

ACTIONS
Board of Supervisors Meeting of January 3, 2007

January 5, 2007

<u>AGENDA ITEM/ACTION</u>	<u>ASSIGNMENT</u>
<p>1. Call to Order.</p> <ul style="list-style-type: none"> Meeting was called to order at 9:00 a.m. by the County Executive, Mr. Tucker. All BOS members were present. Also present were Larry Davis, Ella Carey and Meagan Hoy. 	
<p>4. Election of Chairman.</p> <ul style="list-style-type: none"> ELECTED Kenneth C. Boyd for Calendar Year 2007. 	
<p>5. Election of Vice-Chairman.</p> <ul style="list-style-type: none"> ELECTED David C. Wyant for Calendar Year 2007. 	
<p>6. Appointment of Clerk.</p> <ul style="list-style-type: none"> REAPPOINTED Ella Carey as Clerk and APPOINTED Meagan Hoy as Senior Deputy Clerk for Calendar Year 2007. 	
<p>7. Set Meeting Times, Dates and Places for Calendar Year 2007.</p> <ul style="list-style-type: none"> SET as follows: first Wednesday of the month at 9:00 a.m., second Wednesday of the month at 6:00 p.m., with meetings to be held in the County Office Building on McIntire Road. Since July 4, 2007 is a holiday, the meeting dates in July are: July 11 - 9:00 a.m., and July 18 – 6:00 p.m. Due to holiday schedule, the meeting dates for January 2008 are: January 9 – 9:00 a.m., and January 16 – 6:00 p.m. 	<p><u>Clerk:</u> Advertise in <u>The Daily Progress</u> and post notice on door of Lane Auditorium.</p>
<p>8. Set Dates for Hearing Zoning Text Amendments Requested by Citizens.</p> <ul style="list-style-type: none"> SET as follows: September 12 and December 12, 2007 and March 12, and June 11, 2008. 	<p><u>Clerk:</u> Advertise in <u>The Daily Progress</u> as required by Section 33.10.2 of the Zoning Ordinance.</p>
<p>9. Rules of Procedures, Adoption of.</p> <ul style="list-style-type: none"> ADOPTED as amended at meeting. 	<p><u>Clerk:</u> Forward copy to County Attorney, Planning and Community Development. (Attachment 1)</p>
<p>10. Boards and Commission Policy, Adoption of.</p> <ul style="list-style-type: none"> ADOPTED as amended. 	<p>(Attachment 2)</p>
<p>11. From the Public: Matters Not Listed on the Agenda.</p> <ul style="list-style-type: none"> <u>John Martin</u> expressed concern that the public had not been given sufficient notice to respond to the Board's intent to join the Chamber of Commerce, and the establishment of an Economic Opportunity Fund. These items are part of the public hearing for Agenda Item #21. <u>Nuala Tobin</u>, of Northfields Road, owner of two lots on Sun Ridge Road, urged the Board to take action on the road improvement project (Item #13d) so that homes can be built on these lots. <u>Jeff Werner</u>, of PEC, provided a handout to the Board and spoke about the importance of the proposed Mountain Protection Ordinance. 	
<p>12.1 Adoption of revisions to County Grievance Procedure and Sexual Harassment Policy.</p>	<p><u>Clerk:</u> Forward copy of resolutions to Human Resources and County Attorney's</p>

<ul style="list-style-type: none"> • ADOPTED the attached Resolutions which will approve the proposed changes to Personnel Policy P-03 and P-21. 	office for further distribution. (Attachments 3 and 4)
12.2 Value Engineering in future CIP projects. <ul style="list-style-type: none"> • APPROVED the use of value engineering as an established component of the construction process for all County local government projects. 	<u>Tom Foley/Georg Shadman:</u> Proceed as directed.
12.3 Resolution of Support – Lewis and Clark Enhancement Grant Application. <ul style="list-style-type: none"> • DEFERRED to January 10, 2007. 	<u>Clerk:</u> Schedule on January 10 th agenda.
13a. Work Session: 2007/08-2012/13 Six Year Secondary Road Plan. <ul style="list-style-type: none"> • SET public hearing on the County Priority List of Road Improvements and the VDOT Six Year Secondary Road Improvement Program for February 14, 2007. 	<u>Clerk:</u> Advertise public hearing for February 14 th .
13b. VDOT Monthly Report for December 2005. <ul style="list-style-type: none"> • RECEIVED. 	
13c. Transportation Matters not Listed on the Agenda. <u>Allan Sumpter:</u> <ul style="list-style-type: none"> • VDoT will be looking at signal synchronization throughout the area. <u>David Wyant:</u> <ul style="list-style-type: none"> • Mentioned that a section on White Mountain Road, on top of the hill, is eroding. <u>Sally Thomas:</u> <ul style="list-style-type: none"> • A constituent of Bellair suggested that the sign “to I-64” be changed to a straight ahead arrow, and an arrow be added to the right when you get to I-64 so there will be less traffic in that neighborhood. • There is a state program being used in some areas where parolees are assigned sections of road to keep clean as a condition of parole. She asked that VDoT research to see if this program is working in other localities. <u>Dennis Rooker:</u> <ul style="list-style-type: none"> • There is a pot hole in the center of Route 29 and Hydraulic Road. • Along Dominion Drive, close to Whole Foods, there is an area of the road that is eroding away. • A church is being built with an entrance off of Roslyn Ridge Road, at the corner of Hydraulic Road and Roslyn Ridge Road. The work is creating substantial destruction of pavement where equipment is entering and exiting on a daily basis. He asked VDoT to speak with the contractor to ensure the road is repaved at the end of construction. Mr. Sumpter advised that permit staff will be inspecting the area on a regular basis. 	<u>Clerk:</u> Forward comments to VDOT.
13d. Sun Ridge Road Improvement Project (RIP 99-001). <ul style="list-style-type: none"> • DIRECTED staff to bring back to the Board, as soon as possible, a cost estimate and a feasibility assessment of how they can get 	<u>Clerk:</u> Schedule on next agenda when ready to come back to Board.

	access to the three lots and adequately address the drainage problems.	
	The Board recessed at 11:56 and reconvened at 12:06 p.m.	
14.	<p>Update on Podcasting Program.</p> <ul style="list-style-type: none"> • AUTHORIZED continuance of the podcasting program and expanded to provide the ability to chunk discrete agenda items and that the equipment necessary to have the capability to podcast events outside of the Board meetings be obtained. DIRECTED staff to look at video streaming opportunities with both the City and with a cable franchise. 	<u>Lee Catlin</u> : Proceed as directed.
15.	<p>Pantops Community Advisory Council Guidelines.</p> <ul style="list-style-type: none"> • SUPPORTED the proposed guidelines for the Pantops Community Advisory Council. SUGGESTED that someone from the Crozet Community Advisory Council serve on this Council to share input since they have been through the process. The Board would also like to see an evaluation point of the committee to see if it is still needed, or if needed in a different way. 	<u>Lee Catlin</u> : Notify Clerk when ready to advertise for membership.
16.	<p>County Attorney's Office Position Request.</p> <ul style="list-style-type: none"> • APPROVED the County Attorney's Office Paralegal position request. 	<u>County Attorney</u> : Proceed as approved.
17.	<p>Report on Proffer Management Program.</p> <ul style="list-style-type: none"> • RECEIVED 	
18.	<p>Closed Session. Personnel and Legal Matters.</p> <ul style="list-style-type: none"> • At 1:00 p.m., the Board went into closed session to consider appointments to boards, committees, and commissions. 	
19.	<p>Certified Close Session.</p> <ul style="list-style-type: none"> • At 2:00 p.m., the Board reconvened into open session and certified the closed session. 	
20.	<p>Boards and Commissions: Appointments.</p> <ul style="list-style-type: none"> • APPOINTED Steve Elliott to the Thomas Jefferson Emergency Medical Services Council with said to expire January 1, 2010. • REAPPOINTED Scott Goodman to the Industrial Authority with said term to expire January 19, 2011. • REAPPOINTED Leonard Winslow to the Housing Committee with said term to expire December 31, 2009. • APPOINTED Deborah Van Eersel to the Housing Committee, to fill the unexpired term of James P. Fitzgerald, with said term to expire December 31, 2008. • REAPPOINTED C. Marshall Thompson to the Equalization Board to represent the Rio District with said term to expire December 31, 2007. • REAPPOINTED Betty Black the Community Mobility Committee with said term to expire January 12, 2009. • APPOINTED William Jackson to the Jordon Development Corporation with said term to expire August 13, 2007. 	<u>Clerk</u> : Prepare appointment/reappointment letters, update Boards and Commissions book, webpage, and notify appropriate persons.

