RESCHEDULED
MFP COMMITTEE #4
July 15, 2010

MFP COMMITTEE #7
July 12, 2010

MEMORANDUM

July 8, 2010

TO: Management and Fiscal Policy Committee

FROM: Minna K. Davidson, Legislative Analyst MKD(SVF)

SUBJECT: Executive Regulation 27-09, *General Applicability of Personnel Regulations to Employees of Local Fire and Rescue Departments*

This regulation was originally scheduled for Management and Fiscal Policy Committee review on June 17. At OHR's request, it was deferred to allow time for OHR to consider further some of Council staff's recommendations on the regulation.

OHR staff has worked with Council staff to address the issues of concern to OHR. Staff have agreed on an amended version of the regulation which is attached on © 19-30 for the Committee's review.

Regulation 27-09

On March 23, the Council received Regulation 27-09, *General applicability of Personnel Regulations to Employees of Local Fire and Rescue Departments*, from the Executive. Regulation 27-09 must be processed under Method (1) of Section 2A-15 of the County Code. A resolution proposed under this method does not take effect until the Council approves it.

This regulation amends Section 2-2(m) of the 2001 Montgomery County Personnel Regulations, to clarify, in accordance with a recent Merit System Protection Board (MSPB) decision, that the Personnel Regulations are generally applicable to employees of the Local Fire and Rescue Departments. The regulation was advertised in the December 2009 Montgomery County Register. At the MSPB's request, the Executive modified Section 35-8 of the Personnel Regulations to indicate that if an LFRD employee files an appeal with the Board, the Board will notify the head of the LFRD, and the LFRD must respond, rather than the County Attorney or the Office of Human Resources Director. At the request of the County Attorney's Office, the

regulation also clarifies who must respond to an appeal to the MSPB which is filed by a volunteer firefighter or rescuer. In light of these additional modifications, Regulation 27-09 was readvertised in the February 2010 Register, and no further comments were received.

Background on LFRD Employees

For many years, the Local Fire and Rescue Departments (LFRDs) have employed certain personnel to support their operations. These positions have been paid with Fire Tax funds, but the authority to hire, fire, and manage the personnel rests with the LFRDs. Until recently, LFRD employees included administrative personnel and, at LFRDs with vehicle maintenance shops, mechanics. In FY10, as part of the Apparatus Management Plan, the mechanics became County employees. Currently, there are a total of 19 LFRD personnel, all of whom are administrative. In addition, there is one lapsed administrative position at Glen Echo. A breakout of the current LFRD employee positions is shown below.

LFRD (No. of Stns.)	Position	Grade	Workyear
Bethesda (3)	Administrative Specialist II	21	1.00
Burtonsville (1)	Administrative Specialist I	18	1.00
Cabin John (2)	Administrative Specialist II	21	1.00
Chevy Chase (1)	Office Services Coordinator	16	0.75
Damascus (1)	Office Services Coordinator	16	0.80
Gaithersburg (2)	Administrative Specialist III	23	1.00
Germantown (1)	Office Services Coordinator	16	1.00
Glen Echo (1)	Office Services Coordinator	16	lapsed
Hillandale (2)	Administrative Specialist I	18	1.00
Hyattstown (1)	Office Services Coordinator	16	1.00
Kensington (4)	Administrative Specialist III	23	1.00
	Office Services Coordinator	16	1.00
Laytonsville (1)	Office Services Coordinator	16	1.00
Rockville (4)	Administrative Specialist III	23	1.00
	Office Services Coordinator	16	1.00
Sandy Spring (2)	Office Services Coordinator	16	1.00
Silver Spring (3)	Administrative Specialist II	21	1.00
Takoma Park (1)	Office Services Coordinator	16	1.00
Upper Montgomery (1)	Administrative Specialist I	18	1.00
Wheaton RS (1)	Office Services Coordinator	16	0.80

LFRD Employees and County Personnel Regulations

County Code Section 21-16 (© 12-13) provides for personnel administration for employees of Local Fire and Rescue Departments. Section 21-16(a) says:

> *Applicability of County Regulations.* Employees of local fire and rescue departments who are paid with tax funds are not County employees. They are members of a separate

merit system governed by generally applicable County personnel regulations except as expressly modified by regulations that the County Executive, after receiving Commission approval under Section 21-2(d)(4), adopts under Method (2).

Section 21-16(b) requires the Office of Human Resources to provide certain services to the LFRDs, including: uniform administration and application of personnel regulations and policies; consistent administration and application of a uniform pay plan and benefit program which must be substantially equivalent to that of the County government; disbursement of salaries and wages through the County's payroll system; reviewing all LFRD personnel transactions for consistency with applicable personnel regulations; and use of the Merit System Protection Board.

Section 21-16(c) clarifies that nothing in Chapter 21 means that LFRD employees are County employees, and nothing abrogates the authority of each local fire and rescue department to hire, promote, discipline, discharge, or make work assignments for LFRD employees in that department.

The remaining paragraphs of Section 21-16 provide for judicial review of decisions by the MSPB regarding LFRD employees, and require each LFRD to designate a person as department head under the County Personnel Regulations to take any personnel action on behalf of the local department.

MSPB Appeal and Order

The initial proposal to amend Section 2-2(m) of the Montgomery County Personnel Regulations was made in response to an Order of the MSPB as part of the resolution of an appeal from employees of the Gaithersburg-Washington Grove Volunteer Fire Department. In short, in implementing the new electronic timekeeping system, MCTime, an issue arose regarding personal leave days for LFRD employees, and led to a broader question about whether LFRD employees are governed by an obsolete set of Montgomery County Fire and Rescue Corporation Personnel Regulations from 1988 (reprinted in 1997), or the current Montgomery County Personnel Regulations.

In reviewing the appeal, the MSPB concluded that the LFRD employees are governed by the County Personnel Regulations. The only exception would be if the County Executive, after receiving Commission approval, issues a Method 2 regulation to expressly modify the Personnel Regulations for LFRD employees. The Executive has not issued any such modifying regulations to date.

