

## ARLINGTON COUNTY CODE

## Chapter 6

## CIVIL SERVICE

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**§ 6-1. Civil Service Commission--Created.**

Under authority vested in the County Board by the Code of Virginia, 1950, § 15.2-721, there is hereby created the Arlington Civil Service Commission, hereinafter referred to as "the Commission."  
(6-15-51)

**§ 6-2. Same--Designation; Term.**

The terms of office of members of the Commission shall expire June 30, 1964. The Board shall appoint successors to members whose terms are so terminated for terms ending on June 30, 1965, 1966 and 1967. At the expiration of the term of each such member, his successor shall be appointed for a term of four (4) years.  
(8-24-64)

**§ 6-3. Same--Composition; Qualifications.**

- A. The Commission shall be composed of five (5) persons who are qualified voters in the County,

who have had broad experience in management or public affairs, and who are in full agreement with the application of merit principles in public employment.

B. Members of the Commission shall not, while serving, become candidates for election to public office; nor shall they be a member of any local, state or national committee of a political party, nor any officer of any organization which actively sponsors and works for the election of candidates to public office.

C. Members of the Commission shall hold no paid office or employment under the government of the County while serving as members of the Commission.  
(6-15-51; 7-1-78)

**§ 6-4. Same--Compensation; Funds.**

Members of the Commission shall serve without compensation, but funds will be provided by the County Board in the annual budget for reasonable and necessary expenses to be incurred by the Commission.  
(6-15-51)

**§ 6-5. Same--Chairman.**

The County Board shall designate one (1) member of the Commission to serve as Chairman; and the County Board shall give consideration at its first meeting in each calendar year to continuation of its previous designation of the Chairman of the Commission.  
(6-15-51)

**§ 6-6. Same--Quorum.**

Three (3) members of the Commission shall constitute a quorum for the transaction of business.  
(10-13-79)

**§ 6-7. Same--Removal of Members.**

Any member of the Commission may be removed for good cause shown by a majority vote of the County Board, but only after the County Board has given the member a statement in writing of the reasons for such removal and an opportunity to be heard before a public session of the County Board.  
(6-15-51)

**§ 6-8. Same--Responsibilities and Duties.**

The Commission shall have the responsibility and shall be required:

A. To represent the public interest in the improvement of personnel administration in the County Service.

B. To advise the County Board, the County Manager and the Director of Personnel in the formulation of policies concerning personnel administration in the competitive service.

C. To foster the interests of institutions of learning, and of civic, professional and employee organizations in the improvement of personnel standards in the County Service.

D. To investigate any or all matters relating to conditions of employment in the service of the County and to make, at least annually, a report of its findings and recommendations. The annual report of the Commission to the County Board shall be made available to the public concurrently upon presentation to the County Board.

E. To make specific recommendations to the County Board concerning such changes in State legislation affecting personnel administration and the broadening of the coverage of the merit system for the County as would be necessary and desirable to ensure fairness of treatment in salary opportunity (namely, equal pay for equal work requiring equal qualifications) and other employment conditions for all employees of the County within or without the competitive service, as herein defined.

F. To perform other duties as set forth elsewhere in this Chapter.

G. To select and appoint a clerk if authorized by State law and if sufficient funds are appropriated for that purpose by the County Board. The Clerk shall have the duties of:

1. Attending all Commission meetings and taking such notes and minutes of the meetings, as directed by the Commission and as required by law;
2. Assisting the Commission in scheduling matters to be considered by the Commission;
3. Ensuring that the appropriate persons are notified of matters to be considered by the Commission;
4. Coordinating the obtaining of information required by the Commission;
5. Performing other clerical duties as the Commission may direct.

If State law does not permit the Commission to hire the Clerk, the County Manager is authorized to hire a person to serve in that function.

H. To appoint such other employees as the Commission deems appropriate if authorized by State law and if sufficient funds are appropriated for that purpose by the County Board. If State law does not permit the commission to hire these employees, the County Manager is authorized to hire such other employees as the Commission deems appropriate.

I. To adopt such procedural rules as it deems necessary for the conduct of its meetings, hearings or other matters within its jurisdiction.  
(6-5-51; 10-13-79; Ord. No. 87-27, 1-3-88)

**§ 6-9. Department of Personnel Established.**

There is hereby established a Department of Personnel for the County.  
(6-15-51)

**§ 6-10. Responsibilities and Duties of the County Manager.**

In the administration of the personnel system established by this chapter, the County Manager shall have the authority and shall be required:

A. To administer the merit system, through his general authority to supervise the Director of Personnel and all other heads of departments, subject to the personnel rules adopted hereunder.

B. To recommend proposed personnel rules to the Commission.

C. To appoint and, when necessary for the good of the service, remove employees in the competitive service.

D. To appoint and remove employees in the executive management service.

E. To cooperate with and render necessary assistance to the Commission.  
(10-13-79; Ord. No. 03-15, enacted 6-14-03)

**§ 6-11. Director of Personnel--Qualifications and Method of Appointment.**

The County Manager shall appoint a Director of Personnel who shall be a person trained and skilled in personnel administration, with knowledge of and interest in public personnel administration.  
(6-15-51)

**§ 6-12. Same--Powers and Duties.**

The Director of Personnel shall have general management and control of the Department of Personnel and shall have the following functions and responsibilities:

A. The head of the Department of Personnel shall be the Director of Personnel. Under the administrative direction of the County Manager, the Director of Personnel shall be responsible for the selection of all employees of the Department of Personnel, in such numbers and grades as may be authorized by the County Board in the annual budget, or amendments thereto.

B. To give leadership to department heads in the application of sound principles of human relations to matters of supervision, teamwork, discipline, employee adjustments and work motivation. To stimulate all supervisory personnel to use the most effective methods of utilization and coordination of employee abilities and skills.

C. To conduct open competitive assembled or unassembled examinations for all original appointments in the competitive service and, whenever the County Manager shall determine in accordance with the rules of the Commission that the same is practicable, for promotions in the competitive service. To give wide publicity to all announcements of competitive examinations. To organize plans for the recruitment of trained personnel for the County's competitive service; provided, that in formulating examinations he shall consult with all department heads concerning their personnel requirements and the qualifications necessary to perform the work.

D. To maintain eligible lists, based on such examinations, for each class of position in the competitive service to which appointments are to be made.

E. To enter into, with the approval of the Commission and the County Manager, agreements with other public personnel departments or agencies (local, regional, State or federal) for the joint administration of examinations and the joint use of eligible lists resulting therefrom or for the administration by the Department of Personnel of other personnel systems.

F. To prepare and recommend, when appropriate, to the County Manager a job evaluation and classification system for all positions in the competitive service for consideration by the County Board pursuant to its authority under § 6-19.A. The job evaluation and classification system shall include a classification plan that groups similar positions under a common class title and description. The Personnel Director shall consult with affected agency heads about changes deemed necessary to the classification plan and review with the agency heads the content and qualifications of positions as stated in the position descriptions, and, based upon such review, make a recommendation to the County Manager. The County Manager may, by written determination, delegate to the Personnel Director authority to make final decisions for changes in the classification plan and content and qualifications of categories of positions stated in the written determination.

G. To prepare and recommend to the County Manager a pay system, including a pay plan with salary rates and rules covering all employees in the competitive service.

H. To review at least once each fiscal year the pay plan in consultation with the County Manager. The County Manager's recommendations for amendments or revision shall be forwarded to the County Board, together with the comments thereon of the Commission.

I. To direct and enforce the maintenance by all departments, boards, commissions and offices of the County, excluding the School Department and employees under Attorney for the State, the Treasurer, the Sheriff, the Commissioner of the Revenue, and the Clerk to the Circuit Court, of such personnel records of members of the competitive service as he shall prescribe.

J. To maintain a roster of all persons in the competitive service which shall specify as to each such person:

1. The class title of the position held;
2. The position grade;

3. The current salary or pay rate;
4. Any changes in class title, salary or pay; and
5. Such other data as may be deemed useful or significant in the development of a career service.

K. To certify approved appointments to the management, systems and budgets department, and no payments for personal services shall be made to any person in the competitive service unless so certified.

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

M. To encourage and cooperate with County employees in developing employee health and welfare activities.

N. To investigate the operation and effect of this Chapter, and any amendments thereto hereafter adopted by the County Board, and the rules adopted thereunder, and report annually in writing his findings and recommendations to the County Manager.