<ul style="list-style-type: none"> • REAPPOINTED Chief Miller to the James River Alcohol Safety Action Program with said term to expire January 1, 2010. 	
<p>21. FY 2007 Budget Amendment.</p> <ul style="list-style-type: none"> • APPROVED FY 2007 Budget Amendment in the amount of \$776,771.50. • APPROVED FY 2007 Appropriations #2007042, #2007044,#2007045, #2007047,#2007048, and #2007049. 	<p><u>Clerk</u>: Forward signed appropriation forms to Finance, OMB, and copy appropriate individuals.</p>
<p>21. FY 2007 Budget Amendment.</p> <ul style="list-style-type: none"> • APPROVED, by a vote of 4:2, FY 2007 Appropriation #2007043. 	<p><u>Clerk</u>: Forward signed appropriation forms to Finance, OMB, and copy appropriate individuals.</p>
<p>21. FY 2007 Budget Amendment</p> <ul style="list-style-type: none"> • APPROVED, by a vote of 4:2, FY 2007 Appropriation #2007046. 	<p><u>Clerk</u>: Forward signed appropriation forms to Finance, OMB, and copy appropriate individuals.</p>
<p>22. Water Protection Ordinance (WPO) Amendment – Illicit Discharge Detection and Elimination.</p> <ul style="list-style-type: none"> • SET the proposed ordinance for public hearing. 	<p><u>Clerk</u>: Advertise public hearing for February 14, 2007.</p>
<p>23. Potential Revenue - Route 29 North Service District.</p> <ul style="list-style-type: none"> • DIRECTED staff to come back with additional information on how much revenue would be generated from a service district that included all nonresidential area in all of the growth areas. 	<p><u>Tom Foley</u>: Proceed as directed.</p>
<p>24. Community Development Work Program.</p> <ul style="list-style-type: none"> • DIRECTED staff to bring back for further discussion. 	<p><u>Tom Foley/Mark Graham</u>: Proceed as directed. Notify Clerk when ready to reschedule on Board's agenda.</p>
<p>25. Guidelines for Growth in the Development Areas (Part 2).</p> <ul style="list-style-type: none"> • DIRECTED, by a vote of 4:2, that Master Planning should establish priority areas for land use decisions within each Development Area. 	<p><u>Wayne Cilimberg/Mark Graham</u>: Proceed as directed.</p>
<p>26. From the Board: From the Board: Committee Reports and Matters Not Listed on the Agenda. <u>Sally Thomas</u>:</p> <ul style="list-style-type: none"> • She was appointed to the Transportation Accountability Commission, and invited Board members to give her any input. <p><u>Dennis Rooker</u>:</p> <ul style="list-style-type: none"> • Asked staff to provide information on the Safe Routes to School Grant Application to all Board members; there are two in the County. Mr. Cilimberg said he would follow up. 	<p><u>Wayne Cilimberg</u>: Follow up on information.</p>
<p>27. Adjourn to January 10, 2007, 2:00 p.m.</p> <ul style="list-style-type: none"> • The meeting was adjourned at 6:48 p.m., to January 10, 2007, 2:00 p.m. 	

/ewc

- Attachment 1 – Rules of Procedures
- Attachment 2 – Boards and Commissions Policy
- Attachment 3 – Personnel Policy P-03, Employee Grievance Procedure
- Attachment 4 – Personnel Policy P-21, Sexual Harassment

**RULES OF PROCEDURE
ALBEMARLE BOARD OF COUNTY SUPERVISORS**

A. *Officers*

1. *Chairman.* The Board at its annual meeting shall elect a Chairman who, if present, shall preside at such meeting and at all other meetings during the year for which elected. In addition to being presiding officer, the Chairman shall be the head official for all the Board's official functions and for ceremonial purposes. He shall have a vote but no veto. (Virginia Code Sections 15.2-1422 and 15.2-1423)
2. *Vice-Chairman.* The Board at its annual meeting shall also elect a Vice-Chairman, who, if present, shall preside at meetings in the absence of the Chairman and shall discharge the duties of the Chairman during his absence or disability. (Virginia Code Section 15.2-1422)
3. *Term of Office.* The Chairman and Vice-Chairman shall be elected for one-year terms; but either or both may be re-elected for one or more additional terms. (Virginia Code Section 15.2-1422)
4. *Absence of Chairman and Vice-Chairman.* If the Chairman and Vice Chairman are absent from any meeting, a present member shall be chosen to act as Chairman.

B. *Clerk and Deputy Clerks*

The Board at its annual meeting shall designate a Clerk and one or more Deputy Clerks who shall serve at the pleasure of the Board. The duties of the Clerk shall be those set forth in Virginia Code Section 15. 2-1539 and such additional duties set forth in resolutions of the Board as adopted from time to time. (Virginia Code Section 15.2-1416)

C. *Meetings*

1. *Annual Meeting.* The first meeting in January held after the newly elected members of the Board shall have qualified, and the first meeting held in January of each succeeding year, shall be known as the annual meeting. At such annual meeting, the Board shall establish the days, times, and places for regular meetings of the Board for that year. (Virginia Code Section 15.2-1416)
2. *Regular Meetings.* The Board shall meet in regular session on such day or days as has been established at the annual meeting. The Board may subsequently establish different days, times, or places for such regular meetings by passing a resolution to that effect in accord with Virginia Code Section 15.2-1416. If any day established as a regular meeting day falls on a legal holiday, the meeting scheduled for that day shall be held on the next regular business day without action of any kind by the Board. (Virginia Code Section 15.2-1416)

If the Chairman (or Vice Chairman, if the Chairman is unable to act) finds and declares that weather or other conditions are such that it is hazardous for Board members to attend a regular meeting, such meeting shall be continued to the next regular meeting date. Such finding shall be communicated to the members of the Board and to the press as promptly as possible. All hearings and other matters previously advertised shall be conducted at the continued meeting and no further advertisement shall be required. (Virginia Code Section 15.2-1416)

Regular meetings, without further public notice, may be adjourned from day to day or from time to time or from place to place, not beyond the time fixed for the next regular meeting, until the business of the Board is complete. (Virginia Code Section 15.2-1416)

3. *Special Meetings.* The Board may hold special meetings as it deems necessary at such times and places as it deems convenient. A special meeting may be adjourned from time to time as the Board finds necessary and convenient. (Virginia Code Section 15.2-1417)

A special meeting shall be held when called by the Chairman or requested by two or more members of the Board. The call or request shall be made to the Clerk of the Board and shall specify the matters to be considered at the meeting. Upon receipt of such call or request, the Clerk, after consultation with the Chairman, shall immediately notify each member of the Board, the County Executive, and the County Attorney. The notice shall be in writing and delivered to the person or to his place of residence or business. The notice shall state the time and place of the meeting and shall specify the matters to be considered. No matter not specified in the notice shall be considered at such meeting unless all members are present. The notice may be waived if all members are present at the special meeting or if all members sign a waiver for the notice. (Virginia Code Section 15.2-1418) The Clerk shall notify the general news media of the time and place of such special meeting and the matters to be considered.