One of the arguments used to support the position that the 1988/1997 Fire and Rescue Corporation regulations applied to LFRD employees was that Section 2-2(m) of the Personnel Regulations said that the Personnel Regulations do not cover employees of independent corporations supported in whole or part with Montgomery County tax funds. The MSPB concluded that this section directly conflicted with Section 21-16(a) of the Code and was, therefore, invalid with respect to LFRD employees. In establishing relief for the appellants, the

Board ordered, among other things, that OHR modify the Montgomery County Personnel Regulations to delete Section 2-2(m).

The Analysis and Conclusions from the Board's Final Decision and Order on this appeal are attached on © 14-16.

Proposed Modifications in Regulation 27-09, and Council Staff Recommendations from June 17

1. Proposed Regulation 27-09 would amend Section 2-2(m) of the Montgomery County Personnel Regulations to clarify that the Personnel Regulations apply to LFRD employees except as expressly modified by Executive regulations adopted under the authority of Code Section 21-16.

   Council staff recommendation: Concur with Section 2-2(m) as proposed by the Executive.

2. The proposed regulation would also clarify in Section 35-8(f) of the Personnel Regulations that for appeals from volunteer firefighter/rescuers, the OHR Director and County Attorney must respond to an appeal that relates specifically to action taken by the Fire Chief; the LFRD must respond for all other appeals.

   Council staff recommendation: Concur with Section 35-8(f) as proposed by the Executive.

3. At the MSPB's request, the proposed regulation would add Sections 35-8(c), requiring the MSPB to notify the head of an LFRD in writing that an employee filed an appeal and provide the LFRD with a copy of the appeal, and 35-8(g), requiring the LFRD to respond to an appeal by an employee within 15 days and forward all relevant documentation to the MSPB within that timeframe.

   The MSPB's memorandum requesting this change is on © 17. The Board felt that because LFRDs are not represented in appeals from their employees by the County Attorney and OHR, a further amendment of the Personnel Regulations was necessary to indicate that if an appellant is an LFRD employee, the LFRD must be notified and an LFRD attorney should respond.

   Council staff comments: Council staff partially agrees with the MSPB. If an LFRD employee is appealing an action of an LFRD, then the LFRD should be notified of the appeal, and should be required to respond. However, because the Office of Human Resources by law must provide certain personnel administration functions for LFRD employees, it is possible that an LFRD employee could grieve and appeal an issue which is the responsibility of the Office of Human Resources (as was the case with the appeal that brought about Regulation 27-09). Referring an appeal of this nature to an LFRD

would, at a minimum, slow down the process, and might be confusing for the appellants and others involved in the process.

Council staff recommendations: Reword Sections 35-8(c) and 35-8(g) as follows:

(c) The MSPB must promptly notify the CAO, County Attorney, OHR Director, Fire Chief, and the head of a Local Fire and Rescue Department in writing that one of the Local Fire and Rescue Department's employees filed an appeal and provide the County Attorney, the OHR Director and the head of the Local Fire and Rescue Department with a copy of the appeal.

(g) The OHR Director and County Attorney must respond to an appeal filed by an LFRD employee that relates specifically to the personnel administration functions which OHR is required to provide for LFRD employees under Code Section 21-16(b). The OHR Director and County attorney must respond within 15 working days and forward a copy of the action or decision appealed and all relevant reports, papers, and documents to the MSPB. In all other appeals filed by an LFRD employee, the Local Fire and Rescue Department must respond within 15 working days and forward a copy of the action or decision appealed and all relevant reports, papers, and documents to the MSPB. The MSPB may grant an extension of time for reasons that the MSPB considers good cause.

4. ***In addition, Council staff recommends amending the definition of appellant in Section 35-1(b) of the Personnel Regulations as follows*** to make it clear that an LFRD employee may appeal to the MSPB.

(b) ***Appellant:*** The County employee, applicant for employment, volunteer firefighter or rescuer, or Local Fire and Rescue Department employee who files an appeal with the MSPB.

Overall Council staff recommendation: Request that the Executive amend the regulation as recommended above, and re-issue and re-number it as 27-09AM to indicate that it was amended after transmittal to the Council. Recommend approval with the requested amendments. A draft approval resolution is on © 18.

Amended Regulation 27-09AM

After the June 17 worksession was deferred, Council and OHR staff worked to resolve the issues of concern to OHR. The major issue is discussed below. In addition, Council and OHR staff made several clarifying and drafting amendments. The amendments are all shown with double brackets and double underlines in the marked-up version of the amended regulation on © 25-30.

OHR's major concern was that the Council staff language in Section 35-8(g) above was too broad, and could commit OHR to respond to any type of complaint regarding discipline or

personnel administration even if an LFRD had never consulted OHR (or had consulted OHR but chosen not to follow OHR's advice). OHR staff proposed narrower language which appears in Section 35-8(f) on © 29. OHR and Council staff agreed that the new language would provide an opportunity for an employee to grieve and appeal an action for which OHR is responsible, but would leave OHR out of other types of appeals in which they would not have a role.

Council staff recommendation: Approve Regulation 27-09AM as submitted by the Executive.

