinary disability retirement may be granted an ordinary disability retirement if:

(1) Written application is made containing a justification for the failure to apply within one year of ceasing service; and

(2) The Board finds:

(A) The disability arose in the course of the member's service;

(B) The disability was the proximate cause of the member's ceasing to be in service; and

(C) There was good cause for the member not to have filed an application while in service or within one year after the date that he or she ceased to be in service.

(c) In the event that a member is granted an ordinary disability retirement pursuant to Subsection (b) of this Section, the Board shall establish an effective date which considering all the circumstances of the individual case is just; provided, such date shall be no more than 90 days prior to the execution and filing of his or her application. (20-81-3; 34-81-3; 27-90-3, § 1; 2-16-3.)

Section 3-2-34. - Ordinary disability retirement allowance.

Upon ordinary disability retirement, as provided for in Section 3-2-33, a member shall receive an annual retirement allowance, payable monthly during his or her lifetime and continued disability, consisting of an amount equal to two percent of his or her average final compensation multiplied by the number of years of creditable service. However, said retirement allowance shall not be greater than 60 percent of the member's average final compensation or less than $300.00 per annum. (20-81-3; 2-16-3.)

Section 3-2-35. - Service-connected disability retirement.

(a) Any member who is in service, or within one year of the date that he or she ceased to be in service may retire on account of disability which is due to injury by accident and/or disease(s) which arose out of and in the course of the member's service; provided, that the Medical Examining Board, after a medical examination of such member shall certify that such member is, and has been continuously since the date such retirement is to be effective, mentally or physically incapacitated for further employment by the employer as a result of such injury by accident and/or disease(s), that such incapacity is likely to continue into the indefinite future, and that such member should be retired. The Board shall determine whether a member is disabled due to injury by accident and/or disease(s) which arose out of and in the course of a member's service. In making this determination, the Board shall consult the decisions of the Virginia Workers' Compensation Commission, the Court of Appeals of Virginia, and the Supreme Court of Virginia which have applied or construed similar language under the Virginia Workers' Compensation Act.

(b) The member or his or her employer shall submit a written application setting forth at what time the retirement is to become effective; provided, that such effective date shall be after the last day of service but shall not be more than 90 days prior to the date of such application. Prior to submitting such application, the ~~member shall apply for all social security benefits to which he or she may be entitled. The~~ member shall ~~also~~ report his or her injury by accident and/or disease(s) and make a claim for workers' compensation benefits to his or her employer in accordance with the policies and procedures established by the County or the School Board and other authority. He or she shall cooperate in the investigation of his or her workers' compensation claim by the employer or its agent. The member shall submit copies of the dispositions as made of his or her workers' compensation ~~and social security~~ claim~~s~~ and any subsequent awards or other documents reflecting any modification or termination of such benefits. In making its determination of a member's eligibility for retirement under this Section, the Board shall give great weight to the decisions of the Virginia Workers' Compensation Commission, the Court of Appeals of Virginia, and the Supreme Court of Virginia on the compensability of his or her disability under the Virginia Workers' Compensation Act; and the Board may modify its prior determination of eligibility under this Section in light of any such decision within 90 days after the date that such decision becomes final.

(c) Any member otherwise eligible for ordinary disability retirement under Section 3-2-33, who applies for retirement pursuant to this Section, and whom the Board finds to be disabled but not eligible for retirement under this Section, shall be retired pursuant to Section 3-2-33.

(d) Any member who has not been in service for over one year at the time of his or her application who is otherwise eligible for service-connected disability retirement under this Section may be granted a service-connected disability retirement under this Section if:

(1) Written application is made containing a justification for the failure to apply within one year of ceasing to be in service; and

(2) The Board finds:

(A) The disability arose in the course of the member's service;

(B) The disability was the proximate cause of the member's ceasing to be in service; and

(C) There was good cause for the member not to have filed an application while in service or within one year after the date that he or she ceased to be in service. (20-81-3; 24-85-3; 14-87-3; 27-90-3, §1; 2-16-3.)

Section 3-2-36. - Service-connected disability retirement allowance.

(a) Upon service-connected disability retirement under Section 3-2-35, a member shall receive an annual retirement allowance, payable monthly and during his or her lifetime and continued disability, consisting of an amount equal to 66 ⅔ percent of his or her average final compensation. However, the allowance shall be reduced by ~~five percent of the amount of any primary social security benefit to which said member is entitled and by~~ the amount of any compensation paid to the member under the Virginia Workers' Compensation Act for temporary total or partial incapacity.

(b) ~~When the amount of a member's primary social security benefit has once been determined for purpose of applying the five percent reduction described above, the amount of the reduction shall not thereafter be increased on account of cost of living increases awarded under social security. However,~~ Tthe amount of the reduction shall be increased by an award of a cost-of-living increase to a member's compensation for temporary total or partial incapacity under the Virginia Workers' Compensation Act (Act). When the member is no longer entitled to receive payments for temporary total or partial incapacity under the Act because of the limits in the Act as to the total amount of such compensation or as to the period of time that the member is entitled to receive such compensation the amount of such payments shall no longer be used to reduce the retirement allowance and, accordingly, subsequent monthly payments of the allowance shall be determined as if the original allowance had been computed without the reduction for such payments.

(c) If a member receives his or her compensation for temporary total or partial incapacity under the Virginia Workers' Compensation Act (Act) in the form of a lump sum payment, he or she shall receive no monthly retirement allowance otherwise payable under this Section until such time as the amounts he or she would have received equal the amount of his or her lump sum benefit under the Act; provided, neither a lump sum payment or portion thereof representing compensation for permanent total or partial loss or disfigurement under the Act, nor a lump sum payment or portion thereof representing compensation for periods of temporary total or partial incapacity which occurred prior to the effective date of the member's retirement under Section 3-2-35, shall be offset against the member's allowance under this Section; and provided further, that in the event that a member receives a lump sum settlement of benefits that he or she is or may be entitled to in the future under the Act, and said settlement does not specify how much of the lump sum represents settlement of his or her entitlement to temporary total or partial incapacity, as opposed to other benefits, the Board shall determine the portion of such lump sum which in its judgment represents compensation for such benefits. (20-81-3; 4-83-3; 1-93-3; 23-07-3; 47-08-3; 23-11-3; 66-13-3, § 1.; 2-16-3; 36-17-3.)

Section 3-2-37. - Service-connected accidental death benefit.

If death of a member is caused by an accident occurring prior to retirement, and such death is compensable under the Virginia Workers' Compensation Act, there shall be paid, in addition to any other benefits of this Article or other legislation, the following:

(a) For a member whose death occurs before retirement:

(1) The member's accumulated contributions as provided in Section 3-2-28(c) to his or her designated beneficiary duly approved, acknowledged, and filed with the Board, otherwise to the member's estate; provided, no benefit is payable under Section 3-2-38 or under Section 3-2-42; and

(2) The sum of $10,000.00 to his or her designated beneficiary duly approved, acknowledged, and filed with the Board, otherwise to the member's estate.

(b) For a member whose death occurs after retirement:

(1) The member's accumulated contributions as provided in Section 3-2-28(c) less the amount of any retirement allowances previously received by the member, such sum to be paid to his or her designated beneficiary duly approved, acknowledged and filed with the Board,

otherwise to the member's estate; provided, no benefit is payable under Section 3-2-32(c) or under Section 3-2-38; and

(2) The sum of $10,000.00 to his or her designated beneficiary duly approved, acknowledged and filed with the Board, otherwise to the member's estate. (20-81-3; 34-81-3; 5-85-3; 2-16-3.)

Section 3-2-38. - Refund of contributions upon withdrawal or death; deferred vested benefit.

(a) Refund of contributions.

(1) If a member has ceased to be an employee, otherwise than by death or by retirement under this Article, and has fewer than five years of creditable service on his or her date of separation, he or she shall be eligible for a refund of the total of his or her accumulated contributions (with interest) which have been reduced by the amount of any retirement allowances previously received by him or her under this Article. The member shall file a written application with the Board for such refund, and the application shall include an election by the member directing the System to have the refund paid directly to the member or to transfer the refund amount to another plan identified by the member as permitted under the Internal Revenue Code.

(2) Should death occur to a member in service who has completed less than 15 years of creditable service or to a member on retirement, the amount of his or her accumulated contributions, reduced by the amount of any retirement allowances previously received by him or her under any of the provisions of this Article, shall then be payable in a lump sum to a designated beneficiary on file with the System, or in the absence of a designated beneficiary, to his or her estate; provided, no benefit is payable under Section 3-2-32(c).

(3) Should death occur to a member in service who has completed 15 years of creditable service and if the member's designated beneficiary on file with the System, is not the member's spouse, a lump sum payment equaling the amount of the member's accumulated contributions, as provided in Section 3-2-28(c), shall be paid to the designated beneficiary.

(4) Should death occur to a member in service who has completed 15 years of creditable service and has no designated beneficiary, a lump sum payment equaling the member's contributions shall be paid to the member's estate; provided, that if such member's spouse is the sole person entitled under the laws of the Commonwealth of Virginia to the benefits provided hereunder then said spouse shall have the same right to elect benefits as is provided to spouses in Section 3-2-42.

(5) All refunds shall be mailed to the last address on record with the Board. Refunds that have not been claimed within six months shall become the property of the System.

(6) A member who becomes eligible for membership in either the Virginia Retirement System (VRS) and the Educational Employees' Supplemental Retirement System of Fairfax County (ERFC), the Fairfax County Police Officers Retirement System, or the Fairfax County Uniformed Retirement System prior to receipt of any refund amount to which he or she is entitled may elect in writing to transfer the amount of his or her refund directly from this System to the system for which he or she has become eligible for membership, under such rules and regulations as are adopted by the Board and by the board of the system for which he or she has become eligible for membership. In the alternative, to the extent that a refund is an "eligible rollover distribution" within the meaning of Section 402(f)(2)(A) of the Internal Revenue Code, such a member may (a) pursuant to the rules and regulations of the system of which he or she is eligible to become a member, elect in writing to roll over the portion of his or her refund which represents such an eligible rollover distribution directly from this System to the system for which he or she has become eligible for membership or (b) elect in writing to roll over the portion of his or her refund which is such an eligible rollover distribution directly to an individual retirement account.

(7) Effective on and after January 1, 2007, if a member dies while performing "qualified military service," as defined in Section 414(u) of the Internal Revenue Code, any additional benefits that would have been provided under the System if the member had resumed employment on the day prior to his or her death and then terminated employment due to death shall be paid to such

member's designated beneficiary or, if applicable, estate. This provision shall also apply to Section 3-2-42 regarding spouse retirement allowances.

(8) In lieu of electing deferred vested benefit pursuant to Subsection (b) of this Section, a member with five or more years of creditable service may elect to receive a refund of his or her accumulated contributions made to the System (with interest) reduced by the amount of any retirement allowances previously received under this Article. The member shall file a written application with the Board on separation, or at any time thereafter, so long as he or she has not yet begun to receive a deferred vested benefit. The application shall include an election by the member directing the System to pay the refund paid directly to the member or to transfer the refund to another plan identified by the member as permitted underthe Internal Revenue Code. The refund shall be made not later than 90 days after the receipt of the application.

(b) Deferred vested benefit. If a member has five or more years of creditable service on his or her date of separation, the member may leave his or her accumulated contributions in the System and receive a deferred vested benefit payable beginning on the date the member attains 65 years of age, or in an actuarially reduced amount payable at the optional early retirement age, in accordance with applicable provisions of this Article. (20-81-3; 34-81-3; 5-85-3; 27-90-3; 45-93-3; 10-01-3; 40-08-3; 01-11-3; 2-16-3.)

Section 3-2-39. - Medical reevaluation of disabled members; penalty for unjustified refusal to accept medical attention, vocational rehabilitation or selective employment, or to submit to medical examination.

(a) At least once each year during the first five years following the retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the Board shall require any such member prior to his or her normal retirement date to undergo a medical examination by the Medical Examining Board; provided, that said medical examination requirement shall not be applicable to a member on a disability retirement allowance during the period such member is receiving benefits under the Virginia Workers' Compensation Act. On recommendation of the Medical Examining Board, the Board may waive the medical examination requirement as to any such member. Should such a member refuse to submit to any such medical examination, his or her disability retirement allowance shall be discontinued until his or her withdrawal of such refusal; and should his or her refusal continue for one year, all his or her rights to any further disability retirement allowance shall cease.

(b) Members who are receiving service-connected disability retirement allowances pursuant to Section 3-2-35, and who are receiving periodic payments from their employers pursuant to the Virginia Workers' Compensation Act (Act) which are required to be offset against the allowances pursuant to Section 3-2-36, shall cooperate with and accept medical examinations, vocational rehabilitation, and selective employment provided by the employer pursuant to the Act. In the event that such a member's periodic payments are suspended by the Virginia Workers' Compensation Commission (Commission) for unjustified refusal to accept medical examinations, vocational rehabilitation, and/or selective employment, the Board may, if in its determination such refusal was unjustified, direct that the allowance pursuant to Section 3-2-36 shall be computed as if the member received the suspended payments; and should such member's unjustified refusal continue for one year, all his or her rights to any future disability retirement allowance shall cease. The Board shall make appropriate adjustment to the member's allowance if the suspension by the Commission is subsequently reversed or modified. Employers shall promptly notify the Board of any suspensions or releases from suspensions affecting members subject to this Subsection. For purposes of this Subsection, an order of the Commission suspending compensation for unjustified refusal creates a rebuttable presumption that the member unjustifiably refused medical examinations, vocational rehabilitation, and/or selective employment. (20-81-3; 36-88-3; 11-98-3; 2-16-3.)

Section 3-2-40. - Reduction of service-connected disability retirement allowance.

(a) Whenever the Board ascertains that any member receiving a service-connected disability retirement allowance is, prior to his or her normal retirement date, engaged in work paying more than the difference between his or her allowance and the current salary of the position from which he or she retired, the Board shall reduce such allowance to an amount which, together with the amount earned by him or her, equals the amount of the current salary of the position from which he or she retired. A member receiving a service-connected disability retirement allowance shall submit a copy of that

portion of his or her federal income tax return showing the amount of his or her earned income, and he or she shall also be required to submit copies of all W-2 forms (wage statements) provided him or her by his or her employer(s) to the Board by May 30 of each year. Should such member refuse to submit copies of his or her federal income tax return or W-2 forms to the Board, his or her allowance shall be discontinued until his or her withdrawal of such refusal; and should his or her refusal continue for one year, all his or her rights to any further service-connected disability retirement allowance shall cease. The Board shall have the power to reduce the member's service-connected disability allowance to an amount less than that provided in the first sentence of this Subsection, but not less than $25.00 a month, to recoup the amount of any overpayment from the System to the member on account of the member's earnings in excess of the maximum amount allowed under this Section.

(b) The Board shall adopt written regulations governing the administration of this Section, providing for, among other things, the notification to the members deemed appropriate, and allowing for late submission of required documentation for good cause shown.

(c) Should the Medical Examining Board report and certify to the Board at any time that any member receiving a service-connected disability retirement allowance is able to engage in gainful occupation or work paying more than the difference between his or her retirement allowance and the current salary of the position from which he or she retired, and should the Board find that such member shall have refused an offer of employment considered by the Board suitable to his or her capacity, he or she shall not be entitled to any such allowance during the continuance of such refusal, unless in the opinion of the Board such refusal was justified. (20-81-3; 36-88-3; 27-90-3, § 1; 2-16-3.)

Section 3-2-41. - Cessation of disability retirement allowance.

(a) Should a member receiving a disability retirement allowance return to service at any time prior to his or her normal retirement date, his or her disability retirement allowance shall cease, and he or she shall again become a contributing member. Upon his or her return to service, he or she shall be given membership service credit for all creditable service that he or she had accumulated as of the effective date of his or her disability retirement. In addition, any member returning to service after a period of service-connected disability retirement shall be given membership service credit for the period of his or her service-connected disability retirement.

(b) When a member returns to service under the circumstances described in Subsection (a) of this Section, any excess accumulated contributions of such member over the disability retirement allowances received by him or her shall be transferred from the retirement allowance account to the member's contribution account.

(c) Should the Board at any time determine that a member who is receiving an ordinary disability retirement allowance is no longer incapacitated, the Board shall promptly terminate his or her allowance and notify the member in writing at his or her address as shown in the System's records.

(1) Such member may appeal the action of the Board under Section ~~3-2-49~~3-2-48.

(2) Within 30 days of receipt of such notice, or within 30 days of his or her receipt of the Board's denial of his or her appeal of the termination of his or her ordinary disability retirement allowance, if appealed, such member, if eligible, may apply in writing for a normal or early service retirement allowance. Such members shall be deemed to be in service during this 30 day period solely for the purpose of applying for a service retirement and shall not be granted creditable service for this 30 day period. For purposes of determining their eligibility for such retirement and calculating the appropriate retirement allowance, such members shall be credited with all the creditable service that they had as of the effective date of their ordinary disability retirement. The effective date of such member's normal or early service retirement pursuant to this Subsection shall be the effective date of termination of his or her ordinary disability retirement allowance.

(d) Should the Board at any time determine that a member who is receiving a service-connected disability retirement allowance is (i) no longer incapacitated or (ii) no longer incapacitated due to an injury by accident and/or disease(s) which arose out of and in the course of his or her service, the Board shall promptly terminate his or her service-connected disability retirement allowance and notify the member in writing at his or her address as shown in the System's records.

(1) If at that time such member has five or more years of creditable service and the Board determines that such member is presently incapacitated from further employment with his or her employer due to injury by an accident and/or disease(s) which did not arise out of and in the course of his or her service and such incapacity is likely to continue indefinitely, the Board shall grant such member an ordinary disability retirement allowance effective as of the date of termination of his or her service-connected disability retirement allowance. For purposes of determining their eligibility for such retirement and calculating the appropriate retirement allowance, such members shall be credited with all the creditable service that they had as of the effective date of their service-connected disability retirement and shall receive membership service credit for the period of their service-connected disability retirement.

(2) Any member whose service-connected disability retirement allowance has been terminated by the Board under this Section may appeal the action of the Board under Section ~~3-2-49~~3-2-48.

(3) Within 30 days of receipt of such notice, or within 30 days of his or her receipt of the Board's denial of his or her appeal of the termination of his or her service-connected disability retirement allowance, if appealed, such member, if eligible, may apply in writing for a normal or early service retirement allowance. Members whose service-connected disability retirement had been changed by the Board to ordinary disability pursuant to Subsection (d)(1) of this Section may apply for a normal or early service retirement allowance in lieu of the ordinary disability retirement allowance. Members shall be deemed to be in service during this 30 day period solely for the purpose of applying for a service retirement and shall not be granted creditable service for this 30 day period. For purposes of determining their eligibility for such retirement and calculating the appropriate retirement allowance, such members shall be credited with all the creditable service that they had as of the effective date of their service-connected disability retirement. The effective date of such member's normal or early service retirement pursuant to this Subsection shall be the effective date of termination of his or her service-connected disability retirement allowance. (20-81-3; 27-90-3, § 1; 6-95-3; 14-98-3; 2-16-3.)

Section 3-2-42. - Spouse retirement allowance.

Should death occur to a member in service who has completed five years of creditable service, a retirement allowance shall be payable to the member's spouse if said spouse is the member's designated beneficiary duly approved, acknowledged and filed with the Board. The annual retirement allowance payable monthly for life shall be 50 percent of the annual retirement allowance provided in Sections 3-2-32(a)(1) or 3-2-32(a)(2), with creditable service and average final compensation being determined as of the date of the member's death. Said spouse shall elect in writing within 180 days of the member's death, or within 90 days of receiving notice from the Board, whichever comes first, to receive the benefits outlined above in this Section or a lump sum payment of the member's contributions, plus interest as provided in Section 3-2-28(c); in the event no election is made, said spouse shall receive benefits in the form of a lump sum. If a death is due to a service-connected accident as defined in Section 3-2-37 and the designated beneficiary under Section 3-2-37(a)(1) and (a)(2) is the member's spouse, the spouse shall elect in writing within 180 days of the member's death, or within 90 days of receiving notice from the Board, whichever comes first, to receive either the benefits contained in this Section or those contained in Section 3-2-37(a)(1). In the event of the spouse's death prior to receiving allowances under this Section equaling the sum of the member's contributions to the System, plus interest, said sum, reduced by the amount of any retirement allowances previously paid under this Section, shall be paid to the spouse's designated beneficiary duly approved, acknowledged and filed with the Board, otherwise to the spouse's estate. (20-81-3; 5-85-3; 20-87-3; 29-09-3; 2-16-3.)

Section 3-2-43. - Cessation of normal or early service retirement allowance.

(a) Subsection (b) of this Section shall apply to persons who are receiving a normal or early service retirement allowance from this System, the Fairfax County Uniformed Retirement System, or the Fairfax County Police Officers Retirement System and who submitted their application for such allowance to the Board of such system on or before July 21, 1986. Subsection (c) of this Section shall apply to persons who are receiving a normal or early service retirement allowance from this System, the Uniformed Retirement System, or the Police Officers Retirement System and who submitted their application for such allowance to the Board of such system after July 21, 1986. Personnel Regulation Section 9-2-4 shall apply to persons covered by either Subsection (b) or (c) of this Section.

(b) Should a person receiving a normal or early service retirement allowance from this System, the Fairfax County Uniformed Retirement System, or the Fairfax County Police Officers Retirement System (retiree) return to regular service in a permanent position in any office or employment paid directly or indirectly by the County, he or she shall elect to receive such retirement allowance under one of the following two options:

(1) Such allowance shall not commence or, if already commenced, shall cease while the retiree is so employed. His or her allowance shall commence or resume upon application or reapplication by the retiree after he or she has ceased permanent employment in such a position. The allowance of a retiree of this System who is appointed to a position covered by the Uniformed Retirement System or Police Officers Retirement System shall commence or resume at that cost-of-living adjustment amount pursuant to Section 3-2-44 which would have been payable had the retiree continued to receive his or her allowance without interruption. A retiree who elects in writing at the time of reappointment to a position covered by this Article not to become a member shall be exempted from this System. A retiree who elects in writing at the time of reappointment to a position covered by this Article to become a member shall be eligible:

(A) For recomputation of his or her allowance to take into account compensation and creditable service attributable to the period of reemployment resulting in a deferral or cessation of his or her allowance under this Subsection;

(B) To make a new election for any optional benefit to which he or she is entitled; and

(C) For a retirement allowance for a service-connected disability arising out of and in the course of his or her reemployment.

A retiree of the Uniformed Retirement System or Police Officers Retirement System who is appointed to a position covered by this Article and elects in writing within 30 days of such appointment may be excluded from membership in this System.

(2) Such allowance shall commence or shall not cease while the retiree is so employed. A retiree electing this option shall be excluded from membership in this System or any system covering the position, service in which results in the application of this Subsection.

(c) A person receiving a normal or early service retirement allowance from this System, the Fairfax County Uniformed Retirement System, or the Fairfax County Police Officers Retirement System (retiree) may return to employment for which compensation is paid directly or indirectly by the County, subject to the following conditions:

(1) A retiree shall not receive in combined compensation and retirement allowance, computed monthly, any more than 115 percent of the then current maximum monthly salary for a Deputy County Executive in the County's Compensation Plan. The appropriate Retirement System Board of Trustees shall reduce the retiree's allowance as necessary to keep the combined salary and allowance at this limit. For purposes of this Subsection, a retiree's allowance shall be deemed to be the allowance that he or she would receive if he or she had not elected a joint and last survivor option which results in an actuarially reduced allowance. Employers under all three systems shall report salaries paid to retirees to the retiree's Board of Trustees.

(2) A retiree who is employed in a position service in which would otherwise make him or her eligible for membership in this System, the Uniformed Retirement System, or the Police Officers Retirement System, shall not be eligible for membership in that system.

(d) Notwithstanding any other provision of this Article or any other Article of this Chapter, a person receiving a normal or early service retirement allowance from this System, the Fairfax County Uniformed Retirement System, or the Fairfax County Police Officers Retirement System (retiree) may be employed in a position under his or her former appointing authority subject to the following terms and conditions:

(1) If the retiree is a member of this System and service in the position to which he or she is to be re-appointed ordinarily would result in membership in this System, his or her normal or early service retirement allowance shall be suspended for the duration of his or her new employment.

During his or her new employment, he or she shall make member contributions to this System. At the time of his or her new employment, he or she shall be entitled to make all elections available to new members of this System, and if otherwise eligible, during his or her employment, he or she may apply for ordinary or service-connected disability retirement. In such case, his or her combined years of service and his or her average final compensation based on his or her new employment shall be used in calculating the disability retirement allowance. On re-application for service retirement from his or her new employment, the retiree shall receive as his or her service retirement allowance the higher of (i) his or her initial service retirement allowance increased by any cost-of-living increases that were granted by the Board to service retirements during the period of his or her new employment or (ii) a service retirement allowance calculated on the basis of his or her combined years of creditable service in his or her initial and new employment and his or her average final compensation calculated on the basis of the creditable compensation that he or she received during both his or her initial and new employment as if there had been no break in service.

(2) A retiree who is a member of this System and who is to be re-appointed to a position service in which would result in membership in either the Fairfax County Uniformed Retirement System or the Fairfax County Police Officers Retirement System but for his or her membership in this System, shall be subject to the provisions of either Subsection (a) or (b) of this Section, whichever is applicable.

(3) If the retiree is a member of either the Uniformed Retirement System or Police Officers Retirement System and service in the position to which he or she is to be appointed would result in membership in this System but for his or her membership in the other system, the retiree shall be subject to the provisions of either Subsection (b) or (c) of this Section, whichever is applicable.

(4) This Subsection shall apply to all persons appointed to positions on or after March 1, 1990, service in which would ordinarily make them members of this System, the Uniformed Retirement System, or the Police Officers Retirement System. (20-81-3; 35-81-3; 36-86-3; 27-90-3, § 1; 10-01-3; 11-05-3; 2-16-3.)

Section 3-2-44. - Cost-of-living adjustments.

Monthly retirement allowances shall be adjusted effective July 1, 1981, and each July 1 thereafter in order to reflect changes in the cost of living since the date of the benefit commencement; provided, that such adjustments shall not affect the amount of the social security benefit allowance payable pursuant to Section 3-2-32(a)(3) or Section 3-2-32(a)(4); and, provided further, that allowances for service-connected disability retirement shall be subject to Subsection (d) of this Section. The monthly benefit allowance to be effective July 1 of any such year shall be the benefit in effect immediately prior to such adjustment increased for the basic cost-of-living increase provided for in Subsection (a) of this Section and the supplemental cost-of-living increase, if any, provided for in Subsection (b) of this Section with such increase reduced as provided in Subsection (c) of this Section in the event the monthly retirement allowance has been in pay status for less than 12 months.

(a) The basic cost-of-living increase shall be the lesser of four percent and the percentage corresponding to the percentage increase in the Consumer Price Index during the 12 calendar month period ending with the March immediately preceding the July in which the increase is effective. For the purpose of this Section, Consumer Price Index shall mean the Consumer Price Index for all Urban Consumers (CPI-U) as issued by the Bureau of Labor Statistics of the U.S. Department of Labor for the appropriate Standard Metropolitan Statistical Area (SMSA) that includes the County.

(b) As part of each annual actuarial valuation, the actuary shall determine the percentage supplemental cost-of-living increase (not greater than one percent that can be provided on the following July 1 based upon the available actuarial surplus). The Board then may, but shall not be required to, increase the benefits of all retirement allowances in pay status on each July 1 by such actuarially determined percentage. For the purpose of this Section, available actuarial surplus shall mean the excess of the actuarial value of the assets of the System over the actuarial accrued liabilities of the System as disclosed in the annual actuarial valuation of the System.

(c) In the event a member has not been in pay status for 12 full months, the basic cost-of-living increase and the supplemental cost-of-living increase shall be determined as the percentage of the full increase determined in Subsections (a) and (b) of this Section as follows:

Number of Complete Months Member Has Been in Pay Status	Percentage of Full Increase

• Less than 3 ..... 0%

• 3, 4 or 5 ..... 25%

• 6, 7 or 8 ..... 50%

• 9, 10 or 11 ..... 75%

(d) Cost-of-living adjustments provided by this Section shall be applied to the net amount of the member's service-connected disability retirement allowance after all reductions required by Section 3-2-36 have been made. The member's allowance after the adjustments of cost of living provided by this Section at any date in time shall be determined by retroactive computation from the date of initial retirement, and the application of all applicable cost-of-living adjustments to the net allowance which the member is entitled to under Section 3-2-36.

(e) The Board of Supervisors reserves the right to amend, terminate or modify the post-retirement increases described in Subsection (b) of this Section. Upon termination, no further increases to benefits shall be due or payable to any member or beneficiary. However, any such amendment, termination or modification shall not reduce the amount of benefits then being paid to any member or beneficiary who received benefits payments as of the date of the amendment, termination or modification. Furthermore, no amendment, termination or modification shall reduce the rights of any member as of June 30, 1981, to increases such member was entitled to based upon the terms of the plan in effect on June 30, 1981. (20-81-3; 27-90-3, § 1; 1-93-3; 11-00-3; 26-10-3; 2-16-3.)

~~Section 3-2-45. - Social Security benefit proviso.~~

~~If a member does not qualify for or loses primary social security benefits to which he or she is entitled under social security because of his or her failure to make application therefor or because of his or her violation of the Social Security Act, such primary social security benefits shall nevertheless be considered as being received by such member for the purposes of this Article. (20-81-3; 27-90-3, § 1; 2-16-3.)~~

Section ~~3-2-46~~3-2-45. - Retention rights.

Participation in the System does not convey the right to be retained in service or any right or claim to any assets of, or benefit from, the System unless such right has specifically accrued under this Article. (20-81-3; 27-90-3, § 1; 2-16-3.)

Section ~~3-2-47~~3-2-46. - Vesting on termination of System; non-reversion of funds.

Upon termination of the System or upon complete discontinuance of contributions to the System, the rights of all members to benefits accrued to the date of such termination or discontinuance, to the extent then funded, are non-forfeitable. No portion of the assets of the System shall be used for, or diverted to, purposes other than for the exclusive benefit of the members and their beneficiaries prior to the satisfaction of all liabilities with respect to members and their beneficiaries. (20-81-3; 2-16-3.)

Section ~~3-2-48~~3-2-47. - Non-retroactivity to employees retired or terminated prior to July 1, 1981.

With the exception of the benefit adjustment provided under Section 3-2-32(d)(2), the benefits provided by this Article, and Section 3-2-43, shall not apply to members retired or terminated prior to July 1, 1981. Benefits for such members shall be in accordance with the ordinance in effect prior to July 1, 1981. However, retirement allowances determined thereunder shall be subject to the cost-of-living adjustments provided in Section 3-2-44. (20-81-3; 2-16-3.)

Section ~~3-2-49~~3-2-48 - Review of adverse decisions.

(a) Any member adversely affected by a decision of the Board shall receive written notice of said decision and may, within 30 days of receipt of said notice, request in writing a review by the Board of said decision, pursuant to procedures established by the Board.

(b) Notwithstanding Subsection (a) of this Section, upon written application of a member adversely affected by a decision of the Board and for good cause shown, the Board may reconsider such previous decision. This Subsection is to apply retroactively. (20-81-3; 36-83-3; 2-16-3.)

Section ~~3-2-50~~3-2-49. - Transfer to Senior Executive Service Plan.

Repealed by 01-96-3.

Section ~~3-2-51~~3-2-50. - Masculine usage includes the feminine.

Repealed by 2-16-3.

Section ~~3-2-52~~3-2-51. - Limitation on annual retirement allowance.

Notwithstanding any other provision of this Article, the annual retirement allowance to which any member may be entitled shall not exceed the limits on benefits set forth in Section 415(b) of the Internal Revenue Code and any regulations issued by the U.S. Department of the Treasury thereunder, and in calculating such limits a member's compensation shall include any differential wage payments for military service as defined under Section 3401(h)(2) of the Internal Revenue Code and paid on or after January 1, 2009. Notwithstanding any provision of the Internal Revenue Code to the contrary, the limitations imposed by this Section apply only to retirement allowances granted under this Article, and not to any retirement allowance provided to any employee under any other Article of this Chapter. Such limits shall be applied annually for the 12-month period commencing each July 1 and ending the following June 30. A benefit payable other than in the form of an annuity shall not exceed the amount which, when converted to an actuarial equivalent annual benefit, does not exceed the limits on benefits set forth in Section 415(b) of the Internal Revenue Code. Effective June 30, 2000, the mortality tables prescribed by the Uruguay Round Agreement Acts (GATT), as set forth in Internal Revenue Service Revenue Ruling 2001-62 (superseding and modifying Revenue Ruling 95-29), or as further updated or modified by the Internal Revenue Service, shall be used in determining the actuarial equivalent amount of such benefit. (27-90-3, § 2; 10-91-3; 21-96-3; 8-03-3; 01-11-3; 2-16-3.)

Section ~~3-2-53~~3-2-52. - Distribution of benefits.

Notwithstanding any other provision of this Article, effective for plan years beginning after December 31, 1986, the entire interest of each member shall be distributed to such member not later than the required beginning date specified below, or shall be distributed, beginning not later than the required beginning date, over the life of such member or over the lives of such member and a beneficiary or over a period not extending beyond the life expectancy of such member or the life expectancy of such member and a beneficiary. For this purpose, the term *required beginning date* shall mean April 1 of the calendar year following the later of the calendar year in which the member attains 70½ years of age, or the calendar year in which the member retires. If a member dies after distribution of the member's interest has begun, the remaining portion, if any, of such interest shall be distributed at least as rapidly as under the method of distribution being used as of the date of death. If a member dies before the distribution of the member's interest has begun, any death benefit shall be distributed within five years after the death of such member, unless (1) any portion of the member's interest is payable to (or for the benefit of) a designated beneficiary, (2) such portion shall be distributed over the life of such beneficiary or over a period not extending beyond the life expectancy of such beneficiary, and (3) if the beneficiary is someone other than the member's surviving spouse, such distributions shall begin not later than one year after the date of the member's death or such later date as the U.S. Secretary of the Treasury may by regulations prescribe. If the beneficiary is the surviving spouse of the member, (1) distribution shall begin on or before the latest of one year after the date of the member's death, such later date as the U.S. Secretary of the Treasury may by regulations prescribe, or the date on which the member would have attained 70½ years of age and (2) if the surviving spouse dies before the distributions to such spouse begin, the distribution rules specified in this Section shall be applied as if the surviving spouse were the member. Distributions from the System shall be made in accordance with the requirements of Section 401(a)(9) Internal Revenue Code, including the rules for incidental death distributions set forth at Section 401(a)(9)(G). (27-90-3, § 2; 26-12-3; 50-13-3; 2-16-3.)

Section ~~3-2-54~~3-2-53. - Direct rollovers to other plans.

(a) General. This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the System to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. However, to the extent that any portion of the amount of the rollover is comprised of after-tax contributions, the distribution may only be rolled over to an eligible retirement plan that separately accounts for after-tax contributions.

(b) Definitions.

(1) *Eligible rollover distribution* shall mean any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; and the portion of any distribution that is not includible in gross income.

(2) *Eligible retirement plan* shall mean any one of the following that accepts the distributee's eligible rollover distribution: an individual retirement account described in Section 408(a) of the Internal Revenue Code; an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; an annuity plan described in Section 403(a) of the Internal Revenue Code; a qualified trust described in Section 401 (a) of the Internal Revenue Code; an annuity contract described in Section 403(b) of the Internal Revenue Code; an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state; or effective for distributions made after December 31, 2007, a Roth IRA described in Section 408A of the Internal Revenue Code, provided the eligible rollover distribution is considered a "qualified rollover contribution" under Section 408A(e). However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan shall be an individual retirement account or individual retirement annuity.

(3) *Distributee* shall mean a member or former member. In addition, the member's or former member's surviving spouse, and the member's or former member's spouse or former spouse who is entitled to receive benefits from the System, shall be distributees with regard to the interest of the spouse or former spouse. Effective for distributions on or after January 1, 2010, a distributee also shall include a non-spouse beneficiary of a deceased member or former member who may make an eligible rollover distribution in a direct trustee-to-trustee transfer to an "inherited" individual retirement account.

(4) *Direct rollover* shall mean a payment by the System to the eligible retirement plan specified by the distributee. (45-93-3; 21-96-3; 8-03-3; 01-11-3; 2-16-3)

Section ~~3-2-55~~3-2-54. - Additional retirement allowance.

(a) Definitions.

(1) *Active member* shall mean a member of the System who is an employee on July 1, 1995, or who becomes an employee thereafter, and whose membership in the System has not ceased at any time from either July 1, 1995, or from when he or she became an employee (whichever is later) until the effective date of his or her subsequent retirement.

(2) *Retired member* shall mean a member of the System who is receiving a retirement allowance on July 1, 1995, or whose effective date of retirement is on or before July 1, 1995. A member of the System who is receiving a retirement allowance shall include any member whose effective date of retirement is on or before July 1, 1995.

(3) *Retirement allowance* shall mean a normal service retirement allowance, an early service retirement allowance, an ordinary disability retirement allowance, a deferred vested benefit, or a spouse retirement allowance.

(4) *Base annual retirement allowance* shall mean the initial calculation of a member's or spouse's annual retirement allowance without regard for any deductions for withholding or other benefit elections or adjustments under Section 3-2-7. For a member taking normal service retirement under Section 3-2-31(a), this is the allowance calculated under Section 3-2-32(a)(1) for a member in Plan A or under Section 3-2-32(a)(2) for a member in Plan B; for a member taking early service retirement under Section 3-2-32(b), this is the allowance calculated under Section 3-2-32(b); for a member retired on account of ordinary disability under Section 3-2-33, this is the allowance calculated under Section 3-2-38(b); and for a spouse receiving a spouse retirement allowance, this is the allowance calculated under Section 3-2-42.

(5) *Adjusted base annual retirement allowance* shall mean the base annual retirement allowance of a retired member or of the spouse of a member receiving the base spouse annual retirement allowance under Section 3-2-42, as increased by any cost-of-living adjustments applied to the member's or spouse's retirement allowance from the effective date of his or her retirement or election of the spouse retirement allowance through July 1, 1995.

(6) *Member in service* shall mean a member of the System.

(b) The adjusted base annual retirement allowance of each retired member or spouse receiving a retirement allowance on July 1, 1995, shall be increased by three percent, effective July 1, 1995 (modified adjusted base annual retirement allowance). Adjustments to the retired member's or spouse's retirement allowance made under this Article after July 1, 1995, shall be computed on the basis of the modified adjusted base annual retirement allowance.

(c) When an active member retires, or the eligible spouse of an active member elects to receive the spouse retirement allowance after July 1, 1995, after his or her base annual retirement allowance has been computed under the applicable Section of this Article, the resulting base annual retirement allowance shall be increased by three percent (initial base annual retirement allowance). Adjustments to the member's or spouse's retirement allowance under this Article after July 1, 1995, shall be computed on the basis of the initial base annual retirement allowance.

(d) If a member is entitled to the three percent increase provided for by either Subsection (b) or (c) of this Section, and if at the time he or she is entitled to such increase, he or she is also eligible to receive the pre-62 compensating benefit under Section 3-2-32(a)(3) or the pre-social security benefit under Section 3-2-32(a)(4), his or her pre-62 compensating benefit or pre-social security benefit shall also be increased by three percent.

(e) Separation from service.

(1) A member who:

(A) Separated from service other than by death or retirement with five or more years of creditable service in the System prior to July 1, 1995, and

(B) Has not withdrawn his or her accumulated contributions as of July 1, 1995, and

(C) Subsequently applies for and is determined to be eligible for a deferred vested benefit after July 1, 1995, shall have his or her or her deferred vested benefit computed mutatis mutandi in the same manner as an active member under Subsection (c) of this Section.

(2) A member in service on or after July 1, 1995, who:

(A) Subsequently separates from service other than by death or retirement with five or more years of creditable service in the System, and

(B) Does not withdraw his or her or her accumulated contributions, and

(C) Subsequently applies for and is determined to be eligible for a deferred vested benefit, shall have his or her deferred vested benefit computed mutatis mutandi in the same manner as an active member under Subsection (c) of this Section.

(3) A member in service on or after July 1, 1995, who,

(A) Subsequently separates from service other than by death or retirement with five or more years of creditable service in the System, and

(B) Does not withdraw his or her accumulated contributions, and

(C) Thereafter, returns to service and again becomes a member of the System, and

(D) Subsequently applies for and is determined to be eligible for a normal service, early service or ordinary disability retirement allowance, or a deferred vested benefit, shall have his or her allowance or deferred vested benefit computed mutatis mutandi in the same manner as an active member under Subsection (c) of this Section.

(4) A member in service on or after July 1, 1995, who

(A) Thereafter separates from service, and

(B) Withdraws his or her accumulated members' contributions, and

(C) Subsequently returns to service and again becomes a member of the System, and

(D) At that time makes arrangements to purchase credit for all of his or her previous service in the System under this Article, and

(E) Thereafter applies for and is determined to be eligible for a normal service, early service or ordinary disability retirement, or for a deferred vested benefit, shall have his or her allowance or deferred vested benefit computed mutatis mutandi in the same manner as an active member under Subsection (c) of this Section.

(f) A member's spouse who is receiving an allowance under the joint and last survivor option provided by Section 3-2-32(c), on July 1, 1995, shall have such allowance increased by three percent, effective July 1, 1995. Adjustments to such allowance under this Article after July 1, 1995, shall be computed on the basis of this increased allowance.

(g) Notwithstanding the 60 percent of average final compensation limit contained in Section 3-2-34, the initial base annual retirement allowance of an active member who becomes eligible to receive an ordinary disability retirement allowance and who is entitled to the increase provided by Subsection (c) of this Section, may exceed 60 percent, but shall not exceed 61.8 percent of his or her average final compensation.

(h) Notwithstanding any provision of this Section to the contrary, no adjustment under this Section shall be made which would violate the limitations provided by Section ~~3-2-52~~3-2-51 concerning the limitations imposed by Section 415 of the Internal Revenue Code and any U.S. Treasury regulations issued thereunder; provided, that any adjustment under this Section may be made up to those limitations. (12-95-3; 11-00-3; 2-16-3.)

Section ~~3-2-56~~3-2-55. - Spousal acknowledgment.

Any application for service or disability retirement allowance under this Article shall include a statement made by the spouse of the member, if any, acknowledging, in the presence of a notary public, that the spouse has read and understands the provisions of this Article concerning allowance and payment options and the allowance and payment options, if any, the member has elected to receive. (12-98-3; 2-16-3.)

Section ~~3-2-57~~3-2-56. - Deferred retirement option program.

Effective July 1, 2005, there is hereby established a Deferred Retirement Option Program (DROP) for eligible members of the System. Members of the System in service who are eligible for normal service retirement are eligible to elect to participate in this program.

(a) Definitions.

(1) *DROP period* shall mean the three-year period immediately following the commencement of the member's participation in the DROP.

(2) *Eligible member* shall mean any member who has reached, or will reach within 60 days, his or her normal retirement date as defined in Section 3-2-1(n).

(b) Election to participate.

(1) An eligible member may participate in the DROP only once. An eligible member who desires to participate in the DROP shall file an application with the Fairfax County Retirement Administration Agency not less than 60 days prior to the date of the commencement of the member's participation in the DROP.

(2) A member's election to participate in the DROP is irrevocable, with the exception that a member who elects to participate in the DROP may revoke that election prior to the commencement of his or her DROP period; once revoked, a member may not then elect to participate in the DROP for a period of at least 12 months from the date of his or her revocation.

(3) At the time of an eligible member's election to participate in the DROP, he or she shall make an election in writing pursuant to Section 3-2-32(c) as to whether or not to receive a reduced retirement allowance in order to provide a retirement allowance for his or her spouse after the member's death.

(4) An eligible member who elects to participate in the DROP shall agree to do so for a period of three years.

(5) Subject to any limitation on the number of accrued sick leave hours that may be converted to creditable service as provided in Section 3-2-1 (a)(2), an eligible member who elects to participate in the DROP shall, at the time of his or her election to participate in the DROP, make an election in writing as to whether he or she wishes to convert all of his or her available accrued sick leave to creditable service or to convert all but 40 hours of his or her accrued sick leave to creditable service. Sick leave that is either carried over or that accrues during the DROP period shall not be converted to creditable service at the conclusion of the DROP period.

(c) Continued employment.

(1) A participating DROP member shall, upon commencement of his or her DROP period, continue to work for the County or School Board in the position he or she held before the effective date of his or her election to participate in the DROP. Thereafter, the participating DROP member shall perform the services of that position or any other position to which he or she is promoted or transferred.

(2) A participating DROP member shall continue to accrue annual and sick leave and, if eligible, compensatory time during the DROP period. At the conclusion of the DROP period, the member shall receive the payment for his or her accrued annual and compensatory leave that he or she would have received upon retirement. In no case shall a participating DROP member receive payment for his or her accrued annual and compensatory leave at the commencement of the member's participation in the DROP.

(3) A participating DROP member shall continue to remain eligible for health and life insurance benefits provided by the County or the School Board to its employees and shall remain eligible to participate in the County's or School Board's deferred compensation plan. The deductions from the salary of a participating DROP member for health and life insurance benefits shall be the same deductions that would have been taken had the participating DROP member been an active County or School Board employee, not the deductions that would be taken from the retirement benefits and allowances of a retiree.

(4) All County or School Board personnel policies and regulations shall continue to apply to a participating DROP member after the commencement of his or her DROP period. A participating DROP member shall remain eligible for annual merit pay increments and promotions during the DROP period. However, a participating DROP member's salary during his or her DROP period shall not be included in the computation of the member's average final compensation. A participating DROP member shall also be subject to the County's disciplinary policies and regulations.

(5) If a participating DROP member's continued employment with the County or the School Board is interrupted by military service, there shall be no interruption of the member's participation in the DROP. During the period of the participating DROP member's military service, the member's retirement benefits and allowances shall continue to be paid into the participating member's DROP account until the member's DROP period ends. At the end of the DROP period, the member's DROP account balance shall be paid to the member whether or not he or she has returned to his or her former County or School Board position, and the member shall begin to receive his or her normal retirement benefits.

(6) Except as otherwise set forth herein, a participating DROP member's continued service shall be deemed to be normal service retirement and shall not count as creditable service with the System.

(7) Upon commencement of a participating DROP member's DROP period, the County or the School Board shall cease to withhold contributions to the System from the participating DROP member's salary.

(8) The salary received by a participating DROP member during his or her DROP period shall not be included by the County or the School Board in the base that is used to determine the amount of the County's or the School Board's employer contributions to the System.

(d) DROP account.

(1) Upon commencement of the participation of a member of either Plan A or Plan B, whose County or School Board employment commenced by reporting for work before January 1, 2013, in the DROP, the member's service retirement allowance pursuant to Section 3-2-32(a)(1) or (2) and the additional retirement allowance pursuant to Section 3-2-32(a)(3) or (4) shall be paid into the member's DROP account. Upon commencement of the participation of a member of either Plan C or Plan D, whose County or School Board employment commenced by reporting for work on or after January 1, 2013, in the DROP, the member's service retirement allowance pursuant to Section 3-2-32(a)(1) or (2) shall be paid into the member's DROP account; the additional retirement benefits provided for in Section 3-2-32(a)(3) and (4) shall not be credited to the DROP accounts of members of Plans C and D, although members of those Plans shall remain eligible to receive the additional retirement benefits provided for in Section 3-2-32(a) upon the completion of their DROP period, if they then meet the requirements for eligibility for such benefits set forth in Section 3-2-32(a)(3) and (4). The initial amount credited to a member's DROP account shall be computed based on his or her average final compensation as of the date of the commencement of the DROP period.

(2) The initial monthly amount shall be increased each July 1 based upon the annual cost-of-living adjustment provided to retirees pursuant to Section 3-2-44. Any other changes that occur during the DROP period that would result in an alteration of the participating DROP member's retirement allowances and benefits if he or she were retired shall also result in adjustments to the monthly amount credited to a participating DROP member's DROP account.

(3) The participating DROP member's DROP account shall be credited with interest at an annual rate of five percent, compounded monthly. Interest shall not be pro-rated for any period less than a full month.

(4) Contributions by the County or the School Board and the participating DROP member into the System for the participating DROP member shall cease.

(5) Amounts credited to a participating DROP member's DROP account shall not constitute annual additions under Section 415 of the Internal Revenue Code.

(6) A participating DROP member's DROP account shall not be an account that is separate and distinct from the assets of the System; a participating DROP member's DROP account balance shall remain part of the assets of the System.

(e) Cessation of County or School Board employment.

(1) At the conclusion of a participating DROP member's three-year DROP period, the member's County or School Board employment shall automatically cease. The participating DROP member shall then begin to receive normal service retirement allowances and benefits computed based upon his or her average final compensation at the time of the commencement of the DROP period and his or her creditable service at the time of the commencement of the DROP period, plus cost -of -living increases provided to retirees and any other benefit improvements that may have been granted to retirees during the participating DROP member's DROP period. At least 60 days prior to the conclusion of a participating DROP member's DROP period, the member shall make one of the following elections concerning payment of his or her DROP account balance:

(A) The member may receive payment of his or her DROP account balance as a lump sum.

(B) The member may elect to roll over his or her DROP account balance into a qualified retirement plan, such as an IRA.

(C) The member may elect to receive payment of a portion of his or her DROP account balance and roll over the remaining portion into a qualified retirement plan, such as an IRA. If the member elects this method of receiving his or her DROP account balance, he or she must specify, in writing, the specific amount to be paid as a lump sum and the specific amount to be rolled over.

(D) The member may elect to use his or her DROP account balance to increase his or her monthly retirement allowances and benefits. The amount of the increase shall be determined based on the actuarial equivalent of the member's DROP account balance.

(E) The member may divide his or her DROP account balance in half, and may then elect to use 50 percent of his or her DROP account balance to increase his or her monthly retirement allowances and benefits, and to receive the remainder in any manner listed in Subparagraphs (A), (B) and (C) above. In the event that the participating DROP member does not make the election required by this Subsection, the DROP account balance shall be used to increase his or her monthly retirement allowances and benefits. The amount of the increase shall be determined based on the actuarial equivalent of the member's DROP account balance.

(2) A participating DROP member may terminate his or her County or School Board employment at any time, in which case the effective date of the member's termination of his or her County or School Board employment shall be treated as the end of the DROP period for all purposes of this Section.

(3) In the event that the employment of a participating DROP member is terminated by the County or the School Board during the DROP period for any reason, the effective date of the member's separation from County service shall be treated as the end of the DROP period for all purposes of this Section.

(f) Death or disability during DROP period.

(1) If a participating DROP member dies during the DROP period, the participating DROP member's designated beneficiary on record with the System shall receive payment of the member's DROP account balance and the member's accumulated contributions; if there is no designated beneficiary on record with the System, payment of these amounts shall be made to the participating DROP member's estate. In the event that the participating DROP member has elected a joint and last survivor option pursuant to the terms of Section 3-2-32(c), the participating DROP member's surviving spouse shall receive payment of the participating DROP member's DROP account balance and shall begin to receive retirement allowances and benefits pursuant to the joint and last survivor option election of the participating DROP member.

(2) If a participating DROP member becomes disabled during the DROP period, the participating DROP member shall receive:

(A) In the case that a participating DROP member suffers a disability that would be considered an ordinary disability as defined in Sections 3-2-33 and 3-2-35, the effective date of the member's disability shall be treated as the end of the participating DROP member's DROP period.

(B) In the case that a participating DROP member suffers a service-connected disability as set forth in Section 3-2-36, the participating DROP member may elect either (i) to receive the service-connected disability retirement allowances and benefits to which he or she would otherwise be entitled or (ii) to receive the normal service retirement allowances and benefits to which he or she would be entitled plus his or her DROP account balance. An election to receive service-connected disability retirement allowances and benefits shall constitute a waiver of the member's right to receive any amounts credited to his or her DROP account balance.

(g) Execution of documents and adoption of rules and regulations. The County Executive is authorized to execute all documents necessary or appropriate to operate the DROP including, but not limited to, the establishment of a trust within which the participating DROP members' DROP accounts shall be held and administered. The Board is also authorized to adopt rules and regulations governing the DROP. Any documents executed by the County Executive shall be approved for form by the County Attorney prior to execution. (20-05-3; 40-08-3; 41-08-3; 27-10-3; 26-12-3; 2-16-3.)

Division 9. - Benefit Restoration Plan.

Section ~~3-2-58~~3-2-57. - Benefit restoration plan.

(a) There is hereby established a Benefit Restoration Plan for the System.

(b) Purpose and intent; rule of construction.

(1) In establishing this Benefit Restoration Plan, the Board of Supervisors intends to establish and maintain a "qualified governmental excess benefit arrangement," as defined and authorized by Section 415(m) of the Internal Revenue Code, and as is permitted by Section 51.1-1302 of the *Virginia Code.* The purpose of this Benefit Restoration Plan is to restore, through a non-qualified arrangement, the benefits lost by the application of the limitation on annual benefits under Section 415(b) of the Internal Revenue Code as applicable to governmental plans. This Benefit Restoration Plan shall exist in addition to all other retirement, pension, or other benefits available to participants, including the benefits established by the System.

(2) This Section shall be construed to ensure compliance with federal and state law, and any regulations promulgated thereunder, governing such qualified governmental excess benefit arrangements, including, but not limited to Section 415(m) of the Internal Revenue Code, and Sections 51.1-1302, 51.1-1303, and 51.1-1304 of the *Virginia Code,* as in effect at the time of the adoption of this Section and as subsequently amended.

(c) Definitions.

(1) *Administrator* or *Plan Administrator* shall mean the Board, which is responsible for the general administration and operation of the Benefit Restoration Plan and for making effective the provisions of this Section. Under the oversight of the Board, the Executive Director shall be responsible for the day-to-day operation and administration of the Benefit Restoration Plan.

(2) *Beneficiary* shall mean the person or persons entitled under this Article to receive any benefits payable after the participant's death.

(3) *Benefit Restoration Plan* or *Plan* shall mean the Benefit Restoration Plan for the System established by this Section.