D. *Order of Business*

The Clerk of the Board shall establish the agenda for all meetings in consultation with the Chairman. The first two items on the agenda for each regular meeting of the Board shall be the Pledge of Allegiance and a moment for silent meditation.

The procedures for receiving comment from the public for matters not on the agenda shall be at the discretion of the Board. Unless otherwise decided, individuals will be allowed a three-minute time limit in which to speak during the time set aside on the agenda for "From the Public: Matters Not Listed for Public Hearing on the Agenda".

Zoning applications advertised for public hearing shall be on the agenda for public hearing on the advertised date unless the applicant submits a signed written deferral request to the Clerk of the Board no later than noon on Wednesday of the week prior to the scheduled public hearing. The first request for a deferral will be granted administratively by the Clerk. The Board will be notified of the deferral in the next Board package and the deferral will be announced at the earliest possible Board meeting to alert the public of the deferral. Any request received later than the Wednesday deadline and any subsequent request for a deferral for the same application previously deferred will be granted only at the discretion of the Board by a majority vote. The deferral shall not be granted unless the Board determines that the reason for the deferral justifies the likely inconvenience to the public caused by the deferral. The staff will make every effort to alert the public when a deferral is granted.

It is the Board's preference that a public hearing should not be advertised until all of the final materials for a zoning application have been received by the County and are available for public review. To achieve this preference, applicants should provide final plans, final codes of development, final proffers, and any other documents deemed necessary by the Director of Community Development, to the County no later than two business days prior to the County's deadline for submitting the public hearing advertisement to the newspaper. Staff will advise applicants of this date by including it in annual schedules for applications and by providing each applicant a minimum of two weeks advance notice of the deadline.

If the applicant does not submit the required materials by this date, the public hearing shall not be advertised unless the applicant demonstrates to the satisfaction of the Director of Community Development that good cause exists for the public hearing to be advertised. If not advertised, a new public hearing date will be scheduled. If the public hearing is held without final materials being available for review throughout the advertisement period due to a late submittal of documents, or because substantial revisions or amendments are made to the submitted materials

after the public hearing has been advertised, it will be the policy of the Board to either defer action and schedule a second public hearing that provides this opportunity to the public or to deny the application, unless the Board finds that the deferral would not be in the public interest or not forward the purposes of this policy.

Final signed proffers shall be submitted to the County no later than nine calendar days prior to the date of the advertised public hearing. This policy is not intended to prevent changes made in proffers at the public hearing resulting from comments received from the public or from Board members at the public hearing.

E. *Quorum*

A majority of the members of the Board shall constitute a quorum for any meeting of the Board. If during a meeting less than a majority of the Board remains present, no action can be taken except to adjourn the meeting. If prior to adjournment the quorum is again established, the meeting shall continue. (Virginia Code Section 15.2-1415)

A majority of the members of the Board present at the time and place established for any regular or special meeting shall constitute a quorum for the purpose of adjourning such meeting from day to day or from time to time, but not beyond the time fixed for the next regular meeting.

F. *Voting Procedures*

1. *Approval by Motion.* Unless otherwise provided, decisions of the Board shall be made by approval of a majority of the members present and voting on a motion properly made by a member and seconded by another member. Any motion that is not seconded shall not be further considered. The vote on the motion shall be by a voice vote. The Clerk shall record the name of each member voting and how he voted on the motion. If any member abstains from voting on any motion, he shall state his abstention. The abstention will be announced by the Chairman and recorded by the Clerk. A tie vote shall defeat the motion voted upon. (Article VII, Section 7, Virginia Constitution)
2. *Special Voting Requirements.* A recorded affirmative vote of a majority of all elected members of the Board shall be required to approve an ordinance or resolution (1) appropriating money exceeding the sum of \$500; (2) imposing taxes; or (3) authorizing the borrowing of money. (Virginia Code Section 15.2-1428)
3. *Public Hearings.* The Board shall not decide any matter before the Board requiring a public hearing until the public hearing has been held. The Board may, however, at its discretion, defer or continue the holding of a public hearing or consideration of such matter. The procedures for receiving comment from the applicant and the public for public hearings shall be at the discretion of the Board. Unless otherwise decided, the applicant shall be permitted no more than ten minutes to present its application. Following the applicant's presentation, any member of the public shall be permitted no more than three minutes to present public comment. Speakers are limited to one appearance at any public hearing. Following the public comments, the applicant shall be permitted no more than five minutes for a rebuttal presentation.
4. *Motion to Amend.* A motion to amend a motion before the Board, properly seconded, shall be discussed and voted by the Board before any vote is taken on the original motion unless the motion to amend is accepted by both the members making and seconding the original motion. If the motion to amend is approved, the amended motion is then before the Board for its consideration. If the motion to amend is not approved, the original motion is again before the Board for its consideration.
5. *Previous Question.* Discussion of any motion may be terminated by any member moving the "previous question". Upon a proper second, the Chairman shall call for a vote on the motion of the previous question. If approved by a majority of those voting, the Chairman shall immediately call for a vote on the original motion under consideration. A motion of

the previous question shall not be subject to debate and shall take precedence over any other matter.

6. *Motion to Reconsider.* Any decision made by the Board may be reconsidered if a motion to reconsider is made at the same meeting or an adjourned meeting held on the same day at which the matter was decided. The motion to reconsider may be made by any member of the Board. Upon a proper second, the motion may be discussed and voted. The effect of the motion to reconsider, if approved, shall be to place the matter for discussion in the exact position it occupied before it was voted upon.
7. *Motion to Rescind.* Any decision made by the Board, except for zoning map amendments, special use permit decisions, and ordinances, (these exceptions shall only be subject to reconsideration as provided above) may be rescinded by a majority vote of all elected members of the Board. The motion to rescind may be made by any member of the Board. Upon a proper second, the motion may be discussed and voted. The effect of the motion to rescind, if approved, is to nullify the previous decision of the Board. Zoning map amendments, special use permit decisions and ordinances may be rescinded or repealed only upon meeting all the legal requirements necessary for taking action on such matters as if it were a new matter before the Board for consideration.

G. *Amendment of Rules of Procedure*

These Rules of Procedure may be amended by a majority vote of the Board at the next regular meeting following a regular meeting at which notice of the motion to amend is given.

H. *Suspension of Rules of Procedure*

These Rules of Procedure may be suspended by the majority vote of the Board members present and voting. The motion to suspend a rule may be made by any member of the Board. Upon a proper second, the motion may be discussed and voted. The effect of the motion to suspend a rule, if approved, is to make that rule inapplicable to the matter before the Board. Provided, however, approval of a motion to suspend the rule shall not permit the Board to act in violation of a requirement mandated by the Code of Virginia, the Constitution of Virginia, or any other applicable law.

- I. Necessary rules of procedure not covered by these Rules of Procedures shall be governed by Robert's Rules of Order.

* * * * *

(Adopted 2-15-73; Amended and/or Readopted 9-5-74, 9-18-75; 2-19-76; 1-3-77; 1-4-78; 1-3-79; 1-2-80; 1-7-81; 1-6-82; 1-5-83; 1-3-84; 1-2-85; 1-3-86; 1-7-87; 1-6-88; 1-4-89; 1-2-90; 1-2-91; 1-2-92; 1-6-93; 1-5-94; 1-4-95; 1-3-96; 1-2-97; 1-7-98; 1-6-99; 1-5-2000; 1-3-2001; 1-9-2002; 1-8-2003; 1-7-2004; 1-5-2005; 1-4-2006; 1-3-2007).