This packet contains:	**circle #**
CE's transmittal of Regulation 27-09	1
Regulation 27-09, clean copy	2
Regulation 27-09, bracketed and underlined	6
Fiscal Impact Statement	10
County Code Section 21-16	12
MSPB Analysis and Conclusions from GWGVFD appeal	14
Memorandum from MSPB to OHR	17
Draft approval resolution	18
CE's transmittal of Regulation 27-09AM	19
Regulation 27-09AM, clean copy	20
Regulation 27-09AM, bracketed and underlined	25

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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

March 22, 2010

Method 1

TO: Nancy Floreen, President
Montgomery County Council

FROM: Isiah Leggett, County Executive

SUBJECT: Executive Regulation No. 27-09, General Applicability of Personnel Regulations to Employees of Local Fire and Rescue Departments

I am submitting Executive Regulation No. 27-09 for the Council's review and approval. This regulation amends Section 2-2(m) of the 2001 Montgomery County Personnel Regulations to clarify, in accordance with a recent decision by the Merit System Protection Board, that the Personnel Regulations are generally applicable to employees of Local Fire and Rescue Departments. The regulation was advertised in the December 2009 issue of the *Montgomery County Register*. At the Board's request, the regulation now also modifies Section 35-8 of the Personnel Regulations to indicate that should an LFRD employee file an appeal with the Board, the Board will notify the head of the LFRD, and that it is the LFRD, rather than the County Attorney or the Office of Human Resources Director, who must provide a response to the appeal. At the request of the County Attorney's Office, the regulation now also clarifies who must respond to an appeal filed by a volunteer firefighter or rescuer with the Board. In light of these additions, Executive Regulation 27-09 was readvertised in the February 2010 issue of the *Montgomery County Register*. No comments were received in response to this advertisement.

A fiscal impact statement for the regulation is also included.

Should you have any questions about Executive Regulation No. 27-09, please contact Stuart Weisberg, the Labor Relations Advisor in the Office of Human Resources, at (240) 777-5154.

IL:sw

Attachments

RECEIVED
MONTGOMERY COUNTY
COUNCIL
2010 MAR 23 AM 10: 48

1

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject General Applicability of Personnel Regulations to Employees of Local Fire and Rescue Departments	**Number** 27-09
Originating Department Office of Human Resources	**Effective Date**

General Applicability of Personnel Regulations to Employees of Local Fire and Rescue Departments

Executive Regulation No. 27-09
Issued by: County Executive
Supersedes: Executive Regulation No. 12-00AM II, in part, and
Executive Regulation 14-09, in part

Authority: Montgomery County Code, 2004, §33-7(b)
Council review: Method 1

Montgomery County Register Volume 27, Issue 2
Comment deadline: March 2, 2010

Effective date: _____

Summary: This regulation amends Section 2-2(m) of the 2001 Montgomery County Personnel Regulations to clarify, in accordance with a recent decision by the Merit System Protection Board, that the Personnel Regulations are generally applicable to employees of Local Fire and Rescue Departments (LFRDs). At the Board's request, the regulation also modifies Section 35-8 of the Personnel Regulations to indicate that should an LFRD employee file an appeal with the Board, the Board will notify the head of the LFRD, and that it is the LFRD, rather than the County Attorney or the Office of Human Resources Director, who must provide a response to the appeal. The regulation also clarifies who must respond to an appeal filed by a volunteer firefighter or rescuer with the Board.

Address for comments: Office of Human Resources, Executive Office Building, 7th Floor
101 Monroe Street, Rockville, Maryland 20850

Staff contact: Stuart Weisberg, 240-777-5051, or stuart.weisberg@montgomerycountymd.gov

Please use the key below when reading this regulation:

Boldface	*Heading or defined term.*
* * *	*Existing language unchanged by executive regulation.*

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject General Applicability of Personnel Regulations to Employees of Local Fire and Rescue Departments	**Number** 27-09
Originating Department Office of Human Resources	**Effective Date**

SECTION 2. GENERAL PROVISIONS

* * *

2-2. Applicability of Personnel Regulations. The Personnel Regulations apply to all merit system positions and all employees of the County government except:

* * *

(m) employees of independent agencies or corporations other than Local Fire and Rescue Departments supported in whole or in part with Montgomery County general or special tax funds, unless authorized by statute to be members of the Montgomery County merit system. The Personnel Regulations apply to the employees of Local Fire and Rescue Departments except as expressly modified by Executive regulations adopted under the authority of Section 21-16 (a) of the County Code.

* * *

SECTION 35. MERIT SYSTEM PROTECTION BOARD APPEALS, HEARINGS, AND INVESTIGATIONS

* * *

35-8 Notification, response and submission of record in appeal.

* * *

(b) The MSPB must promptly notify the CAO, County Attorney, OHR Director, Fire Chief, and Local Fire and Rescue Department in writing that a volunteer firefighter or rescuer filed an appeal and provide the County Attorney, the OHR Director and the head of the Local Fire and Rescue Department with a copy of the appeal.

(c) The MSPB must promptly notify the head of the Local Fire and Rescue Department in writing that one of its employees filed an appeal and provide the Local Fire and Rescue Department with a copy of the appeal.

(d) An appellant must respond to an MSPB request for documentation in support of an appeal within 15 working days. The MSPB may grant an extension of time for reasons that the MSPB considers good cause.

(e) The OHR Director and County Attorney must respond to an appeal filed by an employee within 15 working days and forward a copy of the action or decision appealed and all relevant reports, papers, and documents to the MSPB. The MSPB may grant an extension of time for reasons that the MSPB considers good cause.

(f) The OHR Director and County Attorney must respond to an appeal filed by a volunteer firefighter or rescuer that relates specifically to action taken by the Fire Chief within 15 working days and forward a copy of the action or decision appealed and all relevant reports, papers, and documents to the MSPB. In all other appeals filed by a volunteer firefighter or rescuer, the Local Fire and Rescue Department must respond within 15 working days and forward a copy of the action or decision appealed and all relevant reports, papers, and documents to the MSPB. The MSPB may grant an extension of time for reasons that the MSPB considers good cause.

(g) The Local Fire and Rescue Department must respond to an appeal filed by one of its employees within 15 working days and forward a copy of the action or decision appealed and all relevant reports, papers, and documents to the MSPB. The MSPB may grant an extension of time for reasons that the MSPB considers good cause.

