



FREDERICK COUNTY GOVERNMENT

OFFICE OF THE COUNTY EXECUTIVE

Jan H. Gardner
County Executive

Rick Harcum, Chief Administrative Officer

EXECUTIVE ORDER NO.: 03-2022
EFFECTIVE DATE: October 19, 2022

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.

On February 9, 2016, the County Executive issued Executive Order No. 04-2016. That Executive Order confirmed that the positions designated in what are now Sections 1 and 2 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 in 2016 out of an abundance of caution to avoid any suggestion of noncompliance with the Open Meetings Act.

After Executive Order No. 04-2016 was issued, organizational changes occurred affecting the positions defined in this order and it was replaced with Executive Order No. 04-2018.

In February 2022, a revision was made to the specific severance benefit available to employees in the exempt positions listed in Sections 1 and 2 of the Executive Order, and an incentive benefit was added for those employees to provide advance notice of their intent to voluntarily resign or retire so as to allow for succession planning and continuity of operations. Executive Order No. 04-2018 was replaced with Executive Order No. 01-2022. Since then, additional organizational changes have occurred affecting positions defined in the Order making it necessary to create this new Executive Order No. 03-2022.

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

As provided in Article 4 of the County Charter, the positions identified in this Section are appointed by the County Executive and confirmed by the County Council, unless noted by *. All Section 1 positions are on the County Executive's personal staff at the policy-making level and serve as advisers in the execution of 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. County Attorney
2. Chief Administrative Officer
3. Deputy Chief Administrative Officer *
4. Chief Financial Officer *
4. Chief of Staff *
5. Chief Equity and Inclusion Officer *
6. Director, Animal Control Division
7. Director, Budget Office*
8. Director, Citizens Services Division
9. Director, Communications and Public Engagement Office *
10. Director, Economic Development Office*
11. Director, Education and Special Initiatives *
12. Director, Emergency Management Division
13. Director, Energy and Environment Division
14. Director, Finance Division
15. Director, Fire and Rescue Services Division
16. Director, Government Affairs *
17. Director, Human Resources Division
18. Director, Parks and Recreation Division
19. Director, Planning and Permitting Division
20. Director, Public Works Division
21. Director, Senior Services Division
22. Director, Transit Services Division

23. Director, Water and Sewer Utilities Division
24. Director, Solid Waste and Recycling Division
25. Director, Volunteer Fire and Rescue Services Division
26. Director and Chief Information Officer, Interagency Information Technologies Division
27. Any other position appointed pursuant to Chapter 1, Section 14A of the Frederick County Personnel Rules.

* Positions appointed pursuant to Chapter I, Section 14A of the Frederick County Personnel Rules

Section 2

The 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 the 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 3

The positions identified in Sections 1 and 2 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 and 2 constitute "any committee of the counterpart of the Executive Council," as that term is used in the Open Meetings Act.

Section 4

Employees working in positions designated in Section 1 and 2 who are either terminated, requested to resign, or requested to retire will be paid a **severance benefit**. This severance benefit will be calculated based on the years of service they were employed in a Section 1 or 2 position.

One year of service equals twelve consecutive months and will not be calculated on a calendar-year basis. A partial year of service will be rounded up to one full year of service.

If the termination, request for resignation, or request for retirement comes:

- A. *Within six months* of the inauguration of a new County Executive the severance benefit will be equal to two weeks of salary for each year of service. This severance benefit shall not exceed a maximum of twenty-six weeks of salary.
- B. *After the first six months* of the inauguration of a new County Executive the severance benefit will be calculated according to this schedule:
 - i) Six months to two years of service receive six and one half (6½) days of pay
 - ii) Three to ten years of service receive thirteen (13) days of pay
 - iii) Ten years or more of service receive nineteen and one half (19½) days of pay

Section 5

Employees working in positions designated in Section 1 and 2 who either voluntarily resign or retire at any time will be paid an **incentive benefit** to give advance notice of their intent to leave. These employees are the senior leaders of county government and it is essential for succession planning purposes and continuity of operations that these positions do not go vacant without advance notice.

The advance notice incentive benefit will be calculated based on the years of service they were employed in a Section 1 or 2 position. One year of service equals twelve consecutive months and will not be calculated on a calendar-year basis. A partial year of service will be rounded up to one full year of service.

The incentive benefit will be 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-of-pay for each year of service. In total, this advance notice incentive benefit shall not exceed a maximum of forty-two days of pay.

Section 6

Employees encumbering positions designated in Sections 1 and 2 who are either terminated, requested to resign, or requested to retire for reasons of misconduct or gross misconduct are not eligible for severance pay pursuant to this Executive Order.

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 19th day of October 2022, effective immediately, and shall remain in effect until changed by further Executive Order.



Rick Harcum
Chief Administrative Officer



Jan H. Gardner
Frederick County Executive