(4) *Effective date* shall mean the date of this Section's adoption [June 5, 2006].

(5) *Eligible member* shall mean a retired member of the System whose benefits thereunder are reduced by the application of the limitations on annual benefits under Section 415(b) of the Internal Revenue Code as applicable to governmental plans.

(6) *Enabling statute* shall mean Chapter 13 of Title 51.1 of the *Virginia Code,* as amended.

(7) *Grantor trust* shall mean the trust fund described in Subsection (i)(3) of this Section and established and maintained for the Benefit Restoration Plan.

(8) *Participant* shall mean an eligible member qualified to participate in the Benefit Restoration Plan.

(9) *Plan sponsor* shall mean the Board of Supervisors.

(10) *Plan year* shall mean the 12-month period beginning on July 1.

(11) *Restoration death benefit* shall mean the benefit due the beneficiary of a participant under the Benefit Restoration Plan as determined under this Section.

(12) *Restoration retirement benefit* shall mean the benefit due a participant or his or her beneficiary under the Benefit Restoration Plan determined under this Section.

(d) Eligibility and participation.

(1) Eligibility and date of participation. Each eligible member shall be a participant in the Benefit Restoration Plan commencing with the date he or she first becomes, or again becomes, an eligible member.

(2) Length of participation. Each eligible member who becomes a participant shall be or remain a participant for so long as he or she is entitled to future benefits under the terms of the Benefit Restoration Plan.

(e) Restoration retirement benefit. Subject to the terms and conditions set forth in this Section, a participant who retires or is retired under the System and who is entitled to the payment of benefits under the System shall be entitled to a restoration retirement benefit, generally expressed as a benefit payable monthly for the life of the participant and commencing at the applicable time provided under this Article, equal to the excess, if any, of:

(1) The amount of the participant's retirement allowance under the System, determined without regard to the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, over

(2) The amount of the participant's retirement allowance under the System.

To the extent that the participant's retirement allowance payable under the System is increased at any time due to increases in limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, whether by statute, regulation, actions of the U.S. Secretary of the Treasury or his or her delegate or otherwise, the participant's restoration retirement benefit shall be reduced correspondingly.

(f) Death benefit.

(1) Death after benefit commencement. If a participant dies after his or her restoration retirement benefit commences to be paid, the only benefits payable under the Benefit Restoration Plan to his or her beneficiary after his or her death shall be those, if any, provided under the form of payment being made to him or her at his or her death.

(2) Death before benefit commencement. If a participant dies before his or her restoration retirement benefit commences to be paid, the only benefit payable under the Benefit Restoration Plan with respect to him or her shall be the restoration death benefit, if any, provided in Subsection (f)(3) of this Section.

(3) Restoration death benefit. Subject to the terms and conditions set forth herein, if a participant dies on or after the effective date and before his or her restoration retirement benefit commences to be paid, his or her beneficiary shall be entitled to a restoration death benefit as follows:

(A) If his or her beneficiary is entitled to receive any death benefit under the System, such beneficiary shall be entitled to receive as a restoration death benefit under the Benefit Restoration Plan an amount equal to the excess, if any, of:

(i) The amount of such death benefit under the System, determined without regard to the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, over

(ii) The actual amount of such death benefit under the System.

To the extent that the participant's accrued benefit or any death benefit payable under the System is increased at any time due to increases in the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, whether by statute, regulation, actions of the U.S. Secretary of the Treasury or his or her delegate or otherwise, the participant's restoration death benefit shall be reduced correspondingly.

(g) Vesting. A participant's restoration retirement benefit or restoration death benefit, as the case may be, shall be vested at the time of his or her retirement under the System or death, but only to the extent, and determined in the manner, that such participant has a vested and non-forfeitable right to his or her retirement allowance under the System.

(h) Payment of benefits.

(1) Timing and manner for payment of benefits. A participant's restoration retirement benefit, or the restoration death benefit, shall be payable at the same time and in the same manner as the participant's retirement allowance or comparable death benefit (other than his or her accumulated contributions or contribution refund death benefit) is paid under the System, whether as elected by the participant or otherwise payable. For a member who is receiving a retirement allowance under the System on the effective date, and who would immediately be an eligible member upon the effective date, such member shall immediately commence receiving a restoration retirement benefit on a prospective basis.

(2) Discretionary use of other methods of payment. In the sole discretion of the Administrator, monthly payment amounts of less than $100.00, or such amount as the Administrator may from time to time determine, may be paid on an annual or semi-annual basis, in arrears and without interest.

(3) Benefit determination and payment procedure. The Administrator shall make all determinations concerning eligibility for benefits under the Benefit Restoration Plan, the time or terms of payment, and the form or manner of payment to the participant (or the participant's beneficiary in the event of the death of the participant). The Administrator shall promptly notify the employer and, where payments are to be made from a grantor trust, the trustee thereof, of each such determination that benefit payments are due and provide to the employer or trustee such other information necessary to allow the employer or trustee to carry out said determination, whereupon the employer or trustee shall pay such benefits in accordance with the Administrator's determination.

(4) Payments to minors and incompetents. If a participant or beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits shall be paid to such person as the Administrator may designate for the benefit of such participant or beneficiary. Such payments shall be considered a payment to such participant or beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Benefit Restoration Plan.

(5) Distribution of benefit when distributee cannot be located. The Administrator shall make all reasonable attempts to determine the identity and/or whereabouts of a participant or his or her beneficiary entitled to benefits under the Benefit Restoration Plan, including the mailing by certified mail of a notice to the last known address shown on the employer's or the Administrator's records. If the Administrator is unable to locate such person entitled to benefits hereunder, or if there has been no such claim made for such benefits, the employer shall continue to hold the benefit due such person, subject to any applicable statute of escheats.

(i) Funding.

(1) The undertaking to pay the benefits hereunder shall be unfunded obligations payable solely from the general assets of the employer and subject to the claims of the employer's creditors.

(2) Except as provided in a grantor trust established as permitted under Subsection (i)(3) of this Section, nothing contained in the Benefit Restoration Plan and no action taken pursuant to this Section shall create or be construed to create a trust of any kind of a fiduciary relationship between the employer and the participant or his or her beneficiary or any other person or to give any participant or beneficiary any right, title, or interest in any specific asset or assets of the employer. To the extent that any person acquires a right to receive payments from the employer under the Benefit Restoration Plan, such rights shall be no greater than the right of any unsecured general creditor of the employer.

(3) Use of grantor trust permitted. Notwithstanding any provision of this Section to the contrary, the Benefit Restoration Plan Sponsor may in its sole discretion elect to establish and fund a grantor trust for the purpose of providing benefits under the Benefit Restoration Plan.

(j) Plan administrator.

(1) The Plan Administrator shall have full and complete authority and discretion to control and manage the operation of and shall decide all matters under the Benefit Restoration Plan pursuant to this Section and the enabling statute. The Administrator shall have any and all powers as may be necessary or advisable to discharge its duties under the Benefit Restoration Plan including the power and authority to interpret the terms of the Benefit Restoration Plan.

(2) The Plan Administrator shall be responsible for performing the duties required for the operation of the Benefit Restoration Plan, and shall be responsible for supervising the performance of any other persons who may assist in the performance of the Plan Administrator's responsibilities under this Section and the enabling statute.

(3) To enable the Plan Administrator to perform its responsibilities, employer(s) shall promptly provide to the Plan Administrator complete and accurate information on any matter that is required by the Administrator in order to make any decision or determination under the Benefit Restoration Plan. The Plan Administrator shall rely upon this information supplied by the employer, and shall have no duty or responsibility to verify this information.

(4) Except as prohibited by law or by this Section, the Plan Administrator may delegate any of its duties to the Executive Director. The Plan Administrator may contract with any person to provide services to assist in the administration of the Benefit Restoration Plan. The Plan Administrator shall make such contracts in compliance with all applicable state and local laws and regulations. Any person other than the Plan Administrator who performs services regarding the Benefit Restoration Plan shall be subject to the supervision and direction of the Plan Administrator and shall not have the authority to control the operation of the Plan.

(k) Termination and amendment of Benefit Restoration Plan.

(1) Termination. The Board of Supervisors hereby reserves the right to terminate this Benefit Restoration Plan at any time; provided, that no such termination shall reduce, suspend, or terminate the restoration retirement benefit or restoration death benefit otherwise payable to a participant or beneficiary hereunder as of the date of such termination.

(2) Amendment. The Board of Supervisors hereby reserves the right to amend this Benefit Restoration Plan at any time; provided, that no such amendment shall reduce, suspend, or terminate the restoration retirement benefit or restoration death benefit otherwise payable to a participant or beneficiary hereunder as of the date of such amendment.

(l) Non-assignability. The interests of each participant hereunder in the Benefit Restoration Plan are not subject to the claims of the participant's creditors; and neither the participant nor his or her beneficiary, shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Benefit Restoration Plan, which payments and interest are expressly declared to be non-assignable and non-transferable. Notwithstanding the foregoing, the

Plan Administrator shall honor any process for a debt to the employer who has employed the participant and any administrative actions pursuant to Section 63.2-1900 et seq. of the *Virginia Code,* or any court process to enforce a child or spousal support obligation, in the manner as described in Section 3-2-6 mutatis mutandi. Restoration retirement benefits and/or restoration death benefits created under this Section which are deemed to be marital property pursuant to Section 20-89.1 et seq. of the *Virginia Code* may be divided or transferred by the court by direct assignment to a spouse or former spouse pursuant to Section 20-107.3 of the *Virginia Code.* Under no circumstances shall a payment under this Subsection take place before the participant's benefit under the System is actually paid. (12-06-3; 2-16-3.)

ARTICLE 3. - Fairfax County Uniformed Retirement System.

Division 1. - Generally.

Section 3-3-1. - Fairfax County Uniformed Retirement System established.

Under the authority of Section 51.1-801 of the *Virginia Code,* there is hereby established a retirement system for employees, to be known as the "Fairfax County Unformed Retirement System," by and in which name it shall, pursuant to the provisions of this Article, transact all of its business. The Fairfax County Uniformed Retirement System is intended to satisfy the requirements of Sections 401(a) and 414(d) of the Internal Revenue Code for qualified governmental pension plans. (1961 Code, § 9-73; 11-74-9; 28-77-3; 51-13-3; 3-16-3.)

Section 3-3-2. - Definitions.

Unless provided otherwise in another Section, the following definitions shall apply to this Article:

(a) *Accrued sick leave credit* shall mean:

(1) For employees whose County employment commenced by reporting for work before January 1, 2013 (members of Plans A, B, C, or D), the credit allowed a member with more than five years of service for purposes of determining retirement eligibility. Credit shall be allowed at the rate of one month for every 172 hours of accrued unused sick leave, and pro rata credit shall be allowed for each fraction thereof.

(2) For employees whose County employment commenced by reporting for work on or after January 1, 2013 (members of Plan E), the credit allowed a member with more than five (5) years of service for purposes of determining retirement eligibility. Credit shall be allowed at the rate of one month for every 172 hours of accrued unused sick leave, and pro rata credit shall be allowed for each fraction thereof; however, for employees whose County employment commenced by reporting to work on or after January 1, 2013, notwithstanding the amount of the employee's accrued sick leave balance, the maximum amount of accrued sick leave credit that may be used for determining retirement eligibility and for computing the member's retirement allowances and benefits shall be the employee's accrued sick leave balance or 2,080 hours, whichever is less.

(b) *Accumulated contributions* shall mean the sum of all amounts deducted or picked up from the compensation of a member and credited to his or her individual account in the members' contribution account, any amounts transferred from another retirement plan pursuant to Section 3-3-25.1, together with interest credited on such amounts and any other amounts he or she shall have contributed or transferred thereto as provided in Section 3-3-29(c).

(c) *Actuarial equivalent* shall mean a benefit of equal value when computed upon the basis of such actuarial tables as are adopted by the Board.

(d) *Average final compensation* shall mean the average annual creditable compensation of a member during the three consecutive years (78 consecutive pay periods) of creditable service in which such compensation was at its greatest amount, or during the entire period of his or her creditable service if less than three years. In determining creditable compensation, premium payments such as overtime pay shall not be included.

(1) In determining average final compensation for members who retire on or after January 1, 1988, the member's accrued unused sick leave at the time of retirement may, at the option of the member, be substituted for an equivalent period of creditable service as if the member had continued to work at his or her final salary during the period of his or her accrued unused sick leave; provided, that in determining the average final compensation for members who became members of the System on or after January 1, 2013 (members of Plan E), no more than 2,080 hours of the member's accrued unused sick leave may be used for this purpose.

(2) If a member ordered or called to active duty with the armed forces of the United States on or after August 2, 1990, with or without his or her consent, other than for training at the request of the member, is entitled to service credit as a result of such military service pursuant to Section 3-3-25(b) and he or she otherwise would have no creditable compensation attributable to some portion or all of such period of service, his or her average final compensation shall be calculated as if he or she had continued to receive the creditable compensation as defined in this Article and approved and established for his or her position by the County Compensation Plan, including pick-up contributions, during the period of military service for which he or she is receiving service credit. A member shall be entitled to the benefit of the application of this rule for up to a cumulative total of four years of military service commencing on or after August 2, 1990. The Board shall make any and all necessary retroactive adjustments to members' allowances as a result of this rule.

(3) Notwithstanding the foregoing, whenever the Director of the Department of Human Resources, at the request of the Board, the member, or the member's beneficiary, determines that the member's receipt of a merit increment was delayed as a result of either or both of the amendments to Section 4.3-2 of the Personnel Regulations, effective July 13, 1991, and July 11, 1992, and that the member would otherwise have been entitled to such merit increment under the Personnel Regulations, based upon the Human Resources Director's review of the member's personnel and payroll records, the Board shall calculate the member's average final compensation as if the member had received the merit increment at the time he or she would have but for the aforesaid amendments to Section 4.3-2 of the Personnel Regulations. This rule shall apply to all applications for allowances and benefits filed with the Board on or after July 13, 1991. The Board shall make any necessary retroactive adjustments to allowances and benefits.

(4) Periods of leave without pay under the federal Family and Medical Leave Act of 1993 (FMLA) shall be disregarded in determining periods of consecutive months or pay periods in calculating average final compensation.

(e) *Beneficiary* shall mean any person entitled to receive benefits as provided by the System. The Board shall provide a member with a form on which to designate in writing one or more beneficiaries of the member's benefits upon the member's death. The Board shall maintain any such written designation on file. A designated beneficiary may be changed from time to time by written notice by the member filed with the Board.

(f) *Board* shall mean the Board of Trustees of the System, as provided for in this Article.

(g) *Creditable compensation* shall mean the full compensation, including pick-up contributions, holiday hours worked, administrative emergency leave worked, shift differential paid and regularly scheduled hours paid, credited at the base rate of pay but excluding premium pay such as all overtime, including Fair Labor Standards Act (FLSA) overtime and excluding performance bonuses. Effective for plan years after December 31, 1988, compensation in excess of $200,000.00, as indexed under Section 415(d) of the Internal Revenue Code, shall be disregarded. Notwithstanding the foregoing, effective for members whose County employment commenced by reporting for work on or after July 1, 1996, compensation in excess of the limit set forth in Section 401(a)(17) of the Internal Revenue Code shall be disregarded. In determining the compensation of an employee under this definition, the rules of Section 415(c)(3) of the Internal Revenue Code shall apply. Effective for plan years on or after January 1, 2001 an employee's compensation shall include amounts not includible in gross income by reason of Section 132(f)(4) of the Internal Revenue Code.

(h) *Creditable service* shall mean the sum of membership service credit, plus prior service credit, plus portability service credit purchased pursuant to Section 3-3-25.1, plus accrued sick leave credit.

(i) *DROP* shall mean the Deferred Retirement Option Program, as provided in Section 3-3-573-3-56.

(j) *Early retirement* shall mean the retirement upon completion of 20 years of service with an actuarial reduction of the normal retirement allowance accrued.

(k) *Employee* shall mean any person regularly employed within the Fire and Rescue Department, the Sheriff's Department, and the Department of Animal Control, with the exception of clerical personnel in these departments, or as a park police officer or helicopter pilot, rendering service to the County, and any person regularly employed within the Department of Public Safety Communications who transferred into the System pursuant to Section 3-2-19(e) or who was appointed to a position in the classes identified in Section 3-3-20(a)(4) on or after July 1, 2005, whose compensation is fully or partially paid directly or indirectly by the County.

(l) *Employer* shall mean an authority in the general County having the power to appoint an employee to office or employment paid directly or indirectly by the County and the Board of Trustees of the System.

(m) *Executive Director* shall mean the Executive Director of the Fairfax County Retirement Administration Agency.

(n) *Internal Revenue Code* shall mean the federal income tax statutes, as they may be amended or superseded from time to time in the future.

(p) *Medical Examining Board* shall mean the physician or physicians provided for by Section 3-3-10.

(q) *Member* shall mean any person included in the membership of the System as provided in Section 3-3-20.

(r) *Membership service credit* shall mean credit for service rendered while a member of the System, or as otherwise provided in Section 3-3-24.

(s) *Normal retirement date* shall mean either (1) the member's 55th birthday, provided, said member shall have completed six years of creditable service as a uniformed member of the Fire and Rescue Department, Sheriff's Department, or Department of Animal Control, or as a park police officer, helicopter pilot, or sheriff, or (2) the date the member completes 25 years of creditable service as a uniformed member of the Fire and Rescue Department, Sheriff's Department, or Department of Animal Control, or as a park police officer, helicopter pilot, or sheriff. The normal retirement date for members who are former park police officers who elected to remain in the System pursuant to Section 3-3-20(b)(2) shall be computed in the same manner. Creditable service for these members shall include service both as a park police officer and as a police officer.

(t) *Pick-up contributions* shall mean a member's regular contribution which is picked up, through a salary reduction, by the County from the member's compensation for service rendered on or after December 22, 1984.

(u) *Plan A* shall mean the option effective July 1, 1981, available to employees whose County employment commenced by reporting for work on or before March 31, 1997, providing for current members of Plan A to:

(1) Contribute four percent of compensation up to the taxable wage base and five and three-fourths percent of compensation in excess of the taxable wage base; and

(2) Accrue normal retirement benefits as provided for in Section 3-3-33(a)(1)(A) and (B) or as provided for in Section 3-3-33(a)(2)(A). Further, cost-of-living adjustments shall not be applicable to the allowance until the member reaches age 55 years, at which time the full benefits prescribed in Section 3-3-33 and Section 3-3-45 shall become payable.

(v) *Plan B* shall mean the provision effective July 1, 1981, allowing current members the option and requiring new members whose County employment commenced by reporting for work on or before March 31, 1997, to:

(1) Contribute seven and eight-one-hundredths percent of compensation up to the taxable wage base and eight and eighty-three-one-hundredths percent of compensation in excess of the taxable wage base; and

(2) Accrue normal retirement benefits as provided for in Section 3-3-33(a)(1)(A), (B), and (C) or as provided for in Section 3-3-33(a)(2)(A) and (B). Cost-of-living adjustments provided for in Section 3-3-45 shall be applied to this amount from the date of retirement. Additionally, 50 percent of the retirement allowance provided in Section 3-3-33(a)(1)(B) shall be payable from the date of retirement. Upon attainment of age 55 years, benefits shall be based on the provisions of Section 3-3-33(a)(1)(A) and (B).

(w) *Plan C* shall mean the provision effective April 1, 1997, allowing then-existing members of Plan A who elect to transfer to Plan C prior to April 1, 1997, to:

(1) Contribute four percent of compensation; and

(2) Accrue normal retirement benefits as provided for in Section 3-3-33(a)(1)(D) or as provided for in Section 3-3-33(a)(2)(C). Further, cost-of-living adjustments shall not be applicable to the allowance until the member reaches age 55 years, at which time the full benefits prescribed in Sections 3-3-33 and 3-3-45 shall become payable.

(x) *Plan D* shall mean the provision effective April 1, 1997, allowing then-existing members of Plan B, and requiring new members whose County employment commenced by reporting for work on or after April 1, 1997, but on or before December 31, 2012, to:

(1) Contribute seven and eight-one-hundredths percent of compensation; and

(2) Accrue normal retirement benefits as provided for in Section 3-3-33(a)(1)(D) or as provided for in Section 3-3-33(a)(2)(D). Cost-of-living adjustments provided for in Section 3-3-45 shall be applied to this amount from the date of retirement.

(y) *Plan E* shall mean the option effective beginning on January 1, 2013, requiring new members whose County employment commenced by reporting for work on or after January 1, 2013, to:

(1) Contribute seven and eight-one-hundredths percent of compensation; and

(2) Accrue normal retirement benefits as provided for in Section 3-3-33(a)(1)(D) or as provided for in Section 3-3-33(a)(2)(D). Cost-of-living adjustments provided for in Section 3-3-45 shall be applied to this amount from the date of retirement.

(z) *Primary social security benefit* shall mean the primary insurance amount to which the member is entitled, for old age or disability, as the case may be, pursuant to the federal Social Security Act as in effect at his or her date of retirement, under the provisions of this Chapter, except as otherwise specifically provided.

(aa) *Prior service credit* shall mean credit for service rendered prior to the effective date of this Article [May 6, 1974], or as otherwise provided in Section 3-3-25.

(bb) *Qualifying employment* shall mean employment that qualifies an employee for participation in the System, and defined specifically to mean regular employment by the Fire and Rescue Department, the Sheriff's Department, and the Department of Animal Control, with the exception of clerical employment in these departments, or as a park police officer or helicopter pilot rendering service to the County, whose compensation is fully or partially paid directly or indirectly by the County.

(cc) *Retirement allowance* shall mean the retirement payments to which a member is entitled as provided in this Article.

(dd) *Salary* shall mean the compensation, including pick-up contributions, established for each position as approved in the County Compensation Plan.

(ee) *Service* shall mean service as an employee for which compensation is paid by the employer, but shall not include time spent on leave without pay.

(ff) *Social security* shall mean the federal Social Security Act and its programs for old age, survivors and disability insurance and benefits, as applicable.

(gg) *Social security breakpoint* shall mean the average of the taxable wage base for the 35 calendar years ending with the year in which the member attains social security normal retirement age. In determining a member's social security breakpoint during any particular plan year, it is assumed that the taxable wage in effect at the beginning of the plan year shall remain the same for all future years.

(hh) *System* shall mean the Fairfax County Uniformed Retirement System. When any part of this Article refers to multiple retirement systems, the Uniformed Retirement System shall be referred to as "this System," rather than "the System."

(ii) *Taxable wage base* shall mean the maximum amount of wages received during the calendar year on which social security taxes are payable by the member and by the employer, as such amount is defined in Section 3121(a) of the Internal Revenue Code.

(1961 Code, § 9-72; 11-74-9; 28-77-3; 20-81-3; 5-83-3; 22-83-3; 23-85-3; 36-88-3; 29-89-3; 27-90-3, § 3; 43-92-3; 15-93-3; 37-94-3; 21-96-3; 14-00-3; 10-01-3; 18-01-3; 8-03-3; 8-04-3; 36-10-3; 27-12-3; 3-16-3.)

Section 3-3-2.1. - Definitions elsewhere in County Code and in County Personnel Regulations.

Unless this Article provides otherwise, the definitions provided in Sections 1-1-2, 3-3-1, and 3-3-12 of the Code of the County of Fairfax, and Chapter 2 of the Fairfax County Personnel Regulations shall apply herein. (3-16-3.)

Section 3-3-3. - Social Security Breakpoint.

Repealed by 3-16-3.

Section 3-3-4. - Duties of appointing authorities.

The authority having the power to hire the services of a member shall keep such records and from time to time shall furnish such information as the Board may require in the discharge of its duties. Upon employment of a member, the authority shall inform the member of his or her duties and obligations in connection with the System as a condition of employment. (1961 Code, § 9-74; 11-74-9; 3-16-3.)

Section 3-3-5. - Consent to provisions of Article required for employment.

By and upon acceptance of employment, every member shall be deemed to consent and agree to any deductions or employer pick-up of amounts from his or her compensation required by this Article and to all other provisions thereof. (1961 Code, § 9-75; 11-74-9; 5-85-3; 3-16-3.)

Section 3-3-6. - Protection against fraud.

In addition to any other provisions of law, any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of the System in any attempt to defraud the System shall be guilty of a misdemeanor and shall be punished accordingly. (1961 Code, § 9-76; 11-74-9; 3-16-3.)

Section 3-3-7. - Benefits unassignable; non-attachable.

The right of any member to a retirement allowance, the return of accumulated contributions or any other right accrued or accruing to any person under this Article and the money created by this Article shall be unassignable and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws or any other process of law whatsoever except for administrative actions pursuant to Section 63.2-1900 et seq. of the *Virginia Code,* or any court process to enforce a child or child and spousal support obligation, and shall be unassignable except as specifically provided in this Article. However, retirement benefits and assets created under this Article which are deemed to be marital property pursuant to Section 20-89.1 et seq. of the *Virginia Code,* may be divided or transferred by the court by direct assignment to a spouse or former spouse pursuant to Section 20-107.3 of the *Virginia Code.* (1961 Code, § 9-77; 11-74-9; 3-80-3; 5-85-3; 13-92-3; 1-93-3; 3-16-3.)

Section 3-3-8. - Errors resulting in over- or under-payment.

Should any change or error in the records result in any member or beneficiary receiving from the System more (overpayment) or less than he or she would have been entitled to receive had the records or computation been correct, the Board shall have the power to correct such error and, as far as practicable, to adjust the payments in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid. (1961 Code, § 9-78; 11-74-9; 3-16-3.)

Section 3-3-9. - Amendment of Article.

The Board of Supervisors shall have the continuing right and power to amend or supplement this Article at any time, which right and power is hereby expressly reserved. But no amendment shall be made unless an actuarial report has been filed with the Board of Supervisors as to its effect upon the System and no amendment shall be adopted which shall reduce the then accrued benefits of members or beneficiaries below the extent they are then covered by accumulated reserves, which reserves shall constitute a trust fund for the payment of such benefits. (1961 Code, § 9-79; 11-74-9; 3-16-3.)

Section 3-3-10. - Medical Examining Board.

The Medical Examining Board shall consist of the Director of the Health Department (or his or her designee) and, in the discretion of the Board, one or two other physicians designated by the Board. The duties of the Medical Examining Board shall be to arrange for and pass upon all medical examinations required under this Article or requested by the Board and to investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability retirement. The members of the Medical Examining Board, who may act individually or collectively, shall report in writing to the Board their conclusions and recommendations upon all matters referred to it. (1961 Code, § 9-80; 11-74-9; 27-97-3; 3-16-3.)

Section 3-3-10.1. - Post-employment physical examinations.

(a) Any member or person eligible to participate in the System who applies for service-connected disability retirement or severe service-connected disability retirement on or after July 1, 2004, shall disclose to the Board any and all medical records and information, including, but not limited to any pre-employment or post-employment physical examination, any examination made relating to any claim under the Virginia Workers' Compensation Act and any and all other further tests or examinations required by the Board to assist it in its determination of whether the disability for which the member seeks retirement is service-connected or if it is the result of a preexisting condition.

(b) Failure to disclose to the Board any medical record or information required hereunder or to undergo any further required tests or examinations shall preclude a member who does not disclose such medical records and information or such other further tests or examinations from receiving service-connected disability retirement as provided for in Section 3-3-36 and from receiving severe service-connected disability retirement as provided for in Section 3-3-37.2. (34-04-3; 3-16-3.)

Division 2. - Board of Trustees.

Section 3-3-11. - Administration of System vested in Board of Trustees.

The general administration and the responsibility for the proper operation of the System and for making effective the provisions of this Article are hereby vested in the Board. (1961 Code, § 9-81; 11-74-9; 3-16-3.)

Section 3-3-12. - Membership; term of office.

(a) The Board of Trustees of the System shall consist of the following members:

- Four persons appointed by the Board of Supervisors;
- Two persons elected by the uniformed employees of the Fire and Rescue Department and the employees of the Department of Public Safety Communications;
- One person elected by the uniformed employees of the Sheriff's Department and the Department of Animal Control and park police and helicopter pilot members of the System;
- One person elected by the retirees of the System;
- Director of the Department of Finance, who shall be the Treasurer of the Board, or his or her permanent designee, sitting ex officio; and

- Director of the Department of Human Resources, or his or her permanent designee, sitting ex officio.

(b) With the exception of the Director of the Department of Finance and Director of the Department of Human Resources, the terms of office of the trustees shall be four years.

(c) The only persons eligible to be elected by the uniformed employees of the Fire and Rescue Department and the employees of the Department of Public Safety Communications as trustees are uniformed employees of the Fire and Rescue Department and employees of the Department of Public Safety Communications. The only persons eligible to be elected as a trustee by the uniformed employees of the Sheriff's Department and the Department of Animal Control and park police and helicopter pilot members of the System are uniformed employees of the Sheriff's Department and the Department of Animal Control and park police and helicopter pilot members of the System. The offices of such trustees shall be vacated should such trustees separate from service prior to the completion of their term.

(d) The only persons eligible to be elected as a trustee by the retirees of the System are retirees of the System. (1961 Code, § 9-82; 11-74-9; 20-81-3; 13-92-3; 40-93-3; 36-10-3; 59-13-3; 3-16-3.)

Section 3-3-13. - Vacancies in office.

If a vacancy occurs in the office of a trustee of the System, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled. (1961 Code, § 9-83; 11-74-9; 3-16-3.)

Section 3-3-14. - Compensation of trustees.

The trustees of the System may receive compensation at the rate set by the Board of Supervisors. (1961 Code, § 9-84; 11-74-9; 3-16-3.)

Section 3-3-15. - Accountable to the Board of Supervisors.

The Board of Trustees of the System shall be accountable to the Board of Supervisors. (1961 Code, § 9-85; 11-74-9; 3-16-3.)

Section 3-3-16. - Functions of the Board.

(a) Subject to the limitations of this Article, the Board shall, from time to time, establish rules and regulations for the administration of the System and for the transaction of its business, copies of which shall be made available to interested parties.

(b) The Board may employ and pay out of the System funds for all services as shall be required.

(c) The Board shall keep in convenient form such data as shall be necessary for an actuarial valuation of the System and for checking the experience of the System.

(d) The Board shall keep minutes of all its proceedings, which shall be open to public inspection unless applicable law provides otherwise.

(e) The Board shall submit to the Board of Supervisors annually an independent audit showing the fiscal transactions of the System for the preceding fiscal year, the amount of accumulated cash and securities of the System, and the last balance sheet indicating the financial condition of the System.

(f) At least once in each two-year period, beginning July 1, 1969, the Board shall cause an actuarial evaluation to be made of the System.

(g) The Board shall review adverse decisions as provided by Section ~~3-3-50~~3-3-49. (1961 Code, § 9-86; 11-74-9; 3-16-3.)

Division 3. - Management of Funds.

Section 3-3-17. - Board trustee of funds; investment of same.

(a) The Board shall be the trustee of funds created by this Article and shall have full power to invest and re-invest such funds. Such investments and re-investments shall be conducted with bona fide discretion and in accordance with the laws of the Commonwealth of Virginia as such laws apply to fiduciaries investing such funds. The Board may, upon the exercise of bona fide discretion, employ investment counsel, who shall be subject to the same limitations herein provided for the Board.

Subject to such limitations, the Board shall have full power to hold, purchase, sell, assign, transfer, or otherwise dispose of any of the securities or investments in which any of the funds created herein have been invested, as well as the proceeds of such investments and any money belonging to such funds.

(b) No trustee shall be personally liable for losses suffered by the System on investments made under the authority of and in compliance with this Section. (1961 Code, § 9-87; 11-74-9; 3-16-3.)

Section 3-3-18. - Treasurer fiscal officer of the Board.

The Treasurer of the Board shall be the custodian of all of its funds and securities or evidences of such when in the custody of a fiduciary agent. He or she shall give bond, conditioned upon the faithful performance of his or her duties and the proper accounting of all funds and securities coming into his or her hands. He or she shall deposit all money in the name of the Board and disburse the same only on vouchers signed by such person as is designated for the purpose by the Board. (1961 Code, § 9-88; 11-74-9; 3-16-3.)

Section 3-3-19. - Prohibited interest of member or employee of Board.

(a) The State and Local Government Conflict of Interests Act, Section 2.2-3100 et seq. of the *Virginia Code* , shall apply to members and employees of the Board.

(b) No member or employee of the Board shall, directly or indirectly, for himself or herself or as an agent in any manner use the funds of the System, except to make such current and necessary payments as are authorized by the Board. (1961 Code, § 9-89; 11-74-9; 3-16-3.)

Division 4. - Membership in System.

Section 3-3-20. - Membership composition.

(a) Membership shall be composed of the following:

(1) Present employees, as hereinafter identified, except those listed in Subsection (2)(B) of this Section:

(A) All persons who were employees on the effective date of this Article or who were on leave from service on such date; or

(B) Any employee, otherwise qualified, who has been a member of another Fairfax County retirement system, and who has withdrawn therefrom, provided he or she pays into this System all contributions which would have been due from him or her had he or she been a member of this System, plus interest at the rate or rates, as established by the Board, for each of the years for which membership service credit is sought.

(2) Future employees, as hereinafter identified, except those listed in Subparagraph (B) of this Subsection:

(A) All persons who hereafter shall become employees, persons receiving a normal or early service retirement allowance from this System, the Fairfax County Employees' Retirement System, or Fairfax County Police Officers Retirement System eligible for membership only under the terms and conditions set forth in Section 3-3-43.

(B) Employees who are members of the Virginia Retirement System (VRS) and the Educational Employees Supplemental Retirement System of Fairfax County (ERFC), the Employees' Retirement System, or the Police Officers Retirement System, and future employees who are eligible to become members of those systems are not eligible for membership in this System; provided, that an employee who is a member of such a system shall be eligible for membership in this System if he or she elects in writing to withdraw from such system, pursuant to the rules and regulations of this System and of the system of which he or she was previously a member. If the withdrawal from the other system occurs due to being employed in a different position by the same appointing authority, the employee shall be required to purchase service credit under this System for service rendered while a member of such other system, pursuant to the rules of Section 3-3-24. If the withdrawal from the other system occurs due to being employed by a different appointing authority, the employee shall be permitted but not required to purchase service

credit under this System for service rendered while a member of such other system, pursuant to the rules of Section 3-3-24. Elected officials, who elect in writing at the time of their employment not to become members, shall be exempted from this System.

(3) The membership in this System of uniformed employees of the Department of Animal Control transferred from the Employees' Retirement System to this System pursuant to Section 3-2-19(d) shall commence on October 1, 1985, or date of appointment, whichever is later. For purposes of this Article, such members shall be deemed to have been appointed on or after January 1, 1984, regardless of being granted any membership service credit pursuant to Section 3-3-24. Uniformed employees of the Department of Animal Control, including the Director, appointed on or after October 1, 1985, shall become members of this System upon appointment.

(4) The membership in this System of certain employees of the Public Safety Communications Center transferred from the Employees' Retirement System to this System pursuant to Section 3-2-19(e), shall commence on October 1, 2005, or date of appointment, which ever is later. Employees of the Public Safety Communications Center appointed on or after July 1, 2005, in the class specification Public Safety Communications Squad Supervisor, Public Safety Communications Assistant Squad Supervisor, Public Safety Communicator III, Public Safety Communicator II or Public Safety Communicator I, or any successor class specification(s) to these class specifications, shall become members of this System upon appointment.

(b) Park police transferring to the Fairfax County Police Officers Retirement System.

(1) Members of this System who were park police and who were reclassified as police officers on January 22, 1983, shall, within 30 days of the adoption of this Subsection [June 20, 1983], make an irrevocable election, in writing, whether to remain members of this System or to transfer to the Fairfax County Police Officers Retirement System.

(2) Members of this System who were park police and who were reclassified as police officers on January 22, 1983, who elect to remain as members of this System shall continue as members of this System.

(3) Members of this System who were park police and who were reclassified as police officers on January 22, 1983, who elect to transfer to the Police Officers Retirement System shall cease to be members of this System and shall be members of the Police Officers Retirement System as of January 22, 1983.

(4) Members who elect to transfer to the Police Officers Retirement System pursuant to Subsection (b)(3) of this Section shall make a further election among the following options at the time of their election under Subsection (b)(1) of this Section:

(A) Withdraw the total of his or her accumulated member contributions (with interest) as of January 22, 1983, which shall be reduced by the amount of any retirement allowances previously received by him or her under this Article. Any member contributions to this System after January 22, 1983, shall be transferred to the transferee's member account in the Police Officers Retirement System. Said refund shall be paid to the member not later than 90 days from the date of receipt of the member's election by the Board; or

(B) If the member has five or more years of creditable service in this System on January 22, 1983, the member may leave his or her accumulated contributions as of January 22, 1983, in this System and receive a deferred vested benefit commencing on the first of the month coinciding with or following the date the member attains age 55 years, or in an actuarially reduced amount payable at the optional early retirement age, in accordance with applicable provisions of this Article; and any member contribution made to this System after January 22, 1983, shall be transferred to the transferred member's account in the Police Officers Retirement System; or

(C) The member may transfer his or her accumulated contributions to the Police Officers Retirement System to obtain prior service credit in that system pursuant to Section 3-7-20(b). In this case, the Board shall transfer the member's accumulated contributions (plus

interest) as well as that portion of the retirement allowance account representing employer contributions to this System attributable to the member's service in this System to the Police Officers Retirement System.

(5) Members who are required by Subsection (b)(1) of this Section to make an election whether to transfer to the Police Officers Retirement System who fail to do so within the 30 day period provided therein shall be deemed to have elected to continue in this System pursuant to Subsection (b)(1) of this Section.

(6) Participation in this System of former members who return to qualifying employment shall be determined in accordance with the following terms and conditions:

(A) Former members who have not withdrawn their accumulated contributions from this System as provided in Section 3-3-39 shall return to membership in the plan to which they were contributing at the time their former employment ceased.

(B) Former members who withdrew their accumulated contributions from this System as provided in Section 3-3-39 subsequent to the cessation of their former employment shall become members of Plan D upon their return to qualifying employment. A former member may purchase membership service credit for the period of his or her prior employment, provided that he or she pays into this System all contributions that would have been due from him or her had he or she been a member of this System during the period of his or her prior employment, plus interest on such contributions at the rate or rates established by the Board, for each of the years for which membership service credit is sought. Any election to purchase membership service credit for periods of prior employment under this Subsection must be made within one year after the former member returns to qualifying employment.

(c) Members of the System who were deputy sheriffs and who as deputy sheriffs had been performing nursing and/or paramedical duties in the Sheriff's Department and who when reassigned to civilian positions in the Sheriff's Department allocated to one of the classes in the Correctional Health Nurse class series, shall, notwithstanding any other provision in this Chapter to the contrary, remain as members of the System so long as they remain in such positions and for so long as they remain so continuously employed in a position allocated to such classes in the Sheriff's Department or in other positions covered by this Article.

(d) Notwithstanding any other provision of this Chapter or Article to the contrary, an active member of this System who has more than five years of creditable service in this System and who is appointed to serve as a Deputy County Executive shall remain a member of this System, and shall not become a member of the Fairfax County Employees' Retirement System as a result of such appointment. Any such member shall remain a member of this System for so long as he or she is so employed or subsequently resumes working in a position that is covered under this System. (1961 Code, § 9-90; 11-74-9; 35-81-3; 22-83-3; 23-85-3; 36-86-3; 45-93-3, 10-01-3; 32-02-3; 23-05-3; 27-12-3; 3-16-3.)

Section 3-3-21. - Cessation of membership.

The membership of any person in the System shall cease :

(a) If he or she ceases to be an employee for a period of five years; or

(b) Upon separation and withdrawal of his or her accumulated contributions; or

(c) Upon death. (1961 Code, § 9-91; 11-74-9; 20-81-3; 3-16-3.)

Division 5. - Service Credit.

Section 3-3-22. - Statement to be filed with Board.

Under such rules and regulations as are adopted by the Board, each member or someone on his or her behalf shall file with the Board in such form as the Board may prescribe, a statement of the facts pertaining to his or her status as a member, which shall include a statement of all service rendered as an employee, and such other information as the Board may require. Until such statement is filed, no member or his or her beneficiary shall be eligible to receive any benefits under this Article. (1961 Code, § 9-92; 11-74-9; 3-16-3.)

Section 3-3-23. - Year of service.

The Board shall determine by appropriate rules and regulations how much service in any year is the equivalent of a year of service, but in no case shall it allow credit for more than one year of service for all service rendered in any period of 12 consecutive months. (1961 Code, § 9-93; 11-74-9; 3-16-3.)

Section 3-3-24. - Membership service credit.

(a) Each member shall receive membership service credit for periods for which he or she received compensation and was a member of the System or after he or she last became a member in the event of a break in his or her membership, provided that any former member of the System who ceased his or her County employment and withdrew his or her accumulated member contributions from the System may purchase membership service credit by paying into the System all accumulated contributions which were collected from him or her during his or her prior period or periods of membership, plus interest at the rate or rates established by the Board, for the entirety of any period of prior service for which membership service credit is sought; a member may not purchase credit for only a portion of any prior period of service, but may only purchase credit for an entire prior period of service. In the event that a member of Plans A, B, C, or D, who ceased his or her County employment and withdrew his or her accumulated member contributions from the System seeks, on or after January 1, 2013, to purchase credit for periods during which he or she received compensation as a member of the System, he or she may only become a member of, and purchase membership service credit in, Plan E, by paying into the System all accumulated contributions which would have been collected from him or her during his or her prior period or periods of membership, plus interest at the rate or rates established by the Board, for the entirety of any period of prior service for which membership service credit is sought; however, notwithstanding the foregoing, a member of any of the five Plans (A, B, C, D or E) that are part of the System who ceased his or her County employment, but who left his or her accumulated member contributions in the System, shall, upon his or her return to County employment, rejoin the Plan to which he or she formerly belonged. Such member may satisfy some or all of the amount due from him or her for the purchase of such service through a rollover from an individual retirement account if the entire amount in that account is attributable to a rollover from the System. Such member may also satisfy some or all of the amount due from him or her for the purchase of such service through a direct trustee-to-trustee transfer from an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code maintained by an eligible employer described in Section 457(e)(1)(A), or through a direct trustee-to-trustee transfer from an annuity contract described in Section 403(b) of the Internal Revenue Code.

(1) Members who are former park police officers who elected to remain in the System under Section 3-3-20(b)(2) shall receive membership service credit for service rendered as a park police officer and for their service as a police officer, including time served as a police officer prior to their election pursuant to Section 3-3-20(b)(2).

(2) Uniformed employees of the Department of Animal Control who transferred into this System pursuant to Section 3-2-19(d) may purchase membership service credit in this System for service as a uniformed employee of the Department of Animal Control rendered prior to October 1, 1985, by making an election in writing pursuant to Section 3-2-19(d)(3) and paying to the Board the difference between the employee contributions that would have been required under this System plus interest, and their employee contribution plus interest to the Fairfax County Employees' Retirement System for the period for which membership service credit is sought. The Board is authorized to enter into agreements with such members for the payment of the sum in installments, at the same interest rate, applied to the member's contribution account, so long as the entire sum due, plus interest, is paid within one year of the adoption of Section 3-2-19(d) [December 16, 1985].

(3) With respect to employees of the Public Safety Communications Center who transferred into this System pursuant to Section 3-2-19(e) and who purchase membership service credit in this System pursuant to Section 3-2-19(e)(3) and (5) by paying to the Board the difference between the employee contributions that would have been required under this System plus interest, and their employee contribution plus interest to the Employees' Retirement System, the Board is authorized to enter into agreements with such members for the payment of the sum in

installments, at the same interest rate, to be applied to the member's contribution account, so long as the entire sum due, plus interest, is paid within three years of October 1, 2005.

(4) Under such rules and regulations as are adopted by the Board, any employee who has been a member of the Virginia Retirement System (VRS) and the Educational Employees Supplemental Retirement System of Fairfax County (ERFC), the Employees' Retirement System, or the Fairfax County Police Officers Retirement System, and who withdraws therefrom may purchase service credit for service rendered while a member of such other system by paying into this System all contributions that would have been due from him or her had he or she been a member of this System, plus interest at the rate or rates, as established by the Board, for each of the years for which membership service credit is sought. (A member may purchase membership service credit for prior service while a member of VRS only for service due to employment by the Fairfax County Public Schools (FCPS).)

(5) The amount due from a member for such purchase of service credit shall be satisfied, to the extent possible, (a) by directing the trustees of the system from which he or she is withdrawing to transfer his or her accumulated member contributions in such system directly to this System, without distribution to such employee, if such transfers are available under such system, or (b) through (i) a rollover from the system from which he or she is withdrawing (if the member would be eligible for a refund from such system), (ii) a rollover from an individual retirement account in which all contributions were derived from a rollover from a system, (iii) a direct trustee-to-trustee transfer from an annuity described in Section 403(b) of the Internal Revenue Code, or (iv) a direct trustee-to-trustee transfer from an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code maintained by an eligible employer described in Section 457(e)(1)(A). To the extent that a rollover or direct transfer permitted under this Subsection is insufficient to purchase the necessary service credit, other arrangements permitted by the rules and regulations adopted by the Board shall be made for purchasing such service credit.

(b) Members in service shall also receive membership service credit for periods of service-connected disability retirement from the System.

(c) A member shall also receive membership service credit for any period during which the member is taking leave without pay from the County service and is receiving compensation from the County for temporary total or temporary partial disability under the Virginia Workers' Compensation Act.

(d) Each member shall receive membership service credit for military leave, provided he or she returns to full employment within 90 days of discharge and such discharge is other than dishonorable. (1961 Code, § 9-94; 11-74-9; 22-83-3; 23-85-3; 45-93-3; 36-94-3; 22-96-3; 10-01-3; 8-03-3; 23-05-3; 27-12-3; 3-16-3.)

Section 3-3-25. - Prior service credit.

The Board shall determine, as soon as practicable after the filing of statements of service, the credit that the member is entitled to receive for prior service. Credit for prior service need not have been continuous provided no break in service exceeded five years. When an employee again becomes a member after his or her prior membership has ceased, he or she shall enter the System as an employee not entitled to prior service credit. Members who have had a break in service shall receive full credit for all past County service; provided, that no credit shall be given for a period of employment prior to a break in service in excess of five years. (1961 Code, § 9-95; 11-74-9; 45-93-3; 30-09-3; 3-16-3.)

Section 3-3-25.1. - Portability service credit.

(a) Definitions.

(1) *Accepting plan* shall mean the retirement plan or system which is receiving membership assets from another defined benefit retirement plan or system in order to permit a current member to purchase portability service credit in the accepting plan through the use of his or her membership contributions in the transferring plan.

(2) *Portability service credit* shall mean service credit purchased in an accepting plan by the transfer of membership assets from the transferring plan.

(3) *Transferring plan* shall mean the retirement plan or system which is transferring membership assets to an accepting plan to enable a former employee of the transferring plan to purchase service in the accepting plan through the use of his or her membership contributions in the transferring plan.

(b) The Board of Supervisors may enter into agreements with the Virginia Retirement System (VRS) or with any other political subdivision of the Commonwealth of Virginia, provided that the retirement system of any other political subdivision of the Commonwealth of Virginia is a defined benefit plan or eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code maintained by an eligible employer described in Section 457(e)(1)(A), to permit any vested member of any such plan to purchase portability credit in this System.

(c) The purchase of portability service credit in the System pursuant to this Section may only be made within 18 months of the date when an employee commences employment in a position covered by the System, or within 18 months of March 23, 2003, for County employees who are members of the System on March 23, 2003.

(d) In order to purchase portability service credit in the System, the member shall be a vested member of the transferring plan and the transferring plan shall be holding member contributions that are subject to transfer. A member desiring to purchase portability service credit shall make written application for the purchase of such credit to the System. The System shall determine from the transferring plan the amount of the member's assets that would be subject to transfer to the System. Based upon the amount subject to transfer, the Board shall determine the amount of portability service credit that would be actuarially equivalent to the amount of the assets to be transferred to the System; this amount shall represent the maximum amount of portability service credit that can be purchased. The Board shall communicate the amount of portability service credit that can be purchased to the member in writing; however, in no event shall the amount of portability service credit that can be purchased exceed the duration of the member's employment in a position that was covered by the transferring plan. The member shall have 30 days from the date of the letter advising him or her of the amount of portability service credit that can be purchased to determine whether to proceed with the purchase or to withdraw his or her application for the purchase of portability service credit.

(e) In the event that the assets transferred are not sufficient to purchase portability service credit in the System equivalent to five years of service, the member shall not become vested in the System until his or her creditable service equals five years.

(f) The purchase of portability service credit in the Virginia Retirement System (VRS) or the retirement system of any political subdivision of the Commonwealth of Virginia that is covered by this Section shall be accomplished upon the transfer of assets from the transferring plan to this System. Upon the completion of such transfer, the member shall lose all rights to any allowances and benefits from the transferring plan, and shall only be entitled to receive allowances and benefits from this System.

(g) When a vested member of this System leaves his or her covered employment and enters a position covered by the Virginia Retirement System (VRS) or by a defined benefit retirement plan of a political subdivision of the Commonwealth of Virginia with which the Board of Supervisors has entered into a portability agreement, the former member of this System may transfer an amount equal to the greater of (i) his or her accumulated member contributions with interest thereon, or (ii) an amount representing the present value of his or her accrued benefits with this System. In order to accomplish the transfer of assets from this System to an accepting plan, the member must make application in writing to this System. Upon the transfer of membership assets from this to the accepting plan, the member shall lose all rights to any allowances or benefits from this System based upon the service giving rise to the assets transferred to the accepting plan by this System. Should such a person resume service in a position covered by this System in the future, he or she may purchase service credit for such prior service or purchase portability service credit, if eligible to do so, in accordance with the provisions of this Article at the time he or she again becomes a member of this System. (18-01-3; 8-03-3; 3-16-3.)

Division 6. - Contributions.

Section 3-3-26. - Member contributions.

(a) Each member shall contribute for each pay period for which he or she received compensation the amounts prescribed in this Section. Subsequent to December 22, 1984, the County shall pick up all employee contributions required herein, for all compensation earned on or after December 22, 1984. The Board of Supervisors may, from time to time, revise the rates of member contributions.

(b) All members of Plan A, who, before April 1, 1997, do not elect in writing to accept the provisions set forth in Subsection (d) of this Section and Section 3-3-33(a)(2)(C) shall be considered as participants in Plan A. Contributions shall be made equal to four percent of such member's creditable compensation per pay period until his or her creditable compensation during the calendar year exceeds the taxable wage base. When such member's annual creditable compensation during the calendar year exceeds the taxable wage base, contributions shall be made equal to five and three-quarters percent of said member's creditable compensation per pay period.

(c) All members of Plan B, who before April 1, 1997, do not elect in writing to accept the provisions set forth in Subsection (e) of this Section and Section 3-3-33(a)(2)(D) shall be considered participants in Plan B. Contributions shall be made equal to seven and eight-one-hundredths percent of such member's creditable compensation per pay period until his or her creditable compensation during the calendar year exceeds the taxable wage base. When such member's annual creditable compensation during the calendar year exceeds the taxable wage base, contributions shall be made equal to eight and eighty-three-one-hundredths percent of said member's creditable compensation per pay period.

(d) All members of Plan A, who, before April 1, 1997, elect in writing to accept the provisions of this Section and Section 3-3-33(a)(2)(C), shall be considered participants in Plan C. Contributions shall be made equal to four percent of the member's creditable compensation per pay period.

(e) All members of Plan B, who, before April 1, 1997, elect in writing to accept the provisions of this Section and Section 3-3-33(a)(2)(D), and all new members who begin employment that qualifies them for participation in the System on or after April 1, 1997, shall be considered participants in Plan D. Contributions shall be made equal to seven and eight-one-hundredths percent of the member's creditable compensation per pay period.

(f) Notwithstanding any other provision of this Section, no pick-up shall be made from any member's compensation if the employer's contribution required hereunder is in default.

(g) The Board may modify the method of collecting the pick-up contributions of members so that the employers, departments, institutions, and agencies required to remit to the Treasurer of the Board may retain the amounts picked up by them with respect to members' salaries and have a corresponding amount deducted from County funds otherwise payable to them.

(h) All contributions required to be made under Subsections (b), (c), (d) and (e) of this Section with respect to current services rendered by an active member on or after December 22, 1984, shall be picked up by the County and shall be treated as the employer's contribution in determining tax treatment under Section 414(h)(2) of the Internal Revenue Code. For all other purposes under this Chapter and otherwise, such pick-up contributions shall be treated as contributions made by a member in the same manner and to the same extent as contributions made by a member prior to December 22, 1984. All picked-up amounts shall be included in compensation for the purpose of calculating benefits under Division 8. The County shall pay such picked-up amounts from the same source of funds which is used in paying earnings to the employee.

(i) With the exception of the transfers between retirement plans specifically allowed as set forth above, no transfers between any of the Plans of the System shall be permitted. (1961 Code, § 9-96; 11-74-9; 20-81-3; 34-81; 5-85-3; 48-96-3; 3-16-3.)

Section 3-3-27. - Employer contributions.

(a) Each employer shall contribute at an annual rate to be fixed by the Board of Supervisors.

(b) The aggregate present value of future employer contributions payable into the retirement allowance account shall be sufficient, when combined with the amount then held in the members' contribution account and the retirement allowance account together with the present value of future employee

contributions, to provide the estimated prospective benefits payable. The annual employer contribution rate shall be fixed as equal to the employer normal cost plus an expense rate, as long as the System's funding ratio (actuarial value of assets divided by actuarial accrued liability) remains within a corridor, the lower measurement of which is described below and the upper measurement of which is 120 percent. The employer normal cost and System actuarial accrued liability are to be measured using the entry age normal funding method.

- To the extent that the System's funding ratio exceeds 120 percent, a credit shall be established equal to the amount of assets in excess of 120 percent of the actuarial accrued liability.
- To the extent that the System's funding ratio is lower than the lower measure of the corridor, a charge shall be established equal to the difference between the lower measure plus the actuarial accrued liability and the assets.