O. To perform such duties for the Commission as it shall direct.

P. The Director of Personnel shall be authorized to request and receive information concerning the criminal history records, including fingerprint comparisons, of applicants for employment with Arlington County, Virginia, in order to determine whether, in the interest of public welfare and safety, the past criminal conduct of an applicant with a conviction record is compatible with the nature of the employment under consideration. Such applicant shall submit to fingerprinting by the Arlington County Sheriff or other agency designated by the Director of Personnel and provide descriptive information as required by the Sheriff or other agency. Such criminal history record information obtained shall be considered confidential and shall be used solely to assess eligibility for public employment and shall not be disseminated to any person not involved in the assessment process. (2-26-77; 10-13-79; Ord. No. 82-24, 6-28-82; Ord. No. 87-27, 1-3-88; Ord. No. 02-17, 6-22-02)

### **§ 6-13. Employee/Employer Relations.**

A. *Purpose.* The sole underlying purpose of both the County and the employees of the County is to serve and protect the interests of the citizenry of the County. Such interests are best served and protected only when there exists between the County and employees of the County a continuing harmonious relationship. Further, it is recognized that the paramount interests of the citizenry create an employment relationship in the public sector inherently different from that which exists in private employment. It is, therefore, the purpose of this policy to provide guidelines by which management and employees of the County may hear and discuss matters concerning their employment with the County.

B. *Definitions.* The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise:

1. "County" means Arlington County, Virginia, but does not include the Arlington County School Board.
2. "County Manager" means the County Manager or the County Manager's designee.
3. "Employee" means any person employed by the County, excluding: employees whose wages are provided for under the budget of the Arlington County School Board; employees employed by the Commonwealth of Virginia; supervisory, judicial and confidential employees of the County; elected and appointed officials; constitutional officers and employees appointed by them; persons possessing the status of independent contractors; and employees whose duties are temporary or seasonal in nature.

4. “Supervisory employee” means any individual having authority in the interests of the County:
  - a. To hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees; or
  - b. To responsibly direct other employees; or
  - c. To adjust the grievances of other employees; or
  - d. To effectively recommend any action set forth in a., b. or c. of this subsection, provided that the authority to act as set forth in a., b., c. or d. of this subsection requires the exercise of independent judgment and is not merely routine or clerical in nature.
5. “Professional employee” means:
  - a. Any individual whose primary duty consists of the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course or specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship and who customarily and regularly exercises discretion and independent judgment in the performance of such function; or
  - b. Any employee who has completed or is engaged in a course of specialized intellectual instruction and study described above and who is performing related work in conjunction with a professional employee as described in Paragraph B.6 of this subsection.
6. “Technical employee” means:
  - a. Any individual whose primary duty consists of the performance of work requiring the routine exercise of a specialized knowledge or skill acquired through distinctive training, as distinguished from a prolonged course of specialized intellectual instruction and study; or
  - b. Any employee who has completed or is engaged in the distinctive training described above, or who is receiving on-the-job training in a specialized knowledge or skill, and who is performing related work in conjunction with a professional employee as described in Paragraph a. of Subsection B.5 or technical employees as described in Paragraph a. of this subsection B.6.
7. “Confidential employee” means any individual who, in the course of his or her employment:
  - a. Has access to confidential County personnel files or other confidential County information (including budgetary and fiscal data) subject to use by the County in the hear and discuss process or in the adjustment of grievances; or
  - b. Assists and acts in a confidential capacity to persons who formulate, determine and effectuate government policies in the area of employee relations.
8. “Employee organization” means any organization or association of any kind which admits to membership employees of Arlington County and which has a primary purpose of representing employees in the public sector as to their conditions of employment.
9. “Representation” means any individual employee may represent himself or herself or have an employee organization or individual represent his or her interests in discussions with County representatives as to conditions of employment. Under no circumstances shall exclusive representation be permitted for an employee organization or association.
10. “Hear and discuss” means the process by which representatives of the County and individual

employees or their chosen employee organization or representative may meet at reasonable times to make known their mutual concerns regarding conditions of employment.

11. “Conditions of employment” shall not include:
- a. Any subject preempted by or in contravention of federal or State law or governmental charter; or
  - b. The authority and power of the Arlington County Board, the Arlington County Civil Service Commission, or the Personnel Department to establish and administer standards relating to the recruitment of candidates, to conduct and grade merit examinations and generally to rate candidates in the order of their relative qualifications for the purpose of appointment, assigning, transferring, and promoting employees, to establish position descriptions, class specifications and to assign class specifications to pay grades; or
  - c. Any subject inconsistent with the provisions of this policy.
12. “Strike” means the concerted refusal or failure of employees to perform their duties as assigned.
13. “Employee group” means an occupational grouping of employees with a community of interests in their conditions of employment.

C. *Employee rights.* Employees shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of hearing and discussing with the County and with respect to conditions of employment; provided, that nothing herein shall be deemed to permit an employee to engage in a strike. An employee shall also have the right to refuse to join or to participate in the activities of employee organizations, and shall have the right to represent himself or herself individually or designate a personal representative in his or her employee relations with the County. No employee shall be interfered with, restrained, coerced, intimidated, or discriminated against because of his or her exercise of these rights.

D. *Procedures for raising a question concerning representation.* An employee organization shall be recognized by the County and shall have the right to represent any employees for the purpose of hearing and discussing conditions of employment. Such employee organization may be required to provide written authorization from the individual employees they represent.

E. *Employee groups.* The following employee groups shall be the only groups deemed appropriate for the purpose of this policy: all sworn employees of the Police Department; all uniformed employees of the Fire Department; all employees in trades and maintenance occupations; all employees whose functions are primarily clerical in nature; and all professional and technical employees.

F. *Hear and discuss procedure.* Before the County Manager meets with the County Board in each budget cycle, the Manager shall meet with each employee group to discuss terms and conditions of their employment.

In addition, the County will provide a means of regular communication with employees through the posting of notices on bulletin boards and other effective means.

Adequate time shall be provided for employees to respond to issues to the extent practical, considering each individual item of interest. The response time shall be specified on the notice. The designated County representative who individual employees or their representatives are to contact will be stated on the notice.

G. *Limitations.* This policy shall not be a substitute for the normal process by which individual employees and their supervisors discuss employment matters.  
(6-15-51; 5-7-62; 7-30-77)

#### § 6-14. Three Classes of Service.

All employees of the County shall be divided into the three (3) following services:

A. *Competitive service.* Included in the competitive service shall be all positions existing now or hereafter created which are under the administrative control and direction of the County Manager, and to which appointments are made by the County Manager.

B. *Noncompetitive service.* Included in the noncompetitive service shall be members of the County Board and all other elected officials, the County Manager, the County Attorney, the Clerk to the County Board; employees appointed by the Treasurer, Attorney for the Commonwealth, Commissioner of Revenue, Clerk to the Circuit Court, the County Attorney, the Clerk to the County Board, and the Sheriff; members of part-time boards, councils and commissions, employees of the School Board and heads of departments whose appointment is vested by law in the County Board.

C. *Executive management service.* Effective June 15, 2003, included in the executive management service shall be employees under the administrative control and direction of the County Manager who are executives or senior executive assistants, which includes, but is not limited to Deputy County Manager, department directors, Assistant County Managers, assistants to the County Manager, and legislative liaison. Such employees serve at the will of the County Manager and are exempt from coverage by merit and civil service provisions of this Chapter, and policy and administrative regulations, except as expressly provided therein. Executive employees hired before the effective date of this section shall be converted to this class of service effective June 15, 2003.

The jurisdiction of the Commission shall be limited to the competitive service and employees appointed by the County Attorney.  
(6-15-58; Ord. No. 82-24, 6-28-82; Ord. No. 03-15, 6-14-03)

#### **§ 6-15. Administrative Regulations (Personnel).**

A. The County Manager shall prepare administrative regulations relating to personnel matters as the need of the service requires.