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject General Applicability of Personnel Regulations to Employees of Local Fire and Rescue Departments	**Number** 27-09
Originating Department Office of Human Resources	**Effective Date**

* * *

Approved: Isiah Leggett, County Executive — Date 3/22/10

Approved as to form and legality:

Office of the County Attorney — Date 1/21/10

Revised 4/96

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject General Applicability of Personnel Regulations to Employees of Local Fire and Rescue Departments	**Number** 27-09
Originating Department Office of Human Resources	**Effective Date**

General Applicability of Personnel Regulations to Employees of Local Fire and Rescue Departments

Executive Regulation No. 27-09
Issued by: County Executive
Supersedes: Executive Regulation No. 12-00AM II, in part, and
Executive Regulation 14-09, in part

Authority: Montgomery County Code, 2004, §33-7(b)
Council review: Method 1

Montgomery County Register Volume 27, Issue 2
Comment deadline: March 2, 2010

Effective date: _____

Summary: This regulation amends Section 2-2(m) of the 2001 Montgomery County Personnel Regulations to clarify, in accordance with a recent decision by the Merit System Protection Board, that the Personnel Regulations are generally applicable to employees of Local Fire and Rescue Departments (LFRDs). At the Board's request, the regulation also modifies Section 35-8 of the Personnel Regulations to indicate that should an LFRD employee file an appeal with the Board, the Board will notify the head of the LFRD, and that it is the LFRD, rather than the County Attorney or the Office of Human Resources Director, who must provide a response to the appeal. The regulation also clarifies who must respond to an appeal filed by a volunteer firefighter or rescuer with the Board.

Address for comments: Office of Human Resources, Executive Office Building, 7th Floor
101 Monroe Street, Rockville, Maryland 20850

Staff contact: Stuart Weisberg, 240-777-5051, or stuart.weisberg@montgomerycountymd.gov

Please use the key below when reading this regulation:

Boldface	*Heading or defined term.*
Underlining	*Added to existing regulation by proposed regulation.*
[Single boldface brackets]	*Deleted from existing regulation by proposed regulation.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing or proposed regulation by amendment.*
* * *	*Existing language unchanged by executive regulation.*

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject General Applicability of Personnel Regulations to Employees of Local Fire and Rescue Departments	**Number** 27-09
Originating Department Office of Human Resources	**Effective Date**

SECTION 2. GENERAL PROVISIONS

* * *

2-2. Applicability of Personnel Regulations. The Personnel Regulations apply to all merit system positions and all employees of the County government except:

* * *

(m) employees of independent agencies or corporations other than Local Fire and Rescue Departments supported in whole or in part with Montgomery County general or special tax funds, unless authorized by statute to be members of the Montgomery County merit system. The Personnel Regulations apply to the employees of Local Fire and Rescue Departments except as expressly modified by Executive regulations adopted under the authority of Section 21-16 (a) of the County Code.

* * *

SECTION 35. MERIT SYSTEM PROTECTION BOARD APPEALS, HEARINGS, AND INVESTIGATIONS

* * *

35-8 Notification, response and submission of record in appeal.

* * *

(b) The MSPB must promptly notify the CAO, County Attorney, OHR Director, Fire Chief, and [l]Local [f]Fire and [r]Rescue [d]Department in writing that a volunteer firefighter or rescuer filed an appeal and provide the County Attorney, [and] the OHR Director and the head of the Local Fire and Rescue Department with a copy of the appeal.

(c) The MSPB must promptly notify the head of the Local Fire and Rescue Department in writing that one of its employees filed an appeal and provide the Local Fire and Rescue Department with a copy of the appeal.

[(c)]

(d) An appellant must respond to an MSPB request for documentation in support of an appeal within 15 working days. The MSPB may grant an extension of time for reasons that the MSPB considers good cause.

[(d)]

(e) The OHR Director and County Attorney must respond to [the] an appeal filed by an employee within 15 working days and forward a copy of the action or decision appealed and all relevant reports, papers, and documents to the MSPB. The MSPB may grant an extension of time for reasons that the MSPB considers good cause.

(f) The OHR Director and County Attorney must respond to an appeal filed by a volunteer firefighter or rescuer that relates specifically to action taken by the Fire Chief within 15 working days and forward a copy of the action or decision appealed and all relevant reports, papers, and documents to the MSPB. In all other appeals filed by a volunteer firefighter or rescuer, the Local Fire and Rescue Department must respond within 15 working days and forward a copy of the action or decision appealed and all relevant reports, papers, and documents to the MSPB. The MSPB may grant an extension of time for reasons that the MSPB considers good cause.

(g) The Local Fire and Rescue Department must respond to an appeal filed by one of its employees within 15 working days and forward a copy of the action or

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject General Applicability of Personnel Regulations to Employees of Local Fire and Rescue Departments	**Number** 27-09
Originating Department Office of Human Resources	**Effective Date**

decision appealed and all relevant reports, papers, and documents to the MSPB. The MSPB may grant an extension of time for reasons that the MSPB considers good cause.

* * *

Approved: Isiah Leggett, County Executive — Date 3/22/10

Approved as to form and legality:
Office of the County Attorney — Date 1/21/10

OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

March 18, 2010

TO: Joseph F. Beach, Director
Office of Management and Budget

VIA: Alex Espinosa, Management and Budget Manager

VIA: John Cuff, Management and Budget Specialist

FROM: Lori O'Brien, Management and Budget Specialist

SUBJECT: Executive Regulation 27-09, General Applicability of Personnel Regulations to Employees of Local Fire and Rescue Departments

REGULATION SUMMARY

This regulation, amending Section 2-2(m) of the Montgomery County Personnel Regulations to clarify, in accordance with a recent decision by the Merit System Protection Board (MSPB), that the Personnel Regulations are generally applicable to employees of Local Fire and Rescue Departments (LFRD), was advertised in the December 2009 County Register. At the Board's request, the regulation now also modifies Section 35-8 of the Personnel Regulations to indicate that should a LFRD employee file an appeal with the Board, the Board will notify the head of the LFRD, and that it is the LFRD, rather than the County Attorney or the Office of Human Resources Director, who must provide a response to the appeal. At the request of the County Attorney's Office, the regulation now also clarifies who must respond to an appeal filed by a volunteer firefighter or rescuer with the Board.