The employer contribution shall be adjusted by a 15 year amortization of the credit or charge described in this Subsection, to be paid until the funding ratio re-enters the corridor at which time it shall cease.

Effective with the fiscal year 2016 County contribution rate, the lower measure of the corridor shall be established at 95 percent. The 95 percent threshold shall be increased until it reaches 100 percent, no later than by the year 2020. Once the lower measurement of the corridor reaches 100 percent, the 15-year amortization described above shall be over a fixed 15 years with additional 15-year amortization layers created annually. Once the System's funding ratio reaches 100 percent, such amortizations shall cease.

In the event of an ordinance change that affects benefits, the employer contribution rate shall be changed effective with the July 1 coincident with or next following the date of adoption of the ordinance change. The employer normal cost component shall be adjusted to the level required by the ordinance change and there shall be an additional component to the employer cost equal to the increase in actuarial accrued liability. Any additional actuarial accrued liability which does not reduce the funding level below 120 percent shall be excluded from this component. (1961 Code, § 9-97; 11-74-9; 23-85-3; 28-89-3; 48-96-3; 10-01-3; 16-02-3; 28-15-3, § 2; 3-16-3.)

Division 7. - Assets of System.

Section 3-3-28. - Assets to be credited to one of two accounts.

All of the assets of the System shall be credited, according to the purpose for which they are held, to one of two accounts, namely, the members' contribution account, and the retirement allowance account. (1961 Code, § 9-98; 11-74-9; 3-16-3.)

Section 3-3-29. - Members' contribution account.

(a) The members' contribution account shall be the account to which all members' contributions, pick-up contributions and interest allowances as provided in this Article shall be credited. From this account shall be paid the accumulated contributions of a member required to be returned to him or her upon withdrawal or paid in the event of his or her death before retirement.

(b) Each member's contribution and pick-up contributions provided for in Sections 3-3-26 and 3-3-27 shall be credited to the individual account of that member.

(c) Each individual account of the members' contribution account shall be credited annually with interest at a rate of not less than two percent per annum on the accumulated contributions of the member; provided, that interest shall accrue on any such contribution beginning at the end of the calendar year in which each such contribution was made, and further provided that interest shall not be accredited or accumulated to the individual accounts of members who have ceased to be employees for a period of more than five years.

(d) Upon the retirement of a member, his or her accumulated contributions shall be transferred from the members' contribution account to the retirement allowance account. (1961 Code, § 9-99; 11-74-9; 5-85-3; 3-16-3.)

Section 3-3-30. - Retirement allowance account.

(a) The retirement allowance account shall be the account in which shall be accumulated all employer contributions, amounts transferred from the members' contribution account, and to which all income from the invested assets of the System after all expenses for required services shall be credited. This account shall pay retirement allowances, other benefits payable after a member's retirement, and necessary expenses of the System.

(b) The amount of interest allowances provided for in Section 3-3-29 shall be transferred each year from the retirement allowance account to the members' contribution account. (1961 Code, § 9-100; 11-74-9; 3-16-3.)

Section 3-3-31. - Deposits.

For the purpose of meeting disbursements for retirement allowances and other payments, there may be kept available cash, not exceeding ten percent of the total amount in the accounts of the System, on deposit in one or more banks or trust companies that are approved as depositories for County funds. (1961 Code, § 9-101; 11-74-9; 3-16-3.)

Division 8. - Benefits.

Section 3-3-32. - Service retirement.

(a) Normal service retirement. Any member in service who has attained the age of 55 years and has completed six years of creditable service, or has completed 25 years of creditable service may retire at his or her normal retirement date or thereafter upon written notice to the Board made by the member, or his or her duly appointed agent, stating the time the retirement is to become effective. However, such effective date shall be subsequent to his or her last day of service, but not more than 90 days subsequent to the filing of such notice.

(b) Early service retirement. Any member in service who has completed 20 years of creditable service may retire pursuant to the procedures set forth in Subsection (a) of this Section.

(c) Compulsory retirement. Repealed; provided, any member in service who previously had reached compulsory retirement age but who had continued in service pursuant to the exemptions previously provided by this Subsection may continue in service without regard to the limitations set forth in this Subsection. (1961 Code, § 9-102, 11-74-9; 28-77-3; 20-81-3; 5-83-3; 22-83-3; 14-87-3; 3-16-3.)

Section 3-3-33. - Service retirement allowance and other benefits.

(a) Normal service retirement. Upon service retirement after July 1, 1988, a member shall receive an annual retirement allowance, payable monthly as provided below:

(1) Effective the first of any month following the member's attainment of age 55 years the annual retirement allowance payable for life shall consist of:

(A) For members of Plans A and B, an amount equal to two percent of the average final compensation, multiplied by the number of years of creditable service.

(B) In addition to the amount of retirement allowance provided in Subparagraph (A) of this Subsection, members of Plans A and B shall receive an additional amount payable monthly, equal to the primary social security benefit to which such member would be entitled under the provisions of the Social Security Act in effect on the date of the member's retirement if such member were then 65 years of age. Further, such additional retirement allowance shall be reduced by the amount of any social security benefits such member may become eligible to receive, at the earliest date of such eligibility. For purposes of this reduction the amount of social security benefits of a member shall be the amount he or she would have been eligible to receive, without regard to any disqualification resulting from the earned income of the member. The social security benefits, for all employees whose County employment commenced by reporting for work after July 1, 1976, shall be determined on a pro rata basis as ratio of the number of years of creditable service in the County (numerator) and 25 years (denominator). This number is never larger than one.

(C) For the members of Plan B, the amount prescribed in Subparagraph (A) of this Subsection shall include cost-of-living adjustments provided for under Section 3-3-45

during the period between the member's retirement and his or her attainment of age 55 years.

(D) For members of Plans C, D and E, an amount equal to two and five-tenths percent of the member's average final compensation multiplied by the number of years of creditable service.

(E) For members of Plans D and E, the amount prescribed in Subparagraph (D) of this Subsection shall include cost-of-living adjustments provided for under Section 3-3-45.

(2) For members who retire before attaining the age of 55 years, the annual retirement allowance, payable during the period between retirement and the first of the month following such member's 55th birthday, shall be determined as follows:

(A) Members of Plan A shall receive the amount provided for in Subsection (a)(1)(A) of this Section. Such allowances shall not be subject to cost-of-living adjustments provided for under Section 3-3-45 until the first of the month following the member's 55th birthday. Further, the additional allowance prescribed in Subsection (a)(1)(B) of this Section shall not be included.

(B) After undergoing the additional deductions through December 31, 1981, members of Plan B shall receive the amount provided for in Subsection (a)(1)(A) of this Section subject to cost-of-living adjustments under Section 3-3-45 plus 50% of the additional allowance provided for under Subsection (a)(1)(B) of this Section.

(C) Members of Plan C shall receive the amount provided for in Subsection (a)(1)(D) of this Section. Such allowances shall not be subject to cost-of-living adjustments provided for under Section 3-3-45 until the first of the month following the member's 55th birthday.

(D) Members of Plans D and E shall receive the amount provided for in Subsection (a)(1)(D) of this Section subject to cost-of-living adjustments under Section 3-3-45 as provided in Subsection (a)(1)(E) of this Section.

(3) In addition to the allowances provided in Subsections (a)(1) and (a)(2) of this Section, for participants in Plans A, B, C, D or E retiring after March 18, 2002, the allowances in Subparagraphs (A) and (B) below, referred to as the pre-social security benefit, shall be payable until the first month after the member attains the age of eligibility for an unreduced social security retirement benefit. The pre-social security benefit shall not be subject to cost-of-living adjustments provided for under Section 3-3-45.

(A) For members of Plans A and B, an additional amount equal to two-tenths of one percent of average final compensation times years of service.

(B) For members of Plan C, D, and E, an additional amount equal to three-tenths of one percent of average final compensation times years of service.

(C) The pre-social security benefit provided herein shall not be credited to the DROP accounts of members of Plan E who elect to participate in the DROP; however, upon the completion of the member's DROP period, the member shall be entitled to receive the pre-social security benefit provided herein if he or she is not then entitled to an unreduced social security benefit until the first month after such member is entitled to an unreduced social security benefit.

(b) Early service retirement. An amount which shall be determined in the same manner as for retirement at the member's normal retirement date with years of creditable service and average final compensation being determined as of the date of his or her actual retirement, and the amount of the retirement allowance so determined being reduced on an actuarial equivalent basis for the period that the actual retirement date precedes the normal retirement date; provided, that for members who retire after July 1, 1988, the amount provided for in Subsection (a)(1)(B) of this Section shall not be reduced on the actuarial equivalent basis.

(1) The allowance for members of Plans A and C except those exempted under Subsection (b)(2) of this Section shall be reduced in accordance with the factors prescribed in Table 1.

(2) The allowance for members of Plans B, D, and E and members of Plans A and C whose age plus creditable service equal 75 shall be reduced in accordance with the factors prescribed in Table 2.

(c) Joint and last survivor option. Before the normal retirement date, a member may elect to receive a decreased retirement allowance during his or her lifetime and to have such retirement allowance or a specified fraction thereof, continued after his or her death to the spouse, for his or her lifetime. The amount of such retirement allowance shall be determined on an actuarial equivalent basis and shall be calculated at the member's actual retirement date using the actuarial adjustment factors in Table 3. In the event a retired member has elected a reduced retirement allowance in consideration of continued allowance to his or her spouse after the member's death and such spouse predeceases the member, such member's retirement allowance shall be increased to that amount to which the member would have been entitled had no election been made. In the event a retired member who has elected the joint and last survivor option shall be divorced from his or her spouse, and such former spouse waives his or her rights to the benefits of the election of the joint and last survivor option, the retired member may revoke his or her joint and last survivor election; such revocation must be accompanied by a certified copy of a court order or decree containing the waiver of the spouse's rights under the joint and last survivor option election. Upon the provision of the request to revoke the election and the certified copy of a court order or decree containing the waiver of the spouse's rights under the joint and last survivor option election, the Executive Director shall revoke the election and increase the member's retirement allowance to the amount it would have been had no joint and last survivor election ever been made. The effective date of the increase in the member's retirement allowance shall be the first of the month next following the submission of the request to revoke the election accompanied by a certified copy of a court order or decree containing the waiver of the spouse's rights under the joint and last survivor option election.

TABLE 1
FAIRFAX COUNTY UNIFORMED RETIREMENT SYSTEM

Actuarial Reduction Factors That Would Apply to Members
With a Normal Retirement Age Requirement of 25 Years of Service
(or, Attainment of Age 55, if Earlier) if They Are Permitted To
Retire Early With a Reduced Retirement Allowance After 20 Years of Service

(ASSUMES 4% COST-OF-LIVING ADJUSTMENTS ARE EFFECTIVE
AT AGE 55 WITHOUT CATCH-UP PROVISION)

Age at Retirement	Years of Service					
	20	21	22	23	24	25
38	65.83	71.56	77.79	84.57	91.94	100.00
39	65.83	71.57	77.80	84.58	91.95	100.00
40	65.85	71.58	77.81	84.59	91.96	100.00
41	65.88	71.60	77.82	84.60	91.97	100.00
42	65.93	71.63	77.84	84.61	91.98	100.00
43	65.99	71.67	77.87	84.63	91.99	100.00
44	66.07	71.73	77.91	84.66	92.00	100.00
45	66.17	71.81	77.97	84.69	92.02	100.00
46	66.29	71.91	78.04	84.73	92.04	100.00

47	66.45	72.03	78.13	84.79	92.07	100.00
48	66.64	72.18	78.24	84.86	92.10	100.00
49	66.86	72.36	78.37	84.95	92.14	100.00
50	67.13	72.57	78.53	85.05	92.19	100.00
51	72.81	72.81	78.71	85.18	93.11	100.00
52	78.92	78.92	78.92	86.29	92.97	100.00
53	85.48	85.48	85.48	85.48	92.41	100.00
54	92.50	92.66	92.66	92.66	92.66	100.00
55	100.00	100.00	100.00	100.00	100.00	100.00

TABLE 2
FAIRFAX COUNTY UNIFORMED RETIREMENT SYSTEM

Actuarial Reduction Factors That Would Apply to Members
With a Normal Retirement Age Requirement of 25 Years of Service
(or, Attainment of Age 55, if Earlier) if They Are Permitted To
Retire Early With a Reduced Retirement Allowance After 20 Years of Service

(ASSUMES 4% COST-OF-LIVING ADJUSTMENTS
ARE EFFECTIVE AT RETIREMENT)

Age at Retirement	Years of Service					
	20	21	22	23	24	25
38	74.50	79.17	84.06	89.18	94.48	100.00
39	74.18	78.89	83.83	89.01	94.39	100.00
40	73.84	78.61	83.60	88.84	94.30	100.00
41	73.49	78.32	83.37	88.67	94.21	100.00
42	73.11	78.01	83.13	88.50	94.12	100.00
43	72.72	77.68	82.88	88.33	94.03	100.00
44	72.32	77.34	82.61	88.14	93.93	100.00
45	71.89	76.98	82.34	87.95	93.83	100.00
46	71.44	76.61	82.04	87.75	93.73	100.00
47	70.97	76.22	81.74	87.53	93.62	100.00
48	70.48	75.81	81.41	87.31	93.50	100.00
49	69.96	75.38	81.08	87.07	93.38	100.00
50	69.42	74.92	80.72	86.83	93.25	100.00
51	74.45	74.45	80.35	86.57	93.11	100.00
52	79.95	79.95	79.95	86.29	92.97	100.00
53	86.00	86.00	86.00	86.00	92.82	100.00

54	92.66	92.66	92.66	92.66	92.66	100.00
55						

TABLE 3

FAIRFAX COUNTY UNIFORMED RETIREMENT SYSTEM

Actuarial Adjustment Factors That Would Apply to Members
With a Normal or Early Service Retirement Allowance Determined Under Section 3-3-33
Who Elect a Joint and Last Survivor Option

Percent of Retirement Allowance Continued to Spouse Upon Member's Death	Factor for Equal Ages	Increase/Decrease For Each Full Year Beneficiary is Older (Younger) Than Employee	Maximum Factor
100%	87%	0.7%	96%
75%	90%	0.6%	97%
66.67%	91%	0.5%	98%
50%	93%	0.4%	99%

(1961 Code, § 9-103; 11-74-9; 28-7-3; 20-81-3; 34-81-3; 36-83-3; 36-88-3; 29-89-3; 27-90-3, § 3; 48-96-3; 28-97-3; 13-98-3; 5-00-3; 17-02-3; 27-12-3; 51-13-3; 3-16-3.)

Section 3-3-34. - Ordinary disability retirement.

(a) Any member in service who has five or more years of creditable service may, at any time before his or her normal retirement date, retire on account of disability, not compensable under the Virginia Workers' Compensation Act, upon written application to the Board, made by the member or his or her appointing authority, setting forth at what time the retirement is to become effective; provided, that such effective date shall be after the last day of service, but shall not be more than 90 days prior to the execution and filing of such application; and provided further, that the Medical Examining Board, after a medical examination of such member, shall certify that such member is, and has been continuously since such effective date if prior to the filing of such application, mentally or physically incapacitated for the further performance of duty, and that such incapacity is likely to be permanent and that such member should be retired.

(b) Any member not in service at the time of application who is otherwise eligible for ordinary disability retirement may be granted an ordinary disability retirement if:

(1) Written application is made within one year of the date he or she ceased to be in service; and

(2) The Board finds:

(A) The disability arose in the course of the member's service;

(B) The disability was the proximate cause of the member's ceasing to be in service; and

(C) There was good cause for the employee not to have filed an application while in service.

(c) In the event a member is granted an ordinary disability retirement pursuant to Subsection (b) of this Section, the Board shall establish an effective date which, considering all the circumstances of the

individual case is just; provided, such date shall be no more than 90 days prior to the execution and filing of his or her application. (1961 Code, § 9-104; 11-74-9; 20-81-3; 48-96-3; 3-16-3.)

Section 3-3-35. - Ordinary disability retirement allowance.

Upon ordinary disability retirement, as provided for in Section 3-3-34, a member shall receive an annual retirement allowance, payable monthly during his or her lifetime and continued disability, consisting of an amount equal to two percent of his or her average final compensation multiplied by the number of years of creditable service. However, said retirement allowance shall not be greater than 60 percent of the member's average final compensation. (1961 Code, § 9-105; 11-74-9; 28-77-3; 20-81-3; 48-96-3; 3-16-3.)

Section 3-3-36. - Service-connected disability retirement.

(a) Any member in service may, at any time before his or her normal retirement date, retire on account of disability which is due to injury by accident and/or disease(s) which arose out of and in the course of the member's service. The Board shall determine a member is disabled due to injury by accident and/or disease(s) which arose out of and in the course of a member's service. In making this determination, the Board shall consult the decisions of the Virginia Workers' Compensation Commission, the Court of Appeals of Virginia, and the Supreme Court of Virginia which applied or construed language under the Virginia Workers' Compensation Act. Furthermore, in making this determination, the Board shall consider any medical record or information and/or any further tests or examinations required pursuant to Section 3-3-10.1.

(b) The member or his or her employer shall be required to submit a written application setting forth at what time the retirement is to become effective; provided, that such effective date shall be after the last day of service but shall not be more than 90 days prior to the date of such application. Prior to submitting such application, the member shall be required to apply for ~~all~~ workers' compensation ~~and social security benefits~~ to which he or she may be entitled. The member shall ~~also~~ be required to submit to the Board copies of the dispositions as made of his or her workers' compensation ~~and social security~~ claim~~s~~ and any subsequent awards or other documents reflecting any modification or termination of such benefits. With respect to the determination of a member's eligibility for retirement under this Section, the Board shall give great weight to the decisions of the Virginia Workers' Compensation Commission, the Court of Appeals of Virginia, and the Supreme Court of Virginia on the compensability of his or her disability under the Virginia Workers' Compensation Act; and the Board may modify its prior determination of eligibility under this Section in light of any such decision within 90 days after the date such decision becomes final.

(c) Any member otherwise eligible for ordinary disability retirement under Section 3-3-34, who applies for retirement pursuant to this Section, and whom the Board finds to be disabled but not eligible for retirement under this Section, shall be retired pursuant to Section 3-3-34.

(d) Any member who applied for service-connected disability retirement on or before (effective date of amendment [December 16, 1985]) shall have his or her eligibility for such retirement governed by the provisions of this Section in effect on that date. Members applying thereafter shall have their eligibility determined by the provisions of this Section.

(e) When an application for service-connected disability retirement has been submitted by a member or on his or her behalf by his or her employer, the appointing authority for the agency in which the member is employed shall certify whether or not there exist any vacant positions within the agency the essential physical job functions of which the member could perform, with or without reasonable accommodation; this certification shall be provided to the member and to the Board. The appointing authority shall have a continuing obligation to notify the member and the Board if any such position becomes vacant between the time of the appointing authority's initial certification and the Board's action on the member's retirement application. A member who has applied for service-connected disability retirement who meets the physical requirements for such position, with or without reasonable accommodation, and who can be retrained to fulfill the other requirements for any such position shall be given the option to accept such position and withdraw his or her application for service-connected disability retirement or to decline such position and proceed with his or her application for service-connected disability retirement. A member shall have seven days from the date of the appointing authority's certification that a position is available to make his or her election

as to whether he or she shall accept the position or proceed with his or her retirement application; the failure of the member to make such election shall constitute an election to proceed with his or her application for retirement. In the event that the member elects not to accept a position for which he or she has received notification, the appointing authority shall have no further duty to notify the member and the Board of any further positions that may subsequently become available. In the event that no such positions are vacant or the member elects not to accept a vacant position, the application for service-connected disability retirement shall proceed to a determination by the Board. The certification by an appointing authority that no such positions exist within the member's agency constitutes an application of specific County personnel policies, procedures, rules and regulations. (1961 Code, § 9-106; 11-74-9; 20-81-3; 24-85-3; 48-96-3; 34-04-3; 3-16-3.)

Section 3-3-37. - Service-connected disability retirement allowance.

(a) Any member who is receiving, or has been approved by the Board to receive, service-connected disability retirement, or who has applied for service-connected disability retirement, or whose employer has submitted as application for service-connected disability retirement for such employee as of December 9, 1996, under Section 3-3-36, shall receive an annual retirement allowance, payable monthly during his or her lifetime and continued disability, consisting of an amount equal to 66 ⅔ percent of the salary the member received at the time of retirement. This allowance shall be reduced ~~by five percent of the amount of any primary social security benefit to which the member is entitled and~~ by the amount of any compensation awarded under the Virginia Workers' Compensation Act to the member for temporary total or partial incapacity~~; provided, however, that no reduction shall be made to a member's service-connected disability retirement allowance due to the member's entitlement to social security disability benefits in whole or in part as the result of a disability other than the disability that served as the basis for the award of service-connected disability retirement~~.

(b) Any member who submits an application for service-connected disability retirement, or for whom his or her employer submits such application under Section 3-3-36 on or after December 9, 1996, shall receive an annual retirement allowance, payable monthly during his or her lifetime and continued disability, consisting of an amount equal to 40 percent of the salary the member received at the time of retirement. However, this allowance shall be reduced ~~by five percent of the amount of any primary social security disability benefit to which the member is entitled and~~ by the amount of any compensation awarded under the Virginia Workers' Compensation Act to the member for temporary total or partial incapacity.

(c) ~~When the amount of a member's primary social security benefit has once been determined for purposes of applying the five percent reduction described in Subsections (a) and (b) of this Section, the amount of the reduction shall not thereafter be increased on account of cost-of-living increases awarded under social security. However, t~~The amount of the reduction shall be increased by an award of a cost-of-living increase to the member's compensation for temporary total or partial incapacity under the Virginia Workers' Compensation Act (Act). When the member is no longer entitled to receive payments for temporary total or partial incapacity under the Act because of the limits in the Act as to the total amount of such compensation or as to the period of time that the member is entitled to receive such compensation, the amount of such payments shall no longer be used to reduce the retirement allowance and, accordingly, subsequent monthly payments of the allowance shall be determined as if the original allowance had been computed without the reduction for such payments.

(d) If a member receives his or her compensation for temporary total or partial incapacity under the Virginia Workers' Compensation Act (Act) in the form of a lump sum payment, he or she shall receive no monthly retirement allowance otherwise payable under this Section until such time as the amounts he or she would have received equal the amount of his or her lump sum benefit under the Act; provided, neither a lump sum payment or portion thereof representing compensation for permanent total or partial loss or disfigurement under the Act nor a lump sum payment or portion thereof representing compensation for periods of temporary total or partial incapacity which occurred prior to the effective date of the member's retirement under Section 3-3-36 shall be offset against the member's allowance under this Section; and provided further, that in the event the member receives a lump sum settlement of benefits that he or she is or may be entitled to in the future under the Act, and said settlement does not specify how much of the lump sum represents settlement of his or her

entitlement to temporary total or partial incapacity, as opposed to other benefits, the Board shall determine the portion of such lump sum which in its judgment represents compensation for such benefits. (1961 Code, § 9-107; 11-74-9; 28-77-3; 20-81-3; 34-81-3; 4-83-3; 36-88-3; 29-89-3; 1-93-3; 48-96-3; 10-01-3; 23-07-3; 47-08-3; 23-11-3; 67-13-3, § 1; 3-16-3; 37-17-3.)

Section 3-3-37.1. - Joint and last survivor option for disability beneficiaries.

A member of the System who applied for an ordinary or service-connected disability retirement allowance, including those members who are determined to be eligible for severe service-connected disability retirement by the Board, on or after July 1, 1988, may, before his or her actual retirement date, elect the joint and last survivor option provided by Section 3-3-33(c). (36-88-3; 48-96-3; 3-16-3.)

Section 3-3-37.2. - Severe service-connected disability retirement.

(a) Any member in service may, at any time before his or her normal retirement date, be retired on account of a severe disability which is due to injury by accident and/or disease(s) which arose out of and in the course of the member's service. The Board shall determine whether a member has suffered a severe disability as defined herein due to injury by accident and/or disease(s) which arose out of and in the course of a member's service. In making this determination, the Board shall consult the decisions of the Virginia Workers' Compensation Commission, the Court of Appeals of Virginia, and the Supreme Court of Virginia which applied or construed language under the Virginia Workers' Compensation Act. Furthermore, in making this determination, the Board shall consider any medical record or information and/or any further tests or examinations required pursuant to Section 3-3-10.1.

(b) When a member or his or her employer submits a written application for service-connected disability retirement as set forth in Section 3-3-36, the Board shall determine whether the member meets the requirements for qualification to receive severe service-connected disability as set forth in this Section. Prior to submitting such application, the member shall be required to apply for ~~all~~ workers' compensation ~~and social security benefits~~ to which he or she may be entitled. The member shall also be required to submit to the Board copies of the dispositions as made of his or her workers' compensation ~~and social security~~ claim~~s~~ and any subsequent awards or other documents reflecting any modification or termination of such benefits. With respect to the determination of a member's eligibility for retirement under this Section, the Board shall give great weight to the decisions of the Virginia Workers' Compensation Commission, the Court of Appeals of Virginia, and the Supreme Court of Virginia on the compensability of his or her disability under the Virginia Workers' Compensation Act; and the Board may modify its prior determination of eligibility under this Section in light of any such decision within 90 days after the date such decision becomes final.

(c) Any member otherwise eligible for ordinary disability retirement under Section 3-3-34 whom the Board finds to be disabled but not eligible for retirement under this Section, shall be retired pursuant to Section 3-3-34. Any member otherwise eligible for service-connected disability retirement under Section 3-3-36 whom the Board finds to be disabled but not eligible for retirement under this Section, shall be retired pursuant to Section 3-3-36.

(d) *Severe disability* shall mean an impairment from the list below that permanently incapacitates the member from performing the necessary duties of the position in which he or she had been employed prior to sustaining the impairment.

(1) Schedule of impairments:

(A) Loss of both hands or both feet;

(B) Loss of one hand and one foot;

(C) Loss of one hand and the sight of one eye;

(D) Loss of one foot and the sight of one eye;

(E) Loss of the sight of both eyes;

(F) Paralysis, either paraplegia or quadriplegia;

(G) Cancers determined to be compensable by the Virginia Workers' Compensation Commission which were caused by documented contact with a toxic substance, pursuant to Section 65.2-402(c) of the *Virginia Code* ;

(H) Loss of speech;

(I) Loss of hearing;

(J) A mental incapacity that meets the criteria for disability benefits under the Federal Old-Age Survivors' and Disability Insurance Act; or

(K) Hepatitis C.

(2) *Loss* shall mean:

(A) With respect to a hand or foot, the dismemberment by severance through or above the wrist or ankle joint, or the partial dismemberment resulting in the loss of functional use of the partially dismembered hand or foot.

(B) With respect to sight, central acuity of 20/200 or less with the use of correcting lenses or visual acuity greater than 20/200 if accompanied by a limitation in the field of vision that the widest diameter of the visual field subtends an angle no greater than 20 degrees. These standards apply to the affected eye if sight loss is claimed for one eye in combination with loss of a hand or foot, or to the better eye if sight loss is claimed for both eyes.

(C) With respect to hearing, a severe and irreversible bilateral loss of hearing that is not correctable with either the use of hearing aids or with corrective surgery.

(e) For the purpose of this Section only, *member in service* shall include a member who has not reached his or her normal retirement date and who has been retired on account of a service-connected disability pursuant to the terms of Section 3-3-36.

(f) A member for whom an application for severe service-connected disability is approved by the Board shall not be required to submit to medical re-evaluations as required by Section 3-3-40. (48-96-3; 19-01-3; 7-03-3; 34-04-3; 3-16-3.)

Section 3-3-37.3. - Severe service-connected disability retirement allowance.

(a) Any member who retires pursuant to Section 3-3-37.2 shall receive an annual retirement allowance, payable monthly during his or her lifetime, consisting of an amount equal to 90 percent of the salary the member was entitled to receive at the time of his or her retirement. This allowance shall be reduced ~~by five percent of the amount of any primary social security benefit to which the member is entitled and~~ by the amount of any compensation awarded under the Virginia Workers' Compensation Act to the member for temporary total or partial incapacity~~; provided, that no reduction shall be made to a member's service-connected disability retirement allowance due to the member's entitlement to social security disability benefits in whole or in part as the result of a disability other than the disability that served as the basis for the award of service-connected disability retirement~~.

(b) ~~When the amount of a member's primary social security disability benefit has once been determined for purposes of applying the five percent reduction described in Subsection (a), the amount of the reduction shall not thereafter be increased on account of cost-of-living increases awarded under social security. However, t~~The amount of the reduction shall be increased by an award of a cost-of-living increase to the member's compensation for temporary total or partial incapacity under the Virginia Workers' Compensation Act (Act). When the member is no longer entitled to receive payments for temporary total or partial incapacity under the Act because of the limits in the Act as to the total amount of such compensation or as to the period of time that the member is entitled to receive such compensation, the amount of such payments shall no longer be used to reduce the retirement allowance and, accordingly, subsequent monthly payments of the allowance shall be determined as if the original allowance had been computed without the reduction for such payments.

(c) If a member receives his or her compensation for temporary total or partial incapacity under the Virginia Workers' Compensation Act (Act) in the form of a lump sum payment, he or she shall receive no monthly retirement allowance otherwise payable under this Section until such time as the

amounts he or she would have received equal the amount of his or her lump sum benefit under the Act; provided, however, neither a lump sum payment or portion thereof representing compensation for permanent total or partial loss or disfigurement under the Act nor a lump sum payment or portion thereof representing compensation for periods of temporary total or partial incapacity which occurred prior to the effective date of the member's retirement under Section 3-3-37.2 shall be offset against the member's allowance under this Section; and provided further, that in the event the member receives a lump sum settlement of benefits that he or she is or may be entitled to in the future under the Act, and said settlement does not specify how much of the lump sum represents settlement of his or her entitlement to temporary total or partial incapacity, as opposed to other benefits, the Board shall determine the portion of such lump sum which in its judgment represents compensation for such benefits. (48-96-3; 10-01-3; 23-07-3; 47-08-3; 23-11-3; 68-13-3, § 1; 3-16-3; 38-17-3.)

Section 3-3-38. - Service-connected accidental death benefit.

If death of a member is caused by an accident occurring prior to retirement and such death is compensable under the Virginia Workers' Compensation Act, there shall be paid, in addition to any other benefits of this Article or other legislation, the following:

(a) For a member whose death occurs before retirement:

(1) The member's accumulated contributions as provided in Section 3-3-29(c) to his or her designated beneficiary duly approved, acknowledged, and filed with the Board, otherwise to the member's estate; provided, no benefit is payable under Section 3-3-43; and

(2) The sum of $10,000.00 to his or her designated beneficiary duly approved, acknowledged, and filed with the Board, otherwise to the member's estate.

(b) For a member whose death occurs after retirement:

(1) The member's accumulated contributions as provided in Section 3-3-29(c) less the amount of any retirement allowances previously received by the member, such sum to be paid to his or her designated beneficiary duly approved, acknowledged and filed with the Board, otherwise to the member's estate; provided, no benefit is payable under Section 3-3-33; and

(2) The sum of $10,000.00 to his or her designated beneficiary duly approved, acknowledged and filed with the Board, otherwise to the member's estate. (1961 Code, § 9-108; 11-74-9; 5-85-3; 3-16-3.)

Section 3-3-39. - Refund of contributions upon withdrawal or death; deferred vested benefit.

(a) Refund of contributions.

(1) If a member has ceased to be an employee, otherwise than by death or by retirement under the provisions of this Article, and has fewer than five years of creditable service on his or her date of separation, he or she shall be eligible for a refund of the total of his or her accumulated contributions (with interest) which have been reduced by the amount of any retirement allowances previously received by him or her under this Article. The member shall file a written application with the Board for such refund and he or she shall be paid the amount to which he or she is entitled not later than 90 days after receipt of his or her application by the Board. Should a member or a person in retirement die, the amount of his or her accumulated contributions reduced by the amount of any retirement allowances previously received by him or her under this Article shall then be payable in a lump sum to a designated beneficiary or in the absence of a designated beneficiary to his or her estates; provided, no benefit is payable under Section 3-3-33(c).

(2) A member who becomes eligible for membership in either the Virginia Retirement System (VRS) and the Educational Employees Supplemental Retirement System of Fairfax County (ERFC), the Fairfax County Employees' Retirement System, or the Fairfax County Police Officers Retirement System prior to receipt of a refund amount may, under such rules and regulations as are adopted by the Board and by the board of the system of which he or she is eligible to become a member, elect in writing to transfer the amount of his or her refund directly from this System to the system for which he or she has become eligible for membership. In the

alternative, to the extent that a refund is an "eligible rollover distribution" within the meaning of Section 402(f)(2)(A) of the Internal Revenue Code, such a member may (a) under rules and regulations of the system of which he or she is eligible to become a member, elect in writing to roll over the amount of his or her refund directly from this System to the system for which he or she has become eligible for membership or (b) elect in writing to roll over the portion of his or her refund which is such an eligible rollover distribution directly to an individual retirement account.

(3) All refunds shall be mailed to the last address on record with the Board. Refunds that have not been claimed within six months shall become the property of the System.

(b) Deferred vested benefit. If a member has five or more years of creditable service on his or her date of separation from the County, the member may leave his or her accumulated contributions in the System and receive a deferred vested benefit payable beginning the date the member attains 55 years of age. Members who choose a deferred vested benefit are not eligible to receive the pre-social security benefit. (1961 Code, § 9-109; 11 -74-9; 20-81-3; 34-81-3; 5-85-3; 36-88-3; 45-93-3; 10-01-3; 01-11-3; 3-16-3.)

Section 3-3-40. - Medical reevaluation of disabled members; penalty for unjustified refusal to accept medical attention, vocational rehabilitation or selective employment, or to submit to medical examination.

(a) Once each year during the first five years following the retirement of a member on a disability retirement allowance, and once in every three-year period thereafter, the Board shall require any such beneficiary prior to his or her normal retirement date to undergo a medical examination by the Medical Examining Board. Should such a beneficiary refuse to submit to any such medical examination or unreasonably and without just cause or excuse refuse medical attention recommended by the Medical Examining Board, his or her disability retirement allowance shall be discontinued until his or her withdrawal of such refusal; and should his or her refusal continue for one year, all his or her rights to any further disability retirement allowance shall cease.

(b) Members who are beneficiaries of service-connected disability retirement allowances pursuant to Section 3-3-36, and who are receiving periodic payments from their employers pursuant to the Virginia Workers' Compensation Act (Act) which are required to be offset against the allowances pursuant to Section 3-3-37, shall cooperate with and accept medical services or vocational rehabilitation and/or selective employment provided by the employer pursuant to the Act. In the event a member's periodic payments are suspended by the Virginia Workers' Compensation Commission (Commission) for unjustified refusal to accept medical services, vocational rehabilitation and/or selective employment, the Board may, if in its determination such refusal was unjustified, direct that the allowance pursuant to Section 3-3-37 shall be computed as if the member received the suspended payments. The Board shall make appropriate adjustment to the member's allowance if the suspension by the Commission is subsequently reversed or modified. Employers shall promptly notify the Board of any suspensions or releases from suspensions affecting members subject to this Subsection, for unjustified refusal creates a rebuttable presumption that the member unjustifiably refused medical services, vocational rehabilitation training, and/or selective employment.

(c) The requirement for medical examinations of disability retirees established in this Section is not applicable to retirees who are receiving severe service-connected disability retirement benefits pursuant to Section 3-3-37.2. (1961 Code, § 9-110; 11-74-9; 28-77-3; 36-88-3; 3-16-3.)

Section 3-3-41. - Reduction of service-connected disability retirement allowance.

Repealed by 11-94-3.

Section 3-3-42. - Cessation of disability retirement allowance.

(a) Should a beneficiary of a disability retirement allowance return to service at any time prior to his or her normal retirement date, his or her disability retirement allowance shall cease, and he or she shall become a member of the System and contributions, in accordance with Section 3-3-26, shall resume. Any service on the basis of which his or her disability retirement allowance was computed shall thereafter be counted as creditable service; and, in addition, the period of disability retirement shall be counted as creditable service for those on service-connected disability retirement.

(b) Any excess accumulated contributions of such beneficiary over the disability retirement allowances received by him or her shall be transferred from the retirement allowance account to the member's contribution account. (1961 Code, § 9-112; 11-74-9; 5-85-3; 3-16-3.)

Section 3-3-43. - Cessation of normal or early service retirement allowance.

(a) Subsection (b) of this Section shall apply to persons who are receiving a normal or early service retirement allowance from this System, the Fairfax County Employees' Retirement System, or the Fairfax County Police Officers Retirement System and who submitted their application for such allowance to the Board of such system on or before July 21, 1986. Subsection (c) of this Section shall apply to persons who are receiving a normal or early service retirement allowance from this System, the Employees' Retirement System, or the Police Officers Retirement System and who submitted their application for such allowance to the Board of such system after July 21, 1986.

(b) Should a person receiving a normal or early service retirement allowance from this System, the Fairfax County Employees' Retirement System, or the Fairfax County Police Officers Retirement System (retiree) return to regular service in a permanent position in any office or employment paid directly or indirectly by the County, he or she shall elect to receive such retirement allowance under one of the following two options.

(1) Such allowance shall not commence or, if already commenced, shall cease while the retiree is so employed. His or her allowance shall commence or resume upon application or reapplication by the retiree after he or she has ceased permanent employment in such a position. The allowance of a retiree of this System who is appointed to a position covered by the Employees' Retirement System or Police Officers Retirement System shall commence or resume at that cost-of-living adjustment amount pursuant to Section ~~3-3-55~~3-3-54 which would have been payable had the retiree continued to receive his or her allowance without interruption. A retiree of this System who elects in writing at the time of reappointment to a position covered by this Article not to become a contributing member during the period of his or her reemployment shall be exempted from the requirement to make contributions to this System. A retiree of this System who elects in writing at the time of reappointment to a position covered by this Article to become a contributing member again during the period of his reemployment shall be eligible:

(A) For a recomputation of his or her allowance to take into account compensation and creditable service attributable to the period of reemployment during which his or her allowance was suspended under this Subsection;

(B) To make new election for any optional benefit to which he or she is entitled; and

(C) For a retirement allowance for a service-connected disability arising out of and in the course of his or her reemployment (in lieu of his or her service retirement allowance).

A retiree of the Employees' Retirement System or Police Officers Retirement System who is appointed to a position covered by this Article and elects in writing within 30 days of such appointment may be excluded from membership in this System.

(2) The retiree may elect to continue to receive his or her service retirement allowance. A retiree electing this option shall not be eligible for membership in the Employees' Retirement System or Police Officers Retirement System if either covers the position in which he or she is reemployed. If he or she is a retiree of this System and the position in which he or she is reemployed is covered by this System, he or she shall not be required to contribute to this System during his or her period of reemployment.

(c) A person receiving a normal or early service retirement allowance from this System, the Fairfax County Employees' Retirement System, or the Fairfax County Police officers Retirement System (retiree) may return to employment for which compensation is paid directly or indirectly by the County subject to the following conditions:

(1) A retiree shall not receive in combined compensation and retirement allowance, computed monthly, any more than 115 percent of the then current maximum monthly salary for a Deputy County Executive in the County's Compensation Plan. The appropriate Retirement System

Board of Trustees shall reduce the retiree's allowance as necessary to keep the combined salary and allowance at this limit. For purposes of this Subsection, a retiree's allowance shall be deemed to be the allowance that he or she would receive if he or she had not elected a joint or last survivor option which results in an actuarially reduced allowance. Employers under all three systems shall report salaries paid to retirees to the retiree's Board.

(2) A retiree who is employed in a position service in which would otherwise make him or her eligible for membership in this System, the Employees' Retirement System, or the Police Officers Retirement System, shall not be eligible for membership in that system.

(d) Notwithstanding any other provision of this Article or any other Article of this Chapter, a person receiving a normal or early service retirement allowance from this System, the Fairfax County Employees' Retirement System, or the Fairfax County Police Officers Retirement System (retiree) may be employed in a position under his or her former appointing authority subject to the following terms and conditions.

(1) If the retiree is a member of this System and service in the position to which he or she is to be appointed ordinarily would result in membership this System, his or her normal or early service retirement allowance shall be suspended for the duration of his or her new employment. During his or her new employment, he or she shall make member contributions to this System. At the time of his or her new employment, he or she shall be entitled to make all elections available to new members of this System, and if otherwise eligible, during his or her employment, he or she may apply for ordinary or service-connected disability retirement. In such case, his or her combined years of service and his or her average final compensation based on his or her new employment shall be used in calculating the disability retirement allowance. On re-application for service retirement from his or her new employment, the retiree shall receive as his or her service retirement allowance the higher of (i) his or her initial service retirement allowance increased by any cost-of-living increases that were granted by the Board to service retirements during the period of his or her new employment or (ii) a service retirement allowance calculated on the basis of his or her combined years of creditable service in his or her initial and new employment and his or her average final compensation calculated on the basis of the creditable compensation that he or she received during both his or her initial and new employment, as if there had been no break in service.

(2) A retiree who is a member of this System and who is to be re-appointed to a position service in which would result in membership in either the Employees' Retirement System or Police Officers Retirement Systems but for his or her membership in this System, shall be subject to Subsection (b) or (c) of this Section, whichever is applicable.

(3) If the retiree is a member of either the Employees' Retirement or Police Officers Retirement Systems and service in the position to which he or she is to be appointed would result in membership in this System but for this membership in the other system, the retiree shall be subject to Subsection (b) or (c) of this Section, whichever is applicable.

(4) This Subsection shall apply to all persons appointed to positions on or after March 1, 1990, service in which would ordinarily make them members of this System, the Employees' Retirement System, or Police Officers Retirement Systems. (20-81-3; 35-81-3; 36-86-3; 27-90-3, § 3; 10-01-3; 11-05-3; 3-16-3.)

Section 3-3-44. - Spouse retirement allowance.

(a) Should death occur to a member in service who has completed five years of creditable service, a retirement allowance shall be payable to the member's spouse if said spouse is the designated beneficiary duly approved, acknowledged and filed with the Board. The annual retirement allowance, payable monthly for life shall be 50 percent of the annual retirement allowance provided in the first sentence of Section 3-3-33(a), with creditable service and final compensation being determined as of the date of the member's death. Said spouse shall elect within 90 days after notice by the Board of the option of receiving the benefits outlined in this Subsection or a lump sum payment of the member's accumulated contributions as provided in Section 3-3-39, or within 180 days of the death of the member, whichever first occurs. If death is due to a service-connected accident as defined in

Section 3-3-38, and the designated beneficiary under Section 3-3-38(1)(A) is the member's spouse, the spouse shall elect in writing within 90 days after the notice by the Board, or within 180 days of the death of the member, whichever first occurs, to receive either the benefits contained in this Subsection or those contained in Section 3-3-38(1)(A). In the event of the spouse's death prior to receiving allowances under this Section equaling the sum of the member's accumulated contribution, said sum, reduced by the amount of any retirement allowances previously paid under this Section, shall be paid to the spouse's designated beneficiary duly approved, acknowledged and filed with the Board, otherwise the spouse's estate.

(b) Should death occur to a member in service who has completed five years of creditable service and if the member's designated beneficiary, duly approved, acknowledged and filed with the Board, is not the member's spouse, a lump sum payment equaling the member's accumulated contribution as provided in Section 3-3-29(c), shall be paid to the designated beneficiary.

(c) Should death occur to a member in service who has completed five years of creditable service and the member has no designated beneficiary, a lump sum payment equaling the member's accumulated contribution shall be paid to the member's estate; provided, that if such member's spouse is the sole person entitled under the laws of the Commonwealth of Virginia to the benefits provided hereunder, then said spouse shall have the same right to elect benefits as is provided to spouses in Subsection (a) of this Section.

(d) Effective on and after January 1, 2007, if a member dies while performing "qualified military service" as defined in Section 414(u) of the Internal Revenue Code, any additional benefits that would have been provided under the System if the member had resumed employment on the day prior to his or her death and then terminated employment due to death shall be paid to such member's designated beneficiary or, if applicable, estate. (1961 Code, § 9-113; 11-74-9; 28-77-3; 20-81-3; 5-85-3; 29-09-3; 01-11-3; 3-16-3.)

Section 3-3-45. - Cost-of-living adjustments.

Monthly retirement allowances shall be adjusted effective July 1, 1981, and each July 1 thereafter in order to reflect changes in the cost of living since the date of benefit commencement; provided, that such adjustments shall not affect the amount of the social security benefit allowance payable pursuant to Section 3-3-33(a)(1)(B) or Section 3-3-33(a)(2)(B); and provided further, that allowances for service-connected disability retirement shall be subject to Subsection (d) of this Section. The monthly benefit allowance to be effective July 1 of any such year shall be the benefit in effect immediately prior to such adjustment increased for the basic cost-of-living increase provided for in Subsection (a) of this Section and the supplemental cost-of-living increase if any, provided for in Subsection (b) of this Section with such increase reduced as provided in Subsection (c) of this Section in the event the monthly retirement allowance has been in pay status for less than 12 months.

(a) The basic cost-of-living increase shall be the lesser of four percent and the percentage corresponding to the percentage increase in the Consumer Price Index during the 12-month calendar period ending with the March immediately preceding the July in which the increase is effective. For the purpose of this Section, *Consumer Price Index* shall mean the Consumer Price Index for all Urban Consumers (CPI-U) as issued by the Bureau of Labor Statistics of the U.S. Department of Labor for the appropriate Standard Metropolitan Statistical Area (SMSA) that includes the County.

(b) As part of each biennial actuarial valuation, the actuary shall determine the percentage supplemental cost-of-living increase (not greater than one percent that can be provided on the following two July first's based upon the available actuarial surplus). The Board then may, but shall not be required to, increase the benefits of all retirement allowances in pay status on each of such July first by such actuarially determined percentage. For the purpose of this Section, *available actuarial surplus* shall mean the excess of the actuarial value of the assets of the System over the actuarial accrued liabilities of the System as disclosed in the biennial actuarial valuation of the System.

(c) In the event a member receiving a retirement allowance has not been in pay status for 12 full months, the basic cost-of-living increase and the supplemental cost-of-living increase shall be

determined as the percentage of the full increase determined in Subsections (a) and (b) of this Section as follows:

Number of Complete Months Benefit Has Been in Pay Status	Percentage of Full Increase

Less than 3 ..... 0%

3, 4 or 5 ..... 25%

6, 7 or 8 ..... 50%

9, 10 or 11 ..... 75%

(d) Cost-of-living adjustments provided by this Section shall be applied to the net amount of the member's service-connected disability retirement allowance after all reductions required by Section 3-3-37 have been made. The member's allowance after the adjustments for cost of living provided by this Section at any date in time shall be determined by retroactive computation from the date of initial retirement, and the application of all applicable cost-of-living adjustments to the net allowance which the member is entitled to under Section 3-3-37.

(e) The Board of Supervisors reserves the right to amend, terminate or modify the post -retirement increases described in Subsection (b) of this Section. Upon termination, no further increases to allowances shall be due or payable to any member or beneficiary. However, any such amendment, termination or modification shall not reduce the amount of the allowance then being paid to any member or beneficiary who has received allowances as of the date of the amendment, termination or modification. Furthermore, no amendment, termination or modification shall reduce the rights of any member as of June 30, 1981, to increases such member was entitled to based upon the terms of the plan in effect on June 30, 1981. (1961 Code, § 9-114; 11-74-9; 20-81-3; 1-93-3; 26-10-3; 3-16-3.)

~~Section 3-3-46. Social Security benefit proviso.~~ Section 3-3-46. - Retention rights.

Participation in the System does not convey the right to be retained in service, or any right or claim to any assets of the System unless such right has specifically accrued under this Article. (1961 Code, § 9-116; 11-74-9; 20-81-3; 36-88-3; 3-16-3.)

Section ~~3-3-48~~3-3-47. - Vesting on termination of System; nonreversion of funds.

Upon termination of the System or upon complete discontinuance of contributions to the System, the rights of all members to benefits accrued to the date of such termination or discontinuance, to the extent then funded, are non-forfeitable. No portion of the assets of the System shall be used for, or diverted to, purposes other than for the exclusive benefit of the members and their beneficiaries prior to the satisfaction of all liabilities with respect to members and their beneficiaries. (1961 Code, § 9-117; 11-74-9; 20-81-3; 36-88-3; 3-16-3.)

Section ~~3-3-49~~3-3-48. - Nonretroactivity to members retired or terminated prior to July 1, 1974.

The benefits provided by this Article shall not apply to members retired or terminated prior to July 1, 1974, and their rights and benefits shall be determined under the ordinance in effect prior thereto. However, retirement allowances determined thereunder shall be subject to post-1974 cost-of-living adjustments. (1961 Code, § 9-118; 11-74-9; 20-81-3; 3-16-3.)

Section ~~3-3-50~~3-3-49. - Review of adverse decisions.

Any member adversely affected by a decision of the Board shall receive written notice of said decision and may, within 30 days of receipt of such notice, request in writing a review by the Board of said decision, pursuant to procedures established by the Board. (20-81-3; 3-16-3.)

Section ~~3-3-51~~3-3-50. - Transfer to Senior Executive Retirement Plan.

Repealed by 97-26-3.

Section ~~3-3-52~~3-3-51. - Masculine usage includes feminine.

Repealed by 3-16-3.

Section ~~3-3-53~~3-3-52. - Limitation on annual retirement allowance.

Notwithstanding any other provision of this Article, the annual retirement allowance to which any member may be entitled shall not exceed the limits on benefits set forth in Section 415 of the Internal Revenue Code and any regulations issued by the U.S. Department of the Treasury thereunder, and in calculating such limits a member's compensation shall include any differential wage payments for military service as defined under Section 3401(h)(2) of the Internal Revenue Code and paid on or after January 1, 2009. Such limits shall be applied annually for the 12-month period commencing each July 1 and ending the following June 30. A benefit payable other than in the form of an annuity shall not exceed the amount which, when converted to an actuarial equivalent annual benefit, does not exceed the limits on benefits set forth in Section 415(b) of the Internal Revenue Code. Effective June 30, 2000, the mortality tables prescribed by the Uruguay Round Agreement Acts (GATT), as set forth in Internal Revenue Service Revenue Ruling 2001-62 (superseding and modifying Revenue Ruling 95-29), or as further updated or modified by the Internal Revenue Service, shall be used in determining the actuarial equivalent amount of such benefit. (27-90-3, § 4; 21-96-3; 8-03-3; 01-11-3; 3-16-3.)

Section ~~3-3-54~~3-3-533-3-53. - Distribution of benefits.

Notwithstanding any other provision of this Article, effective for plan years beginning after December 31, 1986, the entire interest of each member shall be distributed to such member not later than the required beginning date specified below, or shall be distributed, beginning not later than the required beginning date, over the life of such member or over the lives of such member and a beneficiary or over a period not extending beyond the life expectancy of such member or the life expectancy of such member and a beneficiary. For this purpose, the term *required beginning date* shall mean April 1 of the calendar year following the later of the calendar year in which the member attains 70½ years of age, or the calendar year in which the member retires. If a member dies after distribution of the member's interest has begun, the remaining portion, if any, of such interest shall be distributed at least as rapidly as under the method of distribution being used as of the date of death. If a member dies before the distribution of the member's interest has begun, any death benefit shall be distributed within five years after the death of such member, unless (1) any portion of the member's interest is payable to (or for the benefit of) a designated beneficiary, (2) such portion shall be distributed over the life of such beneficiary or over a period not extending beyond the life expectancy of such beneficiary, and (3) if the beneficiary is someone other than the member's surviving spouse, such distributions shall begin not later than one year after the date of the member's death or such later date as the U.S. Secretary of the Treasury may by regulations prescribe. If the beneficiary is the surviving spouse of the member, (1) distribution shall begin on or before the latest of one year after the date of the member's death, such later date as the U.S. Secretary of the Treasury may by regulations prescribe, or the date on which the member would have attained 70½ years of age and (2) if the surviving spouse dies before the distributions to such spouse begin, the distribution rules specified in this Section shall be applied as if the surviving spouse were the member. Distributions from the System shall be made in accordance with the requirements of Section 401(a)(9) of the Internal Revenue Code, including the rules for incidental death distributions set forth at Section 401(a)(9)(G). (27-90-3, § 4; 51-13-3; 3-16-3.)

Section ~~3-3-55~~3-3-54. - Direct rollovers to other plans.

(a) General. This Section applies to distributions made on or after January, 1, 1993. Notwithstanding any provision of the System to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. However, to the extent that any portion of the amount of the rollover is comprised of after-tax contributions, the distribution may only be rolled over to an eligible retirement plan that separately accounts for after-tax contributions.

(b) Definitions.

(1) *Eligible rollover distribution* shall mean any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code; and the portion of any distribution that is not includible in gross income.

(2) *Eligible retirement plan* shall mean any one of the following that accepts the distributee's eligible rollover distribution: an individual retirement account described in Section 408(a) of the Internal Revenue Code; an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; an annuity plan described in Section 403(a) of the Internal Revenue Code; a qualified trust described in Section 401(a) of the Internal Revenue Code; an annuity contract described in Section 403(b) of the Internal Revenue Code; an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state; or effective for distributions made after December 31, 2007, a Roth IRA described in Section 408A of the Internal Revenue Code, provided the eligible rollover distribution is considered a "qualified rollover contribution" under Section 408A(e). However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

(3) *Distributee* shall mean a member or former member. In addition, the member's or former member's surviving spouse and the member's or former member's spouse or former spouse who is entitled to receive benefits from the System, shall be distributees with regard to the interest of the spouse or former spouse. Effective for distributions on or after January 1, 2010, a distributee shall include a non-spouse beneficiary of a deceased member or former member who may make an eligible rollover distribution in a direct trustee-to-trustee transfer to an "inherited" individual retirement account.

(4) *Direct rollover* shall mean a payment by the System to the eligible retirement plan specified by the distributee. (45-93-3; 21-96-3; 8-03-3; 01-11-3; 3-16-3.)

Section ~~3-3-56~~3-3-55. - Additional retirement allowance.