**ALBEMARLE COUNTY BOARD OF SUPERVISORS
POLICY FOR BOARDS AND COMMISSIONS**

A. CREATION OF NEW BOARDS AND COMMISSIONS

1. On an annual basis the list of active boards and commissions will be purged of all bodies not required by Federal, State, County or other regulations, which have not met at least once during the prior twelve-month period.

2. Whenever possible and appropriate, the functions and activities of boards and commissions will be combined, rather than encouraging the creation of new bodies.

3. Any newly created task force or ad hoc committee which is intended to serve for a limited time period may be comprised of magisterial or at-large members at the discretion of the Board of Supervisors. The appointment process shall follow that adopted in Section B for other magisterial and/or at-large positions.

B. APPOINTMENTS TO BOARDS AND COMMISSIONS

1. All appointments to boards and commissions based upon magisterial district boundaries will be made by the members of the Board of Supervisors. All magisterial positions will be advertised. At the discretion of the supervisor of that district, selected applicants may be interviewed for the position.

2. Prior to each day Board meeting, the Clerk will provide the Board a list of expired terms and vacancies that will occur within the next sixty days. The Board will then advise the Clerk which vacancies to advertise.

3. In an effort to reach as many citizens as possible, notice of boards and commissions with appointment positions available will be published through available venues, such as, but not limited to, the County's website, A-mail, public service announcements and local newspapers. Interested citizens will be provided a brief description of the duties and functions of each board, length of term of the appointment, frequency of meetings, and qualifications necessary to fill the position. An explanation of the appointment process for both magisterial and at-large appointments will also be sent to all applicants.

4. All interested applicants will have a minimum of thirty days from the date of the first notice to complete and return to the Clerk of the Board of Supervisors a detailed application, with the understanding that such application may be released to the public, if requested. No applications will be accepted if they are postmarked after the advertised deadline, however, the Board, at its discretion, may extend the deadline.

5. Once the deadline for accepting applications is reached, the Clerk will distribute all applications received to the members of the Board of Supervisors prior to the day meeting for their review. For magisterial appointments, the Clerk will forward applications as they are received to the supervisor of that district who will then recommend his/her appointment.

6. From the pool of qualified candidates, the Board of Supervisors, at their discretion, may make an appointment without conducting an interview, or may select applicants to interview for the vacant positions. The Clerk will then schedule interviews with applicants to be held during the next day meeting. For magisterial appointments, the decision to interview selected candidates will be determined by the supervisor of that district.

7. All efforts will be made to interview selected applicants and make appointments within ninety days after the application deadline. For designated agency appointments to boards and

commissions, the agency will be asked to recommend a person for appointment by the Board of Supervisors.

8. All vacancies will be filled as they occur.

9. All incumbents will be allowed to serve on a board or commission without his/her position being readvertised unless, based on attendance and performance, the chairman of the body or a member of the Board of Supervisors requests the Board of Supervisors to do otherwise.

10. As a condition to assuming office all citizen members of boards and commissions shall file a real estate disclosure form as set forth in the State and Local Government Conflict of Interests Act and thereafter shall file such form annually on or before January 15.

11. If a member of a board or commission does not participate in at least fifty percent of a board's or commission's meetings, the chairman of the body may request the Board of Supervisors terminate the appointment and refill it during the next scheduled advertising period.

C. ADOPTION

This policy shall be reviewed and readopted by the Board of Supervisors in January.

(Amended and/or Readopted 01-07-98; 02-12-2005; 01-04-2006; 01-03-2007)

RESOLUTION

WHEREAS, the County of Albemarle Personnel Policy Manual sets forth the grievance procedure for County employees; and

WHEREAS, the 2006 General Assembly granted Albemarle County enabling authority to establish an administrative hearing officer format for grievance hearings; and

WHEREAS, the Board desires to implement the hearing officer format and make other appropriate updates and modifications.

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Supervisors of Albemarle County, Virginia, hereby adopts Personnel Policy P-03, Employee Grievance Procedure, of the County of Albemarle Personnel Policy Manual, as attached hereto and incorporated herein, effective January 3, 2007.

* * * * *

ALBEMARLE COUNTY PERSONNEL POLICY

Employee Grievance Procedure Policy

Policy Number: P-03

Date Adopted: January 3, 2007

I. Objective

The purpose of the Albemarle County Grievance Procedure is to afford an immediate and impartial method for the resolution of disputes that may arise between the County government and employees in County service.

II. Coverage of Grievance Procedure

A. This procedure applies to all non-probationary employees in regular full-time and regular part-time positions in:

1. Albemarle County Local Government;
2. The Department of Social Services of Albemarle County, in accordance with Virginia Code § 15.2-1507(A)(4);
3. The Charlottesville-Albemarle-University of Virginia Emergency Communications Center; and
4. The Commission on Children and Families.

B. This procedure shall not apply to the following employees:

1. Appointees of the Board of Supervisors;
2. Officials and employees who by law serve at the will or pleasure of the Board of Supervisors or the County Executive;
3. Deputies and Assistants to the County Executive;
4. Department and agency heads;
5. Employees whose terms of employment are limited by law;
6. Employees in temporary, on-call or seasonal positions;
7. Probationary employees;
8. Any law enforcement officer whose grievance is subject to the provisions of the Law Enforcement Officers Procedural Guarantee Act, Virginia Code § 9.1-500 et seq., and who has elected to proceed pursuant to such provisions in the resolution of his or her grievance; or

9. Any other employee who elects to proceed pursuant to any other existing procedure in the resolution of his or her grievance.
- C. The County Executive or his designee shall determine the officers and employees excluded from the grievance procedure, pursuant to section II(B) above, and shall be responsible for maintaining an up-to-date list of the affected positions (See Appendix to the Grievance Procedure, Positions Not Covered by the Grievance Procedure).

III. Definitions

County Attorney shall mean either the County Attorney or his designee.

County Executive shall mean either the County Executive or his designee.

Grievance shall mean a complaint or dispute by an employee eligible to use this procedure relating to his or her employment, including but not limited to:

- (a) disciplinary actions, including dismissals, demotions and suspensions, provided that dismissals shall be grievable whenever resulting from formal discipline or unsatisfactory job performance;
- (b) the application of personnel policies, procedures, rules and regulations;
- (c) acts of retaliation as the result of using the grievance procedure or of participation in the grievance of another Albemarle County employee;
- (d) acts of retaliation because the employee has complied with any law of the United States or of the Commonwealth, has reported any violation of such law to a governmental authority, has sought any change in law before the Congress of the United States or the General Assembly, or has reported an incidence of fraud, abuse, or gross mismanagement; and
- (e) complaints of discrimination on the basis of race, gender, religion, political affiliation, age, disability or national origin.

Grievant shall mean an eligible employee who has filed a complaint under this procedure.

Human Resources Director shall mean either the Human Resources Director or his designee.

Management shall mean the Board of Supervisors and its designees who establish policy for Albemarle County.

IV. Management Responsibilities

Management retains the exclusive right to manage the affairs and operations of County government. Accordingly, the following complaints are nongrievable:

- (a) establishment and revision of wages or salaries, position classification or general benefits;
- (b) work activity accepted by the employee as a condition of employment or work activity which may reasonably be expected to be a part of the job content;
- (c) the contents of ordinances, statutes or established personnel policies, procedures, rules and regulations;
- (d) failure to promote except where the employee can show that established promotional policies or procedures were not followed or applied fairly;
- (e) the methods, means and personnel by which or by whom work activities are to be carried out;
- (f) termination, layoff, demotion or suspension from duties because of lack of work, reduction in work force, or job abolition, except where such action affects an employee who has been reinstated within the previous six months as the result of the final determination of a grievance;
- (g) the hiring, promotion, transfer, assignment and retention of employees within the County; and

- (h) the relief of employees from duties of the County in emergencies.