FISCAL AND ECONOMIC SUMMARY

The proposed regulation does not have a fiscal or economic impact on the County. While the recent decision by the MSPB that the Personnel Regulations are generally applicable to employees of LFRD may have a fiscal impact on the County, this executive regulation itself does not have a fiscal impact.

The following contributed to and concurred with this analysis: Lori O'Brien, Office of Management and Budget; Michael Coveyou, Department of Finance; and Stuart Weisberg, Office of Human Resources.

JFB:lob

c: Kathleen Boucher, Assistant Chief Administrative Officer
Joseph Adler, Director, Office of Human Resources
Michael Coveyou, Department of Finance
Stuart Weisberg, Office of Human Resources
Caroline Darden, Offices of the County Executive
John Cuff, Office of Management and Budget

OMB REVIEW

✓ Fiscal Impact Statement approved _____
OMB Director

_____ Fiscal Impact Statement not approved, OMB will contact department to remedy.

Sec. 21-16. Personnel administration for local fire and rescue departments.

(a) *Applicability of County Regulations.* Employees of local fire and rescue departments who are paid with tax funds are not County employees. They are members of a separate merit system governed by generally applicable County personnel regulations except as expressly modified by regulations that the County Executive, after receiving Commission approval under Section 21-2(d)(4), adopts under method (2).

(b) *Personnel services.* The Office of Human Resources must provide the following services to the local fire and rescue departments:

(1) Uniform administration and application of personnel regulations and policies.

(2) Consistent administration and application of a uniform pay plan and benefit program, which must be substantially equivalent to that of the County government.

(3) Disbursement of salaries and wages, including withholding for taxes and fringe benefits through the County's payroll system.

(4) Review for consistency with applicable personnel regulations all personnel transactions involving employees of local fire and rescue departments paid with tax funds.

(5) Use of the Merit System Protection Board.

(c) *Limitations.* Nothing in this Chapter means that employees of the local fire and rescue departments are County employees, either on a de jure or de facto basis. Nothing in this Chapter abrogates the authority of each local fire and rescue department over such functions as hiring, promotion, discipline, and discharge of employees of that department; the assignment of administrative staff; and day-to-day assignments of volunteer personnel at that department. This Section does not diminish the authority of County government to act under Sections 21-13 and 21-14 or the authority of the Fire Chief to discipline an employee or volunteer of a local fire and rescue department as provided in Section 21-3(g)..

(d) *Judicial review.* An aggrieved employee of a local fire and rescue department, the Chief Administrative Officer on behalf of the County, or any local fire and rescue department or other person aggrieved by any order or decision of the Merit System Protection Board, may obtain judicial review of the order or decision as described in the Maryland Rules of Procedure that apply to appeals of administrative actions. Any party may appeal a decision of a court under this subsection to the Court of Special Appeals or seek review by the Court of Appeals.

(e) *Local department head.* For purposes of this Chapter, a local fire and rescue department must designate a person as a department head under the County personnel regulations and must notify the Office of Human Resources of its selection. The designee may take any personnel action on behalf of the local department that a department head may take under the County personnel regulations, to the extent that those regulations apply to the local department. (1980 L.M.C., ch. 64, § 3; 1982 L.M.C., ch. 40, § 3; 1982 L.M.C., ch. 43, § 1; 1984 L.M.C., ch. 29, § 1; 1985 L.M.C., ch. 14, § 1; 1987 L.M.C., ch. 25, § 1; 1987 L.M.C., ch. 38, § 1; 1988 L.M.C., ch. 3; 1988 L.M.C., ch. 14, § 6; 1989 L.M.C., ch. 2, § 1; 1998 L.M.C., ch 4, § 1; 2004 L.M.C., ch. 5, § 1; 2009 L.M.C., ch. 5, § 1.)

Editor's note-Section 21-16, formerly § 21-4M, was renumbered, amended and retitled pursuant to

1998 L.M.C., ch. 4, § 1.

In Lofland v. Montgomery County, 319 Md. 265, 572 A.2d 163 (1990), the court held that an employee who filed a grievance as provided by personnel regulations adopted pursuant to this section was entitled to an evidentiary hearing before the merit system protection board to address the dispute as to when the time period in which to file the grievance began to run. The above section is cited in Conway v. Takoma Park Volunteer Fire Department, Inc., 666 F.Supp. 786 (D.Md. 1987).

– The CAO's decision, upholding the determination of OHR to remove the personal leave days from LFRD employees, is correct.

ISSUE

Does the 1997 MCFRCPR or the 2001 MCPR, as amended, apply to employees of LFRDs?

ANALYSIS AND CONCLUSIONS

Appellants have provided the Board in support of their appeal with an email from Mr. Michael Faden, Senior Legislative Attorney for the County Council. Mr. Faden, having worked as Council staff on amendments to Chapter 21 of the Code for the last two decades, is quite familiar with Bill 37-97, which produced the current Section 21-16 of the County Code. Appellants' Response, Attach. AA. Mr. Faden provided a quote from the Council staff action memo, co-authored by him and which accompanied Bill 37-97, regarding the intent of bill:

> Throughout this bill it was unnecessary to apply to MCFRS provisions of law that already apply to all departments of County government. For example, MCFRS, as a department of County government, is subject to generally applicable audit requirements and personnel rules which need not be restated, even though they are expressly applied in current law *and this bill* to the local fire and rescue departments precisely because they are not units of County government.

Id.

The County Council intent regarding the personnel regulation coverage of LFRDs in 1998 is crystal clear – LFRD employees, although not County employees, were to henceforth be governed by generally applicable County personnel regulations. County Code, Section 21-16. The only exception to this mandate was where the County Executive, after receiving FRC approval, took action to provide for an exception to the County personnel regulations by promulgating said exception in a regulation under method (2).