(a) Definitions.

(1) *Active member* shall mean a member of the System who is an employee on July 1, 1995, or who became an employee thereafter, and whose membership in the System has not ceased at any time from July 1, 1995, or from when he or she became an employee (whichever is later), until the effective date of his or her subsequent retirement.

(2) *Retired member* shall mean a member of the System who is receiving a retirement allowance on July 1, 1995. A member of the System who is receiving a retirement allowance shall include any member whose effective date of retirement is on or before July 1, 1995.

(3) *Retirement allowance* shall mean a normal service retirement allowance, an early service retirement allowance, an ordinary disability retirement allowance, a deferred vested benefit, or a spouse retirement allowance.

(4) *Base annual retirement allowance* shall mean the initial calculation of a member's or spouse's annual retirement allowance without regard for any deductions for withholding or other benefit elections or adjustments under Section 3-3-8. For a member taking normal service retirement under Section 3-3-32(a), this is the allowance calculated under Section 3-3-33(a)(1) (post-age 55 years) or Section 3-3-33 (a)(2) (pre-age 55 years) less any additional allowance under Section 3-3-33(a)(1)(B); for a member taking early retirement under Section 3-3-32(b), this is the allowance calculated under Section 3-3-33(b), less any additional allowance under Section 3-3-33(a)(1)(B); for a member retired on account of ordinary disability under Section 3-3-34, this is the allowance calculated under Section 3-3-35; for a member receiving a deferred benefit,

this is the allowance calculated under Section 3-3-39(b); and for a spouse receiving a spouse retirement allowance, this is the allowance calculated under Section 3-3-44.

(5) *Adjusted base annual retirement allowance* shall mean the base annual retirement allowance of a retired member or of the spouse of a member receiving the base spouse annual retirement allowance provided under Section 3-3-44, as increased by any cost-of-living adjustments applied to the member's or spouse's retirement allowance from the effective date of his or her retirement or election of the spouse retirement allowance through July, 1, 1995.

(6) *Member in service* shall mean a member of the System.

(b) The adjusted base annual retirement allowance of each retired member or spouse receiving a retirement allowance on July 1, 1995, shall be increased by three percent, effective July 1, 1995 (modified adjusted base annual retirement allowance). Adjustments to the retired member's or spouse's retirement allowance made under the provisions of this Article after July 1, 1995, shall be computed on the basis of the modified adjusted base annual retirement allowance.

(c) When an active member retires or an eligible spouse of an active member elects to receive the spouse retirement allowance after July 1, 1995, after his or her base annual retirement allowance has been computed under the applicable Section of this Article, the resulting base annual retirement allowance shall be increased by three percent (initial base annual retirement allowance). Adjustments to the member's or spouse's retirement allowance under this Article shall be computed on the basis of the initial base annual retirement allowance.

(d) If a member is entitled to the three percent increase in the base retirement allowance provided by either Subsection (b) or (c) of this Section and if at the time he or she is entitled to such increase, he or she is also eligible to receive in whole or in part the additional allowance provided by Section 3-3-33(a)(1)(B) under any provision of this Article, such additional allowance shall be also increased by three percent.

(e) Separation from service.

(1) A member who:

(A) Separated from service other than by death or retirement with five or more years of creditable service in the System prior to July 1, 1995, and

(B) Has not withdrawn his or her accumulated contributions as of July 1, 1995, and

(C) Subsequently applies for and is determined to be eligible for a deferred vested benefit after July 1, 1995, shall have his or her deferred vested benefit computed mutatis mutandi in the same manner as an active member under Subsection (c) of this Section.

(2) A member in service on or after July 1, 1995, who:

(A) Subsequently separates from service other than by death or retirement with five or more years of creditable service in the System, and

(B) Does not withdraw his or her accumulated contributions, and

(C) Subsequently applies for and is determined to be eligible for a deferred vested benefit, shall have his or her deferred vested benefit computed mutatis mutandi in the same manner as an active member under Subsection (c) of this Section.

(3) A member in service on or after July 1, 1995, who,

(A) Subsequently separates from service other than by death or retirement with five or more years of creditable service in the System, and

(B) Does not withdraw his or her accumulated contributions, and

(C) Thereafter, returns to service and again becomes a member of the System, and

(D) Subsequently applies for and is determined to be eligible for a normal service, early service, or ordinary disability retirement allowance, or for a deferred vested benefit, shall

have his or her allowance or deferred vested benefit computed mutatis mutandi in the same manner as an active member under Subsection (c) of this Section.

(4) A member in service on or after July 1, 1995, who:

(A) Thereafter separates from service, and

(B) Withdraws his or her accumulated member's contributions, and

(C) Subsequently returns to service and again becomes a member of the System, and

(D) At that time makes arrangements to purchase credit for all of his or her previous service in the System under this Article, and

(E) Thereafter applies for and is determined to be eligible for a normal service, early service, or ordinary disability retirement or for a deferred vested benefit, shall have his or her allowance or deferred vested benefit computed mutatis mutandi in the same manner as an active member under Subsection (c) of this Section.

(f) The spouse of a member who retired on a normal service, early service or ordinary disability retirement who is receiving an allowance under the joint and last survivor option provided by Section 3-3-33(c), on July 1, 1995, shall have such allowance increased by three percent, effective July 1, 1995. Adjustments to such allowance under this Article after July 1, 1995, shall be computed on the basis of this increased allowance.

(g) Notwithstanding the 60 percent of average final compensation limit contained in Section 3-3-35, the initial base annual retirement allowance of an active member who becomes eligible to receive an ordinary disability retirement allowance and who is entitled to the increase provided by Subsection (c) of this Section shall not exceed 61.8 percent of his or her average final compensation.

(h) Notwithstanding any provision of this Section to the contrary, no adjustment under this Section shall be made which would violate the limitations provided by Section ~~3-3-53~~3-3-52 concerning the limitations imposed by Section 415 of the Internal Revenue Code and U.S. Treasury regulations issued thereunder; provided, that any adjustment under this Section may be made up to those limitations. (12-95-3; 3-16-3.)

Section ~~3-3-57~~3-3-56. - Deferred retirement option program.

Effective October 1, 2003, there is hereby established a Deferred Retirement Option Program (DROP) for eligible members of the System. Members of the System in service who are eligible for normal service retirement are eligible to elect to participate in this program.

(a) Definitions.

(1) *DROP period* shall mean the three-year period immediately following the commencement of the member's participation in the DROP.

(2) *Eligible member* shall mean any member who is, or shall become within 60 days, eligible for normal service retirement benefits as those are defined in Section 3-3-32(a).

(b) Election to participate.

(1) An eligible member may participate in the DROP only once. An eligible member who desires to participate in the DROP must file an application with the Fairfax County Retirement Administration Agency not less than 60 days prior to the date of the commencement of the member's participation in the DROP.

(2) A member's election to participate in the DROP is irrevocable, with the exception that a member who elects to participate in the DROP may revoke that election prior to the commencement of his or her DROP period; once revoked, a member may not then elect to participate in the DROP for a period of at least 12 months from the date of his or her revocation.

(3) At the time of an eligible member's election to participate in the DROP, he or she must make an election in writing pursuant to Section 3-3-33(c) as to whether or not to receive a

reduced retirement allowance in order to provide a retirement allowance for his or her spouse after the member's death.

(4) An eligible member who elects to participate in the DROP shall agree to do so for a period of three years.

(5) Subject to any limitation on the number of accrued sick leave hours that may be converted to creditable service as provided in Section 3-3-1(a)(1), an eligible member who elects to participate in the DROP shall, at the time of his or her election to participate in the DROP, make an election in writing as to whether he or she wishes to convert all of his or her available accrued sick leave to creditable service or to convert all but 40 hours of his or her accrued sick leave to creditable service. Sick leave that is either carried over or that accrues during the DROP period shall not be converted to creditable service at the conclusion of the DROP period.

(c) Continued employment.

(1) A participating DROP member shall, upon commencement of his or her DROP period, continue to work for the County in the position he or she held before the effective date of his or her election to participate in the DROP. Thereafter, the participating DROP member shall perform the services of that position or any other position to which he or she is promoted or transferred.

(2) A participating DROP member shall continue to accrue annual and sick leave and, if eligible, compensatory time during the DROP period. At the conclusion of the DROP period, the member shall receive the payment for his or her accrued annual and compensatory leave that he or she would have received upon retirement. In no case shall a participating DROP member receive payment for his or her accrued annual and compensatory leave at the commencement of the member's participation in the DROP.

(3) A participating DROP member shall continue to remain eligible for health and life insurance benefits provided by the County to its employees and shall remain eligible to participate in the County's deferred compensation plan. The deductions from the salary of a participating DROP member for health and life insurance benefits shall be the same deductions that would have been taken had the participating DROP member been an active County employee, not the deductions that would be taken from the retirement allowances and benefits of a retiree.

(4) All County personnel policies and regulations shall continue to apply to a participating DROP member after the commencement of his or her DROP period. A participating DROP member shall remain eligible for annual merit pay increments and promotions during the DROP period. However, a participating DROP member's salary during his or her DROP period shall not be included in the computation of the member's average final compensation. A participating DROP member is also subject to the County's disciplinary policies and regulations.

(5) If a participating DROP member's continued employment with the County is interrupted by military service, there shall be no interruption of the member's participation in the DROP. During the period of the participating DROP member's military service, the member's retirement allowances and benefits shall continue to be paid into the participating member's DROP account until the member's DROP period ends. At the end of the DROP period, the member's DROP account balance shall be paid to the member whether or not he or she has returned to his or her former County position, and the member shall begin to receive his or her normal retirement benefits.

(6) Except as otherwise set forth herein, a participating DROP member's continued service shall be deemed to be normal service retirement and shall not count as creditable service with the System.

(7) Upon commencement of a participating DROP member's DROP period, the County shall cease to withhold contributions to the System from the participating DROP member's salary.

(8) The salary received by a participating DROP member during his or her DROP period shall not be included by the County in the base that is used to determine the amount of the County's employer contributions to the System.

(d) DROP account.

(1) Upon commencement of the participation of a member of the four plans that existed before January 1, 2013 (Plans A, B, C, and D), whose County employment commenced by reporting for work before January 1, 2013, in the DROP, the member's service retirement allowance pursuant to Section 3-3-33(a) and the additional retirement allowance pursuant to Section ~~3-3-56~~3-3-55 shall be paid into the member's DROP account. Upon commencement of the participation of a member of Plan E, whose County employment commenced by reporting for work on or after January 1, 2013, in the DROP, the member's service retirement allowance pursuant to Section 3-3-33(a) shall be paid into the member's DROP account; the additional retirement benefits provided for in Section 3-3-33(a)(3) shall not be credited to the DROP accounts of members of Plan E, although members of Plan E shall remain eligible to receive the additional retirement benefits provided for in Section 3-3-33(a)(3) upon the completion of their DROP period, if they then meet the requirements for eligibility for such benefits set forth in Section 3-3-33(a)(3). The initial amount credited to a member's DROP account shall be computed based on his or her average final compensation as of the date of the commencement of the DROP period.

(2) The initial monthly amount shall be increased each July 1 based upon the annual cost-of-living adjustment provided to retirees pursuant to Section 3-3-45. Any other changes that occur during the DROP period that would result in an alteration of the participating DROP member's retirement allowances and benefits if he or she were retired shall also result in adjustments to the monthly amount credited to a participating DROP member's DROP account.

(3) The participating DROP member's DROP account shall be credited with interest at an annual rate of five percent, compounded monthly. Interest shall not be pro-rated for any period less than a full month.

(4) Contributions by the County and the participating DROP member into the System for the participating DROP member shall cease.

(5) Amounts credited to a participating DROP member's DROP account shall not constitute annual additions under Section 415 of the Internal Revenue Code.

(6) A participating DROP member's DROP account shall not be an account that is separate and distinct from the assets of the System; a participating DROP member's DROP account balance shall remain part of the assets of the System.

(e) Cessation of County employment.

(1) At the conclusion of a participating DROP member's DROP period, the member's County employment shall automatically cease. The participating DROP member shall then begin to receive normal service retirement allowances and benefits computed based upon his or her average final compensation at the time of the commencement of the DROP period and his or her creditable service at the time of the commencement of the DROP period, plus cost -of -living increases provided to retirees and any other benefit improvements that may have been granted to retirees during the participating DROP member's DROP period. At least 60 days prior to the conclusion of a participating DROP member's DROP period, the member shall make one of the following elections concerning payment of his or her DROP account balance:

(A) The member may receive payment of his or her DROP account balance as a lump sum.

(B) The member may elect to roll over his or her DROP account balance into an "eligible retirement plan," as defined in Section ~~3-3-55~~3-3-54(b)(2).

(C) The member may elect to receive payment of a portion of his or her DROP account balance and roll over the remaining portion into a qualified retirement plan, such as an IRA. If the member elects this method of receiving his or her DROP account balance, he or she must specify, in writing, the specific amount to be paid as a lump sum and the specific amount to be rolled over.

(D) The member may elect to use his or her DROP account balance to increase his or her monthly retirement benefits and allowances. The amount of the increase shall be determined based on the actuarial equivalent of the member's DROP account balance.

(E) The member may divide his or her DROP account balance in half, and may then elect to use 50 percent of his or her DROP account balance to increase his or her monthly retirement allowances and benefits, and to receive the remainder in any manner listed in Subparagraphs (A), (B) and (C) above.

In the event that the participating DROP member does not make the election required by this Subsection, the member shall receive payment of his or her DROP account balance as a lump sum.

(2) A participating DROP member may terminate his or her County employment at any time, in which case the effective date of the member's termination of his or her County employment shall be treated as the end of the DROP period for all purposes of this Section.

(3) In the event that the employment of a participating DROP member is terminated by the County during the DROP period for any reason, the effective date of the member's separation from County service shall be treated as the end of the DROP period for all purposes of this Section.

(f) Death or disability during DROP period.

(1) (B) If a participating DROP member dies during the DROP period, and the participating DROP member's death is a service-connected accidental death as set forth in Section 3-3-38, the member's beneficiary shall receive the benefits provided for in Section 3-3-38(a)(1); if there is no designated beneficiary on record with the System, payment of these amounts shall be to the member's estate. In the event that the participating DROP member has elected a joint and last survivor option pursuant to the terms of Section 3-3-33(c), the participating DROP member's surviving spouse shall receive the benefits provided for in Section 3-3-38(a)(1)(B) and the participating DROP member's DROP account balance, and shall begin to receive allowances and benefits pursuant to the joint and last survivor election of the participating DROP member.

(2) If a participating DROP member becomes disabled during the DROP period, the participating DROP member shall receive:

(A) In the case that a participating DROP member suffers a disability that would be considered an ordinary disability as defined in Section 3-3-35, the effective date of the member's disability shall be treated as the end of the participating DROP member's DROP period.

(B) In the case that a participating DROP member suffers a service-connected disability as set forth in Section 3-3-36 or a severe service-connected disability as set forth in Section 3-3-37.2, the participating DROP member may elect either (i) to receive the service-connected disability retirement allowances and benefits or the severe service-connected disability retirement allowances and benefits to which he or she would

otherwise be entitled or (ii) to receive the normal service retirement benefits and allowances to which he or she would be entitled plus his or her DROP account balance. An election to receive service-connected disability retirement allowances and benefits or severe service- connected disability retirement benefits shall constitute a waiver of the member's right to receive any amounts credited to his or her DROP account balance.

(g) Execution of documents and adoption of rules and regulations. The County Executive is authorized to execute all documents necessary or appropriate to operate the DROP including, but not limited to, the establishment of a trust within which the participating DROP members' DROP accounts shall be held and administered. The Board of Trustees is also authorized to adopt rules and regulations governing the DROP. Any documents executed by the County Executive shall be approved for form by the County Attorney prior to execution. (36-03-3; 41-08-3; 27-10-3; 01-11-3; 27-12-3; 3-16-3.)

Section ~~3-3-58~~3-3-57. - Increased retirement allowance for certain retired members.

(a) For the purposes of this Section only, the following words and phrases shall be defined as follows:

(1) *Retired member* shall mean a member of the System whose effective date of retirement was on or before March 18, 2002.

(2) *Retirement allowance* shall mean a normal service retirement allowance, an early service retirement allowance, an allowance to a surviving spouse pursuant to the joint and last survivor option, or a spouse retirement allowance.

(3) *Spouse receiving a spouse allowance* shall mean a member's surviving spouse who was, on or before March 18, 2002, entitled to receive a spouse retirement allowance.

(4) *Base annual retirement allowance* shall mean the initial calculation of a member's retirement allowance, a surviving spouse's allowance pursuant to the joint and last survivor option, or a spouse's annual retirement allowance, without regard to any deductions for withholding or other benefit elections or adjustments under Section 3-3-8.

(A) For Plan A members taking normal service retirement pursuant to Section 3-3-32(a), this is the allowance calculated pursuant to Sections 3-3-33(a)(1)(A) and (B) as in effect on the effective date of their retirement;

(B) For Plan B members taking normal service retirement pursuant to Section 3-3-32(a), this is the allowance calculated pursuant to Section 3-3-33(a)(1)(A), (B) and (C) as in effect on the effective date of their retirement;

(C) For Plan C members taking normal service retirement pursuant to Section 3-3-32(a), this is the allowance calculated pursuant to Section 3-3-33(a)(1)(D) as in effect on the effective date of their retirement;

(D) For Plan D members taking normal service retirement pursuant to Section 3-3-32(a), this is the allowance calculated pursuant to Section 3-3-33(a)(1)(D) and (E) (Plan D members) as in effect on the effective date of their retirement;

(E) For Plan A and C members taking early service retirement pursuant to Section 3-3-32(b) whose age plus creditable service as of the effective date of their retirement was less than 75 years, this is the allowance calculated pursuant to Section 3-3-33(b)(1) as in effect on the effective date of their retirement;

(F) For Plan B and D members and for Plan A and C members taking early service retirement pursuant to Section 3-3-32(b) whose age plus creditable service was greater than or equal to 75 years as of the effective date of their retirement, this is the allowance calculated pursuant Section 3-3-33(b)(2) as in effect on the effective date of their retirement; or

(G) For a surviving spouse receiving an allowance pursuant to the joint and last survivor option, this is the allowance calculated pursuant to Section 3-3-33(c) as in effect on the effective date of the member's retirement; or

(H) For a spouse receiving a spouse allowance, this is the allowance calculated pursuant to Section 3-3-44(a) as in effect on the date of the commencement of payment of the spouse allowance.

(5) *Adjusted base annual retirement allowance* shall mean the base annual retirement allowance as set forth in Subparagraph 4 of this Subsection as increased by any cost-of-living adjustments applied to the base annual retirement allowance from the effective date of the retired member's retirement or of the commencement of the receipt of a spouse allowance through December 31, 2003.

(b) Effective January 1, 2004, the adjusted base annual retirement allowance of each retired member or spouse receiving a retirement allowance shall be increased as follows:

(1) For Plan A members, by 23 percent;

(2) For Plan B members, by 15 percent;

(3) For Plan C members, by five percent;

(4) For Plan D members, by five percent;

(5) For spouses receiving spouse allowances pursuant to Section 3-3-44(a), by ten percent; or

(6) For surviving spouses receiving allowances pursuant to the joint and last survivor option set forth in Section 3-3-33(c), by ten percent.

(c) No increased retirement allowance calculated pursuant to this Section shall violate the limitations on annual retirement allowances set forth in Section ~~3-3-53~~3-3-52.

(d) For those persons eligible to receive the increased retirement allowance pursuant to this Section, cost of-living adjustments pursuant to Section 3-3-45 and made after January 1, 2004, shall be calculated based upon the increased retirement allowance set forth in this Section. (43-03-3; 3-16-3.)

Division 9. - Benefit Restoration Plan.

Section ~~3-3-59~~3-3-58. - Benefit restoration plan.

(a) There is hereby established a Benefit Restoration Plan for the System.

(b) Purpose and intent; rule of construction.

(1) In establishing this Benefit Restoration Plan, the Board of Supervisors intends to establish and maintain a "qualified governmental excess benefit arrangement," as defined and authorized by the Section 415(m) of the Internal Revenue Code, as is permitted by Section 51.1-1302 of the *Virginia Code.* The purpose of this Benefit Restoration Plan is to restore, through a non-qualified arrangement, the benefits lost by the application of the limitation on annual benefits under Section 415(b) of the Internal Revenue Code as applicable to governmental plans. This Benefit Restoration Plan shall exist in addition to all other retirement, pension, or other benefits available to participants, including the benefits established by the System.

(2) This Section shall be construed to ensure compliance with federal and state law, and any regulations promulgated thereunder, governing such qualified governmental excess benefit arrangements, including, but not limited to Section 415(m) of the Internal Revenue Code and Sections 51.1-1302, 51.1-1303, and 51.1-1304 of the *Virginia Code* , as in effect at the time of the adoption of this Section and as subsequently amended.

(c) Definitions.

(1) *Administrator* or *Plan Administrator* shall mean the Board, which is responsible for the general administration and operation of the Benefit Restoration Plan and for making effective the provisions of this Section. Under the oversight of the Board, the Executive Director shall be responsible for the day to day operation and administration of the Benefit Restoration Plan.

(2) *Beneficiary* shall mean the person or persons entitled under this Article to receive any benefits payable after the participant's death.

(3) *Benefit Restoration Plan* or *Plan* shall mean the Benefit Restoration Plan for the System established by this Section.

(4) *Effective date* shall mean the date of this Section's adoption [June 5, 2006].

(5) *Eligible member* shall mean a retired member of the System whose benefits thereunder are reduced by the application of the limitations on annual benefits under Section 415(b) of the Internal Revenue Code as applicable to governmental plans.

(6) *Enabling statute* shall mean Chapter 13 of Title 51.1 of the *Virginia Code* , as amended.

(7) *Grantor trust* shall mean the trust fund described in Subsection (i)(3) of this Section and established and maintained for the Benefit Restoration Plan.

(8) *Participant* shall mean an eligible member qualified to participate in the Benefit Restoration Plan.

(9) *Plan Sponsor* shall mean the Board of Supervisors.

(10) *Plan Year* shall mean the 12-month period beginning on July 1.

(11) *Restoration death benefit* shall mean the benefit due the beneficiary of a participant under the Plan as determined under this Section.

(12) *Restoration retirement benefit* shall mean the benefit due a participant or his or her beneficiary under the Benefit Restoration Plan determined under this Section.

(d) Eligibility and Participation.

(1) Eligibility and date of participation. Each eligible member shall be a participant in the Benefit Restoration Plan commencing with the date he or she first becomes, or again becomes, an eligible member.

(2) Length of participation. Each eligible member who becomes a participant shall be or remain a participant for so long as he or she is entitled to future benefits under the terms of the Benefit Restoration Plan.

(e) Restoration retirement benefit. Subject to the terms and conditions set forth in this Section, a participant who retires or is retired under the System and who is entitled to the payment of benefits under the System shall be entitled to a restoration retirement benefit, generally expressed as a benefit payable monthly for the life of the participant and commencing at the applicable time provided under this Article, equal to the excess, if any, of:

(1) The amount of the participant's retirement allowance under the System, determined without regard to the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, over

(2) The amount of the participant's retirement allowance under the System.

To the extent that the participant's retirement allowance payable under the System is increased at any time due to increases in limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, whether by statute, regulation, actions of the U. S. Treasury Secretary or his or her delegate or otherwise, the participant's restoration retirement benefit shall be reduced correspondingly.

(f) Death Benefit.

(1) Death after benefit commencement. If a participant dies after his or her restoration retirement benefit commences to be paid, the only benefits payable under the Benefit Restoration Plan to his or her beneficiary after his or her death shall be those, if any, provided under the form of payment being made to him or her at his or her death.

(2) Death before benefit commencement. If a participant dies before his or her restoration retirement benefit commences to be paid, the only benefit payable under the Benefit

Restoration Plan with respect to him or her shall be the restoration death benefit, if any, provided in Subsection (f)(3) of this Section.

(3) Restoration death benefit. Subject to the terms and conditions set forth herein, if a participant dies on or after the effective date and before his or her restoration retirement benefit commences to be paid, his or her beneficiary shall be entitled to a restoration death benefit as follows:

(A) If his or her beneficiary is entitled to receive any death benefit under the System, such beneficiary shall be entitled to receive as a restoration death benefit under the Benefit Restoration Plan an amount equal to the excess, if any, of:

(i) The amount of such death benefit under the System, determined without regard to the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, over

(ii) The actual amount of such death benefit under the System.

To the extent that the participant's accrued benefit or any death benefit payable under the System is increased at any time due to increases in the limitations on contributions and benefits imposed by Section 415 of the Internal Revenue Code, whether by statute, regulation, actions of the U.S. Secretary of the Treasury or his or her delegate or otherwise, the participant's restoration death benefit shall be reduced correspondingly.

(g) Vesting. A participant's restoration retirement benefit or restoration death benefit, as the case may be, shall be vested at the time of his or her retirement under the System or death, but only to the extent, and determined in the manner, that such participant has a vested and non-forfeitable right to his or her retirement allowance under the System.

(h) Payment of Benefits.

(1) Time and manner for payment of benefits. A participant's restoration retirement benefit, or the restoration death benefit, shall be payable at the same time and in the same manner as the participant's retirement allowance or comparable death benefit (other than his or her accumulated contributions or contribution refund death benefit) is paid under the System, whether as elected by the participant or otherwise payable. For a member who is receiving a retirement allowance under the System on the effective date, and who would immediately be an eligible member upon the effective date, such Member shall immediately commence receiving a restoration retirement benefit on a prospective basis.

(2) Discretionary use of other methods of payment. In the sole discretion of the Administrator, monthly payment amounts of less than $100.00, or such amount as the Administrator may from time to time determine, may be paid on an annual or semi-annual basis, in arrears and without interest.

(3) Benefit determination and payment procedure. The Administrator shall make all determinations concerning eligibility for benefits under the Benefit Restoration Plan, the time or terms of payment, and the form or manner of payment to the participant (or the participant's beneficiary in the event of the death of the participant). The Administrator shall promptly notify the employer and, where payments are to be made from a grantor trust, the trustee thereof, of each such determination that benefit payments are due and provide to the employer or trustee such other information necessary to allow the employer or trustee to carry out said determination, whereupon the employer or trustee shall pay such benefits in accordance with the Administrator's determination.

(4) Payments to minors and incompetents. If a participant or beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits shall be paid to such person as the Administrator may designate for the benefit of such participant or beneficiary. Such payments shall be considered a payment to such

participant or beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Benefit Restoration Plan.

(5) Distribution of benefit when distributee cannot be located. The Administrator shall make all reasonable attempts to determine the identity and/or whereabouts of a participant or his or her beneficiary entitled to benefits under the Benefit Restoration Plan, including the mailing by certified mail of a notice to the last known address shown on the employer's or the Administrator's records. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no such claim made for such benefits, the employer shall continue to hold the benefit due such person, subject to any applicable statute of escheats.

(i) Funding.

(1) The undertaking to pay the benefits hereunder shall be unfunded obligations payable solely from the general assets of the employer and subject to the claims of the employer's creditors.

(2) Except as provided in a grantor trust established as permitted in Subsection (i)(3) of this Section, nothing contained in the Benefit Restoration Plan and no action taken pursuant to this Section shall create or be construed to create a trust of any kind of a fiduciary relationship between the employer and the participant or his or her beneficiary or any other person or to give any participant or beneficiary any right, title, or interest in any specific asset or assets of the employer. To the extent that any person acquires a right to receive payments from the employer under the Benefit Restoration Plan, such rights shall be no greater than the right of any unsecured general creditor of the employer.

(3) Use of grantor trust permitted. Notwithstanding any provision of this Section to the contrary, the Benefit Restoration Plan Sponsor may in its sole discretion elect to establish and fund a grantor trust for the purpose of providing benefits under the Benefit Restoration Plan.

(j) Plan Administrator.

(1) The Plan Administrator shall have full and complete authority and discretion to control and manage the operation of and shall decide all matters under the Benefit Restoration Plan pursuant to this Section and the enabling statute. The Administrator shall have any and all powers as may be necessary or advisable to discharge its duties under the Benefit Restoration Plan including the power and authority to interpret the terms of the Benefit Restoration Plan.

(2) The Plan Administrator shall be responsible for performing the duties required for the operation of the Benefit Restoration Plan, and shall be responsible for supervising the performance of any other persons who may assist in the performance of the Plan Administrator's responsibilities under this Section and the enabling statute.

(3) To enable the Plan Administrator to perform its responsibilities, employer(s) shall promptly provide to the Plan Administrator complete and accurate information on any matter that is required by the Administrator in order to make any decision or determination under the Benefit Restoration Plan. The Plan Administrator shall rely upon this information supplied by the employer, and shall have no duty or responsibility to verify this information.

(4) Except as prohibited by law or by this Section, the Plan Administrator may delegate any of its duties to the Executive Director. The Plan Administrator may contract with any person to provide services to assist in the administration of the Benefit Restoration Plan. The Plan Administrator shall make such contracts in compliance with all applicable state and local laws and regulations. Any person other than the Plan Administrator who performs services regarding the Benefit Restoration Plan is subject to the supervision and direction of the Plan Administrator, and does not have the authority to control the operation of the Plan.

(k) Termination and amendment of Benefit Restoration Plan.

(1) Termination. The Board of Supervisors hereby reserves the right to terminate the Benefit Restoration Plan at any time; provided, that no such termination shall reduce, suspend, or terminate the restoration retirement benefit or restoration death benefit otherwise payable to a participant or beneficiary hereunder as of the date of such termination.

(2) Amendment. The Board of Supervisors hereby reserves the right to amend this Benefit Restoration Plan at any time; provided, that no such amendment shall reduce, suspend, or terminate the restoration retirement benefit or restoration death benefit otherwise payable to a participant or beneficiary hereunder as of the date of such amendment.

(l) Non-assignability.

The interests of each participant hereunder the Benefit Restoration Plan are not subject to the claims of the participant's creditors; and neither the participant nor his or her beneficiary, shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Benefit Restoration Plan, which payments and interest are expressly declared to be non-assignable and non-transferable. Notwithstanding the foregoing, the Plan Administrator shall honor any process for a debt to the employer who has employed the participant and any administrative actions pursuant to Section 63.2-1900 et seq. of the *Virginia Code* , or any court process to enforce a child or spousal support obligation, in the manner as described in Section 3-3-7 mutatis mutandi. Restoration retirement benefits and/or restoration death benefits created under this Section which are deemed to be marital property pursuant to Section 20-89.1 et seq. of the *Virginia Code* may be divided or transferred by the court by direct assignment to a spouse or former spouse pursuant to Section 20-107.3 of the *Virginia Code.* Under no circumstances may a payment under this Subsection take place before the participant's benefit under the System is actually paid. (12-06-3; 3-16-3.)

December 13, 2017

Mr. Jeffrey Weiler
Executive Director
Fairfax County Retirement Systems
12015 Lee Jackson Memorial Hwy
Suite 350
Fairfax, Virginia 22033

Re: Adjustments to Service-Connected Disability Benefits

Dear Jeff:

As requested, we have estimated the cost of eliminating the 5% offset of Social Security benefits for employees who retired or will retire from the Employees' or Uniformed Retirement System on service-connected disability. The cost impact is shown below for each of the Systems.

Please note that the cost impact includes an immediate payment of the increase in unfunded actuarial liability that was included in the first year only. There would be no on-going cost impact in normal cost for either the ERS or URS.

Employees' Retirement System

	Valuation (5% Offset)	**Study (Remove Offset)**	**Change**
Normal Cost	8.54%	8.54%	0.00%
UAL Amortization	3.42%	3.42%	0.00%
UAL Impact for Change	n/a	0.08%	0.08%
Expenses	0.25%	0.25%	0.00%
Total Base Rate	12.21%	12.29%	0.08%
Corridor Contribution Rate			
-- Amortize to 98%	26.47%	26.55%	0.08%
-- Amortize to 99%	27.14%	27.22%	0.08%
-- Amortize to 100%	27.80%	27.88%	0.08%
Unfunded Liability (in Millions)	$1,436.8	$1,437.4	$0.6

Uniformed Retirement System

	Valuation (5% Offset)	Study (Remove Offset)	Change
Normal Cost	17.09%	17.09%	0.00%
UAL Amortization	5.60%	5.60%	0.00%
UAL Impact for Change	n/a	0.53%	0.53%
Expenses	0.25%	0.25%	0.00%
Total Base Rate	22.94%	23.47%	0.53%
Corridor Contribution Rate			
-- Amortize to 98%[1]	36.59%	37.12%	0.53%
-- Amortize to 99%	37.64%	38.17%	0.53%
-- Amortize to 100%	38.69%	39.22%	0.53%
Unfunded Liability (in Millions)	$350.3	$351.2	$0.9

The valuation data does not provide the Social Security offset unless the benefit is currently being offset. For those whose offset was listed, we used the offset amount as if it were calculated as of the retirement date. This means, to restore the offset we adjusted the amount listed for COLA increases from the individuals retirement date through the valuation date. We had to make assumptions for those inactive members for whom no offset is listed. For inactive members under age 62 we estimated an offset (based on 5% of a projected PIA amount) to commence at age 62. For those older than 62 with no offset provided, we assumed no offset. Below is a breakdown of the data into the groups described above:

System	Currently Offset	Offset Estimated Under 62	No Offset Over 62
ERS	115	20	11
URS	95	25	12

These estimates were prepared as of June 30, 2017, using the same actuarial assumptions and methods as described in our June 30, 2017 actuarial valuation reports. The employee data used in this analysis was that provided for the 2017 valuation. The results are applicable only for the 2019 Fiscal Year.

I hereby certify that, to the best of my knowledge, this letter and its contents are complete and have been prepared in accordance with generally recognized and accepted actuarial principles and practices which are consistent with the Code of Professional Conduct and applicable Actuarial Standards of Practice set out by the Actuarial Standards Board. Furthermore, as a credentialed actuary, I meet the Qualification Standards of the American Academy of Actuaries to render the opinion contained in this report. This report does not address any contractual or legal issues. We are not attorneys and our firm does not provide any legal services or advice.

[1] The county has a policy of not paying any less than the existing rate until such a time as the UAL has been exhausted. The FY 2018 and FY 2019 rates have been held at the 38.83% rate in effect for FY 2017.

Please call if you have any questions or comments.

Sincerely,
Cheiron

Fiona E. Liston, FSA, EA
Principal Consulting Actuary

cc: Coralie A. Taylor, FSA, EA
Patrick T. Nelson, ASA, EA

Board Agenda Item
June 5, 2018

ADMINISTRATIVE – 5

Authorization for the Fairfax-Falls Church Community Services Board to Apply for and Accept Grant Funding from the Department of Justice, Office of Justice Programs, Bureau of Justice Assistance for an Adult Drug Court Discretionary Grant

ISSUE:
Board of Supervisors authorization is requested for the Fairfax-Falls Church Community Services Board (CSB) to apply for and accept grant funding, if received, from the Department of Justice, Office of Justice Programs, Bureau of Justice Assistance (BJA) for an Adult Drug Court Discretionary Grant in the amount of $500,000, over a four-year period. Funding will support a 1/1.0 FTE new grant Behavioral Health Supervisor position to coordinate court and supervision required to operate a Drug Court and to coordinate recovery support services, supervision and data collection/evaluation. The grant period is January 1, 2019 to December 30, 2022. The total required non-federal match of 25 percent will be met with in-kind resources. If the actual award received is significantly different from the application amount, another item will be submitted to the Board requesting appropriation of grant funds. Otherwise, staff will process the award administratively per Board policy.

RECOMMENDATION:
The County Executive recommends that the Board authorize the CSB to apply for and accept funding, if received, from BJA for an Adult Drug Court Discretionary Grant. Federal funding of $500,000 over a four-year period will support 1/1.0 FTE new grant position to develop, manage and support the Drug Court program. The total required non-federal match of 25 percent will be met with in-kind resources.

TIMING:
Board action is requested on June 5, 2018 as the application is due on June 5, 2018. This grant application was approved by the CSB Board on May 23, 2018.

BACKGROUND:
The Adult Drug Court Discretionary Grant Program seeks to provide financial and technical assistance to develop and implement drug courts that effectively integrate evidence-based substance use disorder treatment, mandatory drug testing, sanctions and incentives, and transitional services in a judicially supervised court setting with jurisdiction over substance-misusers to include addressing the opioid epidemic. BJA is accepting applications for FY 2018 grants to either establish new drug courts or enhance existing drug court programs using evidence-based principles and practices, as well as

statewide level grants. BJA also supports courts that integrate the National Association of Drug Court Professionals (NADCP) adult drug court standards into existing drug court services. Funding will support 1/1.0 FTE grant Behavioral Health Specialist position to operate a Drug Court, coordinate recovery support services, supervision and data collection/evaluation. This proposal seeks to expand and diversify funding for Fairfax County's Diversion First efforts. The FY 2018 Adult Drug Court Discretionary Grant Program solicitation can be found at https://www.bja.gov/DrugCourts18.

FISCAL IMPACT:
Grant funding in the amount of $500,000 is being requested from the Department of Justice, Office of Justice Programs, Bureau of Justice Assistance to fund the Drug Court Discretionary Grant Program. The total required non-federal match of 25 percent will be met with in-kind resources. This grant does allow for the recovery of indirect costs; however, because of the highly competitive nature of the award, the CSB did not include indirect costs as part of the application. This action does not increase the expenditure level in the Federal-State Grant Fund, as funds are held in reserve for unanticipated grant awards.

CREATION OF NEW POSITIONS:
There is 1/1.0 FTE new grant position associated with this award. The County is under no obligation to continue funding this position when the grant funding expires.

ENCLOSED DOCUMENTS:
Attachment 1: Summary of Grant Proposal

STAFF:
Tisha Deeghan, Deputy County Executive
David Rohrer, Deputy County Executive
Daryl Washington, Executive Director, Fairfax-Falls Church Community Services Board

Adult Drug Court Discretionary Grant
Summary of Grant Proposal

Please note: the actual grant application is not yet complete; therefore, this summary has been provided detailing the specifics of this application.

Grant Title:	Adult Drug Court Discretionary Grant
Funding Agency:	U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance
Applicant:	Fairfax-Falls Church Community Services Board (CSB)
Funding Amount:	Federal funding of $500,000; a required non-federal match of 25 percent will be met with in-kind resources.
Proposed Use of Funds:	This grant project will support the implementation of an Adult Drug Court in Fairfax County Circuit Court. It will support the use of evidence-based principles and practices by a multidisciplinary team responding to the offenses and treatment needs of program participants diagnosed with substance abuse. The grant will support collaboration between law enforcement, justice and CSB systems in increasing diversion opportunities. A 1/1.0 FTE new grant Behavioral Health Supervisor position will be established to manage the cross-system policy and practice efforts including recovery support services, supervision and data collection/evaluation.
Performance Measures:	Establish a drug court in Fairfax County. Fund 1, S-26 Behavioral Health Supervisor to support operations and clinical practices in the court. Serve a total of 25 individuals annually in the drug court program, for a total of 100 individuals potentially being served over the duration of the grant period. Implement required evidenced-based practices developed by the National Association of Drug Court Professionals (NADCP). Develop and track outcomes aligned with best practices for drug courts.
Grant Period:	January 1, 2019 – December 30, 2022

Board Agenda Item
June 5, 2018

ADMINISTRATIVE – 6

Authorization for the Fairfax-Falls Church Community Services Board to Apply for and Accept Grant Funding from the Department of Justice, Office of Justice Programs, Bureau of Justice Assistance for a Justice and Mental Health Collaboration Program Grant

ISSUE:
Board of Supervisors authorization is requested for the Fairfax-Falls Church Community Services Board (CSB) to apply for and accept grant funding, if received, from the Department of Justice, Office of Justice Programs, Bureau of Justice Assistance (BJA) to fund the Justice and Mental Health Collaboration Program in the amount of $750,000, over a three-year period. Funding will support 2/2.0 FTE new grant Behavioral Health Specialist I positions as part of the Diversion First initiative, to support people who have been diverted or are transitioning out of the jail. The grant period is January 1, 2019 to December 31, 2021. The total required non-federal match of 20 percent will be met with in-kind resources. If the actual award received is significantly different from the application amount, another item will be submitted to the Board requesting appropriation of grant funds. Otherwise, staff will process the award administratively per Board policy.

RECOMMENDATION:
The County Executive recommends that the Board authorize the CSB to apply for and accept funding, if received, from the Bureau of Justice Assistance for the Justice and Mental Health Collaboration Program. Federal funding of $750,000 over three years will support 2/2.0 FTE new grant positions supporting unmet needs for people transitioning out of jail as part of Fairfax County's Diversion First initiative. The total required non-federal match of 20 percent will be met with in-kind resources.

TIMING:
Board action is requested on June 5, 2018. Due to the grant application deadline of May 29, 2018, the application was submitted pending Board approval. This Board item is being presented at the earliest subsequent Board meeting. If the Board does not approve this request, the application will be immediately withdrawn. The Board of Supervisors was also notified via memo on May 24, 2018, of the CSB's intent to apply for this grant prior to the application due date. This grant application was approved by the Fairfax Falls-Church CSB Board on May 23, 2018.

BACKGROUND:
The Justice and Mental Health Collaboration Program supports innovative cross-system collaboration to serve individuals with mental illnesses or co-occurring mental health

and substance abuse disorders who come into contact with the justice system. BJA seeks to fund projects to facilitate collaboration among the criminal justice and mental health and substance abuse treatment systems to increase access to mental health and other treatment services for this population. This BJA funding supports and aligns with the *Stepping Up* Initiative, a national movement that includes Fairfax County, to reduce the number of people with mental illnesses and co-occurring mental health and substance abuse disorders in jails. Funding will support 2/2.0 FTE grant Behavioral Health Specialist I positions who will work with people who have been diverted or who are transitioning out of jail with community supports to help them with medication compliance, life skills, adherence to treatment and appointments and other approaches to build success in the community and reduce recidivism. Additional funds will be used for evaluation and implementation manual development, as required by the grantor. This proposal seeks to expand and diversify funding for Fairfax County's Diversion First efforts. The Justice and Mental Health Collaboration Program solicitation can be found at https://www.bja.gov/ProgramDetails.aspx?Program_ID=66.

FISCAL IMPACT:
Grant funding in the amount of $750,000 is being requested from the Department of Justice, Office of Justice Programs, Bureau of Justice Assistance to fund the Justice and Mental Health Collaboration Program. The total required non-federal match of 20 percent will be met with in-kind resources. This grant does allow for the recovery of indirect costs; however, because of the highly competitive nature of the award, the CSB did not include indirect costs as part of the application. This action does not increase the expenditure level in the Federal-State Grant Fund, as funds are held in reserve for unanticipated grant awards.

CREATION OF NEW POSITIONS:
There are 2/2.0 FTE new grant positions associated with this award. The County is under no obligation to continue funding this position when the grant funding expires.

ENCLOSED DOCUMENTS:
Attachment 1: Summary of Grant Proposal

STAFF:
Tisha Deeghan, Deputy County Executive
Stacey Kincaid, Sheriff, Office of the Sheriff
Daryl Washington, Executive Director, Fairfax-Falls Church CSB
Laura Yager, Director of Systems Transformation, Office of the County Executive
Marissa Farina-Morse, Diversion First Service Director, Fairfax-Falls Church CSB

Justice and Mental Health Collaboration Program
Summary of Grant Proposal

Grant Title:	Justice and Mental Health Collaboration Program
Funding Agency:	U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance
Applicant:	Fairfax-Falls Church Community Services Board (CSB)
Funding Amount:	Federal funding of $750,000; a required non-federal match of 20 percent will be met with in-kind resources.
Proposed Use of Funds:	This grant project will support 2/2.0 FTE new grant Behavioral Health Specialist I positions to serve individuals with mental illness or co-occurring substance use disorders who have been diverted or who are transitioning out of the jail to offer basic support to help with successful life in the community. Some of the functions will include medication management assistance, life skills, and assistance to maintain a place to live, transportation, and supports that would present barriers to success in the community and to prevent recidivism.
Performance Measures:	**1-** Assure utilization of evidence-based assessment and screening tools focused on identification of mental illness, assessing risk and need, suicidality, and that help identify individual service needs that will inform grant-funded staff service needs. **2-** Assure tracking systems obtain relevant data related to individuals served by staff and demonstrate effectiveness of interventions that help support people considered high risk for recidivism. Utilize a third party evaluator to reduce bias in data collection. **3-** Provide specialized services by grant funded that enhance the success of people served and improves social determinant outcomes related to work, life, and social connectedness as well as reduce recidivism. **4-** Assure compliance with all grant requirements to include reporting, budget expenditures and all administrative processes. **5-** Develop a required Planning and Implementation Guide, to be completed within 6 months of project approval. **6-** Develop of policies and practices to support this effort and help sustain change after the funding period ends.
Grant Period:	January 1, 2019 – December 31, 2021

Board Agenda Item
June 5, 2018

ACTION - 1

Approval of the Project Agreement Between the Virginia Department of Rail and Public Transportation (DRPT) and Fairfax County for Fiscal Year (FY) 2018 Funding for the I-95 Transit and Transportation Demand Management Plan Operating Assistance (Lee, Mason and Mount Vernon Districts)

ISSUE:
Approval for the Director of the Department of Transportation to sign the Project Agreement with DRPT, to enable the County to receive FY 2018 funding for the I-95 Transit and Travel Demand Management (TDM) Plan operating assistance.

RECOMMENDATION:
The County Executive recommends that the Board authorize the Director of the Department of Transportation to sign the Project Agreement between DRPT and Fairfax County, in substantial form as Attachment 1, to fund Fairfax County's I-95 Transit and TDM Plan operating assistance.

TIMING:
The Board of Supervisors should act on this item on June 5, 2018, so that DRPT can release FY 2018 funding for the TDM Plan operating assistance.

BACKGROUND:
The I-95 Corridor Transit and TDM Plan was developed to provide the Commonwealth of Virginia with recommendations, including both operations and capital investments, to complement the I-95 High Occupancy Toll/High Occupancy Vehicle (HOT/HOV) lanes improvements. The plan is derived from the 2008 DRPT I-95/I-395 Transit/TDM Study. This plan maximizes utilization of the HOT/HOV lanes network and responds to the demand for increased public transportation and ridesharing. The I-95 Transit and TDM Plan was developed in collaboration with the Secretary of Transportation and the Virginia Public-Private Transportation Act (PPTA) Office. A multi-jurisdictional stakeholder group was formed early in the study process to provide technical input into the study. The stakeholder group held meetings at three key points during the study. These meetings resulted in defining cost-effective transit and TDM improvements for the I-95 corridor for 2015, 2035 and beyond. This grant is used to fund the operating cost of Fairfax Connector bus route 393, which operates from the Saratoga Park-and-Ride and the Gambrill Road Park-and-Ride in the Springfield area to the Mark Center and the Pentagon.

FISCAL IMPACT:
State grant funding of $283,285 was approved in the FY 2018 Six-Year Improvement Program. Funding from the Commonwealth is provided on a reimbursement basis. Funding for this grant is currently appropriated in Fund 40000, County Transit Systems.

ENCLOSED DOCUMENTS:
Attachment 1 – Project Agreement for Grant # 72018-43: I-95 Transit and TDM Plan Operating Assistance
Attachment 2 - Fairfax County Board of Supervisors Agreement Execution Resolution for the I-95 Transit and TDM Plan Operating Assistance Project Agreement

STAFF:
Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Todd Wigglesworth, Chief, Coordination and Funding Division, FCDOT
Joe LaHait, County Debt Coordinator, Department of Management and Budget
Malcolm Watson, Coordination and Funding Division, FCDOT

ASSIGNED COUNSEL:
Joanna Faust, Assistant County Attorney

Project Agreement for Use of
Commonwealth Transportation Funds
Fiscal Year 2018
Six Year Improvement Program Approved Project
Grant Number 72018-43

This Project Agreement ("Agreement") effective July 1, 2017 by and between the Commonwealth of Virginia Department of Rail and Public Transportation ("Department") and Fairfax County ("Grantee") (collectively, the "Parties") is for the provision of funding for I-95 Transit and Transportation Demand Management ("TDM") Plan operating assistance ("Project").

WHEREAS, on March 13, 2017, the Grantee submitted an application to the Department for funding for the Project in the Fiscal Year 2018 Six Year Improvement Program for I-95 Operating Assistance; and

WHEREAS, the Department has approved funding for the Project; and

WHEREAS, on June 20, 2017, the Commonwealth Transportation Board ("CTB") allocated funding for the Project; and

WHEREAS, the Parties wish to define the extent of the Project, the responsibilities of each Party, the manner of performing the necessary Work, the method and time of payment, and to set out additional conditions associated with the Project.

NOW, THEREFORE, in consideration of the covenants and agreements set forth, and other good and valuable consideration, the sufficiency of which is acknowledged, the Parties agree as follows:

ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET

1. The Work to be performed by the Grantee under the terms of this Agreement is as follows:

    a. Provide I-95 Transit and TDM Plan operating assistance.

2. The Department agrees to provide funding as detailed below:

    a. State grant funding in the amount of $283,285 for the Project approved in the Fiscal Year 2018 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is attached and made a part of this Agreement.

3. The Grantee acknowledges that state grant funding for this grant is subject to appropriation by the General Assembly and allocation by the CTB.

4. The State grant funding amount is calculated based on a 20 percent farebox recovery rate. If the farebox recovery rate exceeds 20 percent for the grant period, the Department will reduce future grants to the Grantee by the overfunded amount. If the actual farebox recovery rate falls below 20 percent for the grant period, the Grantee can request an amendment to this Agreement to provide for the additional net operating costs incurred.

ARTICLE 2. INCORPORATION OF MASTER AGREEMENT FOR USE OF COMMONWEALTH FUNDS

The Parties hereby agree to incorporate the Master Agreement for Use of Commonwealth Transportation Funds, dated May 30, 2012, as if set out in full herein.

This space intentionally left blank

IN TESTIMONY THEREOF, the Department and the Grantee have caused this Agreement to be executed, each by their duly authorized officers, all as of the day, month, and year first written.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

By: _____
Director

Date Signed: _____

By: _____

Title: _____

Date Signed: _____

Appendix 1

Grantee: Fairfax County

Project: I-95 Transit and TDM Plan Operating Assistance

State Project Agreement

Project Number: 72018-43
Project Start Date: July 1, 2017
Project Expiration Date: June 30, 2018

Fund Code		Item Amount
477	Grant Amount (State share of Project cost - 100%)	$283,285
	Total Project Expense	$283,285

In no event shall this grant exceed $283,285.

Fairfax County Board of Supervisors 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 of Fairfax, Virginia, on Tuesday, June 5, 2018, at which meeting a quorum was present and voting, the following resolution was adopted.

AGREEMENT EXECUTION RESOLUTION

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of the County of Fairfax, Virginia, authorizes the Director of the Department of Transportation to execute, on behalf of the County of Fairfax, a Project Agreement with the Virginia Department of Rail and Public Transportation (DRPT) for the provision of funding for the I-95 Transit and Transportation Demand Management Plan operating assistance.

Adopted this 5th day of June 2018, Fairfax, Virginia

ATTEST _____
Catherine A. Chianese
Clerk to the Board of Supervisors

Board Agenda Item
June 5, 2018

ACTION – 2

Approval of a Project Administration Agreement with the City of Fairfax, and George Mason University for the Implementation of a Bikeshare Feasibility Study (Providence, and Braddock Districts)

ISSUE:
Board of Supervisors' approval of, and authorization for the Director of the Department of Transportation to execute a Project Administration Agreement ("PAA") with the City of Fairfax ("City"), and George Mason University ("University") for the implementation of a Bikeshare feasibility study ("Project").

RECOMMENDATION:
The County Executive recommends that the Board adopt a resolution, substantially in the form of Attachment 1, authorizing the Director of the Department of Transportation to execute a PAA (substantially in the form of Attachment 2) with the City and University, for the implementation of the Project.

TIMING:
The Board of Supervisors should act on this item on June 5, 2018, so that the City can continue with conducting Project implementation.

BACKGROUND:
Fairfax County launched Capital Bikeshare in fall 2016 in Reston and Tysons. Bikeshare is a transportation system that allows individuals to check out a bike and ride short to moderate distances from station to station. A system of bikeshare stations and bicycles are set up in an area to allow participants to travel between destinations that are generally further than walking, without driving. As a result, roadway congestion is reduced.

Capital Bikeshare is operated regionally in Washington D.C., the City of Alexandria, and Arlington, Fairfax, and Montgomery Counties. Prince Georges County and Falls Church are planning to launch Capital Bikeshare in 2018.

In fall 2017, Fairfax County was approached by the Town of Vienna, the City of Fairfax, and George Mason University with a proposal to conduct a bikeshare feasibility study along the Route 123 corridor between Tysons and Burke Lake Park. There are many trails and low stress bike connections in the study area that connect activity centers, such as the historic core of the Town of Vienna, the City of Fairfax and George Mason University retail; as well as mass transit stations; including the Burke Centre Virginia

Railway Express (VRE) Station, Vienna/Fairfax – GMU Metrorail station and Greensboro Metrorail station).

Fairfax County is currently planning to launch a small satellite Capital Bikeshare system in Merrifield with the support of the local business community, and received a Transportation Alternatives grant in 2017 to expand Capital Bikeshare in the Providence District. Local funding is available in the FCDOT Bike Program to add stations at strategic locations within the bikeshare network.

The City of Fairfax is taking the lead on the Route 123 corridor bicycle feasibility study and has already submitted a Request for Proposals. A vendor is expected to be selected by the end of April. The study is proposed to be concluded by the end of 2018.

The proposed budget for this project is up to $75,000, with a contribution from Fairfax County not to exceed $25.000. Upon Board approval and agreement execution, the County will transfer $25,000 to the City of Fairfax. Upon successful completion of the study, any unused funding will be returned to the County.

FISCAL IMPACT:
Upon execution of the attached agreement, a total of up to $25,000 will be transferred to the City of Fairfax for project implementation. Previously approved funds for Bicycle Program purposes are available in Fund 40010, County and Regional Transportation Projects, Project TS-000001, Bicycle Facilities Program. There is no impact to the General Fund.

