

APPENDIX B – MERIT SYSTEM LAW

MONTGOMERY COUNTY CODE, CHAPTER 33, PERSONNEL AND HUMAN RESOURCES ARTICLE II. MERIT SYSTEM

Sec. 33-5. Statement of legislative intent; merit system principles; statement of purpose; merit system review commission; applicability of article.

- (a) **Statement of legislative intent.** It is the legislative intent of the county council that this article foster excellence in the public service; high individual competence among employees; recognition that respect for the employee as an individual is first required for achieving such excellence and competence; and harmonious and efficient operation within the various components of county government.
- (b) **Merit system principles.** The merit system established by this chapter encompasses the following principles:
 - (1) All county government authority, including internal supervisory authority, is for service to the people, is derived from law and the people and must not be abused;
 - (2) The recruitment, selection and advancement of merit system employees shall be on the basis of their relative abilities, knowledge and skills, including the full and open consideration of qualified applicants for initial appointment;
 - (3) Merit system employees shall be provided compensation consistent with standard of comparability with other public agencies and the private sector;
 - (4) Merit system employees shall be provided training as needed to assure high quality performance and such training where possible should also provide increased opportunity to facilitate their career advancement;
 - (5) Merit system employees are encouraged to excel in their work performance; they shall be retained if they meet standards of satisfactory overall performance and shall be separated from merit system service if they do not; both supervisors and subordinates have an equal responsibility to facilitate work performance correction and improvement;
 - (6) All applicants to and employees of the county merit system shall be assured fair treatment without regard to political affiliation or other nonmerit factors in all aspects of personnel administration.
 - (7) Merit system employees shall be protected against any coercion to engage in illegal or improper actions or partisan political activities and shall be prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or nomination for office;

- (8) The merit system established under this chapter shall be interpreted in accordance with these principles.
- (c) **Statement of purpose.** The basic purpose of this article is to delineate the respective responsibilities of the county executive, the Chief Administrative Officer and the Merit System Protection Board for personnel management in county government. It is the further purpose of this article to implement by law the county charter responsibilities of the county council with respect to a merit system generally, including provisions for salaries and wages of all classified employees of the merit system under a uniform salary plan, the Merit System Protection Board's authority to exercise its appellate functions, and promotion of the overall objective that the integrity of the county merit system be preserved and that it be administered fairly and efficiently in the best interests of the county and its employees.
- (d) **Merit system review commission.** In addition to the County Council's legislative responsibilities authorized under sections 101 and 401 of the County Charter, there shall be convened no later than July 1, 1980, and, if determined necessary in each instance by county council resolution, subsequently at intervals of four (4) years, a merit system review commission, the functions of which are to strengthen the system of checks and balances among those officials and agencies of county government having merit system responsibilities and to examine and recommend legislative or administrative revision to the merit system in keeping with the intent of the county charter and this article and with new developments in the field of public administration and personnel management. The commission shall be an eleven-member body composed of appropriately qualified county citizens and established by a resolution of the county council. The County Executive shall appoint five (5) of the members of this commission and the county council shall appoint the remaining members. Each commission shall terminate after it renders to the county council its final report.
- (e) **Applicability of article.** This article shall apply to all merit system employees defined herein. Not included under this article unless specifically stated to the contrary are those positions excluded by section 401 of the County Charter as amended and any other positions so excluded from the merit system under other provisions of County law.

Sec. 33-6. Definitions.

In this article, the following words and phrases have the following meanings:

Board: The Merit System Protection Board as described in Section 403 of the County Charter.

County employees: All persons employed by the county regardless of merit system status.

Domestic partner: A person who meets the requirements of Section 33-22 as the domestic partner of a County employee. This definition applies throughout this Chapter unless otherwise indicated.

Illegal or improper actions: Any actions which violate any law or regulation, or which constitute a gross waste of funds, an abuse of authority or a substantial and specific danger to public health or safety.

Merit system employees: All persons who are employed by the county in full-time or part-time year-round permanent career positions in any department/office/agency of the executive and legislative branches of the county government or in any other position specifically so designated by law.

Removal: The separation of a merit system employee through dismissal, involuntary resignation or abolishment of his or her position for reasons or circumstances determined by the Board as being other than a bona fide reduction of funds or work.

Supervisor: The Chief Administrative Officer and all subordinate personnel exercising supervisory functions in the capacity of a public employer.

Sec. 33-7. County Executive and Merit System Protection Board responsibilities.