The County argues that Section 21-16, somehow implicitly authorized the continuation of the 1997 MCFRCPR, notwithstanding its express language otherwise.[9] The Council's Senior Legislative Attorney, Mr. Faden, notes in his email to an LFRD employee, that Bill 37-97, which ultimately became law and included Section 21-16, contained an uncodified transition clause. Specifically, the clause provided:

> *Transition; Department organization.* On July 1, 1998, the Department of Fire and Rescue Services becomes the Division of Fire and Rescue Services in the Montgomery County Fire and Rescue Services. . . *All personnel or other*

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[9] The County does acknowledge in a footnote that Section 21-16(a) is subject to a different interpretation than the one being advanced by the County. County Response at 4 n 3.

> *regulations applicable to employees of the Department of Fire and Rescue Services or any local fire and rescue department on July 1, 1998, remain in force until otherwise amended or repealed, and apply to employees of the Montgomery County Fire and Rescue Service or the local fire and rescue departments respectively.*

Appellants' Response, Attach. AA at 2. Mr. Faden states that it is his belief that the transition clause cannot be cited in support of continuing to apply pre-existing personnel regulations for as long as eleven years. Id. Such an argument would clearly undermine the essential intent of any provision of the bill to which it was attached. Id.

The Board agrees with Mr. Faden's views. At best, the uncodified transition clause can only be viewed as providing the County Executive with a small window of opportunity to act to adopt under method (2) an exception to the then-current County personnel regulations (after receiving approval by the FRC) before they became applicable to LFRD employees. However, as Mr. Faden indicates, the FRC has never approved of any modification to the County personnel regulations since July 1, 1998. Id. at 1. Thus, pursuant to Section 21-16(a), the County's personnel regulations became applicable to LFRD employees in 1998.

The County argues that Section 2-2 of the MCPR, 2001, expressly excludes the LFRD employees from the MCPR's coverage. Specifically, that portion of the MCPR provides that the County personnel regulations do not cover employees of independent corporations supported in whole or part with Montgomery County tax funds. Mr. Faden, in his email to Mr. Kelley, notes that this portion of the MCPR directly conflicts with Section 21-16(a) and thus is "invalid." Appellant's Response, Attach. AA at 2. Mr. Faden indicates that when this version of the personnel regulations was sent to the Council for review, Council staff was not informed that the effect of Section 2-2(m) would be to apply a different set of personnel regulations to fire corporation employees. Id.

The Board agrees with Mr. Faden that Section 2-2(m) is invalid with respect to LFRD employees. The Board notes that Montgomery County Code Section 33-7(b) requires that the County Executive adopt personnel regulations under method (1) of section 2A-15 of the Code. See also Fraternal Order of Police, Montgomery County Lodge No. 35 v. Mehrling, 343 Md. 155, 171 (1996) (noting that the County Executive is required to adopt personnel regulations under method (1) and pursuant to that authority the County Executive has promulgated the MCPR). Thus, MCPR, 2001 was adopted pursuant to method (1). Id.

However, the County Council, in enacting Section 21-16 of the Code, expressly provided only one means of exempting LFRD from County personnel regulations. To do so, the County Executive is required to adopt regulations under method (2) modifying the County personnel regulations after receiving approval from the FRC. There is no record in anything submitted by the County that the County Executive adopted this provision of the MCPR, after receiving

approval from the FRC, utilizing method (2).[10] Accordingly, this specific section of the MCPR conflicts with Section 21-16 of the Code and is deemed by the Board to be invalid.

ORDER

Based on the foregoing, the Board grants Appellants' appeal from the denial of their grievance on the merits. The Board orders the following relief:

1. Appellants, within thirty days from the date of this decision, will be made whole for the personal leave days withdrawn from them in January of this year,

2. OHR will modify MCPR, 2001 to delete Section 2-2(m), within thirty days from the date of this decision; and

3. OHR will notify all LFRD employees that MCPR, 2001, as currently amended, applies to them, within thirty days from the date of this decision.

If any party disagrees with the decision of the Merit System Protection Board, pursuant to Montgomery County Code, Section 33-15, *Judicial review and enforcement*, and MCPR, Section 35-18, *Appeals to court of MSPB decisions*, an appeal may be filed with the Circuit Court for Montgomery County, Maryland in the manner prescribed under the Maryland Rules, Chapter 200, Rule 7-202.

For the Board
October 14, 2009

Bruce Ervin Wood
Chair

[10] Nor could he have adopted the MCPR provision as part of the MCPR using method (2) – he had to use method (1).

MERIT SYSTEM PROTECTION BOARD

MEMORANDUM

December 10, 2009

TO: Joseph Adler, Director
Office of Human Resources

FROM: Bruce Ervin Wood, Chair Bruce Ervin Wood by
Merit System Protection Board

SUBJECT: Executive Regulation 27-09, General Applicability of Personnel Regulations to Employees of Local Fire and Rescue Departments

This is in response to your memorandum, dated November 24, 2009, subject as above. The Board has carefully reviewed the proposed amendment to Section 2 of the 2001 Montgomery County Personnel Regulations and has no objection to its adoption.

Because Local Fire Departments are not represented by the Office of the County Attorney, with the assistance of the Office of Human Resources, in appeals by their employees, the Board would request a further amendment to the personnel regulations be made. Specifically, the Board requests that Section 35-8 (a) be modified to indicate that should the appellant be an employee of a Local Fire and Rescue Department, then the MSPB will notify the head of the Local Fire and Rescue Department (LFD) that one of their employees has filed an appeal and request that the LFD's attorney provide a response to the appeal.

cc: Board Members

100 Maryland Avenue, Suite 113 • Rockville, Maryland 20850-2419 • 240/777-6620, FAX 240/777-6624

Resolution No.: _____
Introduced: _____
Adopted: _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: County Council

Subject: Approval of Executive Regulation 27-09AM, *General Applicability of Personnel Regulations to Employees of Local Fire and Rescue Departments*

Background

1. On March 23, 2010, the Council received proposed Regulation 27-09, *General Applicability of Personnel Regulations to Employees of Local Fire and Rescue Departments*, from the Executive.

2. The Council must review Regulation 27-09 under method (1) of Section 2A-15 of the County Code. Under Method (1), a regulation does not take effect until the Council approves it.