ENCLOSED DOCUMENTS:
Attachment 1: Resolution to Execute a Project Administration Agreement with the City of Fairfax and George Mason University
Attachment 2: Project Administration Agreement between Fairfax County, the City of Fairfax, and George Mason University

STAFF:
Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Todd Wigglesworth, Chief, Coordination and Funding Division, FCDOT
Chris Wells, Senior Transportation Planner, FCDOT
Nicole Wynands, Transportation Planner, FCDOT
Joe LaHait, Debt Coordinator, Department of Management and Budget

ASSIGNED COUNSEL:
Joanna L. Faust, Assistant County Attorney

Fairfax County Board of Supervisors 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 12000 Government Center Parkway, Fairfax, Virginia on Tuesday, June 5, 2018, at which meeting a quorum was present and voting, the following resolution was adopted.

AGREEMENT EXECUTION RESOLUTION

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Fairfax County, Virginia, authorizes the Director of Fairfax County's Department of Transportation to execute, on behalf of the County of Fairfax, a Project Administration Agreement with the City of Fairfax and George Mason University for the implementation of a bikeshare feasibility study on Route 123 between Burke Lake Park and Leesburg Pike (Route 7) to be administered by the City of Fairfax.

Adopted this 5th day of June 2018, Fairfax, Virginia

ATTEST _____
Catherine A. Chianese
Clerk to the Board of Supervisors

FEASIBILITY STUDY AND PROJECT ADMINISTRATION AGREEMENT BETWEEN FAIRFAX COUNTY, the CITY OF FAIRFAX and GEORGE MASON UNIVERSITY

for the feasibility study that is subject of City of Fairfax RFP 18017 (the "PROJECT") of launching a Bikeshare Program in the Route 123 corridor between Burke Lake Park and Leesburg Pike (Route 7).

THIS AGREEMENT, made and executed in triplicate on this day of_____, 2018, ("Effective Date") between the COUNTY OF FAIRFAX, VIRGINIA (the "COUNTY"), the CITY OF FAIRFAX, VIRGINIA ("the CITY") and GEORGE MASON UNIVERSITY (the "UNIVERSITY").

WITNESSETH

WHEREAS, the COUNTY successfully launched a Bikeshare Program in Reston and Tysons (north of Route 7) in 2016; and

WHEREAS, the Route 123 corridor between Burke Lake Park and Route 7 has numerous low stress on-street bicycle routes and trails, connections to transit including the Vienna Metrorail Station, Greensboro Metrorail Station and Burke Centre Virginia Railway Express (VRE) Station, as well as the University's Fairfax Campus and local and regional destinations; and

WHEREAS, the CITY, COUNTY, and UNIVERSITY are committed to exploring the feasibility of launching a Bikeshare system in the Route 123 corridor between Burke Lake Park and Route 7; and

WHEREAS, the CITY, the COUNTY and the UNIVERSITY enter into this Agreement to set forth their respective obligations regarding the PROJECT; and

WHEREAS, funds in the amount of $25,000, as shown in Appendix A (financial document) of this agreement, has been allocated by the COUNTY to finance the PROJECT and constitute the maximum amount the COUNTY will contribute to the PROJECT ("COUNTY Contribution"); and

WHEREAS, funds in the amount of $25,000 each, as shown in Appendix A of this agreement, have been allocated by both the CITY ("CITY Contribution"), and the UNIVERSITY ("UNIVERSITY Contribution") to finance the PROJECT and constitute the maximum amount the CITY, and UNIVERSITY will contribute to the PROJECT; and

WHEREAS, it is anticipated that the PROJECT will encompass the area along Route 123 between Burke Lake Park and Leesburg Pike (Route 7), which is described on the conceptual layout in Appendix B (scoping document) of this agreement; and

WHEREAS, the CITY's, the COUNTY's, and the UNIVERSITY's governing body or designee have, by resolution or documents as evinced by the entity's clerk's minutes or other applicable documents, which are attached hereto as Appendices C through E, respectively, authorized their respective designees to execute this Agreement; and

WHEREAS, Section 15.2-1108 and Section 15.2-1202 of the Code of Virginia authorizes the CITY, and the COUNTY to enter into this agreement;

NOW THEREFORE, in consideration of the promises and mutual covenants and agreements contained herein, the parties hereto agree as follows:

A. The CITY Shall:

1. Collaborate with the COUNTY and UNIVERSITY to complete the work identified in this agreement (Appendix A, and B). All work shall be completed in accordance to scheduled activities established by all parties, and all applicable federal, state, and local laws and regulations, including but not limited to the Virginia Public Procurement Act. Upon notice to the COUNTY and the UNIVERSITY, the CITY may adjust the agreed upon schedule for any delays in the schedule due to unforeseen circumstances.
2. Provide to the COUNTY and UNIVERSITY a detailed scope of the PROJECT and cost estimates within 45 days of execution of this agreement.
3. Work with the COUNTY and UNIVERSITY in good faith to resolve any PROJECT-related issues that may arise and provide any information that may be necessary for the PROJECT.
4. Provide a report of progress and PROJECT expenditures in a format and interval acceptable both to the COUNTY and the UNIVERSITY.
5. Agree to monthly, or as needed, meetings with the designated COUNTY and UNIVERSITY project managers to discuss PROJECT-related issues and PROJECT progress.
6. The COUNTY and UNIVERSITY reserve the right to request that the CITY produce to the COUNTY and UNIVERSITY additional information and/or documentation to substantiate the monthly summary and any payments to be made for the PROJECT.
7. Obtain COUNTY and UNIVERSITY written approval before modifying the scope of the PROJECT which is described in Appendix A. Prior to approval for such modification, the CITY understands that if the CITY takes any steps to deviate from the approved scope without obtaining approval for modifications or indicates an intent not to complete the PROJECT as

described in Appendix A, the COUNTY and/or UNIVERSITY may withdraw from the PROJECT and will notify the CITY of the COUNTY's and/or UNIVERSITY's decision to withdraw.

8. Within 30 days after the COUNTY'S and/or UNIVERSITY's notification of withdrawal, the CITY shall reimburse to the COUNTY and/or UNIVERSITY with interest from the date of payment by the COUNTY and/or UNIVERSITY.
9. Provide to the COUNTY and UNIVERSITY requests for payment consistent with Appendix A, containing detailed summaries of actual PROJECT costs incurred with supporting documentation as determined by the COUNTY and UNIVERSITY and that certify all such costs were incurred in the performance of work for the PROJECT, as authorized by this Agreement. Each payment requisition shall be in invoice format with accompanying cover letter. If approved by the COUNTY and UNIVERSITY, the CITY can expect to receive payment within thirty (30) days upon receipt by the COUNTY and UNIVERSITY. Approved payments may be made by means of electronic transfer of funds from the COUNTY and UNIVERSITY to or for the account of the CITY.
10. Notify the COUNTY and UNIVERSITY of any intent to conduct additional work outside of the approved PROJECT scope. The CITY, in its sole discretion, may expend more than the COUNTY's and UNIVERSITY's Contribution for the PROJECT, but the CITY is responsible for all expenses above the COUNTY and UNIVERSITY Contribution for the PROJECT if such expenses are the result of CITY enhancements or modifications. Similarly, the COUNTY or UNIVERSITY may choose to conduct additional work, and are individually responsible for any expenses for work conducted outside of the approved scope.
11. Prior to incurring any amount in excess of approved PROJECT budget, notify the COUNTY and UNIVERSITY of potential additional PROJECT expenses or cost overruns, whether resulting from unanticipated circumstances or other causes, and provide the COUNTY and UNIVERSITY with detailed estimates of the additional costs. The CITY, COUNTY and UNIVERSITY shall plan a contingency in the PROJECT budget to address potential cost overruns or expenses within the contributions approved in this Agreement.
12. Provide the COUNTY and UNIVERSITY with 45 days' prior notice of its intent to enter into a contract for the PROJECT and forward the proposed contract to the COUNTY and UNIVERSITY for review.
13. Perform, or engage third parties to perform and remit all payments for all work associated with the PROJECT, to include administration cost and related activities for the PROJECT as required.
14. Provide to the COUNTY and UNIVERSITY a copy of the final report for the PROJECT.
15. Submit monthly summaries as referenced in Section A, Paragraph 4. Failure to submit a monthly summary for three consecutive months shall evince the CITY'S abandonment of its obligations under this Agreement. Upon notification by the COUNTY and/or UNIVERSITY to the CITY of such

failure to provide the required summaries, the CITY shall have 5 days to provide the required documents. Should the required summaries and or other supporting documentation not be provided by the CITY, the CITY will immediately return any amount of the COUNTY and UNIVERSITY Contribution not expended, with interest, in accordance with this Agreement and concurrently transmit all invoices and records of payments related to the PROJECT to the COUNTY and UNIVERSITY.

16. Retain all invoices and all records of payments for any and all materials and services rendered for the PROJECT for 3 years, and any related expenses for completion of the PROJECT, and provide copies of any such invoices and records of payments to the COUNTY and UNIVERSITY within ten business days after such request.
17. All the CITY's contractors shall name the COUNTY and UNIVERSITY as an additional insured on any insurance policy issued for the work to be performed for the PROJECT by or on behalf of the CITY for the PROJECT and present the COUNTY and UNIVERSITY with satisfactory evidence thereof before any work on the PROJECT commences or continues.
18. Ensure compliance with the provisions of Title VI of the Civil Rights Act of 1964, regulations of the United States Department of Transportation (USDOT), Presidential Executive Order and the Code of Virginia relative to nondiscrimination.
19. Comply with all requirements of the Virginia Public Procurement Act and other applicable Virginia Code provisions, or local ordinances which govern the letting of public contracts.

B. The COUNTY and UNIVERSITY shall each:

1. Provide funds to the CITY for the PROJECT in accordance with this Agreement the payment outlined in Appendix A.
2. Review the scope of the feasibility study and cost estimates and provide comments to the CITY within 15 days after the receipt of the draft documents and cost estimates.
3. Participate in monthly, or as needed, meetings with the designated CITY project manager to discuss PROJECT progress.
4. Collaborate with the CITY to complete the work in this Agreement, providing input and feedback for work products and schedules in a timely manner. This includes providing information requested by the contractor necessary to conduct the study.

5. Notify the CITY of any questions, concerns or requests for additional information about progress reports or expenditures within 15 days of receipt of these reports (as referenced in Section A, Paragraph 6).

C. All parties shall:

1. Maintain all records for the PROJECT for a period of not less than three years from PROJECT completion. All such records shall be subject to audit by either party upon request.

2. Work cooperatively to complete the PROJECT in a timely and expeditious manner.
3. Meet and confer to resolve any dispute that may arise between the parties. Nothing herein limits the rights of either party to resolve disputes by means not described or provided for in this agreement.
4. Provide notice if the COUNTY and/or UNIVERSITY chooses to withdraw from the study prior to its conclusion (after the contract is awarded and this Agreement is executed). If the COUNTY and/or UNIVERSITY choose to withdraw or otherwise not complete the study for reasons other than deviations from this Agreement, they may still be responsible for their commitment to this study outlined in Appendix A.

D. All requirements for funds to be borne by the COUNTY shall be subject to annual appropriations by the Fairfax County Board of Supervisors.

E. All requirements for funds to be borne by the UNIVERSITY shall be subject to annual appropriations by the General Assembly.

F. Any party may terminate this Agreement by way of advance written notice no less than 45 days prior to awarding the PROJECT contract.

G. Any portion of the COUNTY and UNIVERSITY Contribution not spent or incurred as a debt to a third party prior to termination shall be returned to the COUNTY and UNIVERSITY within 90 days of termination.

H. THIS AGREEMENT shall not be construed as a waiver of the sovereign immunity of Fairfax County, the City of Fairfax, George Mason University or the Commonwealth of Virginia.

I. All notices under this Agreement shall be sent via U.S. Mail, postage prepaid, and email for the COUNTY to:
Tom Biesiadny, Director
Department of Transportation
4050 Legato Road, Suite 400
Fairfax, VA
22033-2895

For the CITY:

Wendy Block Sanford

Transportation Director

10455 Armstrong Street
Fairfax, VA 22030

Chloe Ritter
Transportation Planner
10455 Armstrong Street
Fairfax, VA 22030

For the UNIVERSITY:

_____

_____

_____

_____

With a copy to:

Office of University Counsel

George Mason University

4400 University Drive, MSN 2A3

Fairfax, VA 22030

J. THIS AGREEMENT, when properly executed, shall be binding upon all parties, their successors and assigns.

K. THIS AGREEMENT may be modified in writing upon mutual agreement of all parties

L. THIS AGREEMENT 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.

M. All provisions of this agreement shall be construed in accordance with the laws of Virginia.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed as of the day, month, and year first herein written.

COUNTY OF FAIRFAX, VIRGINIA:

_____ _____

Date

_____ _____

Typed or Printed Name of Signatory Date

_____ _____

Title

CITY OF FAIRFAX, VIRGINIA

_____ _____

Date

_____ _____

Typed or Printed Name of Signatory Date

_____ _____

Title

GEORGE MASON UNIVERSITY

_____ _____

Date

_____ _____

Typed or Printed Name of Signatory Date

_____ _____

Title

Appendix A

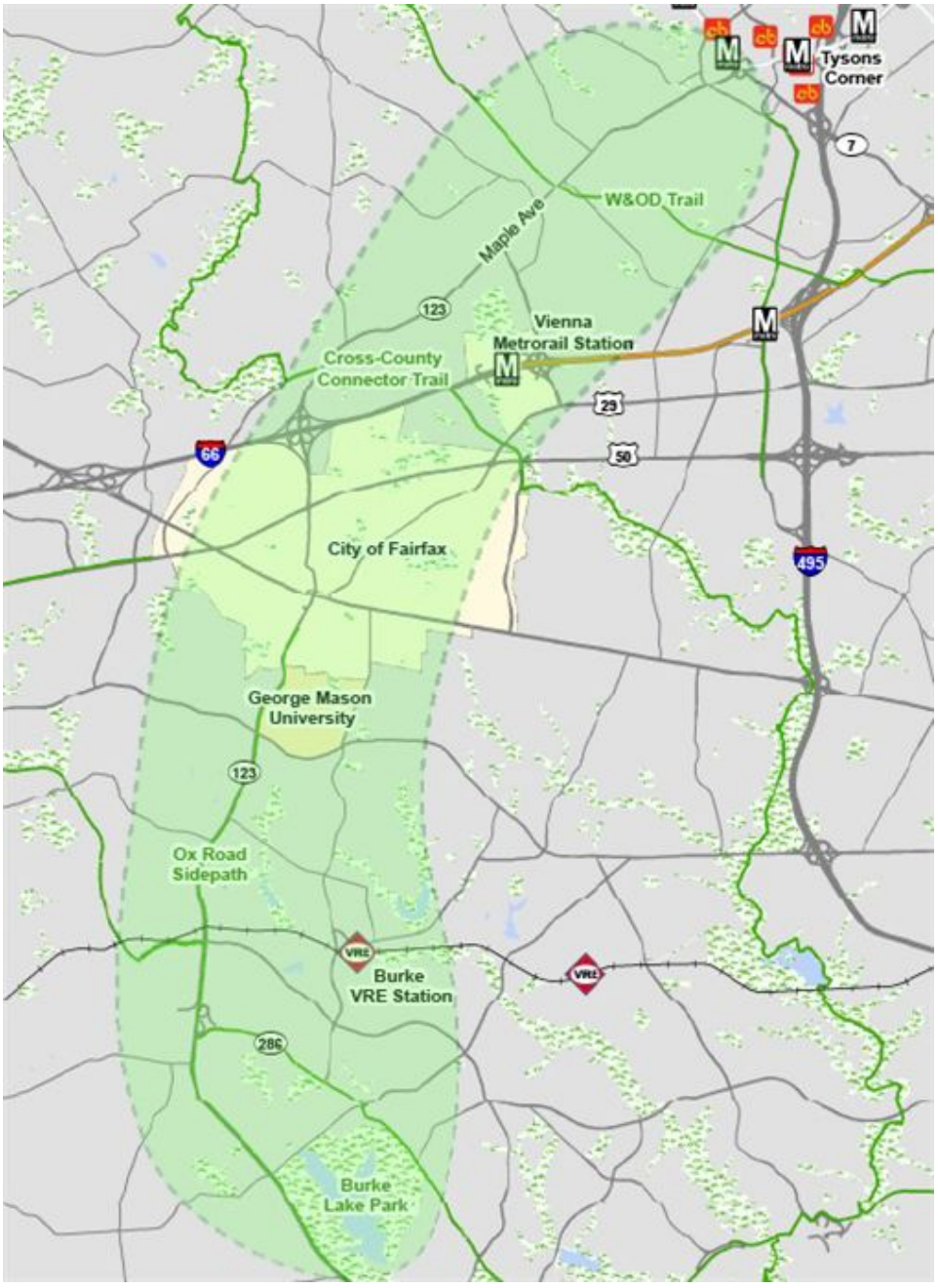
Feasibility Study Narrative Scope

The Study is seeking to evaluate the benefits, opportunities, challenges and cost of bringing bikeshare to the communities of George Mason University-Fairfax Campus, the City of Fairfax, the Town of Vienna, and the unincorporated Fairfax County neighborhoods along the Route 123 corridor between Burke Lake Park and Route 7.
Feasibility/Cost Estimate Study Budget = Up to
$75,000

Contribution:
Fairfax County: up to $25,000
City of Fairfax: up to $25,000
George Mason University: up to $25,000

Map of Study Area

Appendix B



Board Agenda Item
June 5, 2018

ACTION – 3

Approval of a Memorandum of Understanding (MOU) Between Fairfax County and the Town of Vienna Authorizing Fairfax County to Bill and Collect Local Current and Delinquent Registration Fees

ISSUE:
Board authorization for the Department of Tax Administration (DTA) to bill and collect current and delinquent local vehicle registration fees for the town of Vienna pursuant to the MOU in substantially the form provided in Attachment 1.

RECOMMENDATION:
The County Executive recommends that the Board authorize the Director of DTA to sign the attached MOU, which will permit the County to bill and collect current and delinquent local vehicle registration fees for the town of Vienna should that jurisdiction likewise sign the MOU.

TIMING:
Board action is required on June 5, 2018 to allow DTA to commence billing and collections within its routine billing cycle.

BACKGROUND:
Va. Code Ann. § 46.2-752(M) authorizes counties and towns to enter into reciprocal agreements allowing one jurisdiction to bill and collect local vehicle registration fees on behalf of the other.

In order to implement this change, the Board would need to authorize the Director of DTA to sign the MOU in substantially the form presented in Attachment 1 and commence the collections process within the 2018 billing cycle. DTA will bill and collect these fees, deposit funds to the town and provide an electronic file accounting for the collected funds. The governing body of either party can withdraw from this MOU upon written notice to the other party and the timing of any such withdrawal will be determined by the Director of DTA depending on where the County is in its billing cycle. The Board previously approved DTA to collect local registration fees for the Town of Herndon and the Town of Clifton pursuant to this statutory authority.

The Town Council for Vienna voted to enter into the attached MOU at its April 24, 2018 meeting. Staff recommends that the Board authorize the Director of DTA to sign the MOU.

FISCAL IMPACT:
None.

ENCLOSED DOCUMENTS:
Attachment 1 - Memorandum of Understanding with the Town of Vienna
Attachment 2 - Code of Virginia, § 46.2-752

STAFF:
Joseph M. Mondoro, Chief Financial Officer
Jay Doshi, Director, Department of Tax Administration
E. Scott Sizemore, Director, Revenue Collection Division, DTA
Juan B. Rengel, Director, Personal Property & Business License Division, DTA
Wanda Gibson, CTO, Director of Information Technology
Gregory Scott, Deputy Director of Information Technology
Charles R. Spencer, Branch Manager, Revenue Services Branch, DIT

ASSIGNED COUNSEL:
Daniel Robinson, Assistant County Attorney

MEMORANDUM OF UNDERSTANDING BETWEEN THE

FAIRFAX COUNTY BOARD OF SUPERVISORS AND THE TOWN OF VIENNA

This Memorandum of Understanding (MOU) is made and entered into this _____ day of _____2018, by the FAIRFAX COUNTY BOARD OF SUPERVISORS ("County") and the TOWN OF VIENNA ("Town") located within the County of Fairfax. The County and the Town are referred to herein as "the Parties" to this MOU.

The County currently assesses, bills and collects vehicle personal property taxes from the residents of the Town of Vienna. Currently the Town bills and collects vehicle license fees from the Town residents.

The parties desire to enter into this MOU pursuant to the authority conferred to Virginia Code Ann. §46.2-752(M), to effect this MOU, upon approval of both governing bodies, permitting the County Department of Tax Administration (DTA) to collect both non-delinquent and delinquent license fees for the Town.

The parties agree as follows:

COLLECTION OF NON-DELINQUENT AND DELINQUENT LICENSE FEES

Upon full execution of this MOU by the parties, and upon compliance with the terms hereinafter stated, the County agrees to accept accounts submitted by the Town for collection and shall account for and pay over such amounts to the Town in the same manner as provided by law.

AMENDMENT OF VIENNA TOWN CODE

The Town amended Chapter 9, Article 7, Sections 9-64 through 9.67 of the Vienna Town Code regarding Vehicle Licenses on April 23,2018 to conform to Article 17.2 of Chapter 4 of the Fairfax County Code regarding Vehicle Licenses. The Town shall ensure that Chapter 9, Article 7 of the Vienna Town Code regarding Vehicle licenses otherwise conforms to Article 17.2 of Chapter 4 of the Fairfax County Code regarding Vehicle Licenses for the duration of this MOU. If Chapter 9, Article 7

of the Vienna Town Code regarding Vehicle Licenses does not conform to Article 17.2 of Chapter 4 of the Fairfax County Code regarding Vehicle Licenses at any time during this MOU, then the County shall have no obligations under this MOU.

COOPERATION BETWEEN THE PARTIES

The parties each agree that they will cooperate to achieve the intent of this MOU and in the provision and exchange of information. The Town agrees to timely provide all information and documents requested by the Director of DTA, or his designee, that the Director of DTA deems necessary to comply with the provisions of this MOU. If the Town fails to timely provide all such requested information and documents, then the County shall have no obligations under this MOU for the applicable tax year; provided, however, that within ten (10) days of the discovery of the absence of any requested information, the Director of DTA shall notify the Town of the missing information and documents necessary for the County to perform its obligations. If the Town fails to provide the missing information and documents after such notification in a timely manner sufficient to permit the County to perform its obligations under this MOU, then the County shall have no obligation to perform its obligations for the applicable tax year.

REIMBURSEMENT OF EXPENSES

The Director of DTA will provide the Town with a written estimate of expenses to be incurred, if any, in performance of its obligations under the MOU. The Town shall notify the Director of DTA in writing within 10 business days of receipt of said notice of whether the Town agrees to pay such anticipated expenses. If the Town agrees to pay the anticipated expenses, then the County will perform its obligations under this MOU. If the Town declines to pay the anticipated expenses, or fails to provide written notice of acceptance within the time period set forth above, then the County shall have no further obligations under this MOU for the applicable tax year.

CONTACT PERSON(S)

For purposes of communication between the County and the Town with regard to the administration of this MOU, the respective contact persons are as follows:

Town of Vienna Contact: Director of Finance (Marion Serfass)

Mailing Address: Town of Vienna, 127 Center Street, South

City: Vienna State: Virginia Zip: 22180

Telephone Number: 703-255-6322 Fax Number: 703-938-5560

Email Address: mserfass@viennava.gov

Fairfax County Contact: Director, Revenue Collection (Scott Sizemore)

Mailing Address: 12000 Government Center Parkway, Suite 357

City: Fairfax State: Virginia Zip: 22035

Telephone Number: 703-324-2507 Fax Number: 703-324-4935

Email Address: scott.sizemore@fairfaxcounty.gov

TERMINATION

This MOU may be terminated by the governing body of either the County of Fairfax or the Town of Vienna upon written notice to the other party, which shall be effective when the non-terminating party actually receives the written notice of termination, subject to the qualifying provisions set forth in the remainder of this paragraph. If written notice of termination is received during the tax year, the Director of DTA, in consultation with the Town's Director of Finance, shall be responsible for determining whether there is sufficient time to change the billing process in the current tax year, or whether the MOU termination becomes effective in the following tax year.

Board of Supervisors of Fairfax County, Virginia

By_____
Jay Doshi, Director Department of Tax Administration

Date _____

Attest:

_____
Clerk of the Board

Approved as to form:

_____
County Attorney

Town of Vienna, Virginia

By _____
Mercury T. Payton
Town Manager

Date _____

Attest:

_____
Town Clerk

By _____
Marion Serfass
Director of Finance

Date _____

Attest:

_____
Town Clerk

Approved as to form:

_____
Town Attorney

Code of Virginia
Title 46.2. Motor Vehicles
Chapter 6. Titling and Registration of Motor Vehicles

§ 46.2-752. Taxes and license fees imposed by counties, cities, and towns; limitations on amounts; disposition of revenues; requiring evidence of payment of personal property taxes and certain fines; prohibiting display of licenses after expiration; failure to display valid local license required by other localities; penalty

A. Except as provided in § 46.2-755, counties, cities, and towns may levy and assess taxes and charge license fees on motor vehicles, trailers, and semitrailers. However, none of these taxes and license fees shall be assessed or charged by any county on vehicles owned by residents of any town located in the county when such town constitutes a separate school district if the vehicles are already subject to town license fees and taxes, nor shall a town charge a license fee to any new resident of the town, previously a resident of a county within which all or part of the town is situated, who has previously paid a license fee for the same tax year to such county. The amount of the license fee or tax imposed by any county, city, or town on any motor vehicle, trailer, or semitrailer shall not be greater than the annual or one-year fee imposed by the Commonwealth on the motor vehicle, trailer, or semitrailer. The license fees and taxes shall be imposed in such manner, on such basis, for such periods, and subject to proration for fractional periods of years, as the proper local authorities may determine.

Owners or lessees of motor vehicles, trailers, and semitrailers who have served outside of the United States in the armed services of the United States shall have a 90-day grace period, beginning on the date they are no longer serving outside the United States, in which to comply with the requirements of this section. For purposes of this section, "the armed services of the United States" includes active duty service with the regular Armed Forces of the United States or the National Guard or other reserve component.

Local licenses may be issued free of charge for any or all of the following:

1. Vehicles powered by clean special fuels as defined in § 46.2-749.3, including dual-fuel and bi-fuel vehicles,

2. Vehicles owned by volunteer emergency medical services agencies,

3. Vehicles owned by volunteer fire departments,

4. Vehicles owned or leased by active members or active auxiliary members of volunteer emergency medical services agencies,

5. Vehicles owned or leased by active members or active auxiliary members of volunteer fire departments,

6. Vehicles owned or leased by auxiliary police officers,

7. Vehicles owned or leased by volunteer police chaplains,

8. Vehicles owned by surviving spouses of persons qualified to receive special license plates

under § 46.2-739,

9. Vehicles owned or leased by auxiliary deputy sheriffs or volunteer deputy sheriffs,

10. Vehicles owned by persons qualified to receive special license plates under § 46.2-739,

11. Vehicles owned by any of the following who served at least 10 years in the locality: former members of volunteer emergency medical services agencies, former members of volunteer fire departments, former auxiliary police officers, members and former members of authorized police volunteer citizen support units, members and former members of authorized sheriff's volunteer citizen support units, former volunteer police chaplains, and former volunteer special police officers appointed under former § 15.2-1737. In the case of active members of volunteer emergency medical services agencies and active members of volunteer fire departments, applications for such licenses shall be accompanied by written evidence, in a form acceptable to the locality, of their active affiliation or membership, and no member of an emergency medical services agency or member of a volunteer fire department shall be issued more than one such license free of charge,

12. All vehicles having a situs for the imposition of licensing fees under this section in the locality,

13. Vehicles owned or leased by deputy sheriffs; however, no deputy sheriff shall be issued more than one such license free of charge,

14. Vehicles owned or leased by police officers; however, no police officer shall be issued more than one such license free of charge,

15. Vehicles owned or leased by officers of the State Police; however, no officer of the State Police shall be issued more than one such license free of charge,

16. Vehicles owned or leased by salaried firefighters; however, no salaried firefighter shall be issued more than one such license free of charge,

17. Vehicles owned or leased by salaried emergency medical services personnel; however, no salaried emergency medical services personnel shall be issued more than one such license free of charge,

18. Vehicles with a gross weight exceeding 10,000 pounds owned by museums officially designated by the Commonwealth,

19. Vehicles owned by persons, or their surviving spouses, qualified to receive special license plates under subsection A of § 46.2-743, and

20. Vehicles owned or leased by members of the Virginia Defense Force; however, no member of the Virginia Defense Force shall be issued more than one such license free of charge.

The governing body of any county, city, or town issuing licenses under this section may by ordinance provide for a 50 percent reduction in the fee charged for the issuance of any such license issued for any vehicle owned or leased by any person who is 65 years old or older. No such discount, however, shall be available for more than one vehicle owned or leased by the same person.

The governing body of any county, city, or town issuing licenses free of charge under this

subsection may by ordinance provide for (i) the limitation, restriction, or denial of such free issuance to an otherwise qualified applicant, including without limitation the denial of free issuance to a taxpayer who has failed to timely pay personal property taxes due with respect to the vehicle and (ii) the grounds for such limitation, restriction, or denial.

The situs for the imposition of licensing fees under this section shall in all cases, except as hereinafter provided, be the county, city, or town in which the motor vehicle, trailer, or semitrailer is normally garaged, stored, or parked. If it cannot be determined where the personal property is normally garaged, stored, or parked, the situs shall be the domicile of its owner. In the event the owner of the motor vehicle is a full-time student attending an institution of higher education, the situs shall be the domicile of such student, provided the student has presented sufficient evidence that he has paid a personal property tax on the motor vehicle in his domicile.

B. The revenue derived from all county, city, or town taxes and license fees imposed on motor vehicles, trailers, or semitrailers shall be applied to general county, city, or town purposes.

C. A county, city, or town may require that no motor vehicle, trailer, or semitrailer shall be locally licensed until the applicant has produced satisfactory evidence that all personal property taxes on the motor vehicle, trailer, or semitrailer to be licensed have been paid and satisfactory evidence that any delinquent motor vehicle, trailer, or semitrailer personal property taxes owing have been paid which have been properly assessed or are assessable against the applicant by the county, city, or town. A county, city, or town may also provide that no motor vehicle license shall be issued unless the tangible personal property taxes properly assessed or assessable by that locality on any tangible personal property used or usable as a dwelling titled by the Department of Motor Vehicles and owned by the taxpayer have been paid. Any county and any town within any such county may by agreement require that all personal property taxes assessed by either the county or the town on any vehicle be paid before licensure of such vehicle by either the county or the town.

C1. The Counties of Dinwiddie, Lee, and Wise may, by ordinance or resolution adopted after public notice and hearing and, with the consent of the treasurer, require that no license may be issued under this section unless the applicant has produced satisfactory evidence that all fees, including delinquent fees, payable to such county or local solid waste authority, for the disposal of solid waste pursuant to the Virginia Water and Waste Authorities Act (§ 15.2-5100 et seq.), or pursuant to § 15.2-2159, have been paid in full. For purposes of this subsection, all fees, including delinquent fees, payable to a county for waste disposal services described herein, shall be paid to the treasurer of such county; however, in Wise County, the fee shall be paid to the county or its agent.

D. The Counties of Arlington, Fairfax, Loudoun, and Prince William and towns within them and any city may require that no motor vehicle, trailer, or semitrailer shall be licensed by that jurisdiction unless all fines owed to the jurisdiction by the owner of the vehicle, trailer, or semitrailer for violation of the jurisdiction's ordinances governing parking of vehicles have been paid. The provisions of this subsection shall not apply to vehicles owned by firms or companies in the business of renting motor vehicles.

E. If in any county imposing license fees and taxes under this section, a town therein imposes like fees and taxes on vehicles of owners resident in the town, the owner of any vehicle subject to the fees or taxes shall be entitled, on the owner's displaying evidence that he has paid the fees or taxes, to receive a credit on the fees or taxes imposed by the county to the extent of the fees or

taxes he has paid to the town. Nothing in this section shall deprive any town now imposing these licenses and taxes from increasing them or deprive any town not now imposing them from hereafter doing so, but subject to the limitations provided in subsection D. The governing body of any county and the governing body of any town in that county wherein each imposes the license tax herein provided may provide mutual agreements so that not more than one license plate or decal in addition to the state plate shall be required.

F. Notwithstanding the provisions of subsection E, in a consolidated county wherein a tier-city exists, the tier-city may, in accordance with the provisions of the agreement or plan of consolidation, impose license fees and taxes under this section in addition to those fees and taxes imposed by the county, provided that the combined county and tier-city rates do not exceed the maximum provided in subsection A. No credit shall be allowed on the fees or taxes imposed by the county for fees or taxes paid to the tier-city, except as may be provided by the consolidation agreement or plan. The governing body of any county and the governing body of any tier-city in such county wherein each imposes the license tax herein may provide by mutual agreement that no more than one license plate or decal in addition to the state license plate shall be required.

G. Any county, city, or town may by ordinance provide that it shall be unlawful for any owner or operator of a motor vehicle, trailer, or semitrailer (i) to fail to obtain and, if any required by such ordinance, to display the local license required by any ordinance of the county, city or town in which the vehicle is registered, or (ii) to display upon a motor vehicle, trailer, or semitrailer any such local license, required by ordinance to be displayed, after its expiration date. The ordinance may provide that a violation shall constitute a misdemeanor the penalty for which shall not exceed that of a Class 4 misdemeanor and may, in the case of a motor vehicle registered to a resident of the locality where such vehicle is registered, authorize the issuance by local law-enforcement officers of citations, summonses, parking tickets, or uniform traffic summonses for violations. Any such ordinance may also provide that a violation of the ordinance by the registered owner of the vehicle may not be discharged by payment of a fine except upon presentation of satisfactory evidence that the required license has been obtained. Nothing in this section shall be construed to require a county, city, or town to issue a decal or any other tangible evidence of a local license to be displayed on the licensed vehicle if the county's, city's, or town's ordinance does not require display of a decal or other evidence of payment. No ordinance adopted pursuant to this section shall require the display of any local license, decal, or sticker on any vehicle owned by a public service company, as defined in § 56-76, having a fleet of at least 2,500 vehicles garaged in the Commonwealth.

H. Except as provided by subsections E and F, no vehicle shall be subject to taxation under the provisions of this section in more than one jurisdiction. Furthermore, no person who has purchased a local vehicle license, decal, or sticker for a vehicle in one county, city, or town and then moves to and garages his vehicle in another county, city, or town shall be required to purchase another local license, decal, or sticker from the county, city, or town to which he has moved and wherein his vehicle is now garaged until the expiration date of the local license, decal, or sticker issued by the county, city, or town from which he moved.

I. Purchasers of new or used motor vehicles shall be allowed at least a 10-day grace period, beginning with the date of purchase, during which to pay license fees charged by local governments under authority of this section.

J. The treasurer or director of finance of any county, city, or town may enter into an agreement

with the Commissioner whereby the Commissioner will refuse to issue or renew any vehicle registration of any applicant therefor who owes to such county, city or town any local vehicle license fees or delinquent tangible personal property tax or parking citations. Before being issued any vehicle registration or renewal of such license or registration by the Commissioner, the applicant shall first satisfy all such local vehicle license fees and delinquent taxes or parking citations and present evidence satisfactory to the Commissioner that all such local vehicle license fees and delinquent taxes or parking citations have been paid in full. The Commissioner shall charge a reasonable fee to cover the costs of such enforcement action, and the treasurer or director of finance may add the cost of this fee to the delinquent tax bill or the amount of the parking citation. The treasurer or director of finance of any county, city, or town seeking to collect delinquent taxes or parking citations through the withholding of registration or renewal thereof by the Commissioner as provided for in this subsection shall notify the Commissioner in the manner provided for in his agreement with the Commissioner and supply to the Commissioner information necessary to identify the debtor whose registration or renewal is to be denied. Any agreement entered into pursuant to the provisions of this subsection shall provide the debtor notice of the intent to deny renewal of registration at least 30 days prior to the expiration date of a current vehicle registration. For the purposes of this subsection, notice by first-class mail to the registrant's address as maintained in the records of the Department of Motor Vehicles shall be deemed sufficient. In the case of parking violations, the Commissioner shall only refuse to issue or renew the vehicle registration of any applicant therefor pursuant to this subsection for the vehicle that incurred the parking violations. The provisions of this subsection shall not apply to vehicles owned by firms or companies in the business of renting motor vehicles.

K. The governing bodies of any two or more counties, cities, or towns may enter into compacts for the regional enforcement of local motor vehicle license requirements. The governing body of each participating jurisdiction may by ordinance require the owner or operator of any motor vehicle, trailer, or semitrailer to display on his vehicle a valid local license issued by another county, city, or town that is a party to the regional compact, provided that the owner or operator is required by the jurisdiction of situs, as provided in § 58.1-3511, to obtain and display such license. The ordinance may also provide that no motor vehicle, trailer, or semitrailer shall be locally licensed until the applicant has produced satisfactory evidence that (i) all personal property taxes on the motor vehicle, trailer, or semitrailer to be licensed have been paid to all participating jurisdictions and (ii) any delinquent motor vehicle, trailer, or semitrailer personal property taxes that have been properly assessed or are assessable by any participating jurisdiction against the applicant have been paid. Any city and any county having the urban county executive form of government, the counties adjacent to such county and towns within them may require that no motor vehicle, trailer, or semitrailer shall be licensed by that jurisdiction or any other jurisdiction in the compact unless all fines owed to any participating jurisdiction by the owner of the vehicle for violation of any participating jurisdiction's ordinances governing parking of vehicles have been paid. The ordinance may further provide that a violation shall constitute a misdemeanor the penalty for which shall not exceed that of a Class 4 misdemeanor. Any such ordinance may also provide that a violation of the ordinance by the owner of the vehicle may not be discharged by payment of a fine and applicable court costs except upon presentation of satisfactory evidence that the required license has been obtained. The provisions of this subsection shall not apply to vehicles owned by firms or companies in the business of renting motor vehicles.

L. In addition to the taxes and license fees permitted in subsection A, counties, cities, and towns may charge a license fee of no more than $1 per motor vehicle, trailer, and semitrailer. Except for the provisions of subsection B, such fee shall be subject to all other provisions of this section. All funds collected pursuant to this subsection shall be paid pursuant to § 51.1-1204 to the Volunteer Firefighters' and Rescue Squad Workers' Service Award Fund to the accounts of all members of the Fund who are volunteers for fire departments or emergency medical services agencies within the jurisdiction of the particular county, city, or town.

M. In any county, the county treasurer or comparable officer and the treasurer of any town located wholly or partially within such county may enter into a reciprocal agreement, with the approval of the respective local governing bodies, that provides for the town treasurer to collect license fees or taxes on any motor vehicle, trailer, or semitrailer owed to the county that are non-delinquent, delinquent, or both or for the county treasurer to collect license fees or taxes on any motor vehicle, trailer, or semitrailer owed to the town that are non-delinquent, delinquent, or both. A treasurer or comparable officer collecting any such license fee or tax pursuant to an agreement entered into under this subsection shall account for and pay over such amounts to the locality owed such license fee or tax in the same manner as provided by law. As used in this subsection, with regard to towns, "treasurer" means the town officer or employee vested with authority by the charter, statute, or governing body to collect local taxes.

N. For any summons issued for a violation of this section, the court may, in its discretion, dismiss the summons, where proof of compliance with this section is provided to the court on or before the court date.

Code 1950, § 46-64; 1950, p. 240; 1952, c. 169; 1954, cc. 491, 594; 1956, cc. 66, 549, 570; 1958, c. 541, § 46.1-65; 1959, Ex. Sess., cc. 22, 55; 1962, c. 574; 1964, c. 218; 1972, c. 200; 1974, c. 621; 1975, c. 105; 1977, c. 166; 1979, c. 185; 1980, c. 105; 1982, c. 85; 1984, cc. 308, 630, 695; 1986, c. 123; 1987, cc. 208, 243; 1989, cc. 321, 706, 727; 1990, cc. 181, 187, 188, 455; 1991, c. 622; 1992, cc. 226, 355, 794, 806; 1993, cc. 50, 63, 175, 565; 1994, cc. 528, 962;1995, cc. 91, 412, 449, 460, 479, 659;1996, cc. 89, 562;1997, cc. 246, 499, 905, 911;1998, c. 649;1999, c. 236;2000, c. 303; 2001, cc. 338, 471, 605, 606;2002, cc. 206, 553;2003, c. 326;2004, cc. 689, 723;2005, c. 317;2006, c. 148;2007, cc. 213, 230, 813, 865;2008, cc. 163, 457, 591;2009, cc. 366, 756, 843;2010, cc. 125, 131; 2013, c. 82;2014, c. 543;2015, cc. 69, 502, 503;2017, cc. 119, 670.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Board Agenda Item
June 5, 2018

ACTION - 4

Approval of a Parking Reduction for the Signet Property (Dranesville District)

ISSUE:
Board of Supervisors (Board) approval of a nine percent reduction (28 fewer spaces) of the required parking for the Signet Property, Tax Map # 30-2 ((1)) 61A, 61B, and 61C ("Property"), Dranesville District.

RECOMMENDATION:
The County Executive recommends that the Board approve a parking reduction for the Signet Property pursuant to Paragraph 4B of Sect. 11-102 of Chapter 112 (Zoning Ordinance) of the *Code of the County of Fairfax, Virginia (Code),* based on the shared parking study, #3728-PKS-003, subject to the following conditions:

1. A minimum of 286 parking spaces must be maintained on-site at all times to serve the following mix of land use(s):

   - 109,600 gross square feet (GSF) of existing office use
   - 5,033 GSF of restaurant use plus 1,269 square feet of outdoor seating area
   - Residential visitors associated with the site residential users.

   These 286 parking spaces include 40 back tandem spaces located in the residential garage, which will be used for both restaurant and residential visitor parking between 12:00 PM and 3:00 PM, Monday through Friday, or at any other time by request of the commercial owners/operators, during which time valet service must be provided.

2. A minimum of 234 parking spaces must be maintained on-site at all times to serve the 121 dwelling units of multi-family residential use.

3. Parking at rates required by the Zoning Ordinance must be provided for any additional uses not listed in Condition #1.

4. A minimum of one parking space must be assigned on the site at all times to serve each residential dwelling unit. Parking spaces designated for residential use only must be identified and secured by either controlled access or signage. The site plan must clearly identify how parking spaces for residents will be secured for residential use only. No other parking ancillary to the residential uses may be reserved with the exception of those needed to meet accessibility requirements and for electric-vehicle charging stations.

5. Except for the parking spaces reserved for resident use only and nineteen reserved office spaces currently established on the site, no other parking spaces required to meet the parking requirements for this parking reduction will be restricted or reserved with the exception of those needed to meet accessibility requirements and for electric-vehicle charging stations.

6. On-site parking attendants (valet service) must be provided to serve users for the office, restaurant and residential visitor parking from 12:00 PM to 3:00 PM, Monday through Friday, during office and restaurant operations, or at any other time by request of the commercial owners/operators. Visitors using the valet service must be notified of the valet hours and will be asked to retrieve their vehicles before the service closes for the day. Any vehicle that remains in a back tandem parking spot after the valet service ends will be relocated to an on-site standard space. The vehicle keys for a relocated vehicle will be stored at the restaurant or building manager's office where drivers will be able to retrieve their keys during business hours. Visitors must be notified of the location and business hours of either key storage location. During valet operations, the back tandem spaces will be identified as 'Valet Parking Only'. The 40 back tandem spaces will be blocked from use any time the valet service is not in operation.

7. At the request of the owner within parcels identified as Tax Map # 30-2 ((1)) 61A, 61B, and 61C, accompanied by evidence of parking demand for the site uses, the Director of Land Development Services (Director), in his sole discretion, can adjust or eliminate the requirement for valet parking. Consideration of adjustments or elimination of valet parking will require a re-examination of the utilization of the back tandem parking spaces.

8. The conditions of approval of this parking reduction must be incorporated into any site plan or site plan revision associated with the Signet Property submitted to the Director for approval.

9. The current owners, their successors or assigns of the parcels identified as Tax Map # 30-2 ((1)) 61A, 61B, and 61C, must submit a parking space utilization study for review and approval by the Director at any time in the future that the Zoning Administrator or the Director so requests. Following review of that study, or if a study is not submitted within 90 days after being requested, the Director may require alternative measures to satisfy the property's on-site parking needs, which may include requiring all uses to comply with the full parking space requirements of the Zoning Ordinance.

10. All parking utilization studies prepared in response to such a request must be based on applicable requirements of the Code of the County of Fairfax, Virginia and the Zoning Ordinance in effect at the time of its submission.

11. All parking provided must comply with the applicable requirements of Article 11 of the Zoning Ordinance and the Fairfax County Public Facilities Manual, including the provisions referencing the Americans with Disabilities Act and the Virginia Uniform Statewide Building Code.

12. These conditions of approval will be binding on the current owners, successors, assigns and/or other applicants and will be recorded in the Fairfax County Land Records in a form acceptable to the County Attorney. If these conditions have not been recorded and an extension has not been approved by the Director, approval of this parking reduction request will expire without notice six months from its approval date.

TIMING:
Board action is requested on June 5, 2018.

BACKGROUND:
The Signet Property is an approximately 4.43-acre site located within the McLean Community Business Center. At full build-out, the site will consist of the existing office building totaling approximately 109,600 gross square feet (GSF) and a multi-family residential building consisting of 121 dwelling units. Additionally, a proposed ground floor restaurant totaling 5,033 GSF will occupy space on the first floor of the residential building. An underground parking garage is being constructed simultaneously with the residential building.

On July 1, 2014, the Board of Supervisors approved the rezoning application RZ 2012-DR-019 and proffers to allow construction of the residential building and a ground floor retail use using the existing surface parking lot for the office building. Included in this rezoning approval, the Board modified the minimum required parking for nonresidential uses to reduce the number of parking spaces by 20 percent based on the site's location within the McLean Commercial Revitalization District (CRD).

The Code required parking for all development within the site is 586 spaces. Applying the approved 20 percent reduction associated with non-residential development in the CRD results in an adjusted parking requirement of 508 spaces for residential and non-residential parking. The use of a shared parking model for the non-residential parking demand demonstrates different peak parking demand characteristics based on time of day. This analysis indicates that 286 parking spaces will be adequate to meet the peak parking demand for the office and restaurant uses and residential visitors, which is projected to occur between the hours of 12:00 PM and 3:00 PM on weekdays. Including the 234 reserved parking spaces provided for the 121 residential units, the total proposed parking supply is 520 spaces.

As shown on the approved development plan in the 2012 rezoning application, there are 40 tandem parking spaces in the garage available for non-reserved parking. A tandem parking space allows two vehicles to park back-to-back, one vehicle blocking the other. Use of tandem spaces is acceptable if they are assigned to a single residential dwelling owner or if they are managed by a valet service. The applicant has agreed to provide a valet parking program as a condition in the parking reduction agreement to meet peak projected demand for commercial and residential visitor parking, which is expected to occur between 12:00 PM and 3:00 PM on weekdays. After 3:00 PM, the demand for office parking will diminish significantly and the restaurant and residential visitor parking will be accommodated without need for valet parking. The back tandem spaces will be blocked for use when valet parking is not in operation.

A comparison of the Code required parking and proposed parking at full buildout is summarized in the table below.

<table>
<tr><th>Land Use</th><th>Size</th><th>Rate Required by Code</th><th>Code Required Parking</th><th>Required with Approved 20% CRD Reduction</th><th>Proposed 9% Reduction per Shared Parking Model</th></tr>
<tr><td>Office</td><td>109,600 GSF</td><td>3.0 spaces per 1000 GSF</td><td>329 spaces</td><td>263 spaces</td><td rowspan="4">286 shared spaces (includes 40 back tandem spaces)</td></tr>
<tr><td rowspan="3">Restaurant</td><td rowspan="3">5,033 GSF + 1,269 GSF for 80 outdoor seats</td><td>11 spaces per 1000 GSF when GSF > 5000 GSF</td><td>55 spaces</td><td>44 spaces</td></tr>
<tr><td>32 seats (32/80*1269=508 GSF)</td><td>0</td><td>0</td></tr>
<tr><td>48 seats (48/80*1269=761 GSF)</td><td>8 spaces</td><td>7 spaces</td></tr>
<tr><td colspan="3"></td><td>Total=392 spaces</td><td>Total=314 spaces</td><td>Total=286 spaces (9% fewer spaces)</td></tr>
<tr><td>Multi-family Residential[1]</td><td>121 DU</td><td>1.6 spaces per DU</td><td>194 spaces</td><td>No Reduction (194 spaces)</td><td>No Reduction (234 spaces)</td></tr>
<tr><td colspan="3">All Site Uses</td><td>Total=586</td><td>Total=508</td><td>Total=520</td></tr>
</table>

[1]The multi-family parking spaces are not included in the shared parking model. 234 spaces are provided for the multi-family building at an effective rate of 1.9 spaces/DU.

In addition to the previously approved reduction of 20 percent allowed in the CRD, the applicant requests a parking reduction of up to nine percent of the required parking for the proposed commercial and residential visitor parking elements of the development. This equates to a parking reduction of up to 28 spaces for these uses. There is no reduction requested for the residential uses. A total of 58 spaces above the Code requirement are proposed for the multi-family portion of the development for a total of 233 reserved spaces. Given the results in the above shared parking analysis, coupled with the valet parking approval condition, staff anticipates no adverse impacts to the site or adjacent areas.

This recommendation reflects a coordinated review by the Fairfax County Department of Transportation (FCDOT), Department of Planning and Zoning (DPZ), Office of the County Attorney (OCA), and Land Development Services (LDS).

FISCAL IMPACT:
None.

ENCLOSED DOCUMENTS:
Attachment A – Parking reduction request (3728-PKS-003) from Wells and Associates dated August 20, 2017 and revised through April 12, 2018

STAFF:
Robert A. Stalzer, Deputy County Executive
William D. Hicks, Director, LDS
Michael A. Davis, Code Specialist IV, Site Code Research and Development, LDS

ASSIGNED COUNSEL:
Marc Gori, Assistant County Attorney

WELLS + ASSOCIATES

11220 Assett Loop
Suite 202
Manassas, Virginia 20109
703-365-9262
703-917-0739 FAX

www.WellsandAssociates.com

April 12, 2018

Ms. Jan Leavitt, P.E./Mr. John Matusik, P.E.
Land Development Services
Department of Public Works & Environmental Services
12055 Government Center Parkway, Suite 334
Fairfax, Virginia 22035-5503

SUBJECT: Parking Code Reduction Request for the Signet Property
RZ 2012-DR-019 (Approved, July 1, 2014)
3728-SP-003-2 (Approved, May 25, 2017)
#3728-PKS-003-1 (Pending, August 29, 2017 as revised April 12, 2018)

Dear Ms. Leavitt/Mr. Matusik:

Herein is an executive summary associated with a 2nd submission parking reduction request for the "Signet Property" in Fairfax County, Virginia. Originally, a check in the amount of $7,806.00 was made payable to "Fairfax County" for the 1st submission study. In coordination with County staff, a check in the amount of $216.00 made payable to "Fairfax County" is included for this 2nd submission which is equivalent to two (2) plan sheet inserts ($108/plan sheet insert). Separate full-size plan sheets are included as an Attachment II to the parking reduction request and a compact disc is attached to its back cover. The attached compact disc includes an electronic copy of this letter, the parking reduction request, and the ULI 2nd edition spreadsheet file.

The parking reduction request is specifically based on "shared parking" or the demonstration that fewer spaces than those required by Code will adequately "serve two (2) or more uses by reason of the sum of the hourly parking demand of such uses and such reduction will not adversely affect the site or the adjacent area."

The future mixed-use Signet Property redevelopment site consists of three (3) parcels identified as **2018 Fairfax County Tax Map Parcels 30-2 ((1)) 61A, 61B, and 61C**. Parcel 61C includes an existing office building that will remain. Generally, the properties are located in the southeast quadrant of the Elm Street (Route 3671)/ Fleetwood Road (Route 1825) intersection within the McLean Community Business Center (CBC) in the Dranesville Magisterial District of Fairfax County, Virginia

In 2014, the subject properties were rezoned to PRM (Planned Residential Mixed Use), CRD (Commercial Revitalization District), HC (Highway Corridor), and SC (Sign Control) Districts to permit new residential and retail uses on-site. The 1st submission parking

study evaluated the following two (2) program options. Based on ongoing coordination with County staff, the Applicant has revised the parking reduction request to evaluate only one program while also incorporating the recently adopted Zoning Ordinance Amendment that redefines eating establishments as "restaurants" and parks restaurants based on floor area instead of table seats, counter seats, and employees. Further, this 2nd submission parking study formally requests to include its 40 non-residential back tandem spaces to meet parking requirements and reduces the residential dwelling units from 123 DUs to 121 DUs.

For a PRM zoning district, Article 11-101 of the Zoning Ordinance specifically provides that the minimum off-street parking requirements set forth in the Article 11 of the zoning ordinance shall have general application as determined by the Director. The subject parking reduction request is based on a "Shared Parking" analysis which includes the unique parking characteristics of the existing office building. The Fairfax County Zoning Ordinance, Article 11-102.4.B, provides an opportunity for approval of a parking reduction due to "shared parking" resulting from different peak hours for uses comprising the following mixed-use scenario:

- ±109,600 GFA office building (existing)
- ±5,033 GFA restaurant (future)
- ±1,269 GFA restaurant outdoor seating area (future)
    - *32 seats (±508 SF, exempt from parking requirements)*
    - *±48 seats (±761 SF, subject to parking requirements)*
- ±251,353 GFA residential building (future)
    - 121 multi-family dwelling units

Code Parking Requirement (no parking reductions). Based on a strict application of the Zoning Ordinance, 587 parking spaces would be required to accommodate the parking demand associated with full build out of the proposed mix of uses.