B. The Civil Service Commission shall review the draft regulations and may make recommendations to the County Manager.

C. The regulations shall become effective when approved by the Manager.  
(11-4-72; 7-30-77)

#### **§ 6-16. Present Employees to Retain Positions.**

All persons in the County Service holding positions included within the competitive service, as defined herein, shall be continued in their respective positions, without further examination. Any such employees who may become subject to removal for disciplinary reasons shall be removed in accordance with the provisions of this Chapter and the personnel rules adopted hereunder.  
(6-15-51)

#### **§ 6-17. Basis for Appointments, Promotions, Dismissals, Etc., of Certain Employees.**

All employees in the competitive service who are under the administrative control of the County Manager or those employees under the County Attorney shall be appointed, promoted, demoted, transferred or dismissed solely on the basis of merit and fitness for position. The County Manager reserves the right to appoint, promote, dismiss and make other employment decisions regarding the members of the executive management service. Appointments and promotions shall be made based on qualifications and a determination of fitness. Competitive announcement is not required. Dismissals shall be made whenever the County Manager determines that it is in the best interests of the County. Nothing herein shall be construed as requiring cause for the dismissal of employees in the executive management service or to create any right in the employee to continued employment.  
(6-15-51; Ord. No. 82-24, 6-28-82; Ord. No. 03-15, 6-14-03)

#### **§ 6-18. Probational Appointments; Disciplinary Action for the Competitive Service.**

A. All original appointments in the competitive service shall be made from an eligible list certified by



the Director of Personnel. All original appointments shall be made for a probationary period the conditions of which shall be governed by the personnel rules.

B. Members of the competitive service shall be subject to such disciplinary action, including removal, as may be ordered or approved by the County Manager. Prior to the conclusion of the probationary period of any employee his service may be terminated by the County Manager if, in his opinion, the employee does not demonstrate possession of the qualifications required by the position to which he was appointed.

C. After the completion of his probationary period, any member of the competitive service who shall be suspended, reduced in rank or pay, or removed, shall be entitled to notice in writing of the grounds of the disciplinary action.

D. Procedure for appeal of such actions shall be in conformance with the administrative regulations of the County Manager, provided that such regulations shall provide for a right of appeal to the Commission.

E. The finding of the Commission on such appeals shall be binding. In any case where the Commission then determines that the disciplinary action constituted an abuse of discretion, the Commission may direct that the affected employee shall be paid in full or in part for such portion of time as he or she was unjustly suspended, reduced in rank or pay or removed.

F. The Commission shall have no jurisdiction over appeals from police officers who have elected to proceed pursuant to the Law-Enforcement Officers' Procedural Guarantees (§ 9.1-500 et seq., Code of Virginia, 1950, as amended) or who have chosen the Police Trial Board for the resolution of their grievance or firefighters who have chosen the Fire Trial Board for the resolution of their grievance. (11-20-76; 10-13-79; Ord. No. 85-2, 1-5-85; Ord. No. 03-15, 6-14-03)

#### **§ 6-19. Job Evaluation and Classification System for the Competitive Service.**

A. The job evaluation and classification system shall be put into effect by the County Board and shall include a procedure for assigning a class to each position within the classification plan. Such system shall supersede any earlier plans. The County Board shall not put such a system into effect until a qualified consultant has developed a new job evaluation and classification system with determination by the consultant of the appropriate allocation of each position to a class at the time of implementation.

B. No person shall be appointed to or employed in a position in the competitive service until such position is classified under the approved job evaluation and classification system.

C. Except at the time of adoption by the County Board under § 6-19.A, employees, when their positions have been evaluated and proposed for reclassification, shall be afforded an opportunity to have an appeal hearing thereon by the Commission after filing with the Director of Personnel a request for such hearing. Procedures for the appeal of such action shall be in conformance with administrative regulations of the County Manager.

D. No position in the competitive service shall be filled other than on a temporary appointment basis of not more than eighteen (18) months by any person who is a trainee, except where the County Manager determines a longer period is consistent with this section and County Board policy. At the end of the trainee status, the person must meet the qualification requirements for that position as set forth in the position descriptions which are a part of the job evaluation and classification system.

E. *Definitions.* The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:

1. "Job evaluation and classification system" means the formal system for classifying all County positions and shall include the evaluation methodology, classification plan and all associated rules and procedures.
2. "Classification plan" means the approved classes of positions and the associated rules and procedures to establish, amend, cancel, title and group occupational classes, and a position description to describe each class.

3. "Class" means one (1) or more positions so nearly alike in the essential character of their duties and responsibilities that the same pay grade, title and qualification requirements can be applied fairly and equitably for pay purposes.
4. "Position description" means the document that summarizes the most important features of a position. As a minimum, the description shall contain a general summary of the work, major duties and tasks, minimum qualifications, and the knowledge, skills and abilities required to perform satisfactorily the duties of the position.

(6-5-61; Ord. No. 87-3, 1-24-87; Ord. No. 87-27, 1-3-88; Ord. No. 03-15, 6-14-03)

#### **§ 6-20. Pay System and Plan.**

A. There shall be a pay plan for all positions in the County. The County Manager shall forward the proposed pay plan, together with the recommendations thereon of the Commission, to the County Board for approval. Where a salary range is established for a position in the job evaluation and classification system, increases within such range shall be earned by length of service and/or quality of work performance. The pay plan and rates shall be determined with due regard to compensation for similar employment in the Washington metropolitan area, and shall compare therewith, and any other factors that may properly be considered to have a bearing upon the fairness or adequacy of the pay plan.

B. The County Board shall not increase or decrease any salaries of individual members of the competitive service but shall act solely with respect to approving both the pay plan and pay system. The County may, however, enter into salary reduction agreements with employees pursuant to a duly enacted employee flexible benefits plan under Internal Revenue Code, § 125. The amount of salary reduction required for each benefit option offered under such plan shall be determined before entering into the salary reduction agreement as to each such benefit and shall be set forth in a table which shall be a part of the compensation plan.

C. Local government officers and employees may receive a monetary bonus otherwise known as merit awards for exceptional services rendered. Such awards shall be made under procedures in the meritorious service pay section of the personnel rules adopted by the County Manager.

D. *Definitions.* The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:

1. "Pay system" means the methodology, rules and procedures for determining and setting pay rates, and the pay plan.
2. "Pay plan" means the pay structure designated by grades with specific pay rates, pay ranges, steps or other increments, which shall be set forth in a document linking each class of position authorized under the classification plan of a specific grade.

(6-15-51; 7-30-77; Ord. No. 87-27, 1-3-88)

#### **§ 6-21. Promotions.**

A. Vacancies in higher positions in the competitive service shall be filled as far as practicable by promotion from lower classes. When the County Manager determines that there are an insufficient number of well-qualified eligibles within the service, he may direct that the competitive examination for such positions shall be open not only to members of the competitive service but also to all other qualified persons.

B. All examinations for promotion shall be conducted by the Director of Personnel in accordance with the personnel rules, and the qualified candidates shall be certified to the appointing authority and all promotional appointments shall be made from among the persons so certified.

(6-15-51; Ord. No. 87-27, 1-3-88)

#### **§ 6-22. Prohibited Practices Generally.**

- A. No person shall wilfully make any false statement, certificate, mark, rating or report in regard to

any test, certification, promotion, reduction, removal or appointment held or made under the provisions of this Chapter, or in any manner commit or attempt to commit any fraud preventing the impartial execution thereof or of the personnel rules adopted pursuant to this Chapter.

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

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

D. *Prohibition of discrimination.* Discrimination against any person in any practice or procedure in advertising, recruitment, referrals, testing, hiring, assignment, transfer, promotion, training, apprenticeship, disciplinary action, layoff and recall, termination, compensation, benefits or any other term, condition or privilege of employment which limits or adversely affects employment opportunities because of political or religious opinions or affiliations or because of race, color, sex, national origin, marital status, parenthood, age, or disability which is unrelated to the person's occupational qualifications or any other nonmerit factor which is not a bona fide occupational qualification, is prohibited; provided that nothing in this section is intended to prohibit the County from taking reasonable affirmative action to eliminate the effect of discrimination.

E. *Appeal from discrimination.* Any applicant or employee who has reason to believe that he/she has been discriminated against because of any factor prohibited by § 6-22.D in any personnel action may appeal to the Civil Service Commission as provided herein.

If the appellant is an employee, the procedure for appeal shall be in conformance with the administrative regulations of the County Manager provided that such regulations shall provide for a right of appeal to the Civil Service Commission.

If the appellant is an applicant, the appellant shall be afforded an opportunity to be heard by the Civil Service Commission after filing a written request for a hearing with the Commission. The appellant and the person responsible for the alleged discriminatory action shall have the right to be heard and present evidence. If the Commission finds that there was discrimination because of any factor prohibited by § 6-22, it shall order appropriate corrective action.

(6-15-51; 12-18-76; 4-25-81; Ord. No. 84-19, 6-16-84; Ord. No. 85-2, 1-5-85; Ord. No. 96-8, 6-29-96)

### § 6-23. Political Activities.\*

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\*Employees whose positions are funded in whole or in part by loans or grants from a federal agency may be covered by the provisions of the Federal Hatch Act. Where County provisions are more restrictive, the County provisions shall take precedence over the federal provisions.