3. The Management and Fiscal Policy Committee was scheduled to review Regulation 27-09 on June 17, but withdrew it from the agenda at the request of the Office of Human Resources who wanted more time to consider recommendations made by Council staff.

4. The Executive considered the issues further and issued an amended regulation that was re-numbered Executive Regulation 27-09AM to indicate that it was amended after transmittal to the Council.

5. The Management and Fiscal Policy Committee reviewed Regulation 27-09AM on July 12, 2010, and recommends approval.

Action

The County Council for Montgomery County, Maryland, approves the following resolution:

> Executive Regulation 27-09AM, *General Applicability of Personnel Regulations to Employees of Local Fire and Rescue Departments*, is approved.

This is a correct copy of Council action.

_____
Linda M. Lauer, Clerk of the Council

fire&res\reg\27-09am res approval.doc

EXEC REG

MD
CC
SBF
LL
JG

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

July 7,2010

TO: Nancy Floreen, President
Montgomery County Council

FROM: Isiah Leggett, County Executive

SUBJECT: Executive Regulation No. 27-09AM, General Applicability of Personnel Regulations to Employees of Local Fire and Rescue Departments METHOD 1

This regulation amends Section 2-2(m) of the 2001 Montgomery County Personnel Regulations to make clear, in accordance with a recent decision by the Merit System Protection Board, that the Personnel Regulations are generally applicable to employees of Local Fire and Rescue Departments. At the Board's request, the regulation also modifies Section 35-8 of the Personnel Regulations to indicate who must provide a response to an appeal filed by a Local Fire and Rescue Department employee with the Board. The regulation also spells out who must respond to an appeal filed by a volunteer firefighter or rescuer with the Board.

After discussions with Council staff about providing more guidance in the regulation on when it is the duty of the Office of Human Resources and the County Attorney's Office to respond to an appeal filed by a Local Fire and Rescue Department employee and when it is the responsibility of the head of the Local Fire and Rescue Department, we have amended ER 27-09 to offer clarification. Accordingly, I am resubmitting Executive Regulation 27-09, with amendments for your review and approval.

IL:sw

Attachments

RECEIVED
MONTGOMERY COUNTY
COUNCIL
2010 JUL -8 AM 9:28

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MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject General Applicability of Personnel Regulations to Employees of Local Fire and Rescue Departments	**Number** 27-09AM
Originating Department Office of Human Resources	**Effective Date**

General Applicability of Personnel Regulations to Employees of Local Fire and Rescue Departments

Executive Regulation No. 27-09AM
Issued by: County Executive
Supersedes: Executive Regulation No. 12-00AM II, in part, and
Executive Regulation 14-09, in part

Authority: Montgomery County Code, 2004, §33-7(b)
Council review: Method 1

Montgomery County Register Volume 27, Issue 2
Comment deadline: March 2, 2010

Effective date: _____

Summary: This regulation amends Section 2-2(m) of the 2001 Montgomery County Personnel Regulations to clarify, in accordance with a recent decision by the Merit System Protection Board, that the Personnel Regulations are generally applicable to employees of Local Fire and Rescue Departments (LFRDs). At the Board's request, the regulation also modifies Section 35-8 of the Personnel Regulations to indicate who must provide a response to an appeal filed by an LFRD employee with the Board. The regulation also clarifies who must respond to an appeal filed by a volunteer firefighter or rescuer with the Board.

Address for comments: Office of Human Resources, Executive Office Building, 7th Floor
101 Monroe Street, Rockville, Maryland 20850

Staff contact: Stuart Weisberg, 240-777-5051, or stuart.weisberg@montgomerycountymd.gov

Please use the key below when reading this regulation:

Boldface	*Heading or defined term.*
* * *	*Existing language unchanged by executive regulation.*

20

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject	General Applicability of Personnel Regulations to Employees of Local Fire and Rescue Departments	**Number**	27-09AM
Originating Department	Office of Human Resources	**Effective Date**	

SECTION 2. GENERAL PROVISIONS

* * *

2-2. Applicability of Personnel Regulations. The Personnel Regulations apply to all merit system positions and all employees of the County government except:

* * *

(m) employees of independent agencies or corporations (other than Local Fire and Rescue Departments) supported in whole or in part with Montgomery County general or special tax funds, unless authorized by statute to be members of the Montgomery County merit system. The Personnel Regulations apply to the employees of Local Fire and Rescue Departments except as expressly modified by Executive regulations adopted under the authority of Section 21-16 (a) of the County Code.

* * *

SECTION 35. MERIT SYSTEM PROTECTION BOARD APPEALS, HEARINGS, AND INVESTIGATIONS

35-1 Definitions.

* * *

(b) *Appellant:* The County employee, applicant for employment, volunteer firefighter or rescuer, or Local Fire and Rescue Department employee who files an appeal with the MSPB.

* * *

35-2 Right of appeal to MSPB.

(a) Except as provided in Section 29-7 of these Regulations, an employee with merit system status or a Local Fire and Rescue Department employee has the right of appeal and a de novo hearing before the MSPB from a demotion, suspension, termination, dismissal, or involuntary resignation and may file an appeal directly with the MSPB.

(b) An employee with merit system status or a Local Fire and Rescue Department employee may file an appeal with the MSPB over other matters after receiving an adverse final decision on a grievance from the CAO. After the development of a written record, the MSPB must review the appeal. The MSPB may grant a hearing or refer the appeal to a hearing officer if the MSPB believes that the record is incomplete or inconsistent and requires oral testimony to clarify the issues. If the MSPB does not grant a hearing, the MSPB must render a decision on the appeal based on the written record.

* * *

35-8 Notification, response and submission of record in appeal.

(a) The MSPB must promptly notify the CAO, County Attorney, OHR Director, and department director in writing that a County merit system employee filed an appeal and provide the County Attorney and OHR Director with a copy of the appeal.