The Board of Supervisor has previously approved a 20% parking reduction for the non-residential uses. In lieu of the current parking reduction, an overall site "Shared Parking" reduction is proposed to provide a minimum total of **520 parking spaces (237 shared spaces + 40 back tandem shared spaces + 234 reserved resident spaces + 19 reserved office spaces)** to meet the parking requirements associated build out of the project site. Residential visitor spaces were fully accounted for and incorporated into the shared parking model.

As part of the parking reduction request, it is also hereby requested that the 40 **non-residential stacked excess (back tandem) spaces in the future parking garage, as designated on the site plan, be utilized to serve the non-residential uses and residential visitors** subject to the implementation of a parking attendant (valet) parking system during the typical weekday periods between 12 PM and 3 PM.

Please contact me with any questions and/or comments you might have and thank you again for your assistance on this important project.

Sincerely,

Kevin R. Fellin, P.E.
Senior Associate

Enclosures: a/s

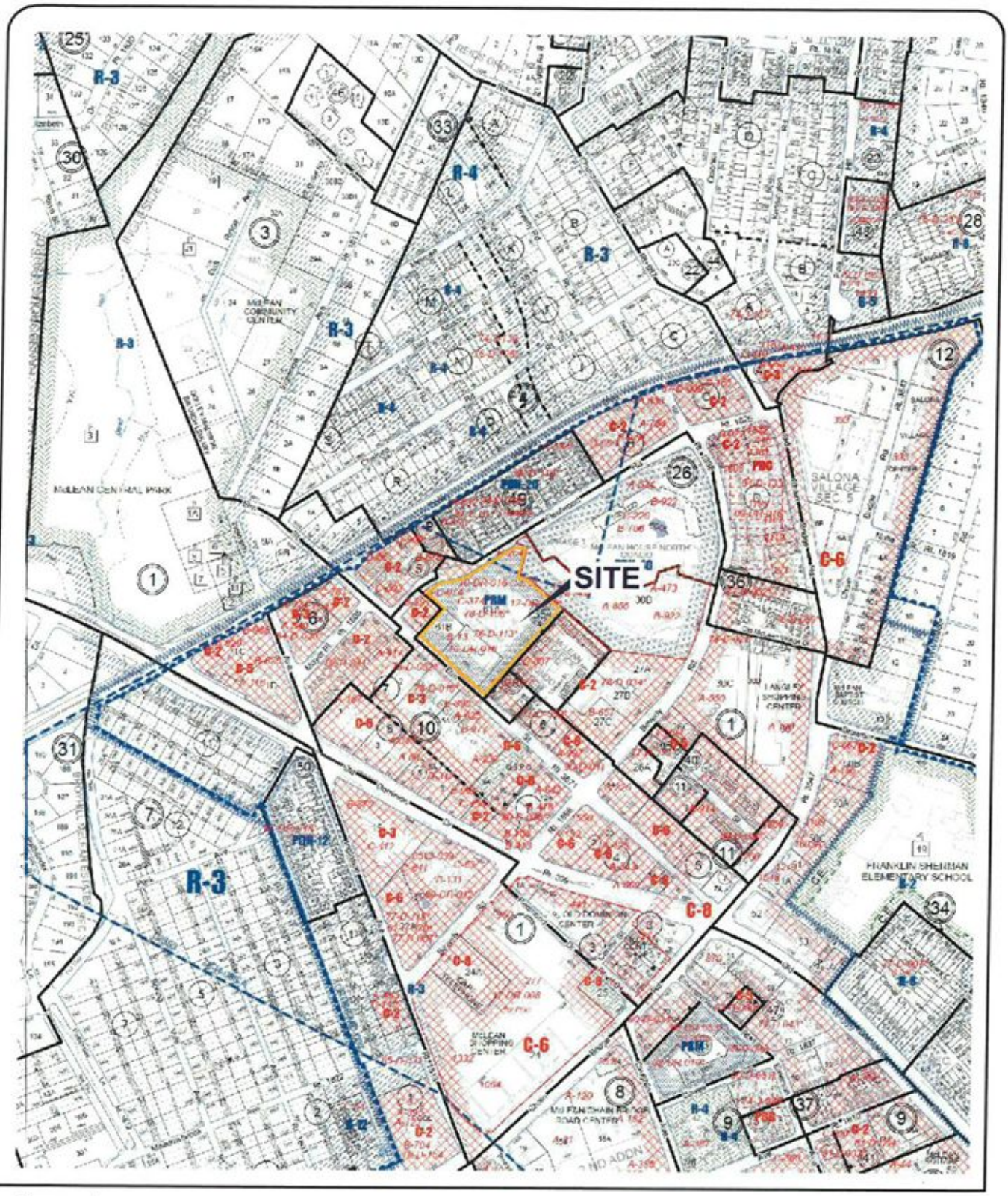


Figure 4
Map of Surrounding Uses

Site Area

North

Signet Property
Fairfax County, Virginia

10

Wells + Associates, Inc.

R:\PROJECTS\6933 JRD SIGNET BUILDING\GRAPHICS\REPORT GRAPHICS.DWG

Figure 1
Site Location Map

Site Area

North

RMB

Signet Property
Fairfax County, Virginia

2

Wells + Associates, Inc.

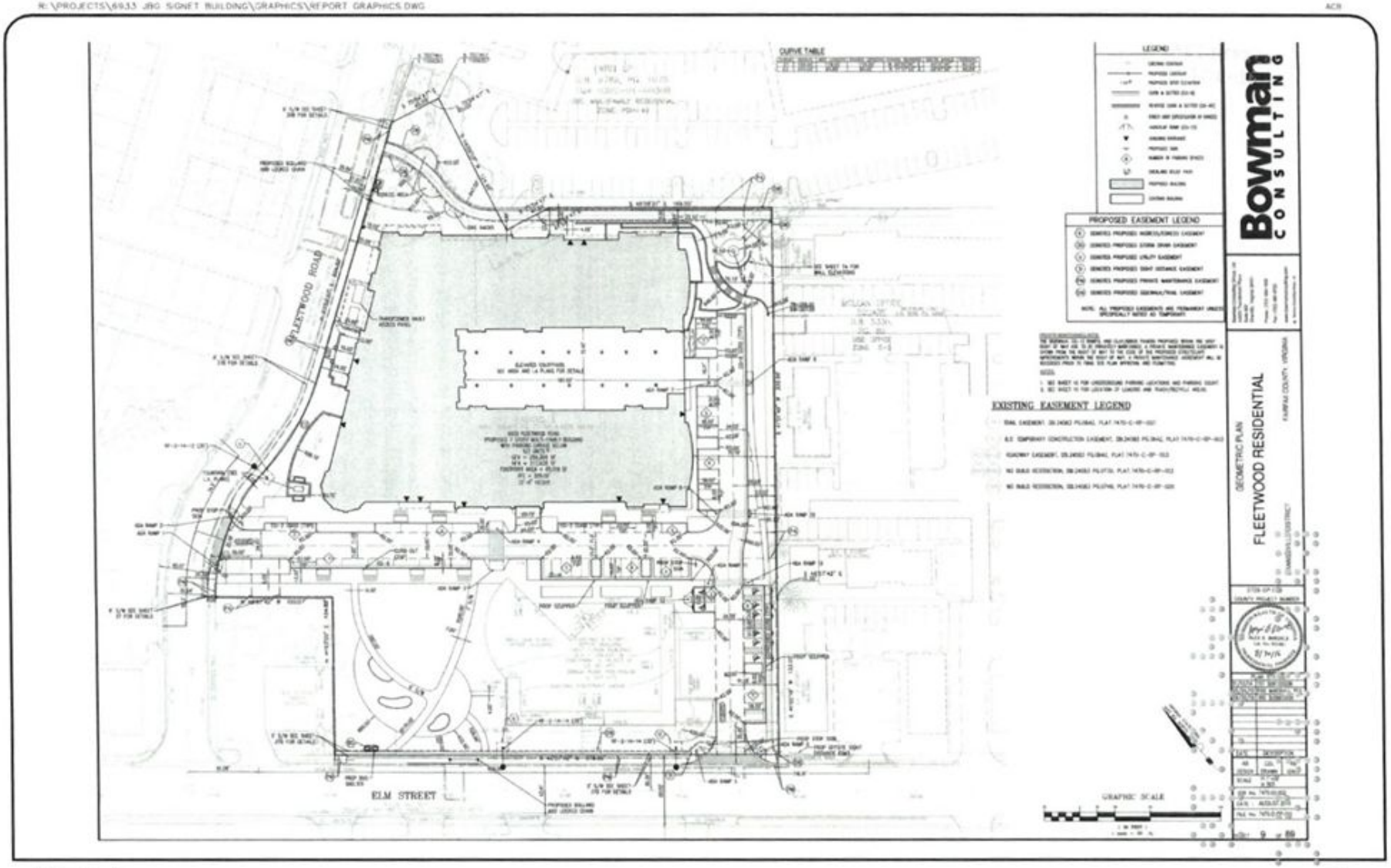


Figure 2
Overall Plan Reduction

5

Signet Property
Fairfax County, Virginia

Wells + Associates, Inc.

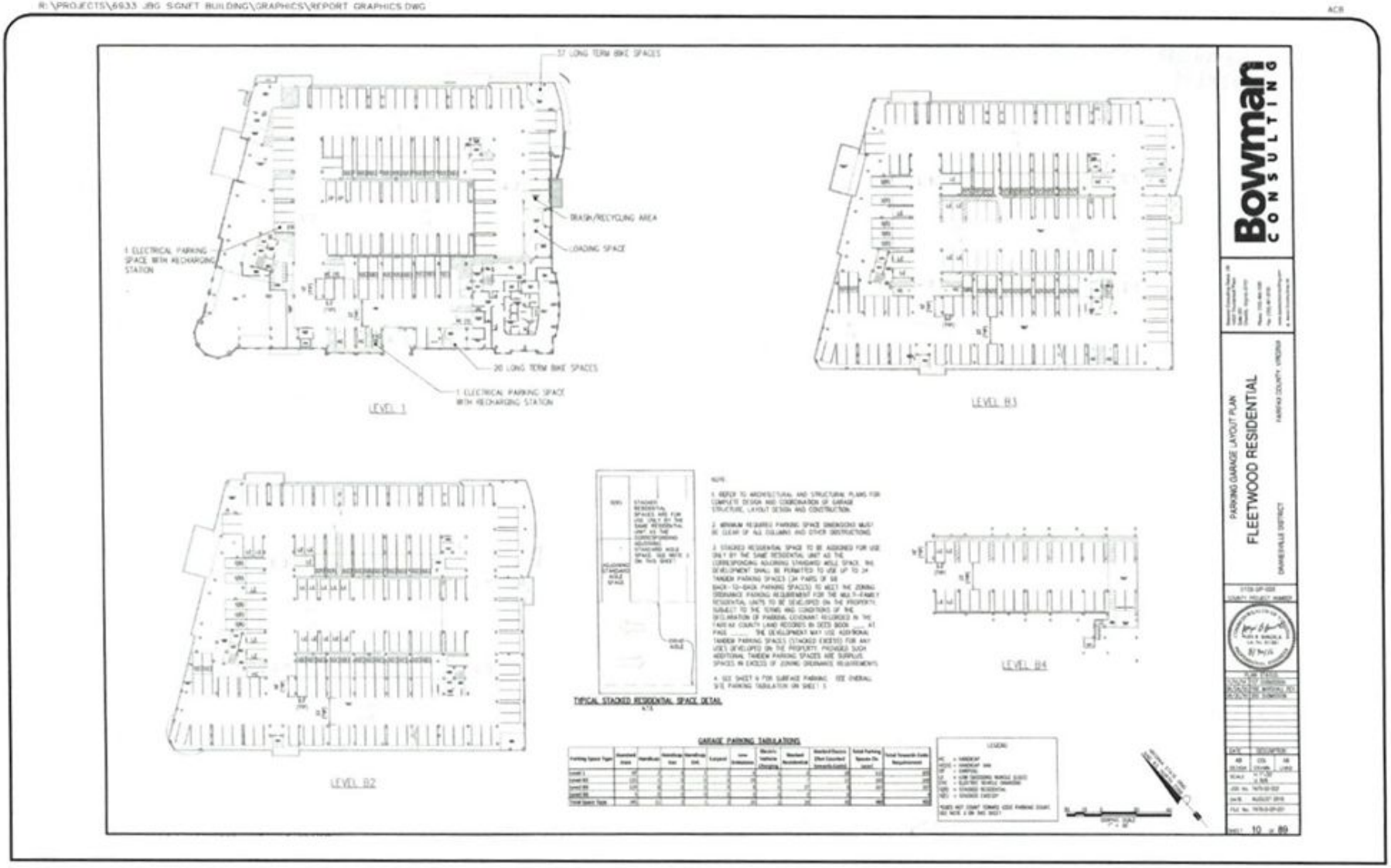


Figure 3
Proposed Garage Layout

North

Board Agenda Item
June 5, 2018

ACTION - 5

Approval of an Agreement Between the Commonwealth of Virginia, Department of Transportation and Fairfax County for the Utilization of Congestion Mitigation and Air Quality Funds for Fiscal Year 2019 Transportation Demand Management Programs

ISSUE:
Board approval for the Director of the Department of Transportation to sign an agreement for use of federal Congestion Mitigation and Air Quality (CMAQ) and state matching funds in the amount of $332,294 for the promotion of Transportation Demand Management (TDM) programs in FY 2019. Funding will be used to decrease air pollution by promoting alternative commuting modes. No Local Cash Match is required. The grant period runs from July 1, 2018 through June 30, 2019. In keeping with Board policy, the Department of Transportation will request budget appropriation in the Federal-State Grant Fund once the project agreement has been fully executed since the award is not significantly different than what was anticipated in FY 2019.

RECOMMENDATION:
The County Executive recommends that the Board of Supervisors authorize the Director of the Department of Transportation to sign the attached agreement, in substantial form, for use of $332,294 in federal CMAQ and state matching funds for the promotion of TDM programs in FY 2019 (Attachment I) and approval of the resolution (Attachment II).

TIMING:
Board action is requested on June 5, 2018, to continue implementation and promotion of TDM programs in Fairfax County for FY 2019.

BACKGROUND:
The Transportation Control Measure (TCM)-47c was adopted in the FY95-00 Transportation Improvement Program (TIP) by the Transportation Planning Board (TPB) of the National Capital Region. The TCM-47c does not mandate employer participation. This measure is designed to encourage private sector employers with more than 100 employees in the Metropolitan Washington region to voluntarily implement alternative commute (trip reduction) programs and is now classified as a Transportation Emission Reduction Measure (TERM).

FISCAL IMPACT:
In keeping with Board policy, the Department of Transportation will request budget appropriation of $332,294 in the Federal-State Grant Fund once the project agreement has been fully executed since the award is not significantly different than what was anticipated in FY 2019.

CREATION OF POSITIONS:
Grant funding will continue to support 3/3.0 FTE existing grant positions. The County is under no obligation to continue funding these positions when the grant funding expires.

ENCLOSED DOCUMENTS:
Attachment I - Agreement for the utilization of Congestion Mitigation and Air Quality Improvement (CMAQ) Funds for Fiscal Year 2019
Attachment II - VDOT Resolution

STAFF:
Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Department of Transportation
Anna Nissinen, Chief, Communication, Marketing & TDM, Department of Transportation
Walter E. Daniel, Jr., TDM Program Manager, Department of Transportation

ASSIGNED COUNSEL:
Daniel Robinson, Assistant County Attorney

AN AGREEMENT FOR
THE UTILIZATION OF CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT (CMAQ) FUNDS
IN FAIRFAX COUNTY

THIS AGREEMENT, made this **___ day of** _____ in the year **two thousand and eighteen**, by and between the Commonwealth of Virginia, Department of Transportation, hereinafter called the DEPARTMENT, and **Fairfax County,** hereinafter called the LOCALITY.

WHEREAS, the LOCALITY has submitted a Scope of Work for undertaking certain activities related to the promotion of Travel Demand Management (TDM) programs in the Northern Virginia District; and

WHEREAS, the DEPARTMENT has concurred with this Scope;

NOW, THEREFORE, the DEPARTMENT and the LOCALITY do hereby agree as follows:

ARTICLE I - PURPOSE OF FUNDS

CMAQ funds made available under this AGREEMENT are to be used in cooperation with the DEPARTMENT for TDM activities. The purpose shall be to provide educational, promotional and / or other related TDM assistance within the Northern Virginia District. A scope of work is attached in accordance with ARTICLE III which promotes the reduction of single-occupant auto usage in order to achieve at least one of the following objectives:

- Reduction of traffic congestion
- Promotion of alternative transportation modes
- Improvement of air quality

ARTICLE II - SOURCE OF FUNDS

Under the provisions of the Title 23 of the United States Code, CMAQ funds are available to the COMMONWEALTH for use in CMAQ-eligible projects. The sum of **$332,294** composed of **$265,835** in federal CMAQ funds and **$66,459** in state matching funds shall be provided and made available to the LOCALITY for expenditure in FY18. This amount is provided to carry out the work activities described in the approved project scope of work incorporated in Attachment A.

The total amount of CMAQ funds allocated to LOCALITY and reimbursable under this agreement is **$332,294**. Federal funds cannot be used to match in-kind service.

ARTICLE III - SCOPE OF WORK

The transportation planning activities to be financed with CMAQ funds are described in a Scope of Work developed by the LOCALITY and attached to this AGREEMENT as Attachment A. Any change in the character or extent of the work to be performed with CMAQ funds shall require an amendment to the Scope of Work and approval by the DEPARTMENT. Such requests must be received and approved prior to the expenditure of CMAQ funds for these activities.

Unless authorized in writing by the DEPARTMENT, the LOCALITY shall not assign any portion of the work to be performed under this AGREEMENT, or execute any contract, amendment, or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this AGREEMENT without the prior written consent of the DEPARTMENT. The DEPARTMENT will review and approve Request for Proposals which use CMAQ funds prior to their issuance. All requests or invitations for bids, proposals, qualifications, or interest, or other official procurement processes, however referred to by the LOCALITY, must receive written consent by the DEPARTMENT prior to advertisement or issue.

Those activities and description of work documented in the approved Scope of Work and any subsequent amendments thereto as approved by the DEPARTMENT are hereby approved for CMAQ funding subject to the conditions of this AGREEMENT.

ARTICLE IV - BASIS OF PAYMENT

For services performed in accordance with the provisions of this AGREEMENT, the DEPARTMENT shall pay to the LOCALITY actual costs as defined herein.

Payments shall be made under the terms set forth in the Scope of Work.

All costs are subject to audit by the DEPARTMENT and/or the U.S. Department of Transportation. Any such audit shall be made in accordance with generally accepted auditing standards and procedures and be governed by 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments; OMB Circular A-87, Cost Principles for State and Local Governments. Additional auditing requirements are set forth in Attachment B.

Any expenditure made or work or grant proposal performed by the LOCALITY on activities contained in the attached scope of work prior to the execution of this agreement by the DEPARTMENT will not be eligible for reimbursement.

ARTICLE V - PROGRESS SCHEDULES AND REPORTS

The LOCALITY shall document expenditures and progress in executing the Scope of Work through the invoicing and reporting requirements established in Tasks 5 and 7 of the Scope.

ARTICLE VI - PERFORMANCE PERIOD

Work to be performed under this AGREEMENT shall be initiated no sooner than July 1, 2018, and completed within the period established in the Scope of Work.

ARTICLE VII - TERMINATION OF AGREEMENT

This AGREEMENT shall be terminated upon the occurrence of any of the following:

1. Withdrawal by the DEPARTMENT from this Planning Process in LOCALITY.
2. Withdrawal of the LOCALITY from this Planning Process.
3. By mutual agreement of the parties.

In the event of termination under provision 1 at least 30 days written notice shall be given prior to termination. Work completed within this notice period shall be eligible for compensation.

In the event of termination under provision 2 said termination shall be effective the date of notification. In the event of termination under provision 3 said termination shall be effective when both parties have signed an agreement to terminate. Work completed up to the date of notification or agreement to terminate shall be eligible for compensation.

The sum of any payments made under this Article shall be based on actual work completed through the date of termination, subject to final audit.

Upon termination, all data, tabulations, documents and other material prepared under this AGREEMENT by and for the LOCALITY shall become the property of the DEPARTMENT.

ARTICLE VIII - RETENTION OF COST RECORDS

The LOCALITY and its subcontractors shall maintain all books, documents, papers, accounting records, and any other evidence supporting the costs incurred. Such information shall be consistent with the provisions of 49 CFR Part 18 and shall be made available at their respective offices at all reasonable times during the contract period, and for a period of three (3) years from the date of final payment from the DEPARTMENT to the LOCALITY, for inspection and audit by any authorized representative of the DEPARTMENT or U.S. Department of Transportation. Copies of such information shall be furnished to the DEPARTMENT upon request.

ARTICLE IX - PUBLICATION PROVISIONS

The LOCALITY shall be free to copyright material developed under this AGREEMENT with the provisions that the DEPARTMENT reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the work for government purposes.

Planning reports developed under this AGREEMENT shall be submitted to the DEPARTMENT for review and approval prior to publication and distribution.

All materials published by the LOCALITY or subrecipient shall:

1. contain an acknowledgment, "Prepared in cooperation with the Northern Virginia District of the Virginia Department of Transportation", and

2. comply with all appropriate state and federal laws.

ARTICLE X - SETTLEMENT OF DISPUTES

Any factual disputes in connection with the work performed in conjunction with this AGREEMENT, which are not disposed of by mutual agreement between the DEPARTMENT and the LOCALITY shall be transmitted in writing to the Commissioner of the DEPARTMENT and a 60-day period provided for his review and decision. The Commissioner, with assistance as needed from the Federal Highway Administration, will rule on the question and his decision shall be final.

Any legal disputes in connection with the work performed in conjunction with this AGREEMENT, which are not disposed of by mutual agreement between the DEPARTMENT and the LOCALITY shall be transmitted in writing to the Commissioner of the DEPARTMENT and a 60-day period provided for his review and decision. The Commissioner, with assistance as needed from the Federal Highway Administration, will rule on the question and their decision shall be final unless the legal dispute is adjudicated in court. Exhaustion of the administrative procedure outlined herein above is a prerequisite of and not a substitute for the right of judicial review of the legal dispute.

ARTICLE XI - COMPLIANCE WITH TITLE VI OF CIVIL RIGHTS ACT

The Locality will insure that all contracts, agreements made with any person, firm agency of whatever nature shall require compliance with the provisions of Title VI of the Civil Rights Act of 1964 as set out in Attachment C, attached hereto, and made a part of this AGREEMENT by reference.

ARTICLE XII - VIRGINIA FAIR EMPLOYMENT CONTRACTING ACT

The Locality will insure that all contracts, agreements made with any person, firm agency of whatever nature shall require compliance with the provisions of the Virginia Fair Employment Contracting Act (Sections 2.2-4200 through 2.2-4201 of the Code of Virginia (1950), as amended). Section 2.2-4201 is set out in Attachment D attached hereto and made part of this AGREEMENT.

ARTICLE XIII - DISADVANTAGED AND WOMEN-OWNED BUSINESS ENTERPRISES

In connection with the performance of this AGREEMENT, the LOCALITY will cooperate with the DEPARTMENT in meeting its commitments and goals with regard to the utilization of Disadvantaged Business Enterprises (DBEs-inclusive of women). The

LOCALITY shall follow the Virginia Department of Transportation's Disadvantaged Business Enterprise program, the Virginia Public Procurement Act requirements and use its best efforts to insure that DBEs shall have equal opportunity to compete for contracts under this AGREEMENT.

The Locality will insure that all contracts, agreements made with any person, firm agency of whatever nature shall require compliance with the provisions of 49 CFR Part 26, as amended, and set out in Attachment E attached hereto, and made part of this AGREEMENT by reference.

Further, the LOCALITY agrees to provide the DEPARTMENT with quarterly reports on the actual dollar amount of funds expended with each DBE contractor.

ARTICLE XIV - AMENDMENTS

Amendments to this AGREEMENT, as may be mutually agreed to, may be made by written agreement between the DEPARTMENT and the LOCALITY.

ARTICLE XV – CERTIFICATIONS

The LOCALITY and the DEPARTMENT acknowledge that neither the representative for the LOCALITY nor the DEPARTMENT has been required, directly or indirectly as an expressed or implied condition in connection with obtaining or carrying out this contract to:

a) employ or retain, or agree to employ or retain, any firm or person, or

b) pay, or agree to pay, to any firm, person or organization, any fee, contribution, donation, or consideration of any kind; except as here expressly stated (if any).

Prohibition Against the Use of Federal Funds for Lobbying

The prospective contractor and all subcontractors agree to comply with the provisions of 31 U.S.C. § 1352, which prohibit the use of federal funds for lobbying any official or employee of any federal agency, or member or employee of Congress; and requires the recipient to disclose any lobbying of any official or employee of any federal agency, or member or employee of Congress in connection with federal assistance. In addition, no federal assistance funds shall be used for activities designed to influence Congress or State Legislature on legislation or appropriations, except through proper, official channels. The prospective contractor shall comply and assure the compliance of subcontractors at any tier with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20.

For contracts of $100,000 or more, the prospective contractor shall submit to the LOCALITY a signed "Certification of Restrictions on Lobbying," and shall require all subcontractors with contracts of $100,000 or more to submit to the prospective contractor and the LOCALITY such signed certifications.

ARTICLE XVI – LIABILITY WAIVER

The LOCALITY shall not seek redress for damages or injury caused in whole or in part by the COMMONWEALTH, the DEPARTMENT or their officers, agents or employees acting within the scope of their duties. The LOCALITY will reimburse the COMMONWEALTH, the DEPARTMENT and their officers, agents and employees for any damage or injury caused by the negligence of the LOCALITY, its officers, agents or employees which arise from their use of funds provided under this AGREEMENT.

ARTICLE XVII – ANNUAL APPROPRIATIONS

Nothing in this Agreement shall obligate the parties hereto to expend or provide any funds in excess of funds agreed upon in this Agreement or as shall have been included in an annual or other lawful appropriation. In the event the cost of a Project is anticipated to exceed the allocation shown for such respective Project on Appendix A, both parties agree to cooperate in providing additional funding for the Project or to terminate the Project before its costs exceed the allocated amount, however the DEPARTMENT and the LOCALITY shall not be obligated to provide additional funds beyond those appropriated pursuant to an annual or other lawful appropriation.

ARTICLE XVIII – SOVEREIGN IMMUNITY

Nothing in this Agreement shall be construed as a waiver of the LOCALITY's or the Commonwealth of Virginia's sovereign immunity.

ARTICLE XVIX – THIRD PARTIES

The Parties mutually agree that no provision of this Agreement shall create in the public, or in any person or entity other than parties, rights as a third party beneficiary hereunder, or authorize any person or entity, not a party hereto, to maintain any action for, without limitation, personal injury, property damage, breach of contract, or return of money, or property, deposit(s), cancellation or forfeiture of bonds, financial instruments, pursuant to the terms of this of this Agreement or otherwise. Notwithstanding any other provision of this Agreement to the contrary, unless otherwise provided, the Parties agree that the LOCALITY or the DEPARTMENT shall not be bound by any agreements between the either party and other persons or entities concerning any matter which is the subject of this Agreement, unless and until the LOCALITY or the DEPARTMENT has, in writing, receive a true copy of such agreement(s) and has affirmatively agreed, in writing, to be bound by such Agreement.

ARTICLE XX – INDIVIDUAL LIABILITY

The Parties mutually agree and acknowledge, in entering this Agreement, that the individuals acting on behalf of the Parties are acting within the scope of their official authority and the Parties agree that neither Party will bring a suit or assert a claim against any official, officer, or employee of either party, in their individual or personal capacity for a breach or violation of the terms of this Agreement or to otherwise enforce the terms and conditions of this Agreement The foregoing notwithstanding, nothing in this subparagraph shall prevent the enforcement of the terms and conditions of this Agreement by or against either Party in a competent court of law.

IN WITNESS WHEREOF, the DEPARTMENT and the LOCALITY have executed this AGREEMENT on the day and year first above written.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION

BY: _____
Signature

Stephen C. Brich, P.E.
Printed Name

Commissioner of Highways
Title

DATE:_____

LOCALITY

BY: _____
Signature

_____
Printed Name

_____
Title

DATE:_____

ATTACHMENT A - Scope of Work
ATTACHMENT B - Contract Audit
ATTACHMENT C - Title VI
ATTACHMENT D - Virginia Fair Employment Contracting Act
ATTACHMENT E - Disadvantaged and Women-Owned Business Enterprises

ATTACHMENT A

EMPLOYER OUTREACH
SCOPE OF WORK

Fiscal Year 2019

Transportation Control Measure (TCM)-47c was adopted in the FY95-00 Transportation Improvement Program (TIP) by the Transportation Planning Board (TPB) of the National Capital Region. TCM-47c does not mandate employer participation. This measure will encourage private sector employers with more than 100 employees in the Metropolitan Washington region to voluntarily implement alternative commute (trip reduction) programs and is now classified as a Transportation Emission Reduction Measure (TERM).

Fairfax County Employer Outreach Program will provide outreach services directly to employers in Fairfax County, which will help promote commute alternatives, create new or expanded alternative commute programs, maintain existing programs, and provide a means to evaluate the impact of these employer efforts.

Activities to be performed include, but are not limited to, the following:

TASK 1: **Contact Employers and Promote Alternative Commute Programs** - Establish and maintain regular contact with employers. Encourage employers to establish an Employee Transportation Coordinator (ETC). Conduct sales calls and face-to-face meetings with employer ETCs and decision makers. Promote Alternative Commute Programs described in **Attachment A-1** as may be determined from the results of Task 2 or as may be developed through discussions with the employer.

TASK 1A **Maintain Contact with Employers with Existing Programs.** – No less frequently than quarterly, communicate with employers in the jurisdiction's database (see Task 4 below) that have existing TDM programs to verify and update contact information and encourage the continuation and / or strengthening of existing programs.

TASK 2: **Conduct Employee Commute Surveys** – Conduct employee commute surveys for employers who voluntarily choose to survey their employees. Although surveys are voluntary, strongly encourage the employer to conduct a survey. Ideally, the survey will be conducted once prior to the implementation of commute incentives, benefit programs or promotions, and again six months to one year after the employer has instituted an incentive or benefit program. The survey will consist of the core questions (as agreed to by Northern Virginia Employer Outreach representatives and the Commuter Connections Employer Outreach Committee) designed to assist in developing and evaluating alternative commute programs. The survey may be customized, including the addition of questions, to fit the needs of the employer and to obtain

information to develop a comprehensive employee commute plan for the employer.

Survey data will be used (a) to provide the employer with commute mode preferences, (b) to provide the jurisdictional employer outreach staff with basic information to make recommendations, and develop or change strategies that will help the employer and employees, and (c) to provide a site specific mode split which could be compared to follow-up data to determine success of the TDM strategies that were implemented. It is also a good tool for employers to track and evaluate program success (if appropriate or desired), and to give employees an opportunity to request additional commuter information.

Surveys will be distributed in one or both of the following methods, depending on the needs of the employer: 1) hard copies, or 2) email with a link to the Commuter Connections and / or Virginia online survey maintained either by MWCOG or through another online survey site.

When using hard copies or the online survey maintained by MWCOG, the request, survey editing and survey processing procedures agreed to by the Employer Outreach Committee will be followed.

TASK 3: **Develop TDM Program Recommendations -** Develop and provide in a written document with recommendations for the employers for the implementation of alternative commute incentives, benefits and programs. The recommendations will be based on the results of the initial employee commute survey if possible, and interviews with employer representatives. Provide copies of documents prepared under this Task to VDOT.

TASK 4: **Record Keeping and Database Maintenance -** Maintain the elements of the regional ACT Employer Outreach database that pertain to employers in the LOCALITY to include the following elements at a minimum:

- Employer name, location, contact name, phone number, email address, number of total employees, number of participating employees, and existing TDM programs,
- TDM program implementation dates and participation rates,
- All contact, communications and work conducted with employers including sales calls, meetings, survey dates and results, and promotions.

Update information in the ACT Employer Outreach database no less frequently than every three months. Incorporate the results from surveys conducted in Task 2 as data is available.

The ACT database will be used for the purpose of:

- recording the status of each employer-based TDM program for which the jurisdiction has knowledge,
- tracking Employer Outreach activities conducted by each jurisdiction,
- identifying employers with additional office locations in other jurisdictions and for viewing past outreach activities for an employer that is relocating from another jurisdiction.

Close coordination with Employer Outreach representatives from other jurisdictions will be adhered to for outreach with employers with additional office locations in other jurisdictions and employers relocating from another jurisdiction.

TASK 5: **Reports -** Provide an Activity Report, in the format shown as Attachment A-2, summarizing employer outreach activities and results to VDOT no less than quarterly and with all reimbursement requests.

TASK 6: **Meetings and Training -** Attend Commuter Connections Employer Outreach Committee meetings as desired and as may be made available by COG.

TASK 7: **Reimbursement Requests -** Provide an invoice to VDOT at least once every three months from the start of the fiscal year. The final invoice for the fiscal year should be submitted by August 31, 2019. Invoices shall be accompanied by sufficient documentation to substantiate costs incurred during the period, and include at a minimum:

- number of hours devoted to Employer Outreach and resulting labor costs;
- description of Direct Costs, accompanied by copies of invoices for individual Direct Costs exceeding $1,500;
- invoices for any work performed by subcontractors for which reimbursement is requested;
- number of new employers contacted;
- brief summary of major activities conducted during invoice period if not reflected on Activity Report (Form A-2).

Invoices which do not include the above information may not be approved by VDOT for payment. The preferred format for invoices submitted to VDOT is shown as Attachment A-3.

FISCAL YEAR 2019 PROJECT GOALS

These Goals represent target values. Program funding is not dependent upon achievement of specific values. Progress towards achieving Goals will be monitored and will serve as guidance for potential program adjustments throughout the year.

- Conduct commute surveys at all employers that implement a new alternative commute program.
- Establish 47 new Level 3 or 4 employers.
- Maintain the existing number of Level 3 and 4 employers.
- Meet with 260 employers.
- Conduct 885 sales calls.
- Conduct 78 outreach activities such as transportation information fairs and other events designed to promote the use of alternative travel modes.

ATTACHMENT A
ATTACHMENT A-1

Potential Alternate Commute Programs to be Promoted in Employer Outreach Activities

Carpool and Vanpool Formation - Work with the employer and employees to encourage and establish carpools and vanpools. The Commuter Connections ridematching system as well as other on-site ridematching systems, promotion of carpool incentives, and van start/van save incentives through the state grants received by the local commuter assistance programs will be used to facilitate carpool and vanpool formation. Coordination with third party vanpool operators will also be used for vanpool formation.

Telework/Telecommuting - Encourage and assist employers with the development and/or expansion of formal telework programs. Request assistance, as needed, from the Department of Rail and Public Transportation and coordinate with DRPT on promotion and employer participation in the Telework!VA program.

Parking Management Strategies - Encourage and assist employers with development of strategies to reduce parking demand, including car sharing, parking cash-out, preferential carpool/vanpool parking and bicycle parking.

TDM Information - Provide transportation and employer benefit and incentive information to employer and employees through onsite promotions, displays, emails, and employer web site.

Transit/Vanpool/Bicycle Benefit Programs - Encourage and assist employers with the development of transportation benefit programs [in accordance with IRS Section 132(f)], pre-tax transit pass purchase programs, and / or other non-SOV commuter benefit programs. Work directly with WMATA SmartBenefits sales force to promote SmartBenefits and assist employers with planning and implementation of SmartBenefits transportation benefit programs for employees that commute via transit or a qualified vanpool. Provide information to employers on benefit administration programs through WMATA and other third party administrators who can assist in implementing a transit/vanpool benefit program at an employer worksite. Provide planning assistance to employers to establish onsite transit pass, token and ticket sales, and SmartBenefit exchange services.

New Hire Programs - Assist employers in providing commute alternative information to newly hired employees. This may consist of delivery of commute options and employer provided benefits and incentive information to new employees through the development of a packet of transportation information, oral presentations at new hire orientations, email, and the employer's web site.

Guaranteed Ride Home (GRH) Program - Assist employers with offering the Commuter Connections regional GRH service to employees who take alternative commute modes at least two days per week. Assist employers seeking to provide supplemental GRH trips for their employees.

Alternative Work Scheduling - Encourage and assist employers with the implementation of flexible work schedules, compressed work weeks and staggered work hour programs.

ATTACHMENT B
CONTRACT AUDIT

The LOCALITY shall permit the Department to audit, examine, and copy all documents, computerized records, electronic mail, or other records of the LOCALITY relating to this Agreement, and the program(s) funded pursuant to this AGREEMENT, during the life of the contract and for a period of not less than three years after date of final payment, or date LOCALITY is declared in default of Contract, or date of termination of the Contract.

1. The documents and records shall include, but not be limited to those required to be retained pursuant to Section VIII (RETENTION OF COST RECORDS) as well as those that were used to prepare all schedules used on the project, record the progress of work on the project, accounting records, purchasing records, personnel payments or records necessary to determine employee credentials, vendor payments and written policies and procedures used to record, compute and analyze all costs incurred on the project, including those used in the preparation or presentation of claims to the Department.

2. Records pertaining to the project as the Department may deem necessary in order to permit adequate evaluation and verification of LOCALITY's compliance with contract requirements, compliance with the Department's business policies, and compliance with provisions for pricing work orders or claims submitted by the LOCALITY or the LOCALITY's subcontractors, insurance agents, surety bond agents and material suppliers shall be made available to the auditor(s) at the Department's request. The LOCALITY shall make its personnel available for interviews when requested by the Department.

3. Upon request, the LOCALITY shall provide the Department with data files on data disks, or other suitable alternative computer data exchange format.

The LOCALITY shall ensure that the requirements of this provision are made applicable to his subcontractors, insurance agents, surety bond agents and material suppliers. The LOCALITY shall cooperate and shall cause all related parties to furnish or make available in an expeditious manner all such information, materials, and data. The LOCALITY shall be forthcoming in disclosing all sources and locations of media.

It shall be the LOCALITY'S responsibility to notify the Department, in writing, of the completion of that subcontractor's portion of the services so that the records of the subcontractor can be audited within the three-year retention period. Failure to do so may result in the LOCALITY'S liability for any costs not supported by the proper documentation for the subcontractor's phase of the services.

The LOCALITY shall provide immediate access to records for the audit and provide immediate acceptable facilities for the audit.

ATTACHMENT C

NOTICE TO CONTRACTORS
COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

(1) Compliance with Regulations: The contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (49 CFR, Part 21 and Part 26, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(2) Nondiscrimination: The contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, religion, color, sex, national origin, age or handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the regulations.

(3) Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor shall comply with the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the ground of race, religion, color, sex, national origin, age or handicap.

(4) Information and Reports: The contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the DEPARTMENT or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions.

Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the DEPARTMENT, or the Federal Highway

Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the DEPARTMENT shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to,

(a) withholding of payments to the contractor under the contract until the contractor complies, and/or

(b) cancellation, termination or suspension of the contract, in whole or in part.

(6) Incorporation of Provisions: The contractor will include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order or instructions issued pursuant thereto. The contractor will take such action with respect to any subcontract or procurement as the DEPARTMENT or the Federal Highway Administration may direct as a means of enforcing such provisions in the event a contractor becomes involved in or is threatened with litigation with a subcontractor. The contractor may request the State and/or the United States to enter into such litigation in order to protect their respective interests.

ATTACHMENT D

VIRGINIA FAIR EMPLOYMENT CONTRACTING ACT

Section 2.2-4201 Code of Virginia (1950) as amended

During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, including the names of all contracting agencies with which the contractor has contracts of over ten thousand dollars.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that such contractor is an equal opportunity employer; provided, however, that notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this chapter.

The contractor will include the provisions of the foregoing paragraphs 1 and 2 in every subcontract or purchase order of over ten thousand dollars, so that such provisions will be binding upon each subcontractor or vendor. Nothing contained in this chapter shall be deemed to empower any agency to require any contractor to grant preferential treatment to, or discriminate against, any individual or any group because of race, color, religion, sex or national origin on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex or national origin employed by such contractor in comparison with the total number or percentage of persons of such race, color, religion, sex or national origin in any community or in the State. (1975, c.626.)

ATTACHMENT E

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN
DEPARTMENT OF TRANSPORTATION PROGRAMS
49 CFR Part 26, as amended

It is the policy of the Department of Transportation that Disadvantaged Business Enterprises (DBEs) as defined in 49 CFR Part 26, as amended, shall have equal opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, 49 CFR Part 26, as amended, applies to this agreement.

The LOCALITY agrees to ensure that DBEs as defined in 49 CFR Part 26, as amended, shall have equal opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard the LOCALITY shall take all necessary and reasonable steps in accordance with 49 CFR Part 26, as amended, to ensure that DBEs have equal opportunity to compete for and perform contracts. The LOCALITY shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT assisted contracts.

The LOCALITY agrees that failure to carry out the requirements set forth herein shall constitute a breach of contract and after the notification of the Department of Transportation, may result in termination of this agreement by the DEPARTMENT or such remedy as the DEPARTMENT deems appropriate.

Attachment II

Fairfax County Board of Supervisors 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 of Fairfax, Virginia, on Tuesday, June 5, 2018, at which meeting a quorum was present and voting, the following resolution was adopted.

AGREEMENT EXECUTION RESOLUTION

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Fairfax County, Virginia, authorizes the Director of Fairfax County's Department of Transportation to execute, on behalf of the County of Fairfax, Project Funding Agreements with the Virginia Department of Transportation (VDOT) to provide educational, promotional and / or other related TDM assistance within the Northern Virginia District.

Adopted this 5th day of June 2018, Fairfax, Virginia

ATTEST _____
Catherine A. Chianese
Clerk to the Board of Supervisors

Board Agenda Item
June 5, 2018

INFORMATION – 1

Planning Commission Action on Application 2232-M17-43 – County Board of Arlington County, Virginia

On Thursday, May 3, 2018, the Planning Commission voted 8-0-4 (Commissioners Ulfelder, Sargeant, Hart, and Hurley abstained from the vote) to approve application 2232-M17-43.

The Commission noted that the application met the criteria of character, location, and extent, and was in conformance with Section 15.2-2232 of the Code of Virginia and is substantially in accord with the provisions of the adopted Comprehensive Plan.

Application 2232-M17-43 sought to develop a bus maintenance and repair facility, located at 6701-6705 Electronic Drive, Springfield, VA 22151 Tax Map 80-2 ((1)) 34 (Mason District). On April 26, 2018, the Planning Commission voted to recommend to the Board of Supervisors approval of concurrent application SE 2017-MA-032 that is scheduled for public hearing before the Board of Supervisors on June 5, 2018.

In a related action, on Thursday May 3, 2018, the Planning Commission voted 12-0 to recommend to the Board of Supervisors that staff review the County's current 2232 review policy in light of the changes to the Zoning Ordinance, and make necessary revisions in consultation with the Office of the County Attorney.

ENCLOSED DOCUMENTS:
Attachment 1: Verbatim excerpt
Attachment 2: Vicinity map

STAFF:
Robert A. Stalzer, Deputy County Executive
Fred R. Selden, Director, Department of Planning and Zoning (DPZ)
Marianne Gardner, Director, Planning Division, DPZ
Jill Cooper, Executive Director, Planning Commission Office

County of Fairfax, Virginia
Planning Commission Meeting
May 3, 2018
Verbatim Excerpt

2232-M17-43 – COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA – Appl. under Sects. 15.2-2204 and 15.2-2232 of the Code of Virginia to permit bus maintenance and repair facility. Located at 6701 Electronic Dr., Springfield, 22151 on approx. 2.15 ac. of land zoned I-6. Tax Map 80-2 ((1)) 34 (pt.). (Concurrent with SE 2017-MA-032). (Mason District)

Decision Only During Commission Matters
(Public Hearing held on April 26, 2018)

Commissioner Strandlie: Thank you, Mr. Chairman. We had a hearing – is there a staff that who can answer the follow-up question on this that Commissioner Hurley had from the previous? Regarding the contingent contract. Commissioner Hurley did – was your question answered?

Commissioner Hurley: Yes. The question was whether we issued 2232s to a private owner who doesn't have – does – has no contract to lease or sell a land – a piece of land to a public body.

Marianne Gardner, Director, Planning Division, Department of Planning and Zoning: I'm Marianne Gardner with the Department of Planning and Zoning, Planning Division. We did ask the County Attorney that question and the answer is that yes, we do. And, the examples given were, telecom facilities are on land not owned by that facility. So yes, we do have experience with that in the past.

Commissioner Strandlie: Thank you. On April 26th, 2018, the Planning Commission held a public hearing on SE 2017-MA-032, concurrent with 2232-M17-43. While the two applications are independent of one another, the public hearings were held concurrently because they relate to the same property. The Planning Commission voted to recommend approval of SE 2017-MA-032, but deferred its decision on 22-M17-43 [sic] until tonight. During this public hearing the Planning Commission also suggested that the Board of Supervisors hearing on SE 27 – 2017-MA-032 [sic] would be moved to May 15th, 2018. However, that date was not feasible for the Board. Therefore, on May 1st, 2018, the Board's public hearing on SE 2017-MA-032, was deferred to a date certain of June 5th, 2018 at 4:00 p.m. Now we will turn to the motion on the pending application on approval of the County Board of Arlington's request for a 2232 approval to construct a bus maintenance and repair facility. Mr. Chairman, I concur with the staff's conclusion that the proposal by the County Board of Arlington County, Virginia, to construct a bus maintenance and repair facility at 6701 Electronic Drive, Springfield, satisfies the criteria of location, character and extent as specified in *Virginia Code* Section 15.2-2232, as amended. Therefore, I MOVE THAT THE PLANNING COMMISSION APPROVE THE SUBJECT APPLICATION 2232-M17-43, AND FIND IT SUBSTANTIALLY IN ACCORD WITH PROVISIONS OF THE ADOPTED COMPREHENSIVE PLAN. I will also have a follow-on motion.

Commissioner Migliaccio: Second.

Chairman Murphy: Seconded by Mr. Ulfelder [sic]. Is there…I'm sorry you had a question?

Commissioner Ulfelder: I was not…Yeah, I'm gonna…

Chairman Murphy: Is there a second to the motion?

Commissioner Migliaccio: Second.

Chairman Murphy: Yeah, seconded by Mr. Migliaccio. Mr. Ulfelder.

Commissioner Ulfelder: Thank you, Mr. Chairman. At the hearing, I probed on the issue of whether Arlington County had in – had taken a hard look at sites within Arlington County, based on the premise that I thought that if a public body was seeking to locate a public facility outside its own jurisdiction, at first needed to do a thorough job of looking within its – within the bounds of its jurisdiction. Either for its – on its own property or an existing facility that they have in – in the County. I went back and reviewed the hearing and the original application and I'm still not convinced that Arlington County have done a complete job of considering locations within Arlington County for this. Therefore, I would not agree with – with the concurrence that it's in line with a particularly the location issue under 2232. That being said, I also believe that this 2232 was not necessary. Eighteen months ago, the County changed the definition of public use and made it clear that public facilities or public uses there – from other jurisdictions being located in Fairfax County, are not reviewed pursuant to 2232 but are handled under the Zoning Ordinance. As it turns out in this case, the Zoning Administrator has opined that this particular use, a bus maintenance facility, is a by-right use at this site, because it's an existing I-6 District. Therefore, in this case, I'm going to – because of the conflict in my position, on the one hand I don't think the 2232 was necessary, but I didn't think that they met the test of the 2232, I'm going to abstain.

Chairman Murphy: Further discussion of the motion. Yes, Ms. Hurley.

Commissioner Hurley: I'm going to abstain. I align myself with Commissioner Ulfelder's remarks.

Chairman Murphy: Further discussion of the motion.

Commissioner Hart: Mr. Chairman.

Chairman Murphy: Mr. Hart.

Commissioner Hart: Thank you. I'm gonna abstain. But I didn't watch the whole public hearing. Thank you.

Chairman Murphy: Anyone else.

Commissioner Sargeant: Mr. Chairman, I'm going to abstain as well. I was not present for the public hearing.

Chairman Murphy: Okay.

Commissioner Strandlie: Mr. Chairman, I would just like to say that this did come up as an issue and we did – I did raise those exact questions with the County as to whether or not a 2232 was required as well. And, after the vote on this I will have a follow-on motion to address that need.

Chairman Murphy: Further discussion? All those in favor of the motion to approve 2232-M17-43, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motions carries with four abstentions. Mr. Ulfelder abstains, Mr. Sargeant abstains, Mr. Hart abstains and Ms. Hurley abstains. Motion carries.

Commissioner Strandlie: Okay.

Chairman Murphy: Ms. Strandlie.

Commissioner Strandlie: Thank you. Mr. Chairman, on – on October 18th, 2016, the Board of Supervisors adopted a Zoning Ordinance amendment that revised the definition of "public use" to clarify that a use controlled or sponsored by another local government is not deemed a public use for purposes of zoning. Other jurisdictions' uses in this County are now subject to applicable zoning regulations for the proposed use. Despite this change to the Zoning Ordinance, the County's 2232 review policy has not been revised since 2012, and still calls for the processing of other jurisdictions' public facilities proposed to be located in Fairfax County as 2232 applications. In light of the apparent discrepancy between the zoning definition of "public use" and the County's 2232 review policy, I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT STAFF REVIEW THE CURRENT POLICY IN LIGHT OF THE CHANGES TO THE ZONING ORDINANCE, AND REVISE IT AS NECESSARY IN CONSULTATION WITH THE COUNTY ATTORNEY'S OFFICE.

Commissioner Ulfelder: Second.

Chairman Murphy: Seconded by Mr. Ulfelder. Is there a discussion of that motion? All those in favor of the motion as articulated by Ms. Strandlie, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. I take it there were no abstentions to that motion. Everybody sort of…

Commissioner Strandlie: Thank you.

The first motion carried by a vote of 8-0-4. Commissioners Ulfelder, Sargeant, Hart and Hurley abstained from the vote.

The second motion carried by a vote of 12-0.

SL

PLANNING DETERMINATION

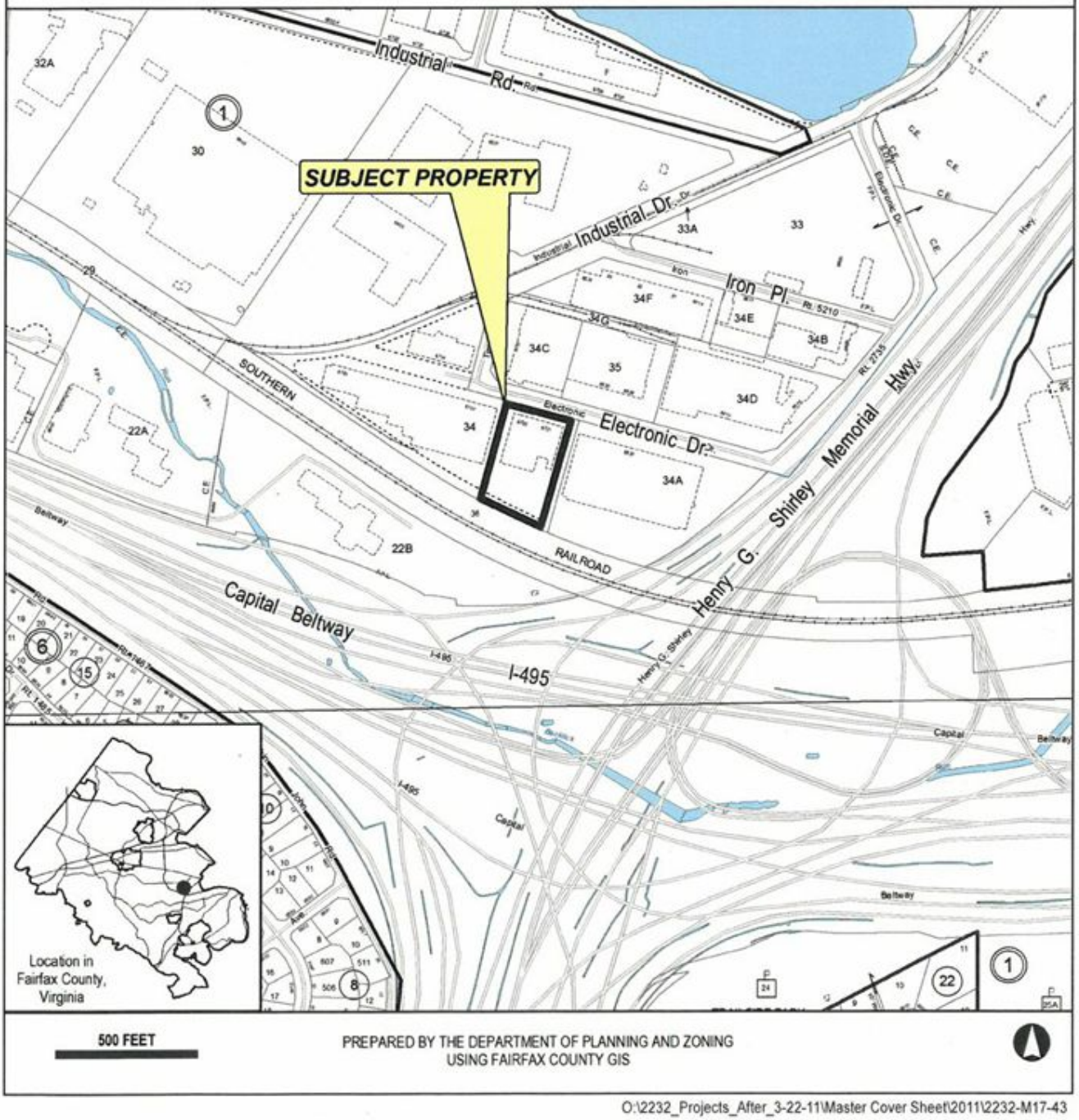
Section 15.2 -2232 of the Code of Virginia

Number: 2232-M17-43 **Acreage:** 2.1481 **District:** Mason

Tax Map ID Number: 80-2((1))34pt. **Address:** 6701-6705 Electronic Dr. Springfield, VA 22151

Planned Use: Industrial **Applicant:** Arlington County Board

Proposed Use: Maintenance and Repair Facility



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Board Agenda Item
June 5, 2018

INFORMATION – 2

Contract Award – Engineering Services RFP 2000002432

The Department of Procurement and Material Management (DPMM) issued a Request for Proposal (RFP2000002432) seeking proposals from qualified sources to provide professional Engineering Services. This contract will be used by multiple departments including Facilities Management, Housing and Community Development, Park Authority, Capital Facilities, and Transportation. The scope of the contract includes, but is not limited to engineering, mechanical, electrical, plumbing, acoustical, civil, and structural engineering services.

