



## FREDERICK COUNTY GOVERNMENT

### OFFICE OF THE COUNTY EXECUTIVE

Jan H. Gardner  
County Executive

Douglas D. Browning, Chief Administrative Officer

EXECUTIVE ORDER NO.: 04-2016

EFFECTIVE DATE: February 9, 2016

#### 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 Resolution No. 14-28 on October 23, 2014, 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. Resolution No. 14-28 revised earlier Resolutions designating those exempt employees and setting forth the terms and conditions under which they were eligible to receive severance pay when their employment ended. Sixteen employees served at the pleasure of the Board under Resolution No. 14-28. These employees now serve at the pleasure of the County Executive.

This Executive Order confirms that the employees designated in Sections 1, 2 and 3 serve as the local counterpart to the Governor's cabinet or Executive Council. This confirmation is 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 takes this action out of an abundance of caution to avoid any suggestion of noncompliance with the Open Meetings Act. This Executive Order is also necessary to reflect organizational changes made within the Executive Branch of County government since the adoption of Resolution No. 14-28.

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 Section 412(a) 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, Health Services Division
10. Director, Human Resources Division
11. Director, Parks and Recreation Division
12. Director, Planning and Permitting Division
13. Director, Public Works 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 Officer
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. Special Administrative Director, Office of the County Executive
7. 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, but are instead appointed by their respective authority or board. 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 their respective board or authority:

1. Director, Internal Audit Division
2. Director, Frederick County Public Libraries

### **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 9th day of February, 2016, effective immediately, and shall remain in effect until changed by further Executive Order.

  
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Douglas D. Browning  
Chief Administrative Officer

  
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Jan H. Gardner  
Frederick County Executive

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