(b) The MSPB must promptly notify the CAO, County Attorney, OHR Director, Fire Chief, and Local Fire and Rescue Department in writing that a volunteer firefighter or rescuer or one of the Local Fire and Rescue Department's employees filed an appeal and provide the

County Attorney, the OHR Director and the head of the Local Fire and Rescue Department with a copy of the appeal.

(c) An appellant must respond to an MSPB request for documentation in support of an appeal within 15 working days. The MSPB may grant an extension of time for reasons that the MSPB considers good cause.

(d) The OHR Director and County Attorney must respond to an appeal filed by a County merit system employee within 15 working days and forward a copy of the action or decision appealed and all relevant reports, papers, and documents to the MSPB. The MSPB may grant an extension of time for reasons that the MSPB considers good cause.

(e) The OHR Director and County Attorney must respond to an appeal filed by a volunteer firefighter or rescuer challenging an action taken by the Fire Chief within 15 working days and forward a copy of the action or decision appealed and all relevant reports, papers, and documents to the MSPB. In all other appeals filed by a volunteer firefighter or rescuer, the Local Fire and Rescue Department must respond within 15 working days and forward a copy of the action or decision appealed and all relevant reports, papers, and documents to the MSPB. The MSPB may grant an extension of time for reasons that the MSPB considers good cause.

(f) The OHR Director and County Attorney must respond to an appeal filed by an Local Fire and Rescue Department employee of an adverse final decision on a grievance from the CAO if the grievance:

(1) disputed or challenged an action or decision of the OHR Director;

(2) was based on an action taken or a failure to act by OHR within OHR's exclusive control; and

(3) was not based on an action taken or a failure to act by the Local Fire and Rescue Department.

The OHR Director and County Attorney must respond within 15 working days and forward a copy of the action or decision appealed and all relevant reports, papers, and documents to the MSPB.

(g) In all other appeals filed by a Local Fire and Rescue Department employee of an adverse final decision on a grievance from the CAO or from a demotion, suspension, termination, dismissal, or involuntary resignation, the Local Fire and Rescue Department must respond within 15 working days and forward a copy of the action or decision appealed and all relevant reports, papers, and documents to the MSPB. The MSPB may grant an extension of time for reasons that the MSPB considers good cause.

* * *

Approved: Isiah Leggett, County Executive — July 7, 2010 Date

Approved as to form and legality: Office of the County Attorney — 7/7/2010 Date

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Revised 4/96

MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject General Applicability of Personnel Regulations to Employees of Local Fire and Rescue Departments	**Number** 27-09AM
Originating Department Office of Human Resources	**Effective Date**

General Applicability of Personnel Regulations to Employees of Local Fire and Rescue Departments

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Summary: This regulation amends Section 2-2(m) of the 2001 Montgomery County Personnel Regulations to clarify, in accordance with a recent decision by the Merit System Protection Board, that the Personnel Regulations are generally applicable to employees of Local Fire and Rescue Departments (LFRDs). At the Board's request, the regulation also modifies Section 35-8 of the Personnel Regulations to indicate who must provide a response to an appeal filed by an LFRD employee with the Board. The regulation also clarifies who must respond to an appeal filed by a volunteer firefighter or rescuer with the Board.

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Staff contact: Stuart Weisberg, 240-777-5051, or stuart.weisberg@montgomerycountymd.gov

Please use the key below when reading this regulation:

Boldface	*Heading or defined term.*
Underlining	*Added to existing regulation by proposed regulation.*
[Single boldface brackets]	*Deleted from existing regulation by proposed regulation.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing or proposed regulation by amendment.*
* * *	*Existing language unchanged by executive regulation.*

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MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject General Applicability of Personnel Regulations to Employees of Local Fire and Rescue Departments	**Number** 27-09AM
Originating Department Office of Human Resources	**Effective Date**

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* * *

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* * *

35-2. Right of appeal to MSPB.

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(b) The MSPB must promptly notify the CAO, County Attorney, OHR Director, Fire Chief, and [l]Local [f]Fire and [r]Rescue [d]Department in writing that a volunteer firefighter or rescuer or one of the Local Fire and Rescue Department's employees filed an appeal and provide the County Attorney, [and] the OHR Director and the head of the Local Fire and Rescue Department with a copy of the appeal.

[[(c) The MSPB must promptly notify the head of the Local Fire and Rescue Department in writing that one of its employees filed an appeal and provide the Local Fire and Rescue Department with a copy of the appeal.]]

(c)

[[(d)]] An appellant must respond to an MSPB request for documentation in support of an appeal within 15 working days. The MSPB may grant an extension of time for reasons that the MSPB considers good cause.

(d)

[[(e)]] The OHR Director and County Attorney must respond to [the] an appeal filed by [[an]] a County merit system employee within 15 working days and forward a copy of the action or decision appealed and all relevant reports, papers, and documents to the MSPB. The MSPB may grant an extension of time for reasons that the MSPB considers good cause.

(e)

[[(f)]] The OHR Director and County Attorney must respond to an appeal filed by a volunteer firefighter or rescuer [[that relates specifically to]] challenging an action taken by the Fire Chief within 15 working days and forward a copy of the action or decision appealed and all relevant reports, papers, and documents to the MSPB. In all other appeals filed by a volunteer firefighter or rescuer, the Local Fire and Rescue Department must respond within 15 working days and forward a copy of the action or decision appealed and all relevant reports, papers, and documents to the MSPB. The MSPB may grant an extension of time for reasons that the MSPB considers good cause.

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[[(g) The Local Fire and Rescue Department must respond to an appeal filed by one of its employees within 15 working days and forward a copy of the action or decision appealed and all relevant reports, papers, and documents to the MSPB. The MSPB may grant an extension of time for reasons that the MSPB considers good cause.]]

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MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject General Applicability of Personnel Regulations to Employees of Local Fire and Rescue Departments	**Number** 27-09AM
Originating Department Office of Human Resources	**Effective Date**

* * *

Approved: Isiah Leggett, County Executive — July 7, 2010 Date

Approved as to form and legality:
Office of the County Attorney — 7/7/2010 Date

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Revised 4/96