- (a) Generally. In performing its functions, the Board is expected to protect the merit system and to protect employee and applicant rights guaranteed under the merit system, including protection against arbitrary and capricious recruitment and supervisory actions, support for recruitment and supervisory actions demonstrated by the facts to be proper, and to approach these matters without any bias or predilection to either supervisors or subordinates. The remedial and enforcement powers of the Board granted herein shall be fully exercised by the Board as needed to rectify personnel actions found to be improper. The Board shall comment on any proposed changes in the merit system law or regulations, at or before the public hearing thereon. The Board, subject to the appropriation process, shall be responsible for establishing its staffing requirements necessary to properly implement its duties and to define the duties of such staff.
- (b) **Personnel Regulations.** The County Executive shall adopt personnel regulations under method (1) of section 2A-15 of this Code.
The personnel regulations shall provide the framework for:
 - (1) The classification of all merit system positions in the executive and legislative branches;
 - (2) Minimum qualifications for merit system positions, methods of determining qualifications and methods of selection for any positions;
 - (3) Probationary periods, promotions, transfers;
 - (4) Causes for removal from any merit system position and methods of removal, including demotions, furloughs, and reduction of staff. However, any regulations governing a reduction in staff and employee rights attendant thereto shall be restricted to the respective branch of government in which the employee is employed; in the case of the legislative and judicial branches, this sentence shall apply to employees

hired by the legislative and judicial branch, respectively, after August 1, 1983.

- (5) Annual, sick and other leave;
- (6) Prohibitions against political activity;
- (7) Maintenance of personnel records; and
- (8) Similar personnel matters as may be provided by law.

- (c) **Classification standards.** With respect to classification matters, the County Executive shall provide by personnel regulation, adopted in the manner specified above, standards for establishing and maintaining a classification plan. These standards may include but are not limited to the following:

- (1) The necessary components of class specifications;
- (2) Criteria for the establishment of new classes, modification or elimination of existing classes;
- (3) Criteria for the assignment of positions to classes;
- (4) Kinds of data required to substantiate allocation of positions;
- (5) Guidelines for comparing levels of job difficulty and complexity; and
- (6) Criteria for the establishment or abolishment of positions.

The Board shall conduct or authorize periodic audits of classification assignments made by the Chief Administrative Officer and of the general structure and internal consistency of the classification plan, and shall submit audit findings and recommendations to the County Executive and County Council.

- (d) **Personnel Regulation review.** The Merit System Protection Board shall meet and confer with the Chief Administrative Officer and employees and their organizations from time to time to review the need to amend these regulations.
- (e) **Adjudication.** The Board shall hear and decide disciplinary appeals or grievances upon the request of a merit system employee who has been removed, demoted or suspended and in such other cases as required herein.
- (f) **Retirement.** The Board may from time to time prepare and recommend to the council modifications to the county's system of retirement pay.
- (g) **Personnel management oversight.** The Board shall review and study the administration of the county classification and retirement plans and other aspects of the merit system and transmit to the Chief Administrative Officer, County Executive and the County Council its findings and recommendations. The Board shall conduct such special studies and audits on any matter relating to personnel as may be periodically requested by the County Council. All county agencies, departments and offices and county employees and organizations thereof shall cooperate with the Board and have adequate notice and an opportunity to participate in any such review initiated under this section.

- (h) **Publication.** Consistent with the requirements of the Freedom of Information Act, confidentiality and other provisions of law, the Board shall publish, at least annually, abstracts of its decisions, rulings, opinions and interpretations, and maintain a permanent record of its decisions.
- (i) **Public forum.** The Board shall convene at least annually a public forum on personnel management in the county government to examine the implementation of charter requirements and the merit system law.

Sec. 33-8. Administrative responsibilities of the Chief Administrative Officer.

- (a) The Chief Administrative Officer shall be responsible for the administration and enforcement of the merit system, including any retirement laws, labor relations laws and the personnel regulations. The Chief Administrative Officer may designate a representative to implement any or all of the provisions of law or the personnel regulations. The Chief Administrative Officer and all department heads are responsible for implementing all final decisions of the Merit System Protection Board made after grievance appeals, although the Chief Administrative Officer shall have the right to appeal any such decision in accordance with procedures recited elsewhere in this article. The Chief Administrative Officer shall ensure that all supervisors receive continual orientation and training about the intent purpose and principles of the merit system and shall ensure that all supervisors implement the objectives of this article.
- (b) The Chief Administrative Officer shall formulate administrative procedures to implement requirements of the merit system law and personnel regulations after providing reasonable public notice and opportunity for comment. These administrative procedures shall be distributed in a manner to make them accessible to all employees.

Sec. 33-9. Equal employment opportunity and affirmative action.

- (a) **Policy.** The county's policy shall be to take all personnel actions on the basis of merit and fitness without regard to political affiliation or non-merit factors, and without regard to other factors as may be provided for in chapter 27, "Human Relations and Civil Liberties," such as sex, marital status, race, religion, national origin, age or handicap.

The Chief Administrative Officer shall be responsible for initiating, developing and maintaining such an equal employment opportunity and affirmative action program as necessary to ensure all persons an equal opportunity to enter and progress in the county's service on the basis of open competition and demonstrated ability. The county executive is authorized to issue such regulations, adopted under method (1) of section 2A-15 of this Code, as necessary to implement this policy. Such regulations shall provide that an employee whose

personal religious beliefs require the abstention from work during certain periods of time may elect to engage in an alternate work schedule in order to meet those religious requirements. The regulation shall include provision for any employee who elects to work an alternate schedule to be obligated to work an equal period of time to that taken off for such religious reasons.