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A. *Definitions.* The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:

1. "Group 1 employee" means any person in the competitive service or executive management service who is not in Group 2 as defined in this section.
2. "Group 2 employee" means any person in the competitive service or executive management service who is in the Office of the County Manager or Office of the County Attorney; or a department director or division chief other than those who are law enforcement officers, firefighters or emergency medical technicians as defined by Virginia Code § 15.2-1512.2, et seq., and any subsequent amendments thereto. The word employee standing alone means Group 1 and Group 2 employees, collectively.

3. "County" means Arlington County, Virginia.
  4. "Election" means a primary, special and general election in which candidates are to be nominated or elected to a public office.
  5. "Local office" means the Arlington County Board seats, Arlington County constitutional offices (Sheriff, Commonwealth Attorney, Commissioner of the Revenue, Treasurer, Clerk to the Circuit Court).
  6. "Official" means a person holding local office or the County Manager, or any employee who has the authority to make decisions or substantial recommendations in regard to the terms and conditions of employment for any Group 1 or Group 2 employee or applicant, including but not limited to hire, discipline, pay and/or promotion.
  7. "Political activities" includes, but is not limited to: soliciting votes or endorsements on behalf of a political candidate or political campaign; displaying a political picture, sign, sticker, badge or button while on duty or in uniform; participating in the activities of, or contributing financially to, a political party, candidate or campaign or an organization that supports a political candidate or campaign; attending or participating in a political convention, caucus, rally, or other political gathering; initiating, circulating or signing a political petition; engaging in fund-raising activities for any political party, candidate or campaign; acting as a recorder, watcher, challenger or similar officer at the polls on behalf of a political party, candidate or campaign; or becoming a political candidate; and includes the activities set forth in subsection A.8.
  8. "Political campaign" means activities engaged in for the purpose of influencing the outcome of an election for office.
  9. "Political candidate" means any person who has made known his intention to seek, or campaign for, office in a general, primary or special election.
  10. "Political party" means any political party, organization or group having as its purpose the promotion of political candidates or political campaigns.
  11. "State office" means the offices of delegates or senators representing Arlington in the Virginia General Assembly.
- B. *Prohibited practices generally.*
1. No employee or official in the service of the County shall reward or discriminate against any applicant for a position or any employee because of that person's political affiliations or political activities as permitted by this section, except as such affiliation or activity may be established by law as disqualification for employment by the County.
  2. No employee or official shall be influenced by, or discriminate in providing services, responding to requests or making other decisions on the basis of, the political affiliations or political activities of the person or organization for which services are provided.
  3. No employee shall coerce or attempt to coerce any other employee to pay, lend or contribute anything of value to a political party candidate or campaign.
  4. No employee shall portray, suggest or imply in any manner, at any time, on or off duty, a County-related endorsement of a political affiliation, activity, party, or candidate for election to any public office.
  5. No employee shall engage in political activities while on duty, or in a County uniform on or off duty, or in any County office or building during working hours applicable thereto. This section is not intended to prohibit employees from engaging in such activities on County premises as may be permitted for the public at large as stated in § 6-23.B.6 when the employees are off duty and out of

uniform, and where such activities are not otherwise prohibited by law or this section. This section is not intended to prohibit employees from displaying bumper stickers on their personal vehicles while parked on County property if such vehicles are not regularly used in County business, and where such activities are not otherwise prohibited by law or this section.

6. No person shall engage in political campaign activities in any County office or building during working hours applicable thereto. This section is not intended to prohibit political activities that are otherwise permitted for the public at large such as gatherings in County parks, or display of political badges.
  7. No employee shall use any County equipment, system, materials or resources in support of political activities.
  8. No person shall seek or attempt to use any political endorsement in connection with any appointment to a position in the competitive service or executive management service.
- C. *Prohibited activities regarding local offices.* In connection with local offices:
1. Group 1 employees are not permitted to continue as an employee upon being elected. A Group 1 employee who is elected to such office must resign immediately upon taking office.
  2. Group 2 employees are not permitted to:
    - a. Continue as an employee upon becoming a candidate for election. A Group 2 employee who has become a candidate for such office must resign immediately upon becoming a candidate.
    - b. Engage in political activities except that they may register to vote, vote, express opinions on political candidates and issues privately, sign petitions, and contribute directly or indirectly to an organization that supports a political party or candidate for election unless the organization is identified as consisting of County employees and it supports candidates for local office.
- D. *Prohibited activities regarding State offices.* In connection with State offices:
1. Group 1 employees who are department directors and divisions chiefs are not permitted to continue as an employee upon being elected. A department director or division chief who is a Group 1 employee who is elected to such office must resign immediately upon taking office.
  2. Group 2 employees are not permitted to:
    - a. Be a candidate for election. A Group 2 employee who has become a candidate for such office must resign immediately upon becoming a candidate.
    - b. Engage in political activities except that they may register to vote, vote, express opinions on political candidates and issues privately, sign petitions, and contribute directly or indirectly to an organization that supports a political party or candidate for election unless the organization is identified as consisting of County employees and it supports candidates for State office.
- E. *Permissible activities.* All employees are free to engage in political activity to the widest extent consistent with the restrictions imposed by law and this section.
- F. The County Manager is hereby authorized and directed to acquaint County employees with the provisions of this Chapter.
- G. Any employee who feels intimidated into political activities or penalized because of failure to engage in such activities, in violation of this Chapter, may appeal such violation without jeopardizing future

employment. The procedure for complaint or appeal shall be according to the County's grievance procedure with all the rights and limitations related thereto.

(6-15-51; Ord. No. 83-14, 5-21-83; Ord. No. 94-25, 10-22-94; Ord. No. 00-17, 6-10-00; Ord. No. 03-15, 6-14-03)

#### **§ 6-24. Penalties.**

Violation of the provisions of this Chapter shall constitute grounds for dismissal from the County competitive service or the executive management service; in the discretion of the County Manager, or for employees of the County Attorney, the County Attorney, a lesser penalty may be imposed under extenuating circumstances, but in no case shall the penalty for willfully engaging in prohibited political activities be established at less than thirty (30) days suspension from duty without pay.

(6-15-51; Ord. No. 94-25, 10-22-94; Ord. No. 00-17, 6-10-00; Ord. No. 03-15, 6-14-03)

#### **§ 6-25. Suspension of Provisions.**

Notwithstanding any other provision of this Chapter, the provisions of this Chapter, or the rules and regulations hereunder, shall be suspended automatically to the extent that they conflict with any federal or State laws, rules or regulations pertaining to an employment position for which the County Board has approved and accepted federal or State funds.

(2-22-75)

#### **§ 6-26. Physical Examination of Policemen and Firemen.**

A. Physical examinations shall be made of all policemen and firemen as required by Chapter 272 of the 1975 Acts of Assembly, as amended, and §§ 27-40.1 and 27-40.1:1 of the Code of Virginia, as amended, to determine if such policemen and firemen are free from respiratory diseases, hypertension and heart disease. The physical examination shall be conducted by any doctor licensed to practice medicine in the Commonwealth of Virginia who is retained by the Arlington County Department of Human Resources.

B. The following diagnostic tests shall be performed in addition to the physical examination:

1. Chest X-ray.
2. Electrocardiogram.
3. Complete blood count.
4. Blood cholesterol.
5. Triglyceride level.
6. Urinalysis.
7. Pulmonary function tests.

(12-18-76)

#### **§ 6-27. Employment of Off-Duty Officers.**

Police officers and deputy sheriffs shall be permitted to engage in off-duty employment which may occasionally require the use of their police powers in the performance of such employment. The Chief of Police and Sheriff shall promulgate reasonable rules and regulations to apply to such off-duty employment.

(4-25-81; Ord. No. 07-15, 10-13-07, Effective 11-01-07)

#### **§ 6-28. Employee Benefits: Housing Assistance.**

Subject to appropriation of funds by the County Board, the County Manager shall establish a program to provide grants to employees of the County, the Constitutional Officers, and the School Board for purchase or rental assistance of a primary residence within the County. The County Manager is authorized to take all actions the

Manager deems necessary or appropriate to establish and administer the program, including the establishment of terms and conditions, and to ensure that the program meets any applicable requirements of the law. (Ord. No. 02-18, 6-22-02; Ord. No. 04-17, 06-26-04, effective 7-1-04)

**§ 6-29. Employee Benefits: Retiree Medical and Dental Plan.**

A. The County will, subject to appropriation of funds by the County Board, provide a monetary subsidy for employees who retire pursuant to § 21-41, § 21-43, § 21-45, § 35-36, § 35-38, § 46-37, § 46-39, or § 46-41.