The RFP was publicly advertised in accordance with the requirements of Fairfax County Purchasing Resolution with 19 responses received. The Selection Advisory Committee (SAC) evaluated the proposals in accordance with the criteria established in the RFP. Upon completion of the evaluation of the proposals, the SAC negotiated with the offerors and recommended contract awards as follows:

- Setty & Associates, Ltd.
- Shaffer, Wilson, Sarver & Gray, P.C.
- Brinjac Engineering, Inc.
- Gauthier, Alvarado & Associates, Inc.
- RMF Engineering
- Global Engineering Solutions
- Loring Consulting Engineering
- Interface Engineering
- Johnson Mirmiran Thompson
- Whitman, Requardt & Associates, LLP

Multiple awards are required due to the varying project types and sizes and the design expertise required for each. The SAC recommends contract award to these firms based on their demonstrated ability to meet County requirements and standards for engineering services.

The Department of Tax Administration (DTA) verified that BrinJac Engineering; Setty & Associates; Whitman, Requardt and Associates; and Johnson, Mirmiran & Thompson, Inc. possess the appropriate Fairfax County Business, Professional, and Occupational License (BPOL). DTA also verified that Loring Consulting Engineers; Interface Engineering; Shaffer, Wilson, Sarver & Gray; RMF Engineering, Inc.; Global Engineering Solutions; and Gauthier, Alvarado & Associates, Inc. are not required to have a Fairfax County BPOL.

Unless otherwise directed by the Board of Supervisors, the Purchasing Agent will proceed to award contracts to the offerors listed above.

These contracts will commence on date of award and terminate on January 31, 2022. The total estimated expenditures under these contracts is approximately $3,500,000 annually in the aggregate based on historical expenditure patterns.

FISCAL IMPACT:
Services rendered through these contracts are paid directly by the departments and agencies requiring the services. The various departments will verify that they have sufficient funding for services before work is approved.

ENCLOSED DOCUMENTS:
Attachment 1 - List of Offerors

STAFF:
Joseph Mondoro, Chief Financial Officer
Cathy A. Muse, Director, Department of Procurement and Material Management
Jose Comayagua, Director, Facilities Management Department

Attachment 1

List of Offerors Submitting Proposal

Name	SWAM Status
Setty & Associates, Ltd.	Minority-Owned Small
Shaffer, Wilson, Sarver & Gray, P.C.	Small
Brinjac Engineering, Inc.	Large
Gauthier, Alvarado & Associates, Inc.	Small
RMF Engineering	Large
Global Engineering Solutions	Women-Owned Small
Loring Consulting Engineers	Corporation
Interface Engineering	Large
Johnson, Mirmiran & Thompson, Inc.	Large
Whitman, Requardt & Associates, LLP	Large

Board Agenda Item
June 5, 2018

10:10 a.m.

Matters Presented by Board Members

Board Agenda Item
June 5, 2018

11:00 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. *Board of Supervisors of Fairfax County, Virginia v. Equity Homes, LLC, Ray Yancey, Trustee, and Arch Insurance Company*, Case No. CL-2012-0003600 (Fx. Co. Cir. Ct.) (Braddock District)

2. Claim of Biscayne Contractors, Inc., to the Board of Supervisors

3. *Biscayne Contractors, Inc. v. Board of Supervisors of Fairfax County, Virginia*, Case No. CL-2017-0017671 (Fx. Co. Cir. Ct.)

4. *Mateusz Fijalkowski v. M. Wheeler, S. Adcock, S. Blakely, R. Bronte-Tinkew, C. Clark, J. Grande, R. Jakowicz, L. Labarca, L. McNaught, W. Mulhern, M. Zesk, Sean Brooks, and American Pool, Inc.*, Case No. 1:18-cv-492 (E.D. Va.)

5. *Joseph A. Glean v. Fairfax County Government and Michael J. McGrath*, Case No. 2018-0004976 (Fx. Co. Cir. Ct.)

6. *Jerome Julius Brown v. Fairfax County Police Department*, Case No. CL-2017-0017695 (Fx. Co. Cir. Ct.)

7. *Qonita Badeges v. Officer Jeffrey Neach*, Case No. GV18-008920 (Fx. Co. Gen. Dist. Ct.)

8. *Matias Rodlauer by GEICO, Subrogee v. Hypolite Essorezam Padameli and Fairfax County*, Case No. GV17-025781 (Fx. Co. Gen. Dist. Ct.)

9. *Lynn Gaines-Oliver v. Iva Robertson*, Case No. GV18-004461 (Fx. Co. Gen. Dist. Ct.)

10. *Gerald E. Preston v. Officer A. Harrell*, Case No. GV17-011154 (Fx. Co. Gen. Dist. Ct.)

11. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Ramon A. Navorio*, Case No. CL-2017-0007129 (Fx. Co. Cir. Ct.) (Braddock District)

12. *Leslie B. Johnson, Fairfax County Zoning Administrator v. FW VA – Kings Park Shopping Center, LLC, and Exxon Mobil Oil Corporation*, Case No. CL-2018-0005345 (Fx. Co. Cir. Ct.) (Braddock District)

13. *Board of Supervisors of Fairfax County, Virginia v. Douglas A. Cohn and Kathryn J. Cohn*; Record No. 171483 (Va. Sup. Ct.) (Dranesville District)

14 *Leslie B. Johnson, Fairfax County Zoning Administrator v. Maziar Choubineh and Shabnam Belat*, Case No. CL-2018-0007073 (Fx. Co. Cir. Ct.) (Dranesville District)

15. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Mishal Hamad Al-Thani*, Case No. CL-2018-0001769 (Fx. Co. Cir. Ct.) (Dranesville District)

16. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Arthur B. Hough and Anita S. Hough*, Case No. GV18-009878 (Fx. Co. Gen. Dist. Ct.) (Dranesville District)

17. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Larissa Omelchenko Taran*, Case No. CL-2017-0011715 (Fx. Co. Cir. Ct.) (Hunter Mill District)

18. *Eileen M. McLane, Fairfax County Zoning Administrator v. Michael P. Savage*, Case No. CL-2008-0000541 (Fx. Co. Cir. Ct.) (Lee District)

19. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Chau Qiu Wu, Cui May Nie, and Crespo General Contracting, LLC*, Case No. CL-2018-0007002 (Fx. Co. Cir. Ct.) (Lee District)

20. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Isidro Ramirez, Regina Estrada and Zandra Makel Otero*, Case No. CL-2018-0007087 (Fx. Co. Cir. Ct.) (Lee District)

21. *Leslie B. Johnson, Fairfax County Zoning Administrator and Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Harry Marshall Studds*, Case No. CL-2018-0007593 (Fx. Co. Cir. Ct.) (Lee District)

22. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Lester H. Smallwood, Jr.*, Case No. GV18-010274 (Fx. Co. Gen. Dist. Ct.) (Lee District)

23. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Oscar Maravilla*, Case No. CL-2018-0000825 (Fx. Co. Cir. Ct.) (Mason District)

24. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Dadvar Sassan*, Case No. GV18-010783 (Fx. Co. Gen. Dist. Ct.) (Mason District)

25. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Kashif H. Waheed and Anahita Ada*, Case No. GV18-003252 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)

26. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Otis Perry and Elcetia L. Perry*, Case No. CL-2008-0005923 (Fx. Co. Cir. Ct.) (Providence District)

27. *Elizabeth Perry, Property Maintenance Code Official v. Rosa C. Ferrufino and Lorenzo A. Hernandez*, Case No. CL-2018-0007573 (Fx. Co. Cir. Ct.) (Providence District)

28. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Victor R. Espinoza and Maria M. Espinoza*, Case No. GV18-007489 (Fx. Co. Gen. Dist. Ct.) (Providence District)

29. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Angela M. O'Sullivan*, Case No. GV18-010782 (Fx. Co. Gen. Dist. Ct.) (Providence District)

30. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Rubina Siddiqui*, Case No. CL-2018-0007397 (Fx. Co. Cir. Ct.) (Springfield District)

31. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Roberta Couver*, Case No. CL-2011-0007717 (Fx. Co. Cir. Ct.) (Sully District)

Board Agenda Item
June 5, 2018

3:30 p.m.

Decision Only on RZ 2017-SP-029 (Christopher Land, LLC) to Rezone from R-1 to PDH-3 to Permit Residential Development with an Overall Density of 2.88 Dwelling Units per Acre and Approval of the Conceptual Plan, Located on Approximately 2.44 Acres of Land (Springfield District)

This property is located on the North side of Fairfax County Parkway approximately 350 feet East of its intersection with Seabrook Lane. Tax Map 97-2 ((1)) 6

The Board of Supervisors deferred this public hearing at the May 1, 2018, meeting until May 15, 2018 at 3:30 p.m.; at which time it was deferred for decision only to June 5, 2018 at 3:30 p.m.

PLANNING COMMISSION RECOMMENDATION:
On May 3, 2018, the Planning Commission voted 10-0-2 (Commissioners Sargeant and Niedzielski-Eichner abstained from the vote) to recommend to the Board of Supervisors approval of RZ 2017-SP-029 and the associated Conceptual Development Plan, subject to the proffers dated April 26, 2018.

In a related action, on May 3, 2018, the Planning Commission voted 10-0-2 (Commissioners Sargeant and Niedzielski-Eichner abstained from the vote) to approve FDP 2017-SP-029, subject to development conditions dated April 25, 2018.

ENCLOSED DOCUMENTS:
Planning Commission Verbatim Excerpt and Staff Report available online at:
https://www.fairfaxcounty.gov/planning-zoning/zoning-application-board-packages-fairfax-county-board-supervisors

STAFF:
Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Bill Mayland, Planner, DPZ

Board Agenda Item
June 5, 2018

3:30 p.m.

Public Hearing on PCA 1996-LE-047 (HD Development of Maryland, Inc.) to Amend the Proffers for RZ 1996-LE-047, Previously Approved for a Retail Shopping Center to Permit Associated Modifications to Proffers and Site Design with an Overall Floor Area Ratio of 0.35 and a Waiver of Open Space Requirements, Located on Approximately 7.49 Acres of Land Zoned PDC (Lee District)

This property is located on the East side of Frontier Drive, West of Elder Avenue and South of Franconia Road. Tax Map 90-2 ((1)) 101A2 and 101B.

PLANNING COMMISSION RECOMMENDATION:
On April 26, 2018, the Planning Commission voted 11-0 (Commissioner Sargeant was absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of PCA 1996-LE-047, subject to the execution of proffers consistent with those dated April 3, 2018;

- Approval of a reaffirmation of a modification of the transitional screening and barrier requirement along the western property boundary, in favor of that shown on the proffered CDP/FDP, as approved on December 8, 1997 and as reflected on the FDPA; and

- Approval of a waiver of the 15 percent minimum required open space in the PDC District, in favor of the open space shown on the FDPA.

Concurrently, the Planning Commission voted 11-0 (Commissioner Sargeant was absent from the meeting) to approve FDPA 1996-LE-047, subject to the development conditions dated April 26, 2018..

ENCLOSED DOCUMENTS:
Planning Commission Verbatim Excerpt and Staff Report available online at:
https://www.fairfaxcounty.gov/planning-zoning/zoning-application-board-packages-fairfax-county-board-supervisors

STAFF:
Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Katelyn Antonucci, Planner, DPZ

Board Agenda Item
June 5, 2018

3:30 p.m.

Public Hearing on PCA 1999-PR-060 (Rocks Tysons Two LLC) to Amend the Proffers for RZ 1999-PR-060 Previously Approved for Mixed-Use Development with an Floor Area Ratio of 1.20 to Permit Modifications to Proffers with no Change to Floor Area Ratio, Located on Approximately 3.77 Acres of Land Zoned PDC, SC and HC (Providence District)

This property is located on the South side of Leesburg Pike, 200 feet West of Old Gallows Road. Tax Map 39-2 ((15)) 9, 11 and 30 and 39-2 ((1)) 7.

PLANNING COMMISSION RECOMMENDATION:
On May 24, 2018, the Planning Commission voted 10-0 (Commissioners Hart and Murphy were absent from the meeting) to recommend to the Board of Supervisors approval of PCA 1999-PR-060, subject to the execution of proffered conditions dated May 3, 2018.

ENCLOSED DOCUMENTS:
Planning Commission Verbatim Excerpt and Staff Report available online at:
https://www.fairfaxcounty.gov/planning-zoning/zoning-application-board-packages-fairfax-county-board-supervisors

STAFF:
Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Daniel Creed, Planner, DPZ

To be deferred to 7/10/18 at 4:00 p.m.

Board Agenda Item
June 5, 2018

3:30 p.m.

Public Hearing on SEA 99-P-046-02 (Flint Hill School) to Amend SE 99-P-046 Previously Approved for a Private School of General Education to Permit the Construction of a Middle School Resulting in an Increase in Enrollment from 700 to 800 and Associated Modifications to Site Design and Development Conditions, Located on Approximately 35.16 Acres of Land Zoned R-1 (Providence District) (Associated with SEA 84-P-105-04)

and

Public Hearing on SEA 84-P-105-04 (Flint Hill School) to Amend SE 84-P-105 Previously Approved for a Private School of General Education to Permit a Decrease in Enrollment from 700 to 500, Located on Approximately 14.7 Acres of Land Zoned R-3 (Providence District) (Associated with SEA 99-P-046-02)

This property is located at 10900,10910,10824, 10816 Oakton Road and 3400, 3320, 3310, 3300, 3308 and 3408 Jermantown Road, Oakton, 22124. Tax Map 47-3 ((1)) 16B,17A, 18, 19, 19A, 20, 20A, 20B, 21A, 22, 22A, 23, 24, 34A, 34B, 34C.

This property is located 3012 Chain Bridge Road, 10429 & 10431 Miller Road and 3044 Jermantown Road, Oakton, 22124. Tax Map 47-2 ((1)) 36A, 37, 38 and 52A.

PLANNING COMMISSION RECOMMENDATION:
The Planning Commission public hearing was deferred from May 17, 2018 until June 28, 2018. The Commission's recommendation will be forwarded to the Board of Supervisors subsequent to that date.

ENCLOSED DOCUMENTS:
Planning Commission Verbatim Excerpt (to be provided after the PC hearing) and Staff Report available online at:
https://www.fairfaxcounty.gov/planning-zoning/zoning-application-board-packages-fairfax-county-board-supervisors

STAFF:
Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Kelly Posusney, Planner, DPZ

Board Agenda Item
June 5, 2018

3:30 p.m.

Public Hearing on RZ 2017-PR-031 (Sunrise Development, Inc. and J127 Education Foundation D/B/A Merritt Academy) to Rezone from R-2 to R-4 to Permit a Private School of General Education, Child Care Center and a Medical Care Facility with an Overall Floor Area Ratio of 0.30, Located on Approximately 6.86 Acres of Land (Providence District) (Concurrent with SEA 86-P-101-06)

and

Public Hearing on SEA 86-P-101-06 (Sunrise Development, Inc. and J127 Education Foundation D/B/A Merritt Academy) to Amend SE 86-P-101 Previously Approved for a Private School of General Education, Child Care Facility and Medical Care Facility to Permit Modifications to Site Design and Development Conditions, Located on Approximately 6.86 Acres of Land Zoned R-4 (Providence District) (Concurrent with RZ 2017-PR-031)

This property is located on the South side of Arlington Boulevard at its intersection with Nutely Street. Tax Map 48-4 ((1)) 49A and 49B.

This property is located at 9207 and 9211 Arlington Boulevard, Fairfax, 22031. Tax Map 48-4 ((1)) 49A and 49B.

PLANNING COMMISSION RECOMMENDATION:
On April 18, 2018, the Planning Commission voted 11-0 (Commissioner Strandlie was not present for the vote) to recommend the following actions to the Board of Supervisors:

- Approval of RZ 2017-PR-031, subject to the execution of proffered conditions dated March 29, 2018;

- Approval of SEA 86-P-101-06, subject to development conditions dated April 12, 2018;

- Approval of a modification of the transitional screening requirement for approximately 56.2 feet along the western portion of the site to that shown on the GDP/SEA Plat;

- Approval of a waiver of the barrier requirement along the western portion of the site; and

- Approval of a waiver to allow a loading space to be shared by the two uses and to allow a loading space not on the lot with the use it serves in accordance with Paragraphs 1 and 2 of Section 11-202 of the Zoning Ordinance.

ENCLOSED DOCUMENTS:
Planning Commission Verbatim Excerpt and Staff Report available online at:
https://www.fairfaxcounty.gov/planning-zoning/zoning-application-board-packages-fairfax-county-board-supervisors

STAFF:
Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Daniel Creed, Planner, DPZ

Board Agenda Item
June 5, 2018

4:00 p.m.

Public Hearing on PCA 82-S-032-02 (Sterling Center LC) to Amend the Proffers for RZ 82-S-032 Previously Approved for Industrial Use to Permit Industrial Use and Associated Modifications to Proffers and Site Design with an Overall Floor Area Ratio of 1.0, Located on Approximately 9.72 Acres of Land Zoned I-6 and WS (Sully District)

This property is located on the West side of Sully Road and South side of Penrose Place Approximately 800 feet East of Lee Road. Tax Map 34-3 ((1)) 30A and 30B.

PLANNING COMMISSION RECOMMENDATION:
On April 19, 2018, the Planning Commission voted 11-0 (Commissioner Sargeant was absent from the public hearing) to recommend to the Board of Supervisors approval of PCA 82-S-032-02, subject to execution of proffers dated April 5, 2018, to include a correction to Proffer Number 4:

> 4. The applicant shall escrow/contribute $100,000 dollars for the construction of a traffic signal at the intersection of Penrose Place and Lee Road prior to the issuance of the first Non-Residential Use Permit (Non-RUP).

ENCLOSED DOCUMENTS:
Planning Commission Verbatim Excerpt and Staff Report available online at:
https://www.fairfaxcounty.gov/planning-zoning/zoning-application-board-packages-fairfax-county-board-supervisors

STAFF:
Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Sharon Williams, Planner, DPZ

REVISED

Board Agenda Item
June 5, 2018

4:00 p.m.

Public Hearing on RZ 2017-MD-027 (Horsepen Run, LLC) to Rezone from R-1 and AN to PDH-5 and AN to Permit Residential Development with an Overall Density of 5.58 Dwelling Units per Acre and Approval of the Conceptual Development Plan, Located on Approximately 65.89 Acres of Land (Dranesville **and Sully** Districts)

This property is located on the East side of Sully Road and South side of Frying Pan Road. Tax Map 24-2 ((1)) 1 and 10.

PLANNING COMMISSION RECOMMENDATION:
On April 26, 2018, the Planning Commission voted 10-0 (Commissioner Hart was not present for the vote and Commissioner Sargeant was absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of RZ 2017-MD-027 and its associated Conceptual Development Plan (CDP), subject to proffers dated April 20, 2018;

- Approval of a modification of Section 6-0303.2B of the Public Facilities Manual to utilize runoff reduction practices to the extent practical for the proposed development in lieu of stormwater detention facilities as shown on the Final Development Plan (FDP);

- Approval of a waiver of Paragraph 3 of Section 13-305 of the Zoning Ordinance to waive the A-B Barrier requirement and B-B and E-E Transitional Screening and Barrier requirements as shown on the Final Development Plan (FDP);

- Approval of a modification of Paragraph 2 of Section 11-302 of the Zoning Ordinance to permit private streets in the proposed development to exceed the maximum 600-foot length limitation as shown on the Final Development Plan (FDP);

- Approval of a modification of Paragraph 2 of Section 6-207 of the Zoning Ordinance to modify the minimum 200 square foot privacy yard for each single-family attached dwelling as shown on the Final Development Plan (FDP);

- Approval of a waiver of Part 4 of Section 11-203 of the Zoning Ordinance to permit a waiver of the loading space requirement for multi-family dwellings;

REVISED

Board Agenda Item
June 5, 2018

- Approval of a waiver of Section 10-0306 of the Public Facilities Manual to permit a waiver of the on-site dumpster pad; and

- Approval of a modification of Paragraph 10 of Section 11-102 of the Zoning Ordinance to permit driveway parking in front of garage parking (i.e, tandem parking) for multifamily 2-over-2 stacked units as shown on the Final Development Plan (FDP).

Concurrently, the Planning Commission voted 10-0 (Commissioner Hart was not present for the vote; Commissioner Sargeant was absent from the meeting) to approve FDP 2017-MD-027 subject to the development conditions dated April 11, 2018.

ENCLOSED DOCUMENTS:
Planning Commission Verbatim Excerpt and Staff Report available online at:
https://www.fairfaxcounty.gov/planning-zoning/zoning-application-board-packages-fairfax-county-board-supervisors

STAFF:
Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Kelly Atkinson, Planner, DPZ

Board Agenda Item
June 5, 2018

4:00 p.m.

Public Hearing on SE 2017-MA-032 (Shirley Investors, LLC) to Permit Provisions for Waiving Open Space Requirements and Provisions for Modification of Minimum Yard Requirements for Certain Existing Structures and Uses, Located on Approximately 8.81 Acres of Land Zoned I-6 (Mason District)

This property is located at 6701 Electronic Drive, Springfield, 22151. Tax Map 80-2 ((1)) 34.

The Board of Supervisors deferred this public hearing at the May 1, 2018 meeting until June 5, 2018 at 4:00 p.m.

PLANNING COMMISSION RECOMMENDATION:
On April 26, 2018, the Planning Commission voted 10-0 (Commissioners Hart and Sargeant were absent from the public hearing) to recommend the following actions to the Board of Supervisors:

- Approval of SE 2017-MA-032, subject to the development conditions dated April 10, 2018;

- Approval of waivers and modifications for proposed Parcels 34H, 34I and 34J (Option A) to include:
    - Modification and waiver of Paragraphs 8 and 12 of Sect. 11-102 of the Zoning Ordinance (permit existing off-street parking spaces to be located closer than 10-feet from a front lot line and all off-street parking spaces shall comply with the geometric design standards per the Public Facilities Manual to permit existing parking spaces with a length less than 18-feet) in favor of that shown on the Special Exception plat;
    - Modification of Paragraph 1 of Sect. 13-202 of the Zoning Ordinance to permit a reduction in the interior parking lot landscaping required from 5-percent in favor of that shown on the Special Exception plat;
    - Waiver of Paragraphs 1 and 2 of Sect. 13-203 of the Zoning Ordinance (4-foot wide peripheral parking lot landscaping strip when a parking lot abuts a property line and 10-foot wide peripheral parking lot landscaping strip when a parking lot abuts right-of-way or a street) in favor of that shown on the Special Exception plat;
    - Waivers of Paragraphs 1, 5, and 14 of Sect. 17-201 of the Zoning Ordinance (construction of pedestrian walkways on-site and/or off-site

other than those proposed with the future development, construction of curb and gutter around all medians that separate off-site parking areas from streets and travel lanes, and installation of street lights in accordance with the Public Facilities Manual) in favor of that shown on the Special Exception plat;
    - Waiver of Sect. 12-0510 of the Public Facilities Manual requiring 10-percent tree canopy coverage for all previously developed property; and

- Approval of a modification for proposed Parcel 34J (Option B) of Paragraphs 1 and 2 of Sect. 13-203 of the Zoning Ordinance (4-foot wide peripheral parking lot landscaping strip when a parking lot abuts a property line and 10-foot wide peripheral parking lot landscaping strip when a parking lot abuts right-of-way or a street) in favor of that shown on the Special Exception plat.

Concurrently, the Planning Commission voted 10-0 (Commissioners Hart and Sargeant were absent from the public hearing) to defer the decision on related application 2232-M17-43 to a date certain of May 3, 2018. The Commission further recommended that the Board of Supervisors public hearing for SE 2017-MA-032 be moved from May 1, 2018 to May 15, 2018 in order for the Board of Supervisors to also consider the Planning Commission's decision on 2232-M17-43.

ENCLOSED DOCUMENTS:
Planning Commission Verbatim Excerpt and the Staff Report is available online at: https://www.fairfaxcounty.gov/planning-zoning/zoning-application-board-packages-fairfax-county-board-supervisors

STAFF:
Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Kelly Atkinson, Planner, DPZ

Board Agenda Item
June 5, 2018

4:00 p.m.

Public Hearing on a Proposed Zoning Ordinance Amendment Re: Articles 8, 10, 18, and Appendix 2 – Minimum Required Rear Yard Coverage Limitations for Single-Family Detached Dwellings

ISSUE:
Zoning Ordinance § 10-103(3) provides that accessory structures and uses on single family detached lots may not cover more than 30% of the minimum required rear yard and there are limited mechanisms for obtaining relief from this restriction. The proposed amendment revises the minimum rear yard coverage limitations to provide options for increasing the by-right percentages of allowable coverage in R-Districts and P-Districts, including an option to exempt P-District lots below 5,000 square feet from the rear yard coverage provisions; to clarify how rear yard coverage is determined; to create a special permit option to increase coverage in R-Districts, and to make other editorial amendments.

PLANNING COMMISSION RECOMMENDATION:
On May 3, 2018, the Planning Commission voted to recommend to the Board of Supervisors adoption of the proposed Zoning Ordinance Amendment, to include the following options as set forth in the Staff Report and Memorandum dated April 26, 2018, to be effective at 12:01 a.m. on the day following adoption:

- A maximum permitted coverage of 30 percent in the minimum required rear yard of R-District lots. A maximum permitted coverage of 50 percent in the minimum required rear yard of P-District lots in excess of 5,000 square feet in land area; and
- With regard to lots of no more than 5,000 square feet in land area in P Districts, Option D as shown in the April 26, 2018 proposed text, which allows a maximum permitted coverage of 75 percent of the minimum required yard, unless otherwise specified on an approved development plan or in a proffered or development condition.

The Planning Commission also made a follow-on motion to direct staff to advertise four options concerning the P-District lots and staff's recommendation that a special permit be made available to increase the percentage of minimum rear yard coverage for lots in the P-District that are not subject to proffered yards, as outlined in the attached Memorandum and proposed text amendment.

A verbatim copy of the Planning Commission Report is enclosed as Attachment 3.

Board Agenda Item
June 5, 2018

RECOMMENDATION:
The County Executive concurs with the Planning Commission recommendation of May 3, 2018.

TIMING:
Board authorization to advertise March 20, 2018; Planning Commission public hearing April 18, 2018 and May 3, 2018, at 7:30 p.m.; Board of Supervisors deferred the public hearing at the May 15, 2018 meeting until June 5, 2018, at 4:00 p.m.

BACKGROUND:
Sect. 10-103 of the Zoning Ordinance sets out the use limitations for all accessory uses and structures. Paragraph 3 states that: "*(a)ll uses and structures accessory to single family detached dwellings, to include those extensions permitted by Sect. 2-412, shall cover no more than thirty (30) percent of the area of the minimum required rear yard*." Currently, the only way to seek relief from this provision is through a variance request in the R-Districts or a Final Development Plan Amendment in P-Districts.

Staff often encounters plats and surveys of single-family detached residential properties showing accessory uses and structures that cover more than 30% of the minimum required rear yard. Most often, staff identifies violations of this provision when residents pursue other zoning approvals, apply for building permits, or attempt to resolve unrelated zoning violations. The most common accessory structures include sheds, detached garages, driveways, and swimming pools and their associated decking. In addition, it is also common to find a residential lot containing extensive patios and low-level decks, children's play equipment, and sports courts. These accessory uses are typically found in the rear yard and, cumulatively, they can easily cover more than 30% of the minimum required rear yard area. In order to allow residents to make sufficient use of their required minimum rear yard, in R-Districts, staff proposes establishing a special permit to allow such uses and structures to exceed the 30% requirement.
In P-Districts, lot sizes are typically much smaller than conventional R-Districts, which severely constrains the usable rear yard area. Increasing the usable space on lots in the P-Districts through a by-right increase in the permitted rear yard coverage would provide residents additional use of the rear portion of their property.

The proposed amendment would provide residents with increased flexibility in the use of their minimum required rear yards. It also would clarify longstanding Zoning Administrator interpretations regarding the calculation of the minimum required rear yard and make an editorial amendment regarding size limitations on children's playhouses.
The amendment would include the following changes:

(1) An option to increase the maximum allowed by-right coverage limitation, from 30% up to 50%, for accessory structures and uses in conventional Residential Districts (R-Districts). However, staff recommends that the Board not increase the permitted rear yard coverage.

(2) An option to increase, from 30% up to 60%, the maximum coverage allowed by right for accessory uses and structures within the minimum required rear yard of any lot exceeding 5,000 square feet and containing a single-family detached dwelling in the P-Districts; however, staff recommends that the Board increase the maximum permitted coverage to 50%. Staff has also provided four different options for the Board to consider regarding P-District lots in the Staff Memorandum, dated April 26, 2018, and its attached proposed Zoning Ordinance amendment.

(3) Add a Group 9 Special Permit option to increase the percentage of coverage, up to 60%, of the minimum required rear yard for single-family detached dwellings in R-Districts and in the P-Districts for lots that are not subject to proffered yards. The proposed Sect. 8-926, entitled "Provisions for Increase in the Percentage of Minimum Required Rear Yard Coverage," would allow the BZA to approve a special permit, subject to additional standards, submission requirements, and conditions.

(4) Amend Sect. 8-914 and Sect. 8-922 to revise the submission requirements for special permits requesting a reduction in yards to add a requirement to include the percentage that the minimum required rear yard is already covered with accessory structures and uses.

(5) Clarify the Use Limitations for Accessory Uses contained in Par. 3 of Sect. 10-103 regarding what is included in coverage calculations.

(6) Clarify how the minimum required rear yard is determined if the BZA approves a special permit or variance permitting a reduction of the minimum required yard.

(7) Specify how to apply the required minimum rear yard for a lot within a P-District that is not subject to proffered rear yards.

(8) Specify that an increase in the percentage of minimum rear yard coverage may be permitted with the approval of a special permit in R-Districts or, for lots located in a P-District, an amendment to the development plan.

(9) Remove the language limiting a child's playhouse to 100 square feet of gross floor area.

(10) Establish a $910 application fee for special permits and final development plan amendments to increase the percentage of coverage of the minimum required rear yard for single-family dwellings.

(11) Amend Appendix 2, Illustrations, to add four plates clarifying coverage calculations as "Illustration 6."

A more detailed discussion of the proposed amendment is set forth in the Staff Report enclosed as Attachment 2.

REGULATORY IMPACT:
If adopted, it is anticipated that there will be a modest increase in the number of special permit applications filed. Review and processing of those special permit applications will be similar to those requesting reductions in the minimum required yards and can be managed using existing staff resources.

FISCAL IMPACT:
The proposed amendment adds a Group 9 Special Permit use, Sect. 8-926, "Provisions for Increase in the Percentage of Minimum Required Rear Yard Coverage." This special permit is proposed to be subject to a $910 application filing fee. Similarly, development plan amendments to increase rear yard coverage on a lot with a single-family detached dwelling in a P-District will also be subject to a $910 application fee. The $910 fee is the same fee that is currently charged for a variance application for an increase in rear yard coverage. Therefore, the fiscal impact of this proposal is negligible.

ENCLOSED DOCUMENTS:
Attachment 1 – Staff Report
Attachment 2 – Staff Memorandum, dated April 26, 2018
Attachment 3 – Planning Commission Verbatim

STAFF:
Robert A. Stalzer, Deputy County Executive
Fred Selden, Director, Department of Planning and Zoning (DPZ)
Leslie B. Johnson, Zoning Administrator (DPZ)
Casey V. Judge, Senior Assistant to the Zoning Administrator (DPZ)

ASSIGNED COUNCIL:
Sara G. Silverman, Assistant County Attorney, Office of the County Attorney

FAIRFAX COUNTY

VIRGINIA

STAFF REPORT

PROPOSED ZONING ORDINANCE AMENDMENT

Articles 8, 10, 18 and Appendix 2 - Minimum Required Rear Yard Coverage Limitations for Single Family Detached Dwellings

PUBLIC HEARING DATES

Planning Commission April 18, 2018 at 7:30 p.m.

Board of Supervisors May 15, 2018 at 4:00 p.m.

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

March 20, 2018

CVJ

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

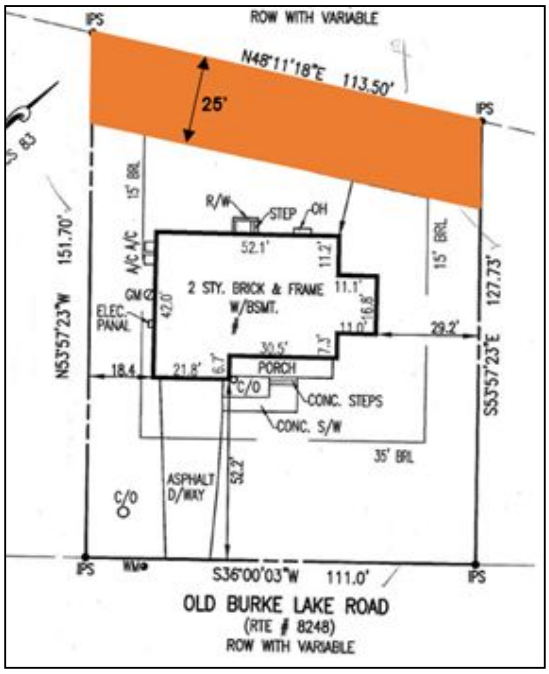
This proposed amendment is on the 2017 Priority 1 Zoning Ordinance Amendment Work Program. Staff initiated it in response to issues that regularly arise on residential properties with numerous or large accessory structures and uses located in the minimum required rear yard. Under the current Zoning Ordinance, accessory structures and uses may not occupy more than 30% of the minimum required rear yard by right. There are only limited mechanisms for requesting an increase in coverage. In a conventional residential district (R-District), a variance application requires stringent standards to be met. In a planned district (P-District), a Final Development Plan Amendment (FDPA) is required to increase the percentage of minimum required rear yard coverage. The Board has specifically asked staff to clarify how the 30% limitation within the minimum required rear yard was determined, to consider increasing the percentage of coverage permitted and potentially eliminate the requirement for certain sized lots, and to consider allowing modifications of the maximum lot coverage requirement in a rear yard to be approved by the Board of Zoning Appeals as a special permit.

Background

The limitation on rear yard coverage serves two main purposes. First, it reduces the bulk impact of structures or uses on adjacent properties, thereby mitigating the intensity of visual "clutter" and noise occurring at the closest point to neighboring properties. Second, it limits the area covered by impervious structures or surfaces in the minimum required yard and thus limits the environmental impacts on adjacent property owners caused by stormwater runoff. Staff regularly encounters plats and surveys of single family detached residential properties showing accessory uses and structures that cover more than 30% of the minimum required rear yard. Most often, staff identifies violations of this provision when residents pursue other zoning approvals, apply for building permits, or attempt to resolve unrelated zoning violations. The most common accessory structures include sheds, detached garages, driveways, and swimming pools and their associated decking. In addition, it is also common to find a residential lot containing extensive patios and low-level decks, children's play equipment, and sports courts. These accessory uses are typically found in the rear yard and, cumulatively, they can easily cover more than 30% of the minimum required rear yard area. Many of these types of structures do not require building permits, and homeowners are not always aware of the 30% coverage limitation.

Sect. 10-103 of the Zoning Ordinance contains the use limitations for all accessory uses and structures. Currently, Par. 3 states that: "*(a)ll uses and structures accessory to single family detached*

dwellings, to include those extensions permitted by Sect. 2-412, shall cover no more than thirty (30) percent of the area of the minimum required rear yard." Article 20 of Zoning Ordinance defines the minimum required yard as "*that minimum distance which the principal building(s) shall be set back from the respective lot lines*." Furthermore, the rear yard is defined as *"(a) yard extending across the full width of the lot and lying between the rear lot line of the lot and the principal building group*." As such, this use limitation applies only to the area of the rear yard extending across the full width of the lot located between the rear lot line and the minimum required building setback line. As referenced in this illustration, the 25-foot minimum required yard (which is the rear yard requirement on most conventional R-District lots) is the area where accessory uses and structures are counted towards coverage. The rear yard requirement is often referred to as the building setback line.

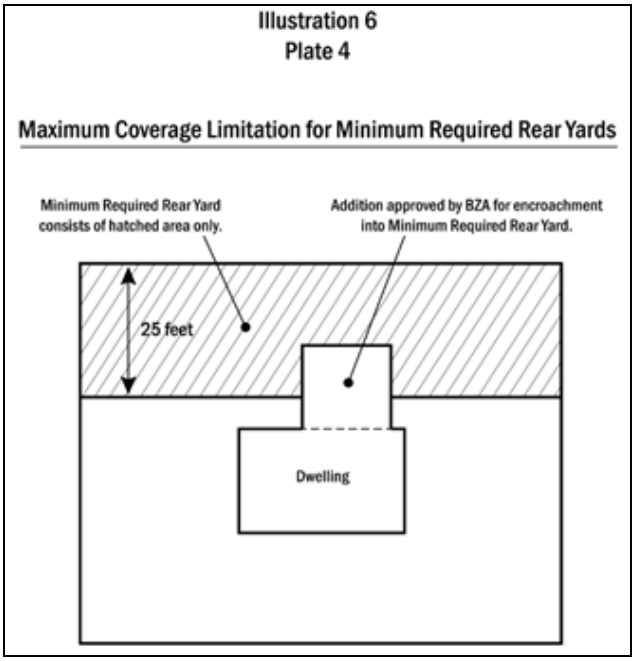


Currently, for family detached dwellings, accessory uses and structures located within the minimum required yard cannot cover more than 30% of this area, but they may cover any area in the rear yard that is not located within the minimum required rear yard, i.e., that area outside the minimum required yard and between the rear plane of the residence. The only way to seek relief from this provision is through a variance request in the R-Districts or a Final Development Plan Amendment in P-Districts.

There are three main areas of difficulty in applying Par. 3 of Sect. 10-103 of the Zoning Ordinance to individual lots. First, there are no specific, codified guidelines as to what constitutes rear yard coverage under Par. 3 of Sect. 10-103. Historically, the Zoning Administrator has dealt with these questions through interpretations. Clearly, footprints of accessory structures, paved or other solid surfaces, and permitted extensions such as eaves, decks, and uncovered stoops outlined in Sect. 2-412 of the Ordinance are specifically included in the current provisions. It has been less clear, however, as to what extent materials and delineations of certain uses, such as a larger mulched area containing children's play equipment, should be considered in coverage calculations. Further the Zoning Administrator has determined that areas clearly delineated for an accessory use are counted towards the coverage calculation. Under longstanding Zoning Administrator interpretations, the entirety of the delineated area would be counted towards coverage calculations. Lastly, the Zoning Administrator has determined that permanently designated sports courts occurring on natural yard surfaces, such as grass or dirt, would also be included in coverage calculations if they were designed with associated structures, markers, or boundaries.

Second, the impact on rear yard coverage of a special permit or variance approval that reduces the minimum rear yard requirement for a lot is not well understood. When the BZA grants an approval to

allow a portion of a dwelling to extend into the rear yard, the overall setback used to determine the coverage area affected by Par. 3 of Sect. 10-103 does not change. The Zoning Administrator has determined that the calculation is still made on the *full minimum required rear yard* for the applicable zoning district, regardless of the reduced rear yard setback approved by the BZA for a particular addition. As a result, the portion of the dwelling approved to extend into the minimum required rear yard is automatically counted towards the 30% maximum coverage area. As illustrated in the above graphic, a special permit was granted for an addition to encroach into the 25-foot required minimum rear yard. Again, under current interpretation, the area of the residence encroaching into the rear yard would be counted towards rear yard coverage despite BZA approval. In such a case, the BZA approval allows encroachment of the structure into the *existing* minimum required rear yard; it does not establish a new minimum required rear yard. The proposed amendment would codify this interpretation.



Third, there are inconsistencies in the relief mechanism for the 30% maximum coverage provisions available to residential properties, depending on whether they are located in a P-District or R-District. Properties developed with single-family detached dwellings in P-Districts may seek permission to exceed the coverage limitation through approval of a Final Development Plan Amendment (FDPA) by the Planning Commission or a Proffered Condition Amendment (PCA) by the Board of Supervisors (Board). However, for residential property owners located in conventional residential zoning districts, the only relief available is BZA approval of a variance, which requires much higher standards for approval than an FDPA or PCA. As prescribed by Sect. 15.2-2309 of the Virginia Code, Sect. 18-404 of the Zoning Ordinance states that the BZA, among other criteria, can approve a variance only when strict application of the Zoning Ordinance *"would unreasonably restrict the utilization of the subject property, or the granting of the variance would alleviate a hardship due to a physical condition relating to the subject property or improvements thereon at the time of the effective date of the Ordinance."* Thus, a variance cannot be granted for a structure or use

on a property, if such is not necessary for the reasonable use of the lot as a whole. In the case of most accessory structures, such as a shed or a swimming pool, this is a difficult standard to meet

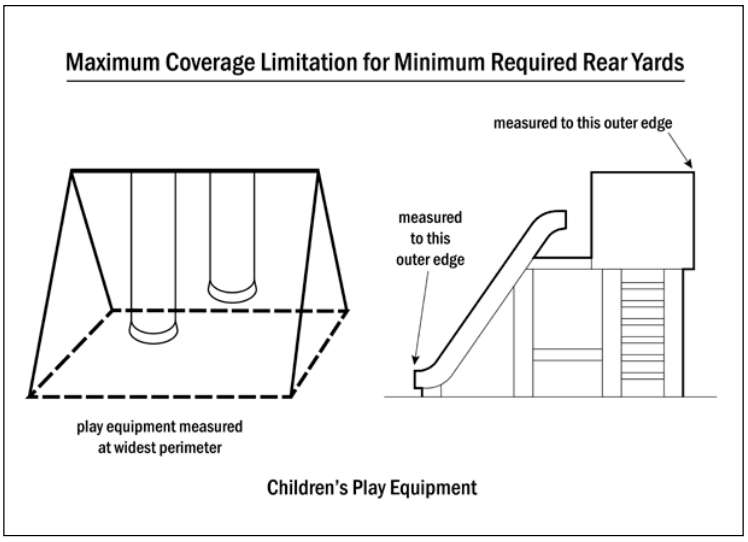
Proposed Amendment

First, the amendment clarifies accessory uses or structures included in the percentage of rear yard coverage. The next step of the amendment will determine what percentage of required minimum rear yard coverage will be regulated. Staff recommends regulating rear yard coverage in two different ways depending on whether the residential lot is located in an R-District or within a P-District. In the conventional R-Districts, staff has advertised a range of the by-right coverage from 30% to 50%. In addition, the amendment proposes a special permit application that will allow R-District homeowners to increase rear yard coverage up to 60%, but only with approval of a special permit from the BZA. In the P-Districts, the amendment proposes to increase the by-right coverage permitted within the minimum required rear yard up to 60%. In addition, staff proposes to exempt P-District lots under 5,000 square feet from this provision.

Clarification on how Coverage is Determined

In order to change, codify, and clarify the interpretations discussed in the Background section of this report, this amendment would clarify how rear yard coverage is determined. As previously discussed, Par. 3 of Sect. 10-103 simply states *"All uses and structures accessory to single family detached dwellings, to include those extensions permitted by Sect. 2-412, shall cover no more than thirty (30) percent of the minimum required rear yard."* Included in the proposed amendment are detailed descriptions of the structures that are counted towards coverage and how they are to be measured. For example, under the proposed amendment, detached accessory structures would be measured at the perimeter area of the outermost horizontal extensions of the equipment, structure, or surface Along with text clarification, the amendment includes four new graphics to increase understanding for staff and applicants. These graphics will be added to Appendix 2 – Illustrations, of the Zoning Ordinance.

In addition, the amendment proposes to clarify which permitted extensions allowed pursuant to Sect. 2-412 of the Zoning Ordinance are to be included in the maximum rear yard coverage. Staff believes that extensions from the dwelling that touch the ground, such as patios, ground level decks, and chimneys, should be included in the calculation of minimum required rear yard coverage. However, staff does not believe that elevated



structures, such as eaves, bay windows, and raised decks should be included in the rear yard coverage calculation. As proposed, projections from the principal dwelling that touch the ground are counted towards coverage but those that do not are specifically excluded from the coverage calculations.

In addition, as previously discussed, the area around children's play equipment included in the rear yard coverage calculation has been interpreted to include the entirety of the play area if there is a delineated space, such as a mulched area enclosed by railroad ties. The amendment differs from this interpretation such that this area would not be counted towards the required minimum rear yard coverage, as the soft-landing material is pervious and will not have stormwater runoff impacts. Therefore, as proposed, the perimeter around the outermost horizontal boundaries of the play equipment will be the only portion counted towards the required minimum rear yard coverage calculation.

R-Districts

In conventional R-Districts, staff has advertised a range of percentages for the Board to consider. The range allows the percentage of minimum yard coverage to remain at the current 30% coverage limitation or to increase up to a maximum of 50% coverage permitted by-right. In addition, staff has included a special permit option to allow individual homeowners to seek increases beyond the 30% limitation. However, anything beyond 60% of coverage would require approval of a variance by the BZA, as is the current practice. Staff believes that 60% is an appropriate maximum coverage to be requested in the conventional zoning districts, as it would allow for additional accessory uses and structures on a case-by-case basis. With BZA approval and the imposition of development conditions to mitigate any potential impacts, this process allows for additional flexibility while also ensuring that adjacent property owners are protected from overly intense uses of rear yards. A new Section 8-926, entitled "Modification of the Minimum Required Rear Yard Limitation," would be added to include additional standards applied by the BZA.

Staff recommends that the Board maintain the 30% rear yard coverage limitation and allow individual homeowners to apply for a special permit if they seek an increase beyond 30% coverage, as it allows for a public process to review each unique scenario, as well as provides the adjacent property owners with an opportunity for input. During the initial outreach process with the Board, staff originally had recommended increasing the permitted rear yard coverage to 40%, as this would allow a majority of the recent variance applications to avoid going through the variance and public hearing process. However, during these outreach efforts, the Board as well as some community groups raised concerns regarding the stormwater impacts of increasing by-right coverage in conventional R-Districts.

In response to these concerns, staff reached out to Stormwater Planning and Wastewater Management, who conducted a review of potential impacts of this increase. Following their analysis, they recommended that the by-right coverage *not* be increased in the conventional R-Districts. With the stormwater analysis showing that allowing up to 50% rear yard coverage by right in conventional R-District lots would contribute to additional drainage complaints and property damage, staff believes the by-right rear yard coverage should remain at 30% for R-Districts. However, stormwater staff would support increasing the allowable minimum required rear yard coverage in P-Districts,

along with the exemption of P-District lots smaller than 5,000 square feet. In addition, stormwater staff supported the special permit process, as this would allow site-specific stormwater solutions to be recommended and implemented, along with development conditions requiring on-site stormwater detention. Creating a special permit to request an increase in the R-Districts would allow an increase in rear yard coverage on a case-by-case basis with review and mitigating development conditions from the BZA.

Urban Forest Management staff also shared concerns regarding the potential impacts of an increase in by-right rear yard coverage in conventional districts both during and after the conclusion of the development process. Most tree preservation areas are in the rear portion of lots. Increasing the ability to encroach into the required minimum rear yard could substantially reduce the amount of preserved canopy coverage for individual lots and subdivisions. Specifically, there is the potential for an increase in requests to deviate from the tree preservation target set out in the Tree Conservation Ordinance, with the submission of site plans or infill lot grading plans. In discussions with Urban Forestry staff, a special permit application would permit the imposition of development conditions requiring sufficient screening and tree preservation on-site.

P-Districts

The amendment proposes to increase the by-right rear yard coverage limitation from 30% to 50% in P-Districts; however, a range of up to 60% is advertised to provide the Board with additional flexibility. Single-family detached dwellings within P-Districts are frequently located on smaller lots than those within conventional districts, and those lots typically have significantly smaller minimum required rear yards. In certain instances, the required minimum rear yard area is so small that no accessory structures or hard surfaces may be constructed without exceeding the 30% limitation. Therefore, staff recommends that P-District lots below 5,000 square feet be exempt from the minimum required rear yard coverage limitation. This design flexibility is justified in conjunction with the open space and amenities located within common spaces throughout a P-District development, as part of the approved rezoning. Staff finds that limiting these small P-District lots to 30% of rear yard coverage is overly restrictive and leaves little practical use of the required minimum rear yard area.

As part of this amendment, staff was asked to research alternative exemptions for the P-District lots other than ones based on individual lot size. One option considered was to exempt a subdivision if the average lot size was under 5,000 square feet in size. Staff reviewed P-District rezoning cases from 1978 to 2016 and found that of the cases researched, over half of the Final Development Plans did not include any metrics related to average lot sizes, and most of these were approved prior to 2002. With these applications, to determine the average lot size, the homeowner or County staff would have to calculate average lot size for the entire subdivision, which can be complicated if dedication of land area or boundary line adjustments have been made over time. Such a process is extremely time consuming and confusing for the average homeowner. In addition, while researching subdivisions that are zoned PDH with an average lot size of 5,000 square feet, the minimum lot size fell extremely far below the 5,000-square-foot lot size exemption, while the maximum lot size was well above the 5,000-square-foot exemption. For example, in the Briarwood Terrace subdivision, the smallest lot within the development was 3,443 square feet in size; the largest lot was 7,567 square

feet in size. Staff is concerned about the potential impacts of lots as large as 7,567 square feet being exempt from the limitation based on the average square-footage of the entire subdivision.

Staff also reviewed the option of averaging the lot sizes with the adjacent lots to exempt the subject property if the average surrounding lot size was below 5,000 square feet. As with the subdivision average lot size approach, this also would require the homeowner or County staff to calculate average lot size for the properties and would entail the same complications. Given this research, staff finds the 5,000-square-foot exemption for an individual lot to be the most appropriate measure.

Staff also assessed the feasibility of providing an "administrative approval" option where a property owner could request approval for lots that exceed the 5,000-square-foot exemption by no more than 10% (or up to 5,500 square feet). During the Board's authorization hearing, it requested that staff advertise this option for the Planning Commission and Board to consider.

While staff is proposing an increase in the by-right maximum coverage up to 50% or 60% in the P-Districts, it is noted that any coverage calculations exceeding the approved amount could continue to be addressed through a Final Development Plan Amendment.

Editorial Amendment

In addition to the proposed language addressing minimum required rear yard coverage limitations, an additional editorial item is proposed in Par. 5 of Sect. 10-102 regarding children's playhouses. Staff proposes removing the limitation of 100 square feet of gross floor area for children's playhouses. Many other enclosed accessory structures, such as doghouses and gazebos, are permitted as accessory uses without such size limitations. Staff does not consider this limitation to serve a purpose, as such structures would be subject to all other considerations for accessory structures including remaining subordinate to the principal dwelling, meeting the location regulations, and meeting the minimum required rear yard coverage limitations.

Special Permit Fee and Submission Requirements

Staff recommends a $910 filing fee for this new special permit application. This is equal to the established filing fee for requesting reductions in minimum required yards as permitted by Par. 1 of Sect. 8-922 and to the fee charged for a variance application. In addition, staff proposes similar submission requirements for this special permit as the ones established for the reduction in minimum required yards.

Additionally, the amendment would modify the submission requirements for special permits requesting a reduction in yards under Sect. 8-914 and Sect. 8-922, to require applicants to include a calculation of the minimum required rear yard coverage. Because problems with existing lot coverage are frequently discovered when applicants request other zoning approvals, this would ensure that staff is provided with a calculation of coverage so that it may identify issues up front. Staff could then direct applicants to resolve issues through simultaneous special permit requests. Staff notes that when multiple special permit types are requested concurrently, only the highest filing fee applies.

Conclusion

The proposed Zoning Ordinance amendment would give owners of single-family detached residential property additional options to seek relief for accessory uses and structures placed within the minimum required rear yard. While the proposed amendment provides for the Board to consider an increase in the by-right required minimum rear yard coverage from 30% up to 50% in R-Districts, due to stormwater concerns staff has recommended that the coverage remain at 30% in the R-Districts. Staff also recommends that the Board create a new special permit option that will allow homeowners to request relief for increased rear yard coverage through a special permit application rather than through a variance. With a special permit application process, the BZA would review such requests to increase coverage on a case-by-case basis and would be able to impose development conditions to mitigate potential impacts. In P-Districts, for lots greater than 5,000 square feet, the by-right coverage percentage would be increased from 30% rear yard coverage to as much as 60%. Lots below 5,000 square feet would be exempt from these coverage limitations. This amendment would also further clarify what is included in the minimum required rear yard coverage calculations. Therefore, staff recommends approval of the proposed amendment with an effective date of 12:01 a.m. on the day following adoption.

PROPOSED AMENDMENT

This proposed Zoning Ordinance amendment is based on the Zoning Ordinance in effect as of March 20, 2018, and there may be other proposed amendments that could affect some of the numbering, order or text arrangement of the paragraphs or sections set forth in this amendment. If any such other amendment is adopted before this amendment, any necessary renumbering or editorial revisions will be administratively incorporated by the Clerk in the printed version of this amendment following Board adoption.

