



FREDERICK COUNTY GOVERNMENT

OFFICE OF THE COUNTY EXECUTIVE

Jan H. Gardner
County Executive

Raymond V. Barnes, Jr., Chief Administrative Officer

EXECUTIVE ORDER NO.: 04-2018

EFFECTIVE DATE: September 25, 2018

Revision of Designation of Exempt Employees and Confirmation that these Employees Serve as the Local Counterpart to the Governor's Cabinet or Executive Council

The voters of Frederick County, Maryland (the "County") have adopted the Charter form of government. Pursuant to Section 401 of the Charter, the executive branch of the County government shall comprise the County Executive and all officers, agents, and employees under the supervision and authority of the Executive.

Before the change to the Charter form of government, the Board of County Commissioners of Frederick County ("Board") adopted a series of Resolutions designating those County officials or employees who were at the policy-making level and were advisers to the Board and were therefore exempt from certain provisions of the Frederick County Personnel Rules. These Resolutions set forth the terms and conditions under which the exempt officials and employees were eligible to receive severance pay when their employment ended. These employees now serve at the pleasure of the County Executive.

On February 9, 2016, the County Executive issued Executive Order 04-2016. That Executive Order confirmed that the employees designated in Sections 1, 2 and 3 of the Executive Order serve as the local counterpart to the Governor's cabinet or Executive Council. This confirmation was made to ensure continued compliance with the Maryland Open Meetings Act, Maryland Annotated Code, General Provisions Article, Section 3-101, et seq., which allows the County Executive to meet with the exempt employees in meetings that are not open to the public. This is permitted under Section 3-101(h)(3)(viii) of the Act, which excludes from the definition of a "public body" "a local government's counterpart to the Governor's cabinet, Executive Council, or any committee of the counterpart of the Executive Council." The State Open Meetings Compliance Board issued an Advisory Opinion in 1993 finding that the regular directors' meeting with the Board did not violate the Open Meetings Act. (Opinion No. 93-10) However, the Open Meetings Compliance Board later issued another Advisory Opinion calling for the formal establishment of local governments' counterparts to the Governor's cabinet, Executive Council, or a committee of the counterpart of the Executive Council. Although this requirement is not contained in the Open Meetings Act, the County Executive issued the Executive Order out of an abundance of caution to avoid any suggestion of noncompliance with the Open Meetings Act. Executive Order 04-2016 also reflected organizational changes made within the Executive Branch of County government.

Since Executive Order 04-2016 was issued, additional organizational changes have been made in the Executive Branch, making it necessary to replace Executive Order 04-2016 with this new Executive Order.

NOW, THEREFORE, I, JAN H. GARDNER, COUNTY EXECUTIVE OF FREDERICK COUNTY, MARYLAND, PURSUANT TO THE AUTHORITY VESTED IN ME BY THE CHARTER OF FREDERICK COUNTY, MARYLAND AND THE LAWS OF MARYLAND, HEREBY ISSUE THIS EXECUTIVE ORDER, EFFECTIVE IMMEDIATELY.

Section 1

The positions identified in this Section are filled through appointment by the County Executive and confirmation by the County Council, as provided in Article 4 of the County Charter. These positions are on the County Executive's personal staff at the policy-making level and serve as advisers to the County Executive in the exercise of her constitutional and legal powers of the office, and therefore are exempt from Chapters VI, VII, and IX and from Chapter VIII, Section 5, of the Frederick County Personnel Rules and serve at the pleasure of the County Executive:

1. Chief Administrative Officer
2. Chief Information Officer, Interagency Information Technologies Division
3. County Attorney
4. Director, Animal Control Division
5. Director, Citizens Services Division
6. Director, Emergency Management Division
7. Director, Finance Division
8. Director, Fire and Rescue Services Division
9. Director, Human Resources Division
10. Director, Parks and Recreation Division
11. Director, Planning and Permitting Division
12. Director, Public Works Division
13. Director, Senior Services Division
14. Director, Transit Services Division
15. Director, Utilities and Solid Waste Management Division
16. Director, Volunteer Fire and Rescue Services Division

Section 2

The appointed positions identified in this Section are at will appointments made by the County Executive under Chapter I, Section 14A of the Frederick County Personnel Rules. These positions also serve at the policy-making level as advisers to the County Executive in the exercise of her constitutional and legal powers of the office, and therefore are exempt from Chapters VI, VII, and IX and from Chapter VIII, Section 5, of the Frederick County Personnel Rules and serve at the pleasure of the County Executive:

1. Budget Director
2. Communications Director, Office of the County Executive

3. Education Liaison, Office of the County Executive
4. Government Affairs and Public Policy Director, Office of the County Executive
5. Director, Office of Economic Development
6. Manager, Office of Sustainability and Environmental Resources
7. Special Administrative Director, Office of the County Executive
8. Any other position appointed pursuant to Chapter I, Section 14A of the Frederick County Personnel Rules