The minimum subsidy towards the cost of medical coverage, which is not supplemental to Medicare, and dental coverage for an employee retiring with a full career of twenty-five (25) years of service (twenty (20) years of service for members of Chapter 21 or 35) will be eighty percent (80%) of the self-insured HMO health plan premium for single coverage and seventy-eight percent (78%) of the self-insured HMO health plan premium for other levels of coverage, and eighty percent (80%) of the dental premium for all levels of coverage, but shall not exceed the following:

1. Nine hundred sixty dollars (\$960.00) per month for members retiring prior to January 15, 2012,
2. Six hundred dollars (\$600.00) for employees hired before July 1, 2008 and retiring on or after January 15, 2012, and
3. Three hundred dollars (\$300.00) for employees hired on or after July 1, 2008.

Specific plan design, prorated benefits for employees with less than a full career, supplemental Medicare coverage and other terms and conditions shall be established by the County Manager. For supplemental Medicare coverage, the monetary caps set forth in sections 1, 2, and 3 above shall be applicable.

B. Subject to appropriation of funds by the Arlington County Board, employees who retired prior July 1, 2008 and elected to continue their health and/or dental plan benefits into retirement may cancel their health and/or dental coverage and opt to re-enroll in the County-sponsored health and/or dental plans within sixty (60) days from the date of termination of their alternative coverage.

C. Subject to appropriation of funds by the Arlington County Board, employees who retire on or after July 1, 2008, who elect to receive their retirement allowance pursuant to §21-48, §35-40, or §46-44(B), and who are receiving a monthly retirement allowance and are eligible for the health and/or dental plan benefits may either:

1. Elect to continue their health and/or dental coverage into retirement, cancel their health and/or dental coverage at any time after retirement provided the retiree obtains alternate health and/or dental insurance coverage from a company or program other than that which Arlington County provides, and re-enroll upon termination of alternate coverage, or
2. Opt to enroll in the County-sponsored health and/or dental plan within sixty (60) days from the date of termination of coverage elsewhere.

Procedures and other terms for cancelling and re-entering the health and/or dental plans shall be established by the Human Resources Director.

(Ord. No. 08-17, 09-13-08; Ord. No. 08-19, 10-18-08; Ord. No. 12-13, 9-15-12).

**§ 6-30. Collective Bargaining**

A. *Statement of Policy.* It is the public policy of the County of Arlington and the purpose of this Section to promote orderly and constructive relationships between the county and its employees subject, however, to the supreme right of the citizens of the county that their government honor guarantees for their health, safety, welfare, and the uninterrupted operations and functions of government. Because unresolved disputes between the county and its employees are detrimental to the public and to county employees, adequate means must be established for their speedy and effective resolution. Within the limitations required by the greater public interest, and recognizing that amicable relationships are desired between the county and its employees, the county board has

determined that the overall policies set forth here may best be accomplished by (1) granting to county employees the right to organize and choose freely their representatives; (2) permitting the county to negotiate and bargain in good faith with employee organizations representing county employees and to enter into written agreements evidencing the result of such bargaining; and (3) establishing procedures to provide for the protection of the rights of the county, county employees and the public at large.

The county board establishes this policy with the intent that county employees enjoy the right to bargain collectively within parameters that promote a government that provides effective and efficient services that are responsive to the community and focused on improving quality of life through the services of staff who value and work to achieve and maintain a high performance work environment characterized by commitment to integrity, inclusiveness, innovation, efficiency and transparency.

B. *Definitions.* As used in this County Code Section, the following terms shall have the meanings set forth below:

*Arbitration* means the procedure by which the county and an exclusive bargaining representative submit their differences to a third party for decision where permitted under Section N of this ordinance.

*Benefits* means, for the purpose of this Section, leave (paid and unpaid, vacation, and holidays), insurance (including contributions and levels of coverage) and matters pertaining to the county-provided retirement, pension or deferred compensation/savings plan(s).

*County* means the County of Arlington acting through its county manager or the county manager's designee.

*Collective Bargaining* means to perform the mutual obligation of the county, by its representatives, and the exclusive bargaining representative of employees in an appropriate bargaining unit to meet and negotiate in good faith at reasonable times and places, with the intent to reach an agreement regarding terms and conditions of employment as defined herein, which agreement shall remain in effect until superseded by a new agreement, subject to appropriation of funds by the county board. Collective bargaining shall not mean negotiation as to matters controlled or preempted by any federal or state constitutional provision, law, rule or regulation.

*Collective Bargaining Agreement* means the written legal contract between the county and an exclusive bargaining agent representing the employees in a bargaining unit authorized by this Section and resulting from collective bargaining as defined in this subsection.

*Confidential Employee* means any employee who works in:

- (1) any office of a county board member;
- (2) the Office of the County Manager;
- (3) the Office of the County Attorney;
- (4) the Department of Human Resources;
- (5) the Department of Management and Finance; or
- (6) in a position, wherever assigned, with authorized access to confidential information pertaining to county budgetary or fiscal data or confidential personnel information pertaining to collective bargaining matters.

*Employee* means any employee of the county, except it does *not* include anyone who is:

- (1) a confidential employee, as defined in this subsection;
- (2) a managerial employee, as defined in this subsection;
- (3) a supervisor, as defined in this section;



- (4) temporary seasonal or grant funded employees as defined in applicable county administrative regulations and temporary regular or temporary occasional employed less than 500 hours in a calendar year;
- (5) an intern or volunteer;
- (6) a member of a board or commission, or other appointee of any public body as defined in state law, who is not otherwise an employee of the County; or
- (7) an employee of the courts or of any local constitutional officer as set forth in Article VII, Section 4 of the Virginia Constitution, whether or not the county provides personnel administrative services or supplements state or other funding provided for the personnel of such officers.

*Employee organization* means an organization in which employees participate, and that exists for the purpose, in whole or in part, of representing employees in collective bargaining concerning labor disputes, wages, hours, and other terms and conditions of employment.

*Employee contract dispute* means a difference of position as between the County and an employee belonging to a bargaining unit concerning administration, interpretation or application of the collective bargaining agreement. It shall not mean disciplinary actions such as dismissals, demotions or suspensions.

*Exclusive bargaining representative* and *exclusive bargaining agent* mean the employee organization recognized by the County as the only organization to bargain collectively for all employees in a bargaining unit (as defined in subsection F).

*Impasse* means the failure of the county and an exclusive bargaining representative to reach agreement in the course of collective bargaining negotiations.

*Labor-management dispute* means a difference of position as between the county and an exclusive bargaining agent; action challenged as a prohibited practice under subsection P; negotiability of subject matters; and questions of eligibility of disputes for resolution by mediation or arbitration. It shall not mean disciplinary or other adverse personnel actions within the meaning of Virginia Code Section 15.2-1506, *et seq.*, as implemented by the uniformly applicable county grievance procedure, and state statutory procedures applicable to law enforcement officers and fire and emergency medical services employees.

*Managerial employee* means any individual who:

- (1) has responsibility for a unit or sub-unit of a division of an agency or department;
- (2) participates in the formulation of policy;
- (3) is significantly engaged in executive or management functions; or
- (4) is charged with the responsibility of directing the implementation of management policies, procedures or practices.

*Mediation* means an effort by a neutral, third-party factfinder chosen under the terms of this Section to assist in resolving an impasse or labor-management dispute as provided in Section N.

*Professional employee* means an employee whose primary duty is the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

*Supervisor* means any individual who customarily and regularly devotes work time to supervision and has authority to hire, transfer, suspend, layoff, recall, promote, demote, discharge, assign, evaluate, reward or discipline other employees, or adjust grievances, or effectively to recommend any such actions. With respect to the Fire Department, "supervisor" includes all personnel at the rank of *battalion chief* or above. With respect to the Police

Department, "supervisor" includes all personnel with the rank of captain or above.

*Strike* means, in concerted action with others, an employee's refusal to report to duty or willful absence from their position, or stoppage of work, for the purpose of inducing, influencing, or coercing a change in the conditions, compensation, rights, privileges or obligations of public employment.

*Technical employee* means an individual whose work requires a combination of basic scientific or technical knowledge or manual skill that can be obtained through specialized post-secondary school education or through equivalent on-the-job training.