Amend Article 8, Special Permits, Part 9, Group 9 Uses Requiring Special Regulation, as follows:

- **Amend Sect. 8-901, Group 9 Special Permit Uses, by adding a new Par. 25 to read as follows:**

  25. Increase in the percentage of minimum required rear yard coverage for single family detached dwellings.

- **Amend Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements based on Error in Building Location, by adding a new Par. 1L to read as follows:**

  1. Notwithstanding Par. 2 of Sect. 011 above, all applications ~~shall~~ must be accompanied by ten (10) copies of a plat and such plat ~~shall~~ must be presented on a sheet having a maximum size of24" x 36", and one 8 ½" x 11" reduction of the plat. Such plat ~~shall~~ must be drawn to a designated scale of not less than one inch equals fifty feet (1" = 50'), unless a smaller scale is required to accommodate the development. Such plat ~~shall~~ must be certified by a professional engineer, land surveyor, architect, or landscape architect licensed by the State of Virginia and such plat ~~shall~~ must contain the following information:

  L. A calculation showing the percentage of the minimum required rear yard that is covered with any accessory use and structure, in accordance with Par. 3 of Sect. 10-103.

- **Amend Sect. 8-922, Provisions for Reduction of Certain Yard Requirements, by adding a new Par. 11N to read as follows:**

  11. Notwithstanding Par. 2 of Sect. 011 above, all applications ~~shall~~ must be accompanied by fifteen (15) copies of a plat and such plat ~~shall~~ must be presented on a sheet having a maximum size of 24" x 36," and one 8 ½" x 11" reduction of the plat. Such plat ~~shall~~ must be drawn to a designated scale of not less than one inch equals fifty feet (1" = 50'), unless a smaller scale is required to accommodate the development. Such plat ~~shall~~ must be certified by a professional engineer, land

surveyor, architect, or landscape architect licensed by the State of Virginia. Such plat ~~shall~~ must contain the following information:

N. A calculation showing the percentage of the minimum required rear yard that is covered with any accessory use and structure, in accordance with Par. 3 of Sect. 10-103.

- **Add new Sect. 8-926, to read as follows:**

8-926 Provisions for Increase in the Percentage of Minimum Required Rear Yard Coverage

The BZA may approve a special permit to allow an increase in the percentage of coverage of the minimum required rear yard on a lot developed with a single family detached dwelling, subject to the following:

1. This approval will allow no more than 60 percent of the minimum required rear yard to be covered by any accessory structure and use.

2. All accessory structures and uses located on the property must be clearly subordinate in purpose, scale, use, and intent to the principal dwelling.

3. The BZA determines that the existing or proposed accessory structures and uses on the property are harmonious with the surrounding off-site uses and structures in terms of the location, height, bulk, and scale of the surrounding structures, topography, existing vegetation, and the preservation of trees.

4. The BZA determines that the existing or proposed accessory structures and uses on the property will not adversely impact the use or enjoyment of any adjacent property.

5. The BZA determines that the proposed increase in the minimum rear yard coverage is appropriate to accommodate the existing or proposed accessory structures and uses on the lot. Specific factors to be considered include, but are not limited to, the location of the dwelling on the lot; the shape of the lot and its yards; the layout of existing or proposed accessory structures and uses; the availability of alternate locations for the existing or proposed accessory structures and uses outside of the minimum required rear yard; the characteristics of the site, including the presence of steep slopes, floodplains, or Resource Protection Areas; the preservation of existing vegetation and significant trees; the location of a well and/or septic field; the location of easements; and the preservation of historic resources.

6. The BZA may impose such conditions as it deems necessary to satisfy these criteria, including, but not limited to, limitations on the maximum sizes or specific locations of existing or proposed accessory structures and uses, and landscaping or screening requirements.

7. Notwithstanding Par. 2 of Sect. 011 above, all applications must be accompanied by fifteen (15) copies of a plat, and such plat must be presented on a sheet having a

maximum size of 24" x 36", and one 8 ½" x 11" reduction of the plat. Such plat must be drawn to a designated scale of not less than one inch equals fifty feet (1" = 50'), unless a smaller scale is required to accommodate the development. Such plat must be certified by a professional engineer, land surveyor, architect, or landscape architect licensed by the State of Virginia. Such plat must contain the following information:

A. Boundaries of the entire property, with bearings and distances of the perimeter property lines, and of each zoning district.

B. Total area of the property and of each zoning district in square feet or acres.

C. Scale and north arrow, with north, to the extent feasible, oriented to the top of the plat and on all supporting graphics.

D. The location, dimension and height of the principal dwelling, including any extension; and the location, dimension and height of any existing or proposed accessory structure or use. For decks, the height of the finished floor above finished ground level, and for eaves, the height of the eave from finished ground level.

E. All required minimum yards to include front, side and rear; a graphic depiction of the angle of bulk plane, if applicable; and the distance from each existing or proposed structure to lot lines.

F. A calculation showing the percentage of the minimum required rear yard that is covered with existing and/or proposed accessory uses and structures, in accordance with Par. 3 of Sect. 10-103.

G. Means of ingress and egress to the property from a public street(s).

H. If applicable, the location of a well and/or septic field.

I. Location of any existing utility easement having a width of twenty-five (25) feet or more, and all major underground utility easements regardless of width.

J. The location, type and height of any existing and proposed landscaping and screening.

K. Approximate delineation of any floodplain designated by the Federal Emergency Management Agency, United States Geological Survey, or Fairfax County; the delineation of any Resource Protection Area or Resource Management Area; the approximate delineation of any environmental quality corridor as defined in the adopted comprehensive plan; and, if applicable, the distance of any existing or proposed structure from the floodplain, Resource Protection Area and Resource Management Area, or environmental quality corridor.

L. Seal and signature of professional person certifying the plat.

Amend Article 10, Accessory Uses, Accessory Service Uses, and Home Occupations, Part 1, Accessory Uses and Structures as follows:

- Amend the introductory paragraph and Par. 5 of Sect. 10-102, Permitted Accessory Uses, as follows:

Accessory uses and structures ~~shall~~ may include, but are not limited to, the following uses and structures; ~~that~~ any such use or structure ~~shall~~ must be in accordance with the definition of Accessory Use contained in Article 20.

5. Child's playhouse~~, not to exceed 100 square feet in gross floor area,~~ and play equipment.

- Amend Par. 3 of Sect. 10-103, Use Limitations, as follows:

3. ~~All uses and structures accessory to single family detached dwellings, to include those extensions permitted by Sect. 2-412, shall cover no more than thirty (30) percent of the minimum required rear yard~~. The following limitations on coverage of the minimum required rear yard apply to any lot developed with a single family detached dwelling:

   A. All accessory structures and uses may cumulatively cover no more than:

      (1) 30 percent ***[Advertised range is from 30 to 50 percent; however, staff has recommended that coverage remain at 30 percent]*** of the minimum required rear yard on any lot located in an R-District; or

      (2) 50 percent ***[Advertised range is from 30 to 60 percent***) of the minimum required rear yard on any lot located in a P-District and containing more than 5000 square feet of land area, unless otherwise specified on an approved development plan or in a proffered or development condition. There is no coverage limit for a lot located in a P-District and containing no more than 5000 square feet of land area. ***[Advertised to allow an administrative exemption from the rear yard coverage restriction for any such P-District lot that measures up to 10% larger than 5,000 square feet.]***

   B. The minimum required rear yard coverage includes the following:

      (1) Any fully or partially roofed freestanding accessory structure, such as a garage, shed, gazebo, and other similar structure, including any horizontal projection. (Reference Plate 1 of Illustration 6 in Appendix 2);

      (2) Any other freestanding accessory structure, including any children's play equipment, sports court, pool and associated decking, and any other similar structure measured around the perimeter of the outermost horizontal extensions of the equipment, structure, or surface (Reference Plate 2 of Illustration 6 in Appendix 2);

      (3) Any horizontal projection from the principal dwelling that touches the ground, such as a chimney, stair, stoop, HVAC equipment, patio, deck and other similar projection. However, any horizontal projection from the principal dwelling which

does not touch the ground (other than the support posts for a deck), including an eave, bay window, open deck, or other similar projection is not included in the minimum required rear yard coverage (Reference Plate 3 of Illustration 6 in Appendix 2);

(4) Any driveway, parking space, walkway and sidewalk greater than 5 feet in width, regardless of the surface or edging material used.

C. Any portion of the principal dwelling that receives approval to encroach into the minimum required rear yard is not included in the minimum required rear yard calculation (Reference Plate 4 of Illustration 6 in Appendix 2).

D. For the purposes of this provision, for any single family detached lot in a P-District that is not subject to a proffered condition establishing minimum rear yards, the required minimum rear yard will be governed by the regulations of that conventional residential zoning district which most closely characterizes the given development.

E. An increase in the percentage of minimum rear yard coverage may be permitted in accordance with the provisions of Part 9 of Article 8 for lots located in an R-District or with approval of an amendment to the development plan for lots located in a P-District.

Amend Article 18, Administration, Amendments, Violations and Penalties, Part 1, Administration, to read as follows:

- **Revise Sect. 106, Applications and Zoning Compliance Letter Fees:**

- **Amend Par. 1, Group 9 Special Permit entries, as follows:**

1. Application for a variance, appeal, special permit or special exception:

Application for a:

Group 9 special permit

Open air produce stand	$1810
Accessory dwelling unit; modification to the limitations on the keeping of animals	$435
Increase in fence and/or wall height in any front yard on a single family dwelling lot	$435
Increase in fence and/or wall height in any front yard on all other uses	$2500
Modification to minimum yard requirements for R-C lots	$185
Error in building location; reduction of certain yard requirements on a single family dwelling lot; modification of minimum yard requirements for certain existing structures and uses; certain additions to an existing single family	$910

	detached dwelling when the existing dwelling extends into a minimum required yard by more than fifty (50) percent and/or is closer than five (5) feet to a lot line; noise barriers on a single residential lot; modification of grade for single family detached dwellings; <u>increase in the percentage of minimum required rear yard coverage for single family detached dwellings</u>	
	Reduction of certain yard requirements on all other uses	$8180
	All other uses	$16375

- **Amend Par. 2, Application for an amendment to the Zoning Map entries, as follows:**

•	Amendments to a previously approved proffered condition and/or development plan, final development plan, conceptual development plan, PRC plan or concurrent conceptual/final development plan for:	
	o Increase in fence and/or wall height on a single family lot	$435
	o A reduction of certain yard requirements on a single family lot; or	$910
	o <u>Increase in coverage limitation for minimum required rear yards</u>	<u>$910</u>
	o Increase in fence and/or wall height on all other uses; or	$2500
	o A reduction of certain yard requirements on all other uses; or	$8180
	o The addition of or modification to an independent living facility for low income tenants.	$1100

Amend Appendix 2, Illustrations, to add the following Illustration 6, Plates 1-4, as follows:

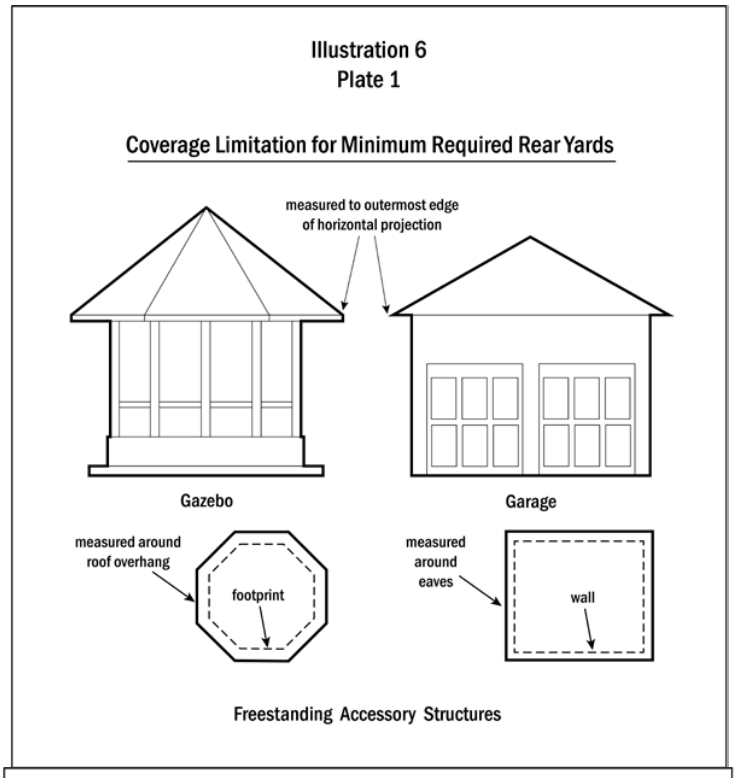


Illustration 6
Plate 1
Coverage Limitation for Minimum Required Rear Yards
measured to outermost edge
of horizontal projection
Gazebo
Garage
measured around
roof overhang
footprint
measured
around
eaves
wall
Freestanding Accessory Structures

1

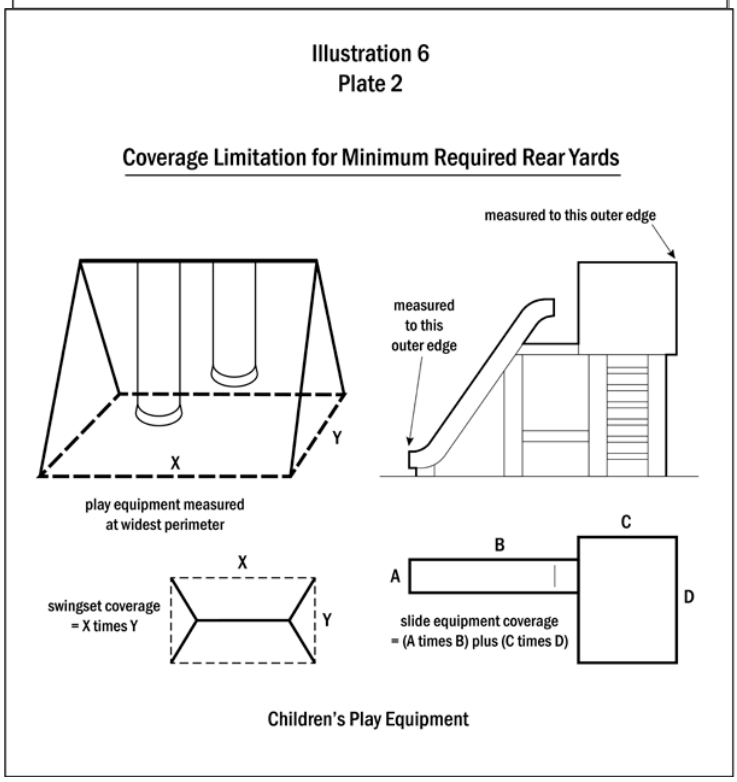
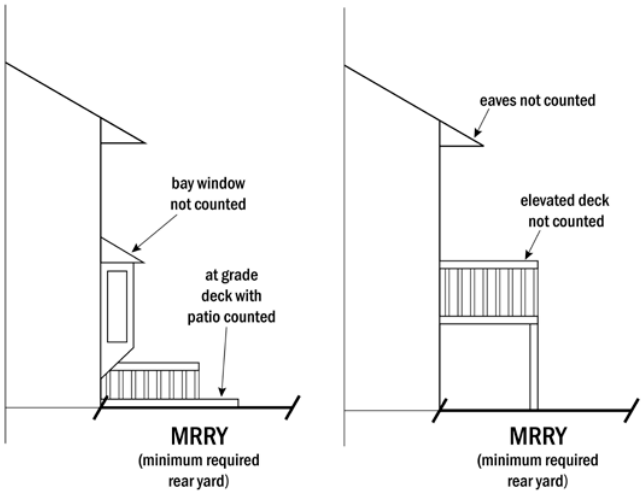


Illustration 6
Plate 2
Coverage Limitation for Minimum Required Rear Yards
measured to this outer edge
measured
to this
outer edge
X
Y
play equipment measured
at widest perimeter
X
swingset coverage
= X times Y
Y
C
B
A
D
slide equipment coverage
= (A times B) plus (C times D)
Children's Play Equipment

2

Illustration 6
Plate 3

Coverage Limitation for Minimum Required Rear Yards

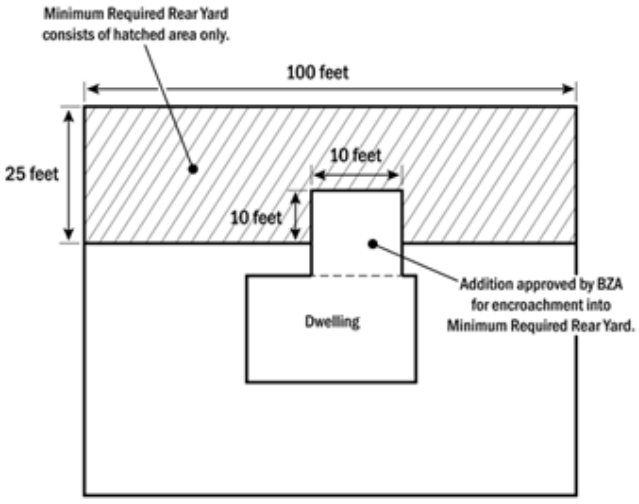


Horizontal Projections from Principal Dwelling

1

Illustration 6
Plate 4

Coverage Limitation for Minimum Required Rear Yards



Minimum Required Rear Yard area = (25 times 100) minus (10 times 10) = 2500 sf minus 100 sf = 2400 sf

Minimum Required Rear Yard with Previously Approved Encroachment Excluded

2

County of Fairfax, Virginia

MEMORANDUM

DATE: April 26, 2018

TO: Peter F. Murphy, Chairman
Members, Fairfax County Planning Commission

FROM: Casey Judge, Senior Assistant to the Zoning Administrator
Zoning Administration Division

SUBJECT: Revised Text for Minimum Required Rear Yard Coverage Limitations for Single Family Detached Dwellings Ordinance Amendment
Planning Commission Decision-Only – May 3, 2018

On March 20, 2018, the Board of Supervisors authorized advertisement of a proposed Zoning Ordinance amendment to revise the restrictions on lot coverage in the minimum required rear yards of single-family detached dwellings. Among other things, that amendment would exempt P-District lots of no more than 5,000 square feet from any restriction on the amount of coverage in their rear yards. As a part of its authorization, the Board directed staff to craft proposed text creating an additional administrative exemption for P-District lots that were slightly greater in size than 5,000 square-feet.

On March 27, 2018, staff published its report for the proposed Zoning Ordinance amendment regarding rear yard coverage. As a part of this report, staff noted that it was working on crafting the requested text. During subsequent conversations, however, uniformity concerns were identified regarding the standards to be applied to such an administrative exemption. As such, staff does not recommend an administrative exemption for P-District lots.

At the Planning Commission's April 18, 2018, public hearing on this proposed amendment, Commissioners expressed concerns regarding any exemption of P-District lots from the rear yard coverage limitations. Staff originally advertised a range of by-right percentages for all P-District lots over 5,000 square feet, but it was requested that staff also propose a range of options to consider regarding P-District lots no larger than 5,000 square feet. The following details the different options staff has developed:

Option A:
This option is staff's recommendation of a maximum rear yard coverage of 50% [advertised range of 30-60%] for P-District lots larger than 5,000 square feet. Staff also recommends that P-District lots of no more than 5,000 square feet be exempt from lot coverage regulations. This option would not require re-advertising prior to the Board of Supervisors' hearing.

Department of Planning and Zoning
Zoning Administration Division
Ordinance Administration Branch
12055 Government Center Parkway, Suite 807
Fairfax, Virginia 22035-5505
Phone 703-324-1314 FAX 703-803-6372
www.fairfaxcounty.gov/dpz

Option B:
Option B applies the 30-60% [advertised range] coverage limitation to all P-District lots, without exempting lots of 5,000 square feet or less in size. Staff suggests that a 50% maximum be applied. This option also would not require re-advertisement prior to the Board of Supervisors' hearing.

Option C:
Option C proposes a sliding scale for P-District lots that are slightly larger than the 5,000-square-foot threshold. The Planning Commission briefly discussed this option at its April 18 hearing. In this sliding scale, a range of percentages are proposed depending on the lot size. For example, a lot of 5,101 square feet would be permitted 80% coverage within its required minimum rear yard. This option would require re-advertising prior to the Board of Supervisors' hearing. An example of the sliding scale for lot sizes and percentage ranges is included below:

Lot Size	Max. Rear Yard Coverage
Up to 5,000 SF	100%
5,001–5,100 SF	90%
5,101–5,200 SF	80%
5,201–5,300 SF	70%
5,301–5,400 SF	60%
5,401 or more SF	50%

Option D:
The final option proposes the 30-60% limitation for P-District lots exceeding 5,000 square feet but allows a 75% coverage limitation on those lots of 5,000 square feet or less. This option would require re-advertisement prior to the Board of Supervisors' hearing.

In addition to the noted options above, the revised text also clarifies Part 3E of Section 10-103, which allows the approval of a FDPA or by a Special Permit on P-District lots.

In conclusion, Staff continues to recommend Option A with an increase in the by-right percentage of coverage to 50% on the P-District lots and an exemption from the coverage requirements for all such lots of no more than 5,000 square feet. In addition, the proposal regarding conventional R Districts has remained unchanged with staff recommending the by-right percentage remain at 30% and a Special Permit option be created for applicants requesting up to 60% of rear yard coverage.

Please contact me at 703-324-1314 with any further questions.

CVJ

Attachment: Proposed text dated April 26, 2018

PROPOSED AMENDMENT
Revised April 26, 2018

This proposed Zoning Ordinance amendment is based on the Zoning Ordinance in effect as of March 20, 2018, and there may be other proposed amendments that could affect some of the numbering, order or text arrangement of the paragraphs or sections set forth in this amendment. If any such other amendment is adopted before this amendment, any necessary renumbering or editorial revisions will be administratively incorporated by the Clerk in the printed version of this amendment following Board adoption.

Changes to the proposed text contained in the Staff Report (dated March 20, 2018) are shown with strikethrough and shaded italics.

Amend Article 8, Special Permits, Part 9, Group 9 Uses Requiring Special Regulation, as follows:

- **Amend Sect. 8-901, Group 9 Special Permit Uses, by adding a new Par. 25 to read as follows:**

  25. Increase in the percentage of minimum required rear yard coverage for single family detached dwellings.

- **Amend Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements based on Error in Building Location, by adding a new Par. 1L to read as follows:**

  1. Notwithstanding Par. 2 of Sect. 011 above, all applications ~~shall~~ must be accompanied by ten (10) copies of a plat and such plat ~~shall~~ must be presented on a sheet having a maximum size of24" x 36", and one 8 ½" x 11" reduction of the plat. Such plat ~~shall~~ must be drawn to a designated scale of not less than one inch equals fifty feet (1" = 50'), unless a smaller scale is required to accommodate the development. Such plat ~~shall~~ must be certified by a professional engineer, land surveyor, architect, or landscape architect licensed by the State of Virginia and such plat ~~shall~~ must contain the following information:

  L. A calculation showing the percentage of the minimum required rear yard that is covered with any accessory use and structure, in accordance with Par. 3 of Sect. 10-103.

- **Amend Sect. 8-922, Provisions for Reduction of Certain Yard Requirements, by adding a new Par. 11N to read as follows:**

  11. Notwithstanding Par. 2 of Sect. 011 above, all applications ~~shall~~ must be accompanied by fifteen (15) copies of a plat and such plat ~~shall~~ must be presented on a sheet having a maximum size of 24" x 36," and one 8 ½" x 11" reduction of the plat.

Such plat ~~shall~~ must be drawn to a designated scale of not less than one inch equals fifty feet (1" = 50'), unless a smaller scale is required to accommodate the development. Such plat ~~shall~~ must be certified by a professional engineer, land surveyor, architect, or landscape architect licensed by the State of Virginia. Such plat ~~shall~~ must contain the following information:

N. A calculation showing the percentage of the minimum required rear yard that is covered with any accessory use and structure, in accordance with Par. 3 of Sect. 10-103.

- **Add new Sect. 8-926, to read as follows:**

8-926 Provisions for Increase in the Percentage of Minimum Required Rear Yard Coverage

The BZA may approve a special permit to allow an increase in the percentage of coverage of the minimum required rear yard on a lot developed with a single family detached dwelling, subject to the following:

1. This approval will allow no more than 60 percent of the minimum required rear yard to be covered by any accessory structure and use.

2. All accessory structures and uses located on the property must be clearly subordinate in purpose, scale, use, and intent to the principal dwelling.

3. The BZA determines that the existing or proposed accessory structures and uses on the property are harmonious with the surrounding off-site uses and structures in terms of the location, height, bulk, and scale of the surrounding structures, topography, existing vegetation, and the preservation of trees.

4. The BZA determines that the existing or proposed accessory structures and uses on the property will not adversely impact the use or enjoyment of any adjacent property.

5. The BZA determines that the proposed increase in the minimum rear yard coverage is appropriate to accommodate the existing or proposed accessory structures and uses on the lot. Specific factors to be considered include, but are not limited to, the location of the dwelling on the lot; the shape of the lot and its yards; the layout of existing or proposed accessory structures and uses; the availability of alternate locations for the existing or proposed accessory structures and uses outside of the minimum required rear yard; the characteristics of the site, including the presence of steep slopes, floodplains, or Resource Protection Areas; the preservation of existing vegetation and significant trees; the location of a well and/or septic field; the location of easements; and the preservation of historic resources.

6. The BZA may impose such conditions as it deems necessary to satisfy these criteria, including, but not limited to, limitations on the maximum sizes or specific locations of existing or proposed accessory structures and uses, and landscaping or screening requirements.

7. Notwithstanding Par. 2 of Sect. 011 above, all applications must be accompanied by fifteen (15) copies of a plat, and such plat must be presented on a sheet having a maximum size of 24" x 36", and one 8 ½" x 11" reduction of the plat. Such plat must be drawn to a designated scale of not less than one inch equals fifty feet (1" = 50'), unless a smaller scale is required to accommodate the development. Such plat must be certified by a professional engineer, land surveyor, architect, or landscape architect licensed by the State of Virginia. Such plat must contain the following information:

A. Boundaries of the entire property, with bearings and distances of the perimeter property lines, and of each zoning district.

B. Total area of the property and of each zoning district in square feet or acres.

C. Scale and north arrow, with north, to the extent feasible, oriented to the top of the plat and on all supporting graphics.

D. The location, dimension and height of the principal dwelling, including any extension; and the location, dimension and height of any existing or proposed accessory structure or use. For decks, the height of the finished floor above finished ground level, and for eaves, the height of the eave from finished ground level.

E. All required minimum yards to include front, side and rear; a graphic depiction of the angle of bulk plane, if applicable; and the distance from each existing or proposed structure to lot lines.

F. A calculation showing the percentage of the minimum required rear yard that is covered with existing and/or proposed accessory uses and structures, in accordance with Par. 3 of Sect. 10-103.

G. Means of ingress and egress to the property from a public street(s).

H. If applicable, the location of a well and/or septic field.

I. Location of any existing utility easement having a width of twenty-five (25) feet or more, and all major underground utility easements regardless of width.

J. The location, type and height of any existing and proposed landscaping and screening.

K. Approximate delineation of any floodplain designated by the Federal Emergency Management Agency, United States Geological Survey, or Fairfax County; the delineation of any Resource Protection Area or Resource Management Area; the approximate delineation of any environmental quality corridor as defined in the adopted comprehensive plan; and, if applicable, the distance of any existing or proposed structure from the floodplain, Resource Protection Area and Resource Management Area, or environmental quality corridor.

L. Seal and signature of professional person certifying the plat.

Amend Article 10, Accessory Uses, Accessory Service Uses, and Home Occupations, Part 1, Accessory Uses and Structures as follows:

- Amend the introductory paragraph and Par. 5 of Sect. 10-102, Permitted Accessory Uses, as follows:

Accessory uses and structures ~~shall~~ may include, but are not limited to, the following uses and structures; ~~that~~ any such use or structure ~~shall~~ must be in accordance with the definition of Accessory Use contained in Article 20.

5. Child's playhouse~~, not to exceed 100 square feet in gross floor area,~~ and play equipment.

- Amend Par. 3 of Sect. 10-103, Use Limitations, as follows:

3. ~~All uses and structures accessory to single family detached dwellings, to include those extensions permitted by Sect. 2-412, shall cover no more than thirty (30) percent of the minimum required rear yard~~. The following limitations on coverage of the minimum required rear yard apply to any lot developed with a single family detached dwelling:

A. All accessory structures and uses may cumulatively cover no more than:

(1) 30 percent ***[Advertised range is from 30 to 50 percent; however, staff has recommended that coverage remain at 30 percent]*** of the minimum required rear yard on any lot located in an R District; or

Option A:

(2) 50 percent ***[Advertised range is from 30 to 60 percent***) of the minimum required rear yard on any lot located in a P District and containing more than 5,000 square feet of land area, unless otherwise specified on an approved development plan or in a proffered or development condition. There is no coverage limit for a lot located in a P District and containing no more than 5,000 square feet of land area.

Option B:

*(2) 50 percent **[Advertised range is from 30 to 60 percent**) of the minimum required rear yard on any lot located in a P District, unless otherwise specified on an approved development plan or in a proffered or development condition.*

Option C:

(2) As presented in the following sliding scale, P District lots are subject to the following, unless otherwise specified on an approved development plan or in a proffered or development condition:

Lot Size	Max. Rear Yard Coverage
Up to 5,000 SF	100%
5,001–5,100 SF	90%
5,101–5,200 SF	80%
5,201–5,300 SF	70%
5,301–5,400 SF	60%
5,401or more SF	50%

Option D:

*(2) 50 percent **[Advertised range is from 30 to 60 percent]** of the minimum required rear yard on any lot located in a P District and containing more than 5,000 square feet of land area, unless otherwise specified on an approved development plan or in a proffered or development condition, or 75 percent of the minimum required rear yard for lots containing no more than 5,000 square feet of land area, unless otherwise specified on an approved development plan or in a proffered or development condition.*

B. The minimum required rear yard coverage includes the following:

(1) Any fully or partially roofed freestanding accessory structure, such as a garage, shed, gazebo, and other similar structure, including any horizontal projection. (Reference Plate 1 of Illustration 6 in Appendix 2);

(2) Any other freestanding accessory structure, including any children's play equipment, sports court, pool and associated decking, and any other similar structure measured around the perimeter of the outermost horizontal extensions of the equipment, structure, or surface (Reference Plate 2 of Illustration 6 in Appendix 2);

(3) Any horizontal projection from the principal dwelling that touches the ground, such as a chimney, stair, stoop, HVAC equipment, patio, deck and other similar projection. However, any horizontal projection from the principal dwelling which does not touch the ground (other than the support posts for a deck), including an eave, bay window, open deck, or other similar projection is not included in the minimum required rear yard coverage (Reference Plate 3 of Illustration 6 in Appendix 2);

(4) Any driveway, parking space, walkway and sidewalk greater than 5 feet in width, regardless of the surface or edging material used.

C. Any portion of the principal dwelling that receives approval to encroach into the minimum required rear yard is not included in the minimum required rear yard calculation (Reference Plate 4 of Illustration 6 in Appendix 2).

D. For the purposes of this provision, for any single family detached lot in a P District that is not subject to a proffered condition establishing minimum rear yards, the required minimum rear yard will be governed by the regulations of that conventional residential zoning district which most closely characterizes the given development.

E. An increase in the percentage of minimum rear yard coverage may be permitted in accordance with the provisions of Part 9 of Article 8 for lots located in an R District. *For lots located in a P District, an increase in the percentage of minimum rear yard coverage may be permitted* with approval of an amendment to the development plan *if subject to proffered yards or by Special Permit in accordance with Part 9 of Article 8 if not subject to proffered yards.*

Amend Article 18, Administration, Amendments, Violations and Penalties, Part 1, Administration, to read as follows:

- **Revise Sect. 106, Applications and Zoning Compliance Letter Fees:**

- **Amend Par. 1, Group 9 Special Permit entries, as follows:**

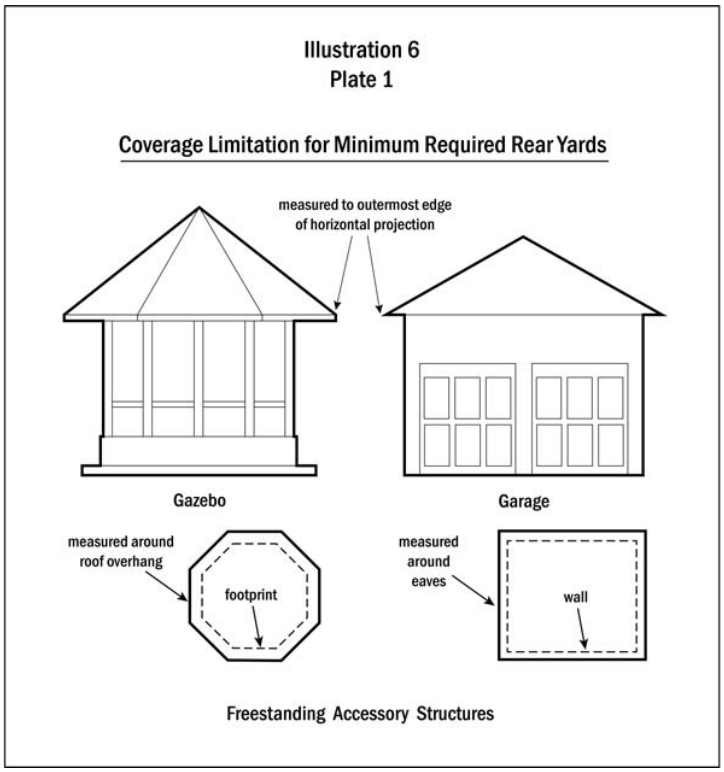
1. Application for a variance, appeal, special permit or special exception:

Application for a:	
Group 9 special permit	
Open air produce stand	$1810
Accessory dwelling unit; modification to the limitations on the keeping of animals	$435
Increase in fence and/or wall height in any front yard on a single family dwelling lot	$435
Increase in fence and/or wall height in any front yard on all other uses	$2500
Modification to minimum yard requirements for R-C lots	$185
Error in building location; reduction of certain yard requirements on a single family dwelling lot; modification of minimum yard requirements for certain existing structures and uses; certain additions to an existing single family detached dwelling when the existing dwelling extends into a minimum required yard by more than fifty (50) percent and/or is closer than five (5) feet to a lot line; noise barriers on a single residential lot; modification of grade for single family detached dwellings; increase in the percentage of minimum required rear yard coverage for single family detached dwellings	$910
Reduction of certain yard requirements on all other uses	$8180
All other uses	$16375

- **Amend Par. 2, Application for an amendment to the Zoning Map entries, as follows:**

- Amendments to a previously approved proffered condition and/or development plan, final development plan, conceptual development plan, PRC plan or concurrent conceptual/final development plan for:
  - o Increase in fence and/or wall height on a single family lot $435
  - o A reduction of certain yard requirements on a single family lot; or $910
  - o <u>Increase in coverage limitation for minimum required rear yards</u> <u>$910</u>
  - o Increase in fence and/or wall height on all other uses; or $2500
  - o A reduction of certain yard requirements on all other uses; or $8180
  - o The addition of or modification to an independent living facility for low income tenants. $1100

Amend Appendix 2, Illustrations, to add the following Illustration 6, Plates 1-4, as follows:



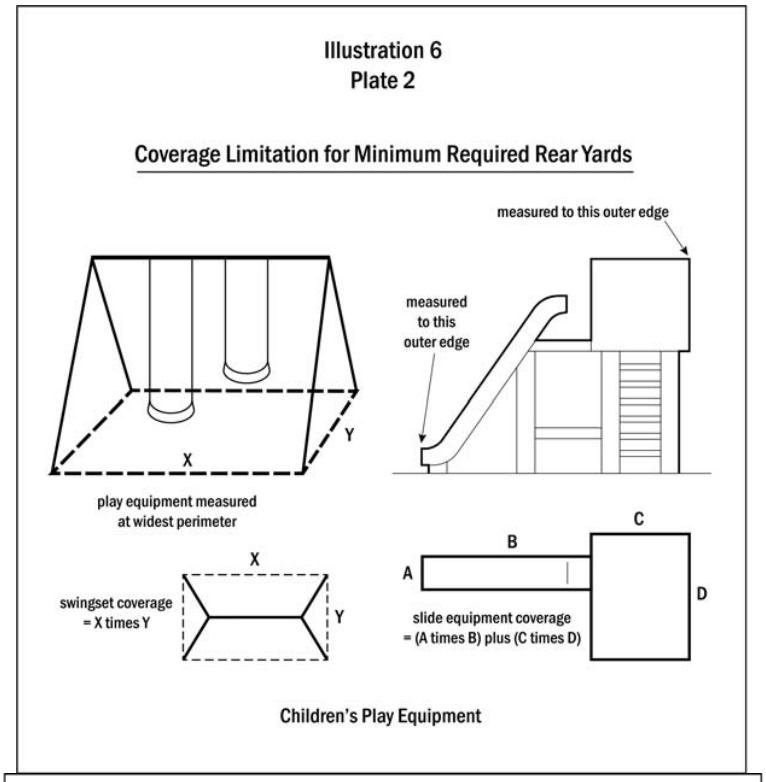


Illustration 6
Plate 2
Coverage Limitation for Minimum Required Rear Yards
measured to this outer edge
measured to this outer edge
X
Y
play equipment measured at widest perimeter
X
Y
swingset coverage = X times Y
B
C
A
D
slide equipment coverage = (A times B) plus (C times D)
Children's Play Equipment

1

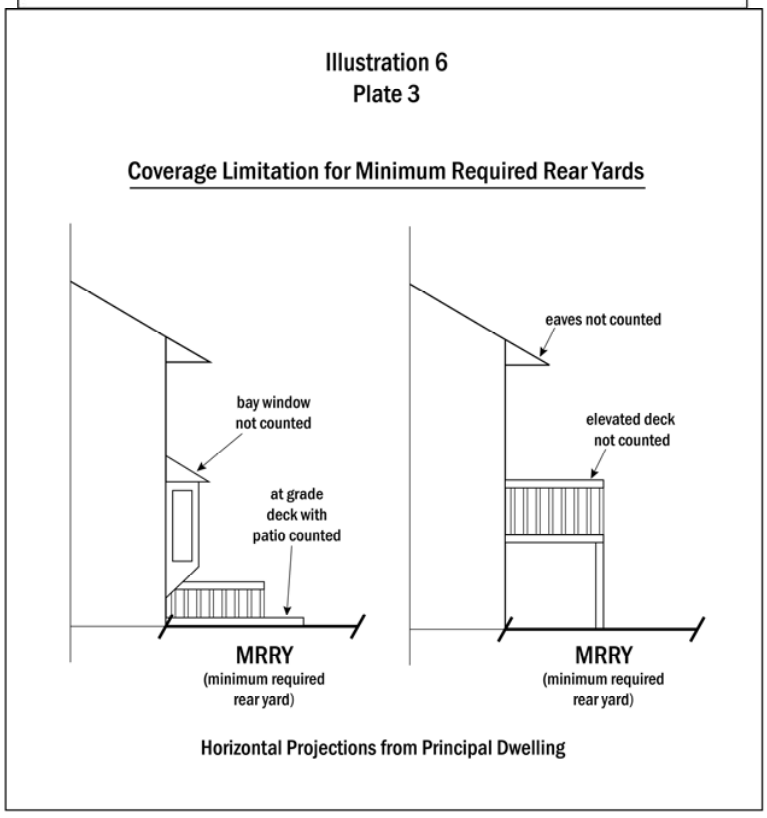
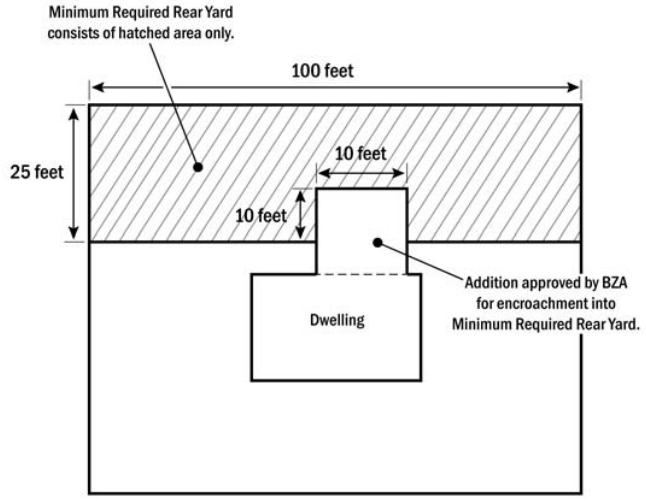


Illustration 6
Plate 3
Coverage Limitation for Minimum Required Rear Yards
bay window not counted
at grade deck with patio counted
MRRY
(minimum required rear yard)
eaves not counted
elevated deck not counted
MRRY
(minimum required rear yard)
Horizontal Projections from Principal Dwelling

2

Illustration 6
Plate 4

Coverage Limitation for Minimum Required Rear Yards



Minimum Required Rear Yard area = (25 times 100) minus (10 times 10) = 2500 sf minus 100 sf = 2400 sf

Minimum Required Rear Yard with Previously Approved Encroachment Excluded

1

County of Fairfax, Virginia
Planning Commission Meeting
May 3, 2018
Verbatim Excerpt

ZONING ORDINANCE AMENDMENT – ARTICLES 8, 10, 18 AND APPENDIX 2 - MINIMUM REQUIRED REAR YARD COVERAGE LIMITATIONS FOR SINGLE FAMILY DETACHED DWELLINGS – An amendment to Chapter 112 (the Zoning Ordinance) of the 1976 Code of the County of Fairfax, as follows:

(1) Amend Sect. 10-102, Permitted Accessory Uses, to remove the 100-square-foot size limitation on a child's playhouse.

(2) Amend Par. 3 of Section 10-103 as follows:
a. To increase, from 30% up to 50%, the maximum coverage allowed by right for accessory uses and structures within the minimum required rear yard of any lot containing a single-family detached dwelling in an R-District.
b. To increase, from 30% up to 60%, the maximum coverage allowed by right for accessory uses and structures within the minimum required rear yard of any lot containing a single-family detached dwelling in the P-Districts and to exempt from the maximum rear yard coverage restriction any such P District lot that does not exceed 5,000 square feet of land area.
c. To clarify which structures and uses are included in the rear yard coverage calculations, specifically freestanding accessory structures, projections from the principal dwelling that touch the ground, and driveways, parking spaces, sidewalks, and walkways that are greater than 5 feet in width.
d. To specify that any portion of the principal dwelling that receives approval to encroach into the minimum required rear yard is not included in the rear yard coverage calculation.
e. To specify that, for the purposes of this provision, for a lot within a P-District that is not subject to proffered rear yards, the required minimum rear yard is governed by the regulations of that conventional residential zoning district which most closely characterizes the given development.
f. To specify that an increase in the percentage of minimum rear yard coverage may be permitted with the approval of a special permit or, for lots located in a P District, an amendment to the development plan.

(3) Revise Article 8, Sect. 8-901 to add a new special permit use to increase the percentage coverage of the minimum required rear yard for single-family detached dwellings, and add a new Section 8-926, entitled "Provisions for Increase in the Percentage of Minimum Required Rear Yard Coverage," to allow for the BZA to approve a special permit to increase the maximum coverage of minimum required rear yards. This section sets out additional standards and submission requirements that would have to be met for the approval of such a special permit, including that the approval will allow no more than 60 percent of the minimum required rear yard to be covered by any accessory structure and use and allows the BZA to impose conditions it deems necessary to satisfy these standards.

(4) Amend Sect. 8-914 and 8-922 to revise the submission requirements to add a requirement to include the percentage that the minimum required rear yard is covered with accessory structures and uses.

(5) Pursuant to authority granted by § 15.2-107 and §15.2-2286 (A) (6) of the Code of Virginia, amend Article 18, Par. 1, Sect. 106 to establish a $910 fee for a Group 9, Special

Permit to increase rear yard coverage on a lot with a single-family detached dwelling in an R-District. In addition, Par. 2 of Section 106 will be amended to establish a $910 fee for a development plan amendment to increase rear yard coverage on a lot with a single-family detached dwelling in a P-District.

(6) Amend Appendix 2, Illustrations, to add four plates clarifying coverage calculations as "Illustration 6." (Countywide)

Decision Only During Commission Matters
(Public Hearing held on April 18, 2018)

Commissioner Hart: Thank you, Mr. Chairman. On April 18, the Commission had a public hearing on a Zoning Ordinance Amendment for minimum rear yard coverage for single family detached dwellings, and deferred decision until tonight. I want to thank our staff team, particularly Casey Judge, Drew Hushour, Ellie Codding, Randy Bartlett and the Zoning Administrator, Leslie Johnson, and also David Stoner in the County Attorney's office, for their fine work on this project, including extensive community outreach. I also want to thank the citizens and groups who testified and submitted written comments. I also want to thank my colleagues who have weighed in, and there once again is a spectrum of opinions as to the details. This amendment was originally intended to address a couple recurring problems, the lack of flexibility for homeowners in a couple unfortunate P district subdivisions to install patios, decks and porches in the minimum rear yard without filing an FCPA – FDPA, excuse me. This is what happens when – when I'm the typist. Sometimes referred to as the Kingstowne problem, and the dilemma for innocent homeowners purchasing an existing home with a rear yard swimming pool who receive a violation for minimum rear yard coverage, having bought the zoning violation along with their new home, without having done anything. With a single-family home, with an existing swimming pool, concrete deck and a small pump house, the homeowner may instantly be in violation, and may be stuck between ripping out the pool and concrete deck, or obtaining a variance, for which the standards are very severe. The Board has wanted to accommodate more flexibility for homeowners in both these scenarios. This amendment also addresses some other desired clarifications. At the same time, the desire for homeowner flexibility may conflict with other objectives in the ordinance, particularly environmental concerns, tree cover and stormwater management issues. We've received some pushback from citizen groups, and from EQAC, about the scope of the amendment. I agree that perhaps we may have gone further towards flexibility than was necessary, at the expense of our environmental objectives. I will therefore be moving that we recommend to the Board of Supervisors a slightly modified version of the original staff recommendation, including Option D in the most recent handout, which will require re-advertising before the Board of Supervisors public hearing, but as I understand it will not require the Commission to have another public hearing. I believe that compromise adequately addresses the concerns of both sides. As to R district lots, I am supporting the staff recommendation of retaining the current thirty percent by-right maximum coverage, but allowing homeowner applications for a special permit, rather than a variance, on a case-by-case basis, to increase coverage up to sixty percent, which I believe is more than sufficient to address most of the situations presented. That case-by-case review will require notice and a public hearing, and may result in appropriate development conditions to address any impacts generated. That also is the approach supported by EQAC for R districts. As to P district lots, my conclusion is somewhat more complicated. It's very difficult to come up with a "one size fits all" recommendation. As to Option B, I believe that a fifty percent by right figure across the board, on the one hand is likely

too low for the smallest P district lots, for which a patio or deck may more typically approach the sixty percent figure. I also believe that the larger P district lots do not need anything like fifty percent, and that we would be unnecessarily sacrificing pervious surface and tree cover for simplicity. For the smaller lots, I have concluded that a seventy-five percent maximum is more than generous, and that even sixty percent should be sufficient for a large patio or deck, leaving some remaining green space. As to the issue of an exemption for the P district lots under 5,000 square feet, I have concluded, based in part on some of the pushback we have received, that goes too far. I do not believe that a one hundred percent by right minimum yard coverage on a detached single family lot is necessary or appropriate, simply to facilitate homeowner flexibility, especially in view of our water quality and Chesapeake Bay objectives. I also believe that the other possible approach, the Option C sliding scale for the smaller lots, is way too complicated and arbitrary, and will not easily be administered by the citizens and contractors trying to figure it out, and will not easily be enforced by staff. The sliding scale approach also seems entirely contrary to our ZMOD objectives to streamline and simplify this type of regulation. Nevertheless, because the amendment will be readvertised to facilitate the Board's consideration of Option D, I see no harm in including Option C in the readvertising, for the Board's consideration, with the stipulation that we're recommending against Option C. Where does this leave us? On the R districts, we would retain the current…

Chairman Murphy: I think that's a rhetorical question.

Commissioner Hart: Well, I'm trying to sum up here…

Commissioner Sargeant: Wait, he's getting to the end.

Commissioner Hart: On the R districts, we would retain the current percentage, but allow homeowners a more realistic procedural path to go above the thirty percent maximum, with the safeguards of a public hearing and case by case review with development conditions. For the P districts, with Option D we are still accommodating much greater homeowner flexibility to deal with the Kingstowne patio and deck problem, but by capping the smaller lots at seventy-five percent rather than a total one hundred percent exemption, we are still retaining some pervious surface and preserving some vegetated separation. We have to draw the line somewhere, and at the same time, a hundred percent is too much. I believe this package, including Option D, is an appropriate recommendation, given the universe of comments received, and my judgment as to an appropriate compromise. Finally, following the public hearing, staff is also recommending one additional change, which also will require readvertising to allow the Board to consider it. And I agree with staff's recommendation on this. For P district lots, that are not subject to proffered yards where the homeowner wants permission to go above the fifty percent or seventy-five percent maximum, staff is now recommending that the homeowner also have the option to proceed by special permit application, rather than only by final development plan application. This optional procedure will still require notice and a public hearing with the Board of Zoning Appeals, and an opportunity for imposition of appropriate development conditions to mitigate impacts. This also is consistent with the approach recommended for R district lots, is consistent with the other types of yard cases heard by the BZA, and will not burden the Planning Commission with additional unwanted cases in this category. I support staff's modified recommendation in this regard, and will be including that issue in the follow-on motion. Therefore, first, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS ADOPTION OF THE PROPOSED

ZONING ORDINANCE AMENDMENT REGARDING THE MINIMUM REQUIRED REAR YARD COVERAGE LIMITATIONS FOR SINGLE FAMILY DETACHED DWELLINGS, TO INCLUDE THE FOLLOWING AS DISCUSSED IN THE STAFF REPORT, STAFF'S MEMORANDUM DATED APRIL 26, 2018, AND ITS PROPOSED TEXT INCLUDING:

- A MAXIMUM PERMITTED COVERAGE OF THIRTY PERCENT IN THE MINIMUM REQUIRED REAR YARD OF R DISTRICT LOTS;

- A MAXIMUM PERMITTED COVERAGE OF FIFTY PERCENT IN THE MINIMUM REQUIRED REAR YARD OF P DISTRICT LOTS IN EXCESS OF 5,000 SQUARE FEET IN LAND AREA; AND

- WITH REGARD TO LOTS OF NO MORE THAN 5,000 SQUARE FEET IN LAND AREA IN P DISTRICTS, OPTION D AS SHOWN IN THE APRIL 26, 2018, PROPOSED TEXT, WHICH ALLOWS A MAXIMUM PERMITTED COVERAGE OF SEVENTY-FIVE PERCENT OF THE MINIMUM REQUIRED REAR YARD, UNLESS OTHERWISE SPECIFIED ON AN APPROVED DEVELOPMENT PLAN OR IN A PROFFERED OR DEVELOPMENT CONDITION;

- I ALSO MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE AMENDMENT BECOME EFFECTIVE AT 12:01 A.M. THE DAY FOLLOWING ADOPTION.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion of the…and yes?

Commissioner Cortina: [Inaudible].

Chairman Murphy: Discussion. Okay I thought you were seconding also. Is there a discussion? Ms. Cortina.

Commissioner Cortina: Yes. Thank you, Mr. Chairman. I am concerned as are several organizations like EQAC and the Tree Commissioners, that allowing the P districts to include by-right up to seventy-five percent is – is going too far. And, I would recommend that we stick with Option B which has already been advertised for the lots that are less than 5,000 square feet. Because the Kingstowne problem is going to become the Fairfax County problem and the Chesapeake Bay problem. We really don't even know the full extent of the problem if accumulatively we start to allow all kinds of impervious surface in these lots. So, I would – I plan to abstain. Thank you.

Chairman Murphy: Further discussion of the motion. Mr. Ulfelder.

Commissioner Ulfelder: Thank you, Mr. Chairman. The Drainessville District doesn't have much in the way of P district, has a lot in connection with the R district. And I know there are some folks there who wanted to stick very strictly to the thirty percent but also to allowing only the use of a variance to go beyond the thirty percent. And, I feel that that's a little too rigid, I'm gonna

support the amendment that sticks with the by-right thirty percent but allows up to sixty percent with the special permit in the R district. And I think that the BZA review – the staff review and the BZA review in the process can very effectively address some of the concerns about coverage, about impact on neighbors, about steps that need to be taken in order to avoid problems with runoff on neighboring properties. And it's all in the context of a public hearing as well, with notice to the neighbors who could come in and discuss exactly why they think it would have a negative impact on – on their adjacent property. So, I do plan to vote for the motion under consideration.

Chairman Murphy: Okay. Further discussion of the motion? All those in favor of the motion on the Zoning Ordinance Amendment Rear Yard coverage as articulated by Commissioner Hart, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Ms. Cortina abstains. Okay.

Commissioner Hart: Mr. Chairman.

Chairman Murphy: Yes, Mr. Hart.

Commissioner Hart: Yes. Secondly, as a follow-on motion, I MOVE THAT THE PLANNING COMMISSION DIRECT STAFF TO ADVERTISE – I GUESS IT'S RE-ADVERTISE, FOR THE BOARD'S CONSIDERATION THE FOUR OPTIONS CONCERNING P DISTRICT LOTS, AS WELL AS STAFF'S RECOMMENDATION THAT A SPECIAL PERMIT OPTION BE MADE AVAILABLE TO INCREASE THE PERCENTAGE OF MINIMUM REAR YARD COVERAGE FOR LOTS IN THE P DISTRICT THAT ARE NOT SUBJECT TO PROFFERED YARDS, AS OUTLINED IN STAFF'S MEMORANDUM DATED APRIL 26, 2018, AND SHOWN IN ITS ATTACHED PROPOSED TEXT.

Commissioner Sargeant: Second.

Chairman Murphy: Seconded by Mr. Sargeant. Is there a discussion of that motion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Cortina: Abstained.

Chairman Murphy: Ms. Cortina abstains.

Commissioner Hart: Thank you.

Each motion carried by a vote of 11-0-1. Commissioner Cortina abstained from the vote.

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