In any grievance brought under the exception to Section IV(f) above, the County's action shall be upheld upon a showing by the County that: (i) there was a valid business reason for the action, and (ii) the employee was notified of the reason in writing prior to the effective date of the action.

V. Human Resources Department Responsibilities

The County Human Resources Department ("Human Resources") shall serve as an impartial administrator of this process. Upon the filing of a grievance, Human Resources shall do the following:

- (a) open a file and assign a number to the grievance;
- (b) ensure that all parties are aware of the process;
- (c) provide access to and copies of grievance forms;
- (d) monitor procedures and time frames;
- (e) notify either party of noncompliance;
- (f) be informed of the status of the grievance by both parties at each step;
- (g) maintain appropriate documentation; and
- (h) perform all other responsibilities as specified in this Procedure.

VI. Grievance Procedure Generally

- A. For purposes of this procedure, "days" shall be defined as calendar days and time periods shall begin to run on the day following that on which any action is taken or report rendered, without regard to weekends or County-observed holidays. If a time period specified in this procedure ends on a weekend or holiday, the last day of the time period shall be the end of the first business day following the weekend or holiday. For example, a written grievance under Step 1 must be presented to the grievant's immediate supervisor within five (5) days of the supervisor's verbal reply to the informal grievance. The five (5) days shall begin to run on the day after receipt of the supervisor's verbal reply and shall terminate on the fifth day following. If the fifth day is a weekend or holiday, the time period shall terminate at the end of the next full business day.
- B. Time limits established under this procedure are intended to be strictly construed and enforced. However, in the interests of fairness, such time limits may be extended if both parties agree to such extensions in writing.
- C. All stages of this procedure beyond Step 1 shall be reduced to writing on forms supplied by Human Resources. At Step 3 and above, the grievant may, at his option, choose to have a representative of his choice, including legal counsel. If the grievant is represented by legal counsel or other person(s), the County likewise has the option of being represented by legal counsel, provided that a person may not serve as both a witness and a representative at any Step under this procedure.
- D. The grievant shall bear any and all costs involved in employing representation and preparing his case at all steps of this procedure, including but not limited to attorneys' fees and expenses and any costs of judicial filings or appeals.
- E. After the initial filing of a written grievance, failure of either party to comply with all substantial procedural requirements of this procedure, without just cause, shall result in a decision in favor of the other party on any grievable issue, provided that the noncomplying party fails to correct the noncompliance within five (5) days of receipt of written notification by the other party of the compliance violation. However, the right of the grievant to correct compliance violations shall not apply to any determinations under Steps 1 through 3, or to grievability determinations, provided that the grievant has previously received written notice of the applicable deadlines for appealing such determinations at the time the determination was rendered but has failed to respond in a timely fashion.
- F. The County Executive may require a clear written explanation of the basis for any requests for just cause extensions or exceptions, and shall determine all compliance issues. Such

determinations by the County Executive are subject to appeal by the grievant by filing a petition with the Circuit Court of Albemarle County within thirty (30) days of the compliance determination. The grievant shall be solely responsible for filing such petition.

VII. Grievability

- A. The County Executive retains sole authority to render decisions regarding grievability, including the question of access to this procedure. In the event that a question regarding grievability arises at any stage of this procedure, the County Executive shall be notified by Human Resources so that a proper decision regarding grievability can be made. A copy of the County Executive's decision concerning grievability shall be sent to the grievant, to the department head and/or immediate supervisor and to Human Resources.
- B. Decisions by the County Executive that an issue or complaint is not grievable may be appealed by the grievant to the Circuit Court of Albemarle County for a hearing de novo on the issue of grievability as provided in Virginia Code § 15.2-1507(A)(9). Proceedings for the review of the County Executive's decision regarding grievability shall be instituted by filing a notice of appeal with the County Executive within ten (10) days from the date of receipt of the decision and giving a copy thereof to all other parties. Within ten (10) days thereafter, the County Executive shall transmit to the Clerk of the Circuit Court of Albemarle County a copy of his decision, a copy of the notice of appeal, and any exhibits that may have been provided in connection with the resolution of the issue of grievability. A list of the evidence furnished to the court shall also be furnished to the grievant.
- C. The failure of the County Executive to transmit the record shall not prejudice the rights of the grievant. If the County Executive fails to transmit the record within the time required, the Circuit Court, on motion of the grievant, may issue a writ of certiorari requiring the County Executive to transmit the record on or before a certain date.
- D. Within thirty (30) days of receipt of such records by the clerk, the Circuit Court, sitting without a jury, shall hear the appeal on the record transmitted by the County Executive and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The Court, in its discretion, may receive such other evidence as the ends of justice require. The Court may affirm, reverse or modify the decision of the County Executive. The decision of the Court shall be rendered no later than the fifteenth (15th) day from the date of the conclusion of the hearing. The decision of the Court is final and is not appealable.
- E. The issue of grievability may be raised at any step of the Grievance Procedure prior to the hearing officer hearing provided in Section XII of this procedure, or it shall be deemed waived by all parties. Once raised, the issue shall be resolved before further processing of the complaint. A request that grievability be determined shall toll the time limits under this procedure. Time limits shall begin to run again the day after the decision on grievability is made by the County Executive or the Circuit Court.
- F. The classification of a complaint as nongrievable by either the County Executive or the Circuit Court of Albemarle County shall not be construed to restrict any employee's right to seek, or management's right to provide, customary administrative review of complaints outside the scope of the Grievance Procedure.

VIII. Consolidation of Grievances

If more than one grievance is filed arising from the same factual circumstances, the County Executive may, at any time prior to a hearing officer hearing, consolidate those grievances for joint processing, including grievability determinations. If consolidation occurs, all time limits set forth in this procedure shall thereafter be calculated from the date of the last filed grievance. Once consolidated, the grievances shall all be processed as a single matter pursuant to this procedure.

IX. Step 1 Procedure: Immediate Supervisor Level

- A. No later than twenty (20) days after the occurrence or condition giving rise to the grievance, the employee affected shall identify the grievance verbally to his immediate supervisor. Within five (5) days of such identification, the immediate supervisor shall give his response to the employee with respect to the particular grievance. The failure of an employee to identify the grievance within the time specified above shall constitute a forfeiture and a waiver of any rights to proceed further and shall terminate the grievance.
- B. If a satisfactory resolution is not reached by this informal process, the grievant shall notify Human Resources of the intent to file a grievance and shall obtain a copy of Grievance Form A from Human Resources. The grievant shall reduce the grievance to writing on Grievance Form A, identifying specifically and in detail the nature of the grievance and the requested remedy. Such written grievance shall be presented to the immediate supervisor within five (5) days of the supervisor's verbal reply to the oral grievance. The supervisor shall promptly notify and supply a copy of the written grievance to Human Resources. The supervisor shall reply to the employee in writing in response to the written grievance within five (5) days of receiving it.
- C. If the grievant's supervisor is also his department/agency head, or if the department/agency head decided the matter that is the subject of the grievance, the grievant shall pass by Step 2 of this procedure and proceed immediately to Step 3. If the grievant's supervisor is the County Executive, he shall pass by Step 3 and proceed immediately to Step 4.