*Terms and Conditions of Employment* means wages, salaries and all forms of monetary compensation, benefits, personnel policies and practices, and working conditions. The term does not include matters reserved to management's sole discretion in subsection D.

C. *Employee Rights.*

1. Employees shall have the right to organize, form, join, assist, and pay dues or contributions to employee organizations, to bargain collectively through an exclusive bargaining representative of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection insofar as such activity is not inconsistent with this Section or prohibited by any other applicable law. Employees shall also have the right to refrain from any or all such activities.
2. A collective bargaining agreement provision that violates the rights of employees set forth in this section shall be void. A collective bargaining agreement provision that establishes a time period for the exercise of an employee right set forth in this subsection shall not violate this section.
3. The county and each employee organization will refrain from any intimidation, coercion, or harassment of employees who choose to exercise their rights under this subsection.

D. *County's Rights and Authority.* The County shall at times retain exclusive rights regarding the following non-negotiable matters/subjects:

- a) to hire, promote and classify all employees; and to, suspend, demote, discharge, or take other disciplinary action against employees for cause; and to establish criteria for all such actions listed herein and make the ultimate decision as to which employee(s) such actions will apply, except that the venue for the final step in the County's grievance procedure available to challenge such county decisions shall be negotiable, to the extent consistent with Virginia law;
- b) to lay off employees or effect a reduction-in-force or to transfer, assign or retain employees , except that the County Manager shall, upon request, negotiate procedures to implement such actions and arrangements for employees affected by such actions and such negotiations shall be governed by N(2)(c);
- c) to establish and change standards of behavior or performance, job qualifications and job descriptions;
- d) to determine the goals, objectives, functions, structure and supervision of departments, divisions and offices of government;
- e) to do all things reasonable and necessary to carry out the mission of the county in emergencies declared in accordance with applicable federal, state or local laws, regulations and policies; and
- f) to establish the county budget and appropriate funds in the county board's discretion in accordance with applicable law.

E. *Official Work Time*

1. Where no exclusive bargaining agent has been recognized as the representative of the employees involved, solicitation of support, membership, or dues, or engaging in any other

employee organization activities is not permitted when the employee(s) involved is on duty unless authorized in a collective bargaining agreement provided, however, that this section shall not be applied in a manner that discriminates against casual nondisruptive conversation in the workplace.

2. Any employee representing an exclusive bargaining agent in the negotiation of an agreement under this Section shall be authorized official time for such purposes, including attendance at an impasse resolution proceeding, during the time the employee otherwise would be in a duty status, but only to the extent reasonable and consistent with county operations and service demands. Exclusive bargaining agents retain the exclusive right to determine who shall represent them at any negotiation and the County's determination of its operations and service demands under this section shall not infringe on that right.

F. *Bargaining Units.* The county shall recognize only the following bargaining units for the purposes of collective bargaining:

1. Police: The police employees' bargaining unit shall consist of all sworn uniformed employees of the police department, except those excluded by definition under subsection B;
2. Fire and Emergency Medical Services: The fire and emergency medical services employees' bargaining unit shall consist of the uniformed fire employees, including fire marshals, except those excluded by definition under subsection B;
3. Service, Labor & Trades (SL&T): Those eligible classes of full-time employees associated with service/maintenance and skilled crafts, i.e., job classes of workers performing duties that result directly in the comfort, convenience and well-being of the general public, or contribute to the maintenance of capital assets, land and infrastructure of the county;
4. Office and Technical employees (O&T): Those eligible classes of workers other than employees included in the Service, Labor and Trades units or the Professional employees unit.
5. Professional employees: employees meeting the definition of Professional employee in the County Code section.

G. *Labor Relations Administrator.*

1. A labor relations administrator (LRA or the administrator) shall be appointed by the county manager within 90 days of the effective date of this ordinance in the manner set forth in subsection 3, below, to effectively administer this Section as it governs exclusive bargaining representative selection, bargaining unit membership, certification and decertification procedures, negotiation impasses, labor-management disputes, prohibited practices, and choice of mediator/arbitrator as needs arise under this Section or any collective bargaining agreement.
2. The administrator must be experienced as a neutral in the field of labor relations, and must not be a person who, because of vocation, employment, or affiliation, can be categorized as a representative of the interest of the county or any employee organization, including an exclusive bargaining agent for a bargaining unit permitted under this Section.
3. The county manager shall appoint the labor relations administrator who shall be selected from a list of no more than 3 (three) nominees jointly developed by a committee made up of the exclusive bargaining agents of the bargaining units permitted by this Section and an equal number of designees of the county manager. The administrator so appointed shall serve a 4-year term. If, as of the time LRA services are first required, no exclusive bargaining agent(s) have yet been recognized by the county under this Section, a labor relations administrator meeting the qualifications described in this subsection shall be appointed for a 4-year term by the county manager following consultation with employee organizations from whom the county manager has received notice of interest in representing county employees.

4. The administrator's services shall be subject to termination by the county manager or the exclusive bargaining agents of the bargaining units permitted by this Section, if any.
5. If the administrator dies, resigns, becomes disabled, or otherwise becomes unable or ineligible to continue to serve within six (6) months of the date of appointment, the county manager must appoint a new administrator from the list from which that administrator was selected to serve the remainder of the previous administrator's term. Otherwise, the administrator vacancy shall be filled as provided in subsection 3.
6. An administrator appointed under this subsection may be reappointed in accordance with the provisions of subsection 3.
7. The terms of payment for the services of the administrator shall be set as specified by contract with the county.
8. The administrator shall:
  - a) hold and conduct elections for certification or decertification pursuant to the provisions of this Section and issue the certification or decertification or cause these actions to occur.
  - b) request from the county or an employee organization, and the county or such organization shall provide, any relevant assistance, service, and data that will enable the administrator to properly carry out duties under this subsection.
  - c) hold hearings and make inquiries, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, and compel by issuance of subpoenas the attendance of witnesses and the production of relevant documents, to the extent permitted by applicable law, in proceedings within the responsibility of the administrator under this subsection.
  - d) investigate and attempt to resolve or settle, as provided in subsection N - Mediation and Arbitration, charges of either the county or an employee organization engaging in prohibited practices as defined in this Section. However, if the county and a certified representative have negotiated a labor-management dispute resolution procedure, the administrator must defer to that procedure to resolve any dispute that properly may be submitted to the procedure, absent a showing that the deferral results in the application of principles contrary to this Section. The administrator must defer to state procedures in any matter governed by the Law-Enforcement Officers' or Firefighters and Emergency Medical Technicians' Bill of Rights set forth in the Virginia Code.
  - e) determine unresolved issues of employee inclusion in or exclusion from the bargaining units permitted under this Section except as limited by definition as set forth in subsection B.
  - f) obtain any necessary support services and make necessary expenditures in the performance of duties, subject to appropriation.
  - g) determine any issue regarding the negotiability of any collective bargaining proposal as a subject of bargaining permitted under this article.
  - h) Exercise any other powers and perform any other duties and functions specified in this article of an administrative nature.

H. *Recognition of Exclusive Bargaining Agent.*

1. A bargaining agent shall be the exclusive representative of all employees in an appropriate bargaining unit described in subsection F if the employee organization is selected by a majority of

the employees voting in an appropriate bargaining unit in an election conducted pursuant to subsection I, and rules and procedures adopted by the LRA, following a request for recognition. Any cost of such election shall be shared equally by the parties involved.

2. "Administratively acceptable evidence" to support a petition for recognition or certification by election or for decertification may consist of a combination of membership cards or a membership roster, evidence of dues payment, or other evidence of bargaining unit employees' desire to be represented by an employee organization for collective bargaining purposes. An authorization that satisfies the Uniform Electronic Transactions Act (Virginia Code § 59.1-479 et seq.) including shall be valid for employees' authorization for purposes of a petition filed by a labor organization for exclusive representation. The determination by the LRA of the sufficiency of a showing of support for a representation election shall not be subject to challenge by any person or employee organization or by the county.