Section 3

The appointed positions listed in this Section are not appointed by the County Executive and are not subject to confirmation by the County Council. These positions also serve at the policy-making level as advisers to the County Executive in the exercise of her constitutional and legal powers of the office, and therefore are exempt from Chapters VI, VII, and IX and from Chapter VIII, Section 5, of the Frederick County Personnel Rules:

1. Health Officer (The Health Officer is nominated by the County and appointed by the Secretary of Health and Mental Hygiene under §3-302 of the Health-General Article of the Maryland Annotated Code. The Health Officer may be removed from office with the concurrence of the County and the Secretary. The Health Officer is the Director of the Health Services Division.)
2. Director, Internal Audit Division (The Director is appointed by the Interagency Internal Audit Authority as provided in §1-2-136 of the County Code and serves at the pleasure of the Authority.)
3. Director, Frederick County Public Libraries (The Library Director is appointed by the Library Board of Trustees under §23-406(a) of the Education Article of the Maryland Annotated Code and serves at the pleasure of the Library Board.)

Section 4

The positions identified in Sections 1, 2 and 3 are formally established as the local counterpart to the Governor's cabinet or Executive Council. Having established the positions to serve as the counterpart of the cabinet or Executive Council, any group including the County Executive and any of the positions identified in Sections 1, 2 and 3 constitute "any committee of the counterpart of the Executive Council," as that term is used in the Open Meetings Act.

Section 5

This Section applies to exempt employees designated in Sections 1 and 2 who are either terminated or requested to resign by the County Executive and to exempt employees designated in Section 3 who are either terminated or asked to resign by their appointing authority. In order for this Section to apply, the basis for the termination or request for resignation cannot be misconduct or gross misconduct. The employees covered by this Section are entitled to severance pay calculated as follows:

A. An employee designated in Section 1 or 3 who is terminated or requested to resign within six months of the inauguration of a new County Executive will be paid a severance benefit from the date of separation based on the employee's length of service. The employee will be paid two weeks salary for each year or fraction thereof that he or she has been employed by the County in an exempt status capacity up to a maximum of twenty-six weeks of salary. A partial year of service will be rounded up to one full year of service. Credit for a partial year will be based on the employee's length of service and will not be calculated on a calendar-year basis.

B. When subsection A of this Section does not apply, the employee will be paid a severance benefit from the date of separation based on the employee's length of service. The employee will be paid his or her salary for seven work days for each year or fraction thereof that he or she has been employed by the County in an exempt status capacity up to a maximum of forty-two work days. A partial year of service will be rounded up to one full year of service. Credit for a partial year will be based on the employee's length of service and will not be calculated on a calendar-year basis.

Section 6

Exempt employees in the positions referred to in Sections 1, 2 and 3 who voluntarily resign or retire are entitled to a severance benefit equal to one day of pay for each work day's notice of their resignation or retirement given to the County Executive or appointing authority, up to a maximum of seven work days pay for each year or fraction thereof that they were employed in an exempt status capacity, such pay not to exceed forty-two work days. A partial year of service will be rounded up to one full year of service. Credit for a partial year will be based on the employee's length of service and will not be calculated on a calendar-year basis.

Section 7

Any person designated as an official or employee exempt from the Frederick County Personnel Rules since the adoption of the first Resolution on this subject (Resolution No. 79-14) who resigns or retires in good standing is entitled to the severance benefits referred to herein for the time during which the official or employee filled a position that was then on the exempt employees list.

Section 8

Exempt employees designated in Sections 1, 2 and 3 who are terminated or asked to resign for reasons of misconduct or gross misconduct are not eligible for severance pay pursuant to this Executive Order.

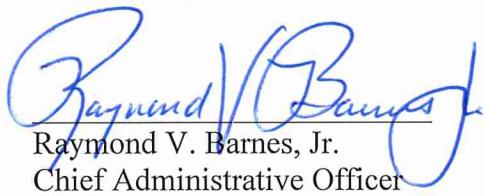
Section 9

The words "gross misconduct" and "misconduct" have the following meanings:

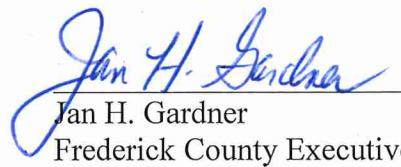
Gross misconduct is the deliberate and willful disregard of standards of behavior showing a gross indifference to the interests of the County or the repeated violations of employment rules that prove a regular and wanton disregard of the employee's obligations.

Misconduct is the negligent disregard of the standards of behavior that are rightfully expected by an employer, including, but not limited to, dereliction of duty, improper or wrongful behavior, or carelessness or negligence of such degree or recurrence as to manifest wrongful intent.

This Executive Order is issued this 25th day of September, 2018, effective immediately, and shall remain in effect until changed by further Executive Order.



Raymond V. Barnes, Jr.
Chief Administrative Officer



Jan H. Gardner
Frederick County Executive