X. Step 2 Procedure: Department/Agency Head

If a satisfactory resolution is not reached at the conclusion of Step 1 as outlined above in Section IX, the grievant shall have the right to appeal as follows. Within five (5) days following receipt of the Step 1(B) written reply, the grievant shall notify his department/ agency head and the Human Resources Department in writing on Grievance Form A that resolution has not occurred and shall supply the reasons why the grievant believes that resolution has not occurred. The department/agency head shall schedule and hold a meeting with the grievant to review the grievance within five (5) days of receipt of such submission, or on such other date as the parties may mutually agree. The only persons who may be present at this meeting are the grievant and the department/agency head. The meeting may be adjourned to another time or place by agreement of the parties. A written reply to the grievance shall be provided to the grievant (with a copy to Human Resources) within five (5) days after the meeting.

XI. Step 3 Procedure: County Executive Level

- A. If a satisfactory resolution is not reached at the termination of Step 2 as outlined above in Section X, the grievant shall notify Human Resources, indicate on Grievance Form A that resolution has not occurred and submit the grievance to the County Executive within five (5) days following receipt of the Step 2 reply. The County Executive shall schedule and hold a meeting with the grievant to review the grievance within ten (10) days of receipt of such submission, or on such other date as the parties may mutually agree.
- B. The grievant may have legal representation or another representative present at the Step 3 meeting. If the grievant is represented by legal counsel or another representative, the County Executive may also have legal counsel or another representative present. The grievant shall inform the County in writing of the name of his legal counsel or other representative at least two (2) days prior to the Step 3 meeting. Either party may call appropriate witnesses, who shall be present only while actually providing testimony. The County Executive shall, in his sole discretion, determine whether the testimony of witnesses is relevant or, if witnesses have testified, whether additional testimony by other witnesses is necessary.
- C. A written reply to the grievance shall be provided to the grievant (with a copy to Human Resources) within five (5) days after the Step 3 meeting, or on such other date as the parties may mutually agree.

XII. Step 4 Procedure: Grievance Hearing

- A. If a satisfactory resolution is not reached at the termination of Step 3 as outlined above in Section XI, the grievant shall notify Human Resources, indicate on Grievance Form A that resolution has not occurred and request a hearing before an administrative hearing officer (“hearing officer”). The request shall be submitted to Human Resources within five (5) days following receipt of the Step 3 reply.
- B. Upon receipt of the request for a grievance hearing, Human Resources shall contact the County Attorney and request that he initiate a request to the Supreme Court of Virginia for appointment of a hearing officer to hear and preside over the grievance hearing. The hearing officer shall be appointed by the Executive Secretary of the Supreme Court of Virginia. The appointment shall be made from the list of administrative hearing officers maintained by the Executive Secretary pursuant to the Code of Virginia. In the alternative, the County Attorney may request the appointment of a hearing officer from the Virginia Department of Employment Dispute Resolution. The County shall bear all expenses associated with the hearing officer's services.
- C. Human Resources and/or the County Attorney shall provide the hearing officer prior to the hearing with a copy of the grievance record and all other documentation relied upon by the County in rendering the decision or action being grieved, and shall provide the grievant with a list of documents furnished to the hearing officer. At least ten (10) days prior to the hearing, the grievant and his attorney or other representative shall be allowed to inspect and copy all documentation supplied by the County to the hearing officer. At least five (5) days prior to the hearing, the grievant and the county shall exchange lists of witnesses and exhibits to be called or introduced at the proceeding. Witnesses or exhibits not disclosed in a timely manner as required by this section shall not be allowed or introduced at the hearing, unless the hearing officer finds good cause shown.

XIII. Conduct of Grievance Hearing

- A. The role of the hearing officer is limited to a determination of whether a grievance filed by an employee is substantiated and what remedy, if any, should be provided. The hearing officer may not formulate or change county policy, rules or procedures. The hearing officer shall determine whether the grievant has demonstrated, by a preponderance of the evidence, that the action complained of was without cause, or done in violation of a law, rule, regulation or other policy. The hearing officer shall not otherwise substitute his or her judgment for that of management.
- B. The hearing officer shall conduct the hearing as follows:
 1. At the request of either party, the hearing shall be private and limited to the grievant, the hearing officer, the legal counsel or other representative of the grievant and the county, appropriate witnesses as they testify, and any court reporters or other official recorders of the hearing. At the request of either party, witnesses shall be separated from the hearing room and allowed to be present only during the time that they actually testify.
 2. The hearing officer shall consider the grievance without regard to any proposed disposition (including offers of settlement) by any lower authority, unless the grievant and the County Executive shall agree in writing that the issue(s) shall be so limited. In all other cases, the hearing officer shall consider the matter as if presented to it in the first instance.
 3. The hearing officer may at any time ask the parties or their representatives for statements clarifying the issues involved in the grievance.
 4. Exhibits, when offered by the grievant or the County, may be received as evidence by the hearing officer, and when so received shall be marked and made a part of the record.
 5. Both parties shall have the right to make opening statements, starting with the grievant. After opening statements, the order of the hearing shall be as follows: the grievant shall proceed first, and shall bear the ultimate burden of persuasion. At the conclusion of the grievant's evidence, the County shall have the opportunity to present its evidence. At the

conclusion of the County's presentation, the hearing officer shall specifically inquire of all parties whether they have any further evidence to offer or witnesses to be heard. Upon receiving a negative response, the hearing officer shall permit the parties to summarize their cases (beginning with the grievant) and shall then declare the hearing closed.

6. Both parties have the right to offer evidence and cross-examine witnesses, and shall produce such additional evidence as the hearing officer deems necessary for understanding and ruling upon the dispute. There shall be no formal rules of evidence at the hearing; however, the hearing officer shall have the right to determine the relevancy of any evidence offered. All evidence shall be taken in the presence of the hearing officer and the parties, except by mutual consent of the parties.
7. The hearing may be reopened by the hearing officer on his own motion or upon application of either party for good cause shown at any time before a final decision is made.
8. Upon the request of the hearing officer, the County or the grievant, the Human Resources Director shall insure that a verbatim record of the hearing is made and retained for not less than 12 months. The record may be in writing or by a taped recording. The party requesting the record shall bear the costs of preparation and transcription, including any costs associated with attendance of a court reporter. If both the grievant and the County request such a record, they shall share equally in all costs incurred.
9. The Human Resources Director or designee may be called upon by the hearing officer or either party as a witness at any time to provide specific policy interpretation or clarification of applicable County policy and these procedures.
10. In any matters not covered by this section, the hearing officer shall determine the applicable procedures to be followed.

XIV. Decision of Administrative Hearing Officer

- A. The hearing officer shall provide a written decision to the County Executive and the grievant, with copies to Human Resources and the County Attorney, no later than twenty (20) calendar days after the completion of the hearing. The decision shall summarize the grievance and the evidence, shall make specific findings of fact, and shall state in full the reasons for the decision, and the remedy (if any) to be granted. The decision of the hearing officer shall be consistent with law and written policy, and as such shall be considered final and binding.
- B. The question of whether the relief granted by the hearing officer is consistent with applicable law and written policy shall be determined by the County Executive, unless such person has a direct personal involvement with the event or events giving rise to the grievance, in which case the decision shall be made by the Commonwealth's Attorney of Albemarle County. The County Executive or Commonwealth's Attorney shall request the hearing officer to reconsider any decision which in his judgment is inconsistent with the laws or written policy applicable to the specific grievance at issue.
- C. If the hearing officer determines that the grievant prevails on any grievable complaint or dispute, he may remedy that complaint or dispute by ordering that the grievant be reinstated to a former position; awarding back pay; or ordering expungement of information contained in the grievant's personnel file(s) maintained by Human Resources or individual department; or rendering opinions specifying the application or interpretation of County personnel policies and procedures as they may relate to the specific facts of the grievance. The grievant shall not, however, be entitled to any relief that he has not specifically requested in the original written grievance form, unless the parties have mutually agreed otherwise as to alternative relief.
- D. If, in response to a grievable complaint or dispute, the hearing officer finds that a department head or other County official failed to follow established procedures governing promotion,

demotion, transfer, hiring or layoff, the hearing officer shall remand the grievance back to the department head or official with instructions that the actions taken be rescinded, and proper procedures be followed for the matter at issue. In connection with such remand, the hearing officer may make appropriate provisional orders concerning the case.