I. *Request for Election.*

1. An employee organization may request an election be held by submitting a petition for an election to the LRA who shall notify the county manager in accordance with procedures set and published by the LRA, including but not limited to provisions for public notice of a petition and election. The petition must represent a showing of interest by at least thirty (30) percent of the employees in a bargaining unit described in subsection F, based upon administratively acceptable evidence.
2. Any additional interested employee organization must submit a petition of intervention to the LRA, which must be accompanied by a showing of interest by thirty (30) percent of the employees in the appropriate bargaining unit, based upon administratively acceptable evidence, within ten (10) days of notice of the petition.
3. An election under this subsection shall be held within forty-five (45) calendar days after written notice to all parties and the public of the determination by the LRA of a valid petition for election in accordance with guidelines established by the LRA. If an employee organization receives a majority of the valid ballots cast by the employees in a permitted bargaining unit, it shall be recognized by the county as the exclusive bargaining agent, unless and until the LRA certifies a different organization or otherwise decertifies the agent in accordance with provisions of this Section. However, the county or the employee organization may file exceptions with the LRA in accordance with its rules, and the county need not recognize the employee organization pending the resolution of any process to review those exceptions. In an election in which none of the choices on the ballot receives a majority, a runoff election shall be conducted in which the ballot shall provide for a selection between the two choices or parties receiving the highest and second highest number of ballots cast in the election.
4. Nothing in this Section shall require or permit an election in any bargaining unit within twelve (12) months after a previous election has been held in such bargaining unit.
5. No party shall have an advantage over the other in gaining access to employees during organizational or representation campaign activity.

J. *Decertification.*

1. Recognition of an employee organization as the exclusive bargaining agent for a bargaining unit permitted by this Section shall continue only so long as such organization satisfies the criteria of this Section.
2. If a petition for decertification of a recognized exclusive bargaining agent is presented to the LRA showing, based upon administratively acceptably evidence, that at least thirty (30) percent of the employees in the bargaining unit no longer want the employee organization to be their bargaining agent, then the LRA shall hold an election in the manner prescribed in subsection I.
3. A petition for decertification of a recognized exclusive collective bargaining agent in an

appropriate unit may be filed in a thirty-day (30) period between the one hundred eightieth (180th) and one hundred fiftieth (150th) day prior to expiration of any existing collective bargaining agreement for that bargaining unit or any time after that collective bargaining agreement has expired.

4. For a period of one (1) year following recognition or certification of an exclusive bargaining agent, no decertification petitions may be filed.
5. An employee organization no longer shall be recognized as the exclusive bargaining agent of the employees in the bargaining unit if a majority of the employees in the appropriate bargaining unit vote in the decertification election to no longer be represented by the employee organization. Decertification shall be effective upon the LRA's certification of the results of such election.

**K. *Rights Accompanying Exclusive Representation***

Any employee organization recognized as the bargaining agent for employees in an appropriate bargaining unit shall have the following rights:

1. To speak on behalf of all members of the unit and represent the interests of all members of the bargaining unit without discrimination and without regard to employee organization membership.
2. To meet at reasonable times and places to engage in good faith collective bargaining on matters that, under this Section, may be the subject of collective bargaining, in an effort to reach an agreement, subject to the approval of the county manager or his/her designee with responsibility for the employees in the bargaining unit.
3. To meet with bargaining unit employees on the premises of the county in non-secure areas during times when the employees are on break or in a non-duty status. Any other employee organization that has submitted a petition and established a valid question concerning representation of the bargaining unit shall also be permitted to meet with bargaining unit employees with the same limitations. This subsection shall not restrict an exclusive bargaining agent and the county from negotiating for greater access to employees by the exclusive bargaining agent as provision of a collective bargaining agreement.
4. To meet with newly hired employees, without charge to the pay or leave time of any of the employees for a maximum of 30 minutes , within 30 calendar days from the date of hire during new employee orientations, or if the employer does not conduct new employee orientations, at individual or group meetings.
5. To be the only labor organization eligible to receive from the county amounts deducted from the pay of employees as authorized by written assignment of the employees, for the payment of regular and periodic dues to the exclusive bargaining agent, unless two exclusive bargaining agents of county employees agree that they can both receive deductions from the same employee. Any such authorization may be revoked in accordance with the terms of the authorization which shall provide a period of irrevocability of not more than one year. An authorization that satisfies the Uniform Electronic Transactions Act (Virginia Code § 59.1- 479 et seq.) shall be valid for employees' authorizations for payroll deductions.
6. To be represented at any formal discussion between one or more representatives of the county and one or more employees in the bargaining unit or their representatives concerning (a) any matter that is within the scope of collective bargaining as set forth in the definition of collective bargaining (see subsection B); or (b) any examination of bargaining unit employees by a representative of the county in connection with an investigation if the employee reasonably believes that the examination involves matters covered by any collective bargaining agreement then in effect, or the employee reasonably believes they may be disciplined based on the subject of the examination, and the employee requests representation.
7. Notwithstanding any other provision in this Section, an individual employee may present a

personal complaint or question at any time to the county without the intervention of an employee organization, provided that any such organization that is recognized by the county as the exclusive bargaining agent for the bargaining unit in which the employee is a member is afforded an effective opportunity to be present and to offer its view at any meetings held to adjust the matter and that any adjustment made shall not be inconsistent with the terms of any applicable collective bargaining agreement. Such employee or employees who utilize this avenue of presenting personal complaints to the county shall not do so under the name, or by representation, of an employee organization.

L. *Good Faith Bargaining*

1. A written request for bargaining must be submitted by the exclusive bargaining agent to the county manager no later than March 1, and negotiations must begin by April 1 and conclude by October 1 of any year where an agreement is sought to be effective at the beginning of the next fiscal year, in order to accommodate the county budget process. Failure of the parties to reach agreement by October 1, shall constitute impasse and trigger impasse resolution procedures under this Section.
2. Nothing in this Section requires either party to make any concessions or agree to the other party's proposals.
3. Good faith bargaining shall not include submission of or a response to a proposal that either violates the rights of employees as set forth in this Section, or impairs, restricts, or delegates the authority of the county as set forth in subsection D provided, however, that the County Manager shall, upon request, negotiate regarding proposals addressing the impact of county decisions that substantially impact the general working conditions of two or more employees made pursuant to authorities in subsection D and the procedures the county shall follow as it implements such decisions, and such negotiations shall be governed by N(2)(c). During the term of unexpired collective bargaining agreement, the County shall have the right to implement a proposed change upon agreement with the exclusive representative or at impasse.
4. The county manager shall designate or appoint the county's representative(s) in collective bargaining negotiations in the county manager's sole discretion. The exclusive representative shall designate its representatives at its sole discretion.

M. *Approval of a Tentative Agreement.*

1. When an exclusive bargaining agent and the county manager's bargaining representative reach a tentative agreement, they shall reduce it to writing and execute it signifying the approval of the bargaining agent and the county manager. No agreement shall be effective or enforceable, however, until:
  - a) a fiscal impact study of the tentative agreement is prepared by the county's Department of Management and Finance;
  - b) the fiscal impact study of the tentative agreement is submitted to the county board, and a public hearing held no later than the November Board Meeting on the fiscal impact of the tentative agreement; and
  - c) the county board specifies by resolution the December Board Meeting its good faith commitment to appropriate funding necessary for the county to meet obligations under the tentative agreement as set forth in the fiscal impact study provided for in this subsection, with the understanding that any such resolution remains subject to actual appropriation. If the board does not resolve to fund any provision(s) of the tentative agreement requiring appropriation, the county manager or the exclusive bargaining agent may re-open negotiations on those provisions which shall be scheduled as promptly as possible with the good faith objective to negotiate provisions that may be acceptable to the board for its consideration within the county's budget approval schedule. Upon

presentation to the board of any tentative agreement re-negotiated under this subsection, the board shall consider and specify by resolution as soon as practicable its good faith commitment to appropriate funding necessary for the county to meet obligations under the tentative agreement, with the understanding that any such resolution remains subject to actual appropriation; and

- d) the tentative agreement is approved by:
  - i. the county manager or county manager's designee with supervisory responsibility for the employees in the bargaining unit as evidenced by signature, which may be an electronic signature made in accordance with applicable state law; and
  - ii. the exclusive bargaining agent by ratification in accordance with the bargaining agent's governing procedures and evidenced by the signature of an authorized agent which may be an electronic signature made in accordance with applicable state law.
- 2. A written agreement shall be contrary to public policy and therefore shall not bind the parties or be enforceable by either party to the extent that it is not the result of good faith bargaining as defined in this Section.