- (b) **Conciliation.** The Chief Administrative Officer is authorized to engage in consultation and conciliation efforts with agencies responsible for enforcement of equal employment opportunity laws with the objective of resolving complaints and to execute binding agreements with these agencies; provided, however, that these conciliation efforts shall not be deemed to abate the procedures or requirements as recited in chapter 27. Should the complaint be determined to be a matter not properly within the jurisdiction of an equal employment opportunity enforcement agency, the complaint, as filed, shall be treated as a grievance and processed under the appropriate procedures established for grievances.
- (c) **Appeals by applicants.** Any applicant for employment or promotion to a merit system position may appeal decisions of the Chief Administrative Officer with respect to their application for appointment or promotion. Appeals alleging discrimination prohibited by chapter 27, "Human Relations and Civil Liberties," of this Code, may be filed in the manner prescribed therein. Appeals alleging that the decisions of the Chief Administrative Officer were arbitrary and capricious, illegal, based on political affiliation, failure to follow announced examination and scoring procedures, or nonmerit factors, may be filed directly with the Merit System Protection Board. Appeals filed with the Merit System Protection Board shall be considered pursuant to procedures adopted by the Board. The Board may order such relief as is provided by law or regulation.

Sec. 33-10. Disclosure of illegal or improper actions in county government; protection for merit system employees against retaliation or coercion for disclosing illegal or improper actions in county government; prohibited practices; complaint procedures; investigations; penalties; appeals.

- (a) **Disclosure of illegal or improper actions.**
 - (1) Employees should report illegal or improper actions in County government.
 - (2) Employees should first report illegal or improper actions to the individual responsible for corrective action. That person may be anyone from the employee's immediate supervisor up to and including the County Executive, or for legislative branch employees, the County Council.
 - (3) In unusual circumstances, or if a retaliatory action or coercion has taken place, the employee may file a report directly with either the Board or the Ethics Commission. Unless expressly authorized by Section 19A-10, the identity of both the employee filing a report and the county employee or official who is the subject of this report must be kept confidential unless

waived in writing by each party, respectively. The Board or the Ethics Commission must refer the report to the government agency, including the Board or the Ethics Commission, that is responsible for addressing the unlawful conduct raised in the report. That government agency must then conduct an inquiry.

- (b) **Protection for employees.** Any merit system employee who refuses to obey an instruction involving an illegal or improper action or who discloses information concerning illegal or improper action in county government with a reasonable good-faith belief that such disclosures are true and accurate shall be protected under procedures authorized herein from any retaliatory or coercive personnel action. This provision does not extend protection to a merit system employee upon a determination that:
- (1) The employee's actions were frivolous, unreasonable and without foundation, even though not brought in bad faith;
 - (2) The employee without good cause failed to comply with administrative regulations concerning the making of such disclosures; or
 - (3) The employee was the subject of otherwise proper personnel actions taken for disciplinary reasons and not for retaliatory purposes prohibited by this section.
- A "personnel action" shall mean any administrative act or omission which has a significant adverse impact upon the employee, or a change in the employee's duties or responsibilities inconsistent with the employee's grade and salary.
- (c) **Prohibited practices.** It shall be unlawful for any person to coerce any merit system employee into taking an illegal or improper action or take any retaliatory action against any merit system employee because of that employee's disclosure of information relating to illegal and improper action in county government.
- (d) **Filing of complaints.** If an employee believes a retaliatory action or coercion has taken place or been attempted because of his refusal to obey an illegal or improper instruction or disclosure of same, the employee may file a written complaint with the Board. The complaint must be filed within sixty (60) days of the alleged violation or action and must contain:
- (1) The employee's name and signature;
 - (2) The employee's home address and telephone number;
 - (3) The name of the individual who allegedly took the action;
 - (4) A concise description of the alleged coercion or retaliatory action and reasons for believing it to be so. The identity of all parties shall be kept confidential unless and until there is a finding of probable cause or all parties waive such confidentiality in writing.

The Board may initiate an inquiry of any person suspected of taking retaliatory or coercive action, with or without a written complaint from an employee.

- (e) **Investigations.** All complaints charging a violation of subsection (c) shall be promptly investigated by the Board's staff, who shall determine whether probable cause exists to believe a violation of that subsection has occurred. Should the Board's staff determine that the subject matter of the complaint involved allegations more properly the subject of an employee grievance or complaint to be filed under the provisions of the personnel regulations or other laws or regulations, the complainant shall be so advised and the complaint dismissed; and the period of limitations for the bringing of such other action shall be deemed to run from the date of the dismissal. Should the Board's staff determine that no probable cause exists, that determination shall be final