XV. Implementation of Hearing Officer Decision

- A. The County Executive shall implement any remedy that may be ordered by the hearing officer, provided that such remedy is consistent with applicable law and County personnel policies. If the County Executive determines that the hearing officer decision is not consistent with applicable law or County personnel policies, the following steps shall be taken:
 - 1. The County Executive shall inform the hearing officer and the grievant of his determination within ten (10) days of his receipt of the hearing officer's written decision; and,
 - 2. The County Executive shall not implement the decision of the hearing officer.
- B. Either party may petition the Albemarle County Circuit Court for a decision regarding implementation of the hearing officer decision. The review of the Circuit Court shall be limited to the question of whether the hearing officer's decision is consistent with provisions of law and written County policy.

RESOLUTION

WHEREAS, the County of Albemarle Personnel Policy Manual sets forth the sexual harassment policy for the County; and

WHEREAS, the Board finds that an amendment to Personnel Policy P-21 is necessary to clarify and update County policies relating to sexual harassment;

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Supervisors of Albemarle County, Virginia, hereby adopts Personnel Policy P-21, Sexual Harassment, of the County of Albemarle Personnel Policy Manual, as attached hereto and incorporated herein, effective January 3, 2007.

I, Ella W. Carey, do hereby certify that the foregoing writing is a true and correct copy of a Resolution duly adopted by the Board of Supervisors of Albemarle County by a vote of six to zero, as recorded below, at a meeting held on January 3, 2007.

ALBEMARLE COUNTY PERSONNEL POLICY

Sexual Harassment Policy

Policy Number: P-21

Date Adopted: January 3, 2007

I. POLICY

Sexual harassment in the workplace is prohibited by the County because it erodes morale, impairs employees' work ability and violates state and federal law. All employees shall be responsible for abiding by this policy and promoting a workplace that is free of sexual harassment.

To ensure employees are informed of the County's Sexual Harassment Policy and trained on their rights and responsibilities under the policy, the Department of Human Resources (HR) will offer sexual harassment training to all new employees within 30 days of employment or appointment to the new position, and will offer training on an ongoing basis to existing employees. It is the department director/office administrator's responsibility to ensure new employees register for training. Additionally, all department directors/office administrators and supervisors should periodically attend refresher training on sexual harassment offered by HR and employees will receive a copy of the policy periodically.

II. IDENTIFYING SEXUAL HARASSMENT

A. **General Guidelines** – Acts of sexual harassment shall result in disciplinary action which may include dismissal. Under this policy, sexual harassment occurs whenever unwelcome conduct of a sexual, sex-based or gender-based nature affects a term or condition of employment or creates a hostile or abusive working environment. The conduct is measured against what an objective, reasonable woman or reasonable man, depending on the gender of the complainant, would consider sexually harassing. The complainant need not suffer any physical injury to be a victim of sexual harassment.

Sexual harassment may occur by a man against a woman, a woman against a man, a man against a man or a woman against a woman. Sexual harassment may occur by or against an employee, contractor or vendor. Sexual harassment may occur at the workplace, or away from the workplace, and may occur during or after work hours, if the conduct impacts the complainant's work environment.

B. **Supervisor Duties** – Supervisors and department directors/office administrators are obligated to ensure that their employees are not subjected to sexual harassment from other employees,

citizens, customers, contractors or vendors if they know or should have known that such sexually harassing behavior was occurring.

- C. **Supervisor/Subordinate Relationships** – Romantic relationships between supervisors and subordinates are never considered legally consensual and shall result in transfer or disciplinary action, depending on the circumstances, against one or both of the participants based on the needs of the County.
- D. **Consensual Relationships** – Employees involved in consensual relationships have an affirmative duty to notify the other party that continued non-work related contact is unwelcome as a precondition to filing a sexual harassment complaint.
- E. **Refusal to Disclose** – The County is not obligated to force an alleged victim of sexual harassment to reveal the name of their harasser if the victim refuses to disclose the name because the victim has talked with the harasser, resolved the matter to their satisfaction and represented in writing that they do not want the County to investigate the incident. However, the manner in which the County will handle these situations will be determined only after interviewing the victim and analyzing the facts and circumstances of each case.
- F. **Retaliation** – Retaliation exists when an individual is discriminated against for reporting sexual harassment or for cooperating, giving testimony, or participating in any manner in a sexual harassment investigation, proceeding or hearing. Retaliation is prohibited under this policy. Anyone who is being subjected to retaliation shall report it pursuant to Section IV of the policy and it shall be investigated and resolved in the same manner as sexual harassment complaints.
- G. **Liability** – In addition to facing disciplinary action from the County, employees who engage in or permit sexual harassment, including supervisors who know or reasonably should know that such misconduct is occurring in their workplace, may face civil liability under federal anti-discrimination laws, such as Title VII of the Civil Rights Act (“Title VII”).
- H. **False Claims** – False allegations of sexual harassment shall constitute violations of the County’s standards of conduct and shall be cause for disciplinary action.

III. FORMS OF SEXUAL HARASSMENT

- A. One form of prohibited sexual harassment under this policy occurs when someone:
 - (1) attempts to force an individual to submit to unwelcome sexual advances;
 - (2) requests sexual favors; or
 - (3) engages in unwelcome verbal or physical conduct of a sexual nature when submission is made a term or condition of employment or submission or rejection is used as a basis for employment decisions, including hiring decisions and provision of job benefits or failure to submit alters a term or condition of employment or results in a tangible change in employment status. Employment decisions, terms and conditions of employment and tangible changes in employment status may include promotions, demotions, compensation, termination, performance appraisals, and decisions causing a significant change of benefits, reassignment with significantly different responsibilities or disciplinary actions.
- B. Another form of prohibited sexual harassment under the policy occurs through the creation of a hostile work environment when unwelcome conduct of a sexual or gender-based nature unreasonably interferes with an individual’s work performance or creates an intimidating, hostile, abusive or offensive work environment. A hostile work environment can be created when any of the following behaviors are directed at another or when a third party overhears or observes such behaviors. The following are examples of behavior that may create a hostile work environment; however, generally, depending on its severity, one single isolated incident will not result in a

hostile work environment but may still result in disciplinary action. The behaviors include but are not limited to:

1. Verbal harassment, insults, ridicule or acts of intimidation, aggression or abuse, based on gender;
 2. Unwanted, intentional touching (i.e., patting, massaging, rubbing, hugging or pinching);
 3. Sexual or suggestive remarks about a person's weight, body, clothing, make-up, appearance or hairstyle;
 4. Demeaning or inappropriate sex-based terms, including intimate or offensive nicknames;
 5. Subjecting members of one sex to disadvantageous terms or conditions of employment to which members of the other sex are not subjected;
 6. Displaying or distributing sexually suggestive calendars, magazines, pin-ups, graffiti, pictures, cartoons, posters, software, e-mail or jokes;
 7. Repeated or continuing use of inappropriate gestures or profanity of a sexual nature;
 8. Telling sexual jokes or making sexual remarks, including sexual innuendo or comments with a double meaning;
 9. Unwelcome pressure to date or engage in sexual activities;
 10. Encouraging others to make inappropriate jokes, comments or advances;
 11. Commenting to a group on an individual's identification or complaint of sexual harassment;
 12. Commenting to a group, teasing an individual or telling lies or spreading rumors about issues of a sexual nature;
 13. Engaging in consensual sexual activity on the job;
 14. Displaying or fondling one's own intimate parts in front of others;
 15. Making facial expressions such as throwing kisses or licking lips or whistling at another in a sexually suggestive manner;
 16. Asking intimate or sexually probing questions;
 17. Boasting of sexual experiences or discussing sexual activities;
 18. Giving sexually explicit notes or pictures or sexually offensive items to another;
 19. Stalking an individual by following them, making repeated telephone calls, etc., whether during or after work hours, and either asking them for sexual favors or otherwise harassing them; or
 20. Requesting sexual favors, accompanied by implied or overt threats concerning an individual's employment status or benefits or promise of preferential treatment with regard to an individual's employment status or benefits.
- C. A third form of sexual harassment, sexual assault or battery, is prohibited by this policy and may constitute a crime. Substantiated allegations of sexual assault or battery constitute grounds for disciplinary action, including immediate leave without pay of the alleged harasser pending investigation. A finding of sexual assault or battery constitutes grounds for immediate dismissal.

(Sexual assault or battery may include but is not limited to: Unwanted kissing, grabbing, pressing against or fondling of the intimate parts of another's body or rape or forcing another to touch the intimate parts of one's body.)

IV. ENFORCEMENT PROCEDURE

- A. **Complaint Procedure** – Any person covered by the policy who is being subjected to sexual harassment should tell the offender to stop the behavior unless they are uncomfortable doing so. If they are unable to tell the offender to stop or if the conduct reoccurs after the offender has been told to stop, the person shall make a complaint to their supervisor, department director/office administrator or HR.

If a complaint is not made within 300 days of the sexually harassing incident, the County is not obligated to investigate but may do so if, due to the nature of the complaint or the position of the alleged offender, the County concludes that an investigation will further the County's sexual harassment policy. However, if the complainant alleges an incident against an alleged harasser that occurred within 300 days and other incidents that occurred over 300 days ago, then all such incidents shall be considered by the investigator in determining the outcome of the complaint.

If a complaint is made against a person who is not in the complainant's department, then the complainant's supervisor or department director/office administrator shall contact and notify HR, which shall notify the alleged harasser's department director/office administrator and initiate an investigation.

- B. **HR Notification** – The department director/office administrator, supervisor (or other person to whom a sexual harassment complaint is made) shall immediately notify HR concerning a sexual harassment or sexual assault/battery complaint, regardless of whether they believe the complaint is valid, in all cases.

If the complaint is made against an employee in the HR Department, the department director/office administrator, supervisor (or other person to whom a sexual harassment complaint is made) shall contact the County Attorney's Office for guidance. The County Attorney's Office shall evaluate the complaint and, in consultation with the County Executive, refer the complaint to an appropriate investigator for further action.

- C. **Previous Complaints** – If a department director/office administrator, supervisor or other person receives a complaint from an individual who previously complained about sexual harassment, whether or not the new allegations are against the same person, or if the complaint is against a person who has previously been accused of harassment, then HR shall be notified. If the person who receives the complaint is unsure whether a person has previously complained or previously been accused, he shall contact HR.

- D. **Complaint Involving Non-Employee** – If a complaint is filed by or against a contractor or vendor or against a customer or citizen, the department involved shall immediately notify HR. If the complaint is founded against a nonemployee, the investigator shall take appropriate action to ensure that the harassment ceases.

- E. **HR Investigation** – Upon notice to HR that a complaint of sexual harassment has been filed or received, the following procedures shall be followed:

Within five (5) calendar days of receipt of the complaint, HR will issue a Notice of Complaint to the alleged harasser.

One or more HR representatives shall conduct confidential, in-depth interviews with the complainant, witnesses, co-workers and the alleged harasser to gather all relevant information. After interviewing all relevant parties, the HR representative(s), in conjunction with the County Attorney's office, shall determine whether or not sexual harassment has occurred based on the evidence gathered during the investigation. The HR representative(s) shall suggest appropriate disciplinary actions in writing, if necessary, (i) to the alleged harasser's department director if the

alleged harasser is subordinate to a department director; (ii) to the appropriate assistant county executive if the alleged harasser is a department director or (iii) to the County Executive if the alleged harasser is an assistant county executive or other County official who reports directly to the County Executive. HR shall also inform the complainant of the final outcome of the investigation. The complaint shall be resolved within 60 days if practicable. HR shall maintain all documents regarding sexual harassment in a confidential manner and advise the County Attorney's Office of the results of the investigation once it has been concluded.

- F. **Accused Rights** – If accused of an act of sexual harassment, an individual: (1) shall be notified of the complaint as soon as possible, (2) shall be entitled to respond to the complaint; (3) shall receive discipline in conformance with the County's Personnel Policies and Procedures if the charges are substantiated; and (4) shall be entitled to utilize the County's Employee Grievance Procedure if the employee disagrees with the disciplinary action, if the employee is eligible to file a grievance and if the action is grievable.
- G. **Cooperation** – All County employees are required to cooperate in sexual harassment investigations.
- H. **Impeding Investigations** – Impeding an investigation or otherwise covering up a violation is prohibited.
- I. **Confidentiality** – All participants in the investigation, including the complainant and the alleged harasser, shall be required to keep the details and results of any investigation confidential, unless otherwise directed under this policy. However, this requirement shall not prevent communications with legal counsel or other legally protected communications, and shall not in any way interfere with rights protected under state or federal law.
- J. **Violation/Discipline** – In determining whether a violation of the policy has occurred, the investigator shall consider the totality of the circumstances, the nature of the act and the context in which the incident occurred. HR will make recommendations on situationally appropriate discipline. HR and the County Attorney's office shall be consulted if the department considers discipline that is different than the original recommendation. All violations of this policy, including violation of the retaliation, confidentiality, cooperation, impeding investigations and false/vindictive claims provisions, shall result in disciplinary action up to and including termination in accordance with the County's Personnel Policies and Procedures. Any employee who fails to report a sexual harassment incident to HR pursuant to this procedure or who allows sexual harassment to continue or fails to take appropriate corrective action or retaliates or discriminates against the complainant, or any other individual who cooperates in the investigation, shall be subject to discipline, up to and including termination. A complainant should report such a violation to HR for investigation.
- K. **Interim Remedial Measures** – After a complaint is received, interim remedial measures may be taken to protect the individuals involved and/or to protect the interests of the County. Any remedial measure may be reversed or modified pending final resolution of a complaint.
- L. **Follow-up** – Once a complaint has been resolved, HR will follow-up with the complainant periodically to ensure that the harassment has ceased and/or no retaliation is occurring.
- M. **Files** – The supervisor or department director/office administrator shall ensure that all documents and files regarding a sexual harassment investigation are maintained in a confidential manner and that access to such files is restricted. Sexual harassment files shall be maintained separate and apart from any other files containing employee information. At the time that a supervisor or department director/office administrator leaves their position, all departmental files maintained pursuant to this section shall be delivered to HR.

For investigations conducted by HR, all documents, files and final reports shall be maintained in a confidential location in HR. Copies will be forwarded to the County Attorney's office. Upon request, the department director/office administrator and appropriate departmental leadership will be permitted to come to HR to review the report.

- N. **Grievance** – Eligible employees may use the County's Employee Grievance Procedure for relief from acts of sexual harassment that are not resolved to the satisfaction of the complainant. The Grievance Procedure time limits shall begin to run after the initial investigation is completed and the complainant is notified of the results.
- O. **Title VII** – Individuals may also consult with the Equal Employment Opportunity Commission concerning their rights under Title VII.