N. *Mediation, Arbitration, Grievance Procedures*

1. Mediation.

- (a) *Labor-Management Disputes*: The county and an exclusive bargaining agent shall first attempt to resolve labor-management disputes informally by discussion between the parties' designees. In the event that the county and the bargaining agent are unable to informally resolve a labor-management dispute, either party or the parties jointly may submit the dispute to the LRA for mediation pursuant to procedures instituted by the LRA.
- (b) *Impasse*: If after a reasonable period of negotiation over the terms of an agreement there is a dispute over specific issues between the county and the bargaining agent, an impasse may be called by either party and resolution may be sought by submission of those issues for mediation by the LRA or a mediator selected through procedures established by the LRA. The parties shall jointly request mediation within five (5) days of such a declared impasse. Whether impasse is declared as set forth here or triggered by operation of subsection L due to failure to reach agreement by October 1 as provided therein, the LRA or other mediator shall set reasonable deadlines for all steps of the mediation process. Negotiations on other matters may continue throughout impasse procedures.
- (c) The mediation process is advisory only, and the LRA or other mediator shall have no authority to bind either party.
- (d) The mediation process and any comments, statements or suggestions from the LRA or other mediator or the parties and any documents evidencing the same made or created during the mediation process shall not be disclosed except as required by law or by agreement of the parties.
- (e) The parties shall share the costs of mediation equally.

2. Arbitration

- (a) If the county and exclusive bargaining agent are unable to reach agreement in mediation to resolve (i) any impasse regarding wages, salaries and any forms of monetary compensation, benefits, working conditions affecting physical health and safety and related equipment, administrative procedures/processes for lay-offs or reductions-in-force, and administrative



procedures/processes for promotion, or (ii) any labor-management dispute by any deadline set forth in procedures provided in this Section or adopted by the LRA, such impasse as described in this subsection N(2)(a) or labor-management dispute shall be submitted to final and binding arbitration pursuant to procedures adopted by the LRA which shall, at a minimum, require the parties' joint selection of an arbitrator. The parties shall share the costs of arbitration equally.

- (b) Each collective bargaining agreement shall contain an employee contract dispute resolution procedure, culminating in final and binding arbitration. This negotiated contract dispute resolution procedure shall be the exclusive procedure available to an employee of a bargaining unit covered by that agreement unless the employee contract dispute is also a grievable matter under Va. Code 15.2-1507 (excluding disciplinary actions such as dismissals, demotions or suspensions), in which case the employee may elect to file an employee contract dispute under the procedures in the collective bargaining agreement, or file a grievance under the procedures guaranteed by VA Code 15.2-1507 and any other applicable state laws. The employee contract dispute procedure and grievance procedure shall be mutually exclusive, and an employee's initial election to file an employee contract dispute or grievance shall be binding and irrevocable at the time of filing.
- (c) Non-binding arbitration, in accordance with procedures established by the LRA, shall be available for resolution of impasses regarding any matters not set forth in subsection N(2)(a) above. In the event that the County does not implement the recommendations or resolutions resulting from non-binding arbitration, the County Manager shall, at the next meeting of the County Board, explain why they have not accepted the recommendation.

In making any decision under the impasse procedure authorized by this subsection N(2)(a), the arbitrator shall give weight to the following factors:

- a. The lawful authority of the County;
- b. Stipulations of the parties;
- c. The interests and welfare of the public;
- d. The financial ability of the employer to meet the costs of any items to be included in the agreement;
- e. Comparison of wages, hours, and terms and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and terms and conditions of employment of other persons performing similar services in the public and private sectors, if applicable;
- f. The average consumer prices for goods and services, commonly known as the cost of living;
- g. The overall compensation presently received by the employees involved in the arbitration;
- h. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings; and
- i. Such other factors that are normally or traditionally taken into consideration in the determination of wages, hours, and terms and conditions of employment through voluntary collective bargaining, mediation, arbitration, or otherwise between the parties, in the public sector.

O. *Strikes and Other Job Actions*

1. Pursuant to Virginia Code § 40.1-55, any employee of the county or of any agency or authority of the county who, in concert with two or more other such employees, strikes or willfully refuses to perform the duties of their employment shall be deemed by that action to have terminated their employment and shall be ineligible for employment in any position or capacity during the next 12 months by the county, the Commonwealth of Virginia or any county, county, town or political subdivision of the Commonwealth or any department of any such public entities. The county agrees that no lockout shall take place.
2. Any employee organization determined to have violated this subsection shall cease to be accorded recognition under this Section, shall cease to receive any dues or fees collected by paycheck withholding and shall not be accorded recognition or receive any dues or fees collected by paycheck withholding for a period of one (1) year.

P. *Prohibited Practice.* Neither the county nor any exclusive bargaining agent shall refuse to negotiate in good faith with respect to matters within the scope of collective bargaining as defined in subsection B.

1. The county and its agents shall not:
  - a. Interfere with, restrain or coerce employees in the exercise of rights granted by this Section;
  - b. Dominate or interfere in the administration of any employee organization;
  - c. Encourage or discourage membership in any employee organization, committee, or association including by discrimination in hiring, tenure, or other terms and conditions of employment;
  - d. Discharge or discriminate against any employee because the employee has filed an affidavit, petition, or complaint or given any information or testimony under this subsection or because the employee has formed, joined, or chosen to be represented by any exclusive bargaining agent;
  - e. Deny the rights accompanying certification as the exclusive bargaining agent as conferred by this Section;
  - f. Refuse to bargain collectively with the recognized exclusive bargaining agent as provided in this Section;
  - g. Refuse to participate in good faith in any agreed-upon impasse resolution procedures or those set forth in this Section; or
  - h. Refuse to reduce a collective bargaining agreement to writing and sign such agreement provided all conditions for an enforceable agreement, as set forth in this Section and under other applicable law, have been met.
2. No employee organization or its agents shall:
  - a. Interfere with, restrain, or coerce any employee with respect to rights granted in this Section or with respect to selecting an exclusive representative;
  - b. Fail to represent an employee who is in a bargaining unit exclusively represented by the employee organization fairly regarding negotiation and administration of collective bargaining agreements and without discrimination, provided such failure is willful or deliberate;
  - c. Refuse to bargain collectively with the county as provided in this Section; or
  - d. Refuse to participate in good faith in or violate any agreed-upon impasse resolution

procedures or those set forth in this Section.

3. Prohibited practice charge procedures.
  - a. Proceedings against a party alleging a violation of this subsection shall be commenced by filing a charge with the LRA within 90 days of the alleged violation, or acquiring knowledge thereof, and causing a copy of the charge to be served upon the accused party in the manner of an original notice as provided in subsection R. The accused party shall have 10 days within which to file a written answer to the charge. The LRA may conduct a preliminary investigation of the alleged violation, and if the LRA determines that the charge has no legal or factual basis, they may dismiss the charge. If the charge is not dismissed, the LRA shall promptly thereafter set a time and place for a hearing. The parties shall be permitted to be represented by counsel or other designated representative, summon witnesses, and request the LRA to subpoena witnesses and the production of records on the requester's behalf. Compliance with the technical rules of pleading and evidence shall not be required.
  - b. The LRA may designate a hearing officer to conduct any hearing. The hearing officer shall have such powers as may be exercised by the LRA for conducting the hearing and shall follow procedures adopted by the LRA for conducting the hearing. The decision of the hearing officer may be appealed to the LRA and the LRA may hear the case de novo or upon the record as submitted before the hearing officer.
  - c. The LRA, at their discretion, shall provide for an official written transcript to report the proceedings, the costs of which shall be borne equally by the parties.
  - d. The LRA shall file its findings of fact and conclusions. If the LRA finds that the party accused has violated any provision of this subsection, the LRA may issue an order directing the party to cease and desist engaging in the violation and may order such other reasonable affirmative relief as is necessary to remedy the violation. Under the provisions for court review of arbitration awards set forth in the Uniform Arbitration Act (Virginia Code §§8.01-581.01 et seq.), the LRA may petition the circuit court for enforcement of an order made under this subsection.
  - e. Any party aggrieved by any decision or order of the LRA may within 21 days from the date such decision or order is filed, appeal to the circuit court to obtain judicial review pursuant to the provisions for judicial review set forth in the Uniform Arbitration Act, Virginia Code §§8.01-581.01, et seq. A party may seek enforcement an LRA or arbitrator's decision or order in accordance with the procedures of the Uniform Arbitration Act.

Q. *Time Limits.* Any time limits in this Section may be extended by written agreement of the county, the employee organization and any other appropriate parties.

R. *Notices.* Any notice required under the provisions of this Section shall be in writing, but service of any such notice shall be sufficient if mailed by certified mail, return receipt requested, addressed to the last-known address of the parties, unless otherwise provided in this Section or by the rules of the LRA, which rules shall provide for the electronic service of documents. Refusal of certified mail by any party shall be considered service. Prescribed time periods shall commence from the date of the receipt of the notice.

(Ord. No. 21-13, 7-17-21, effective 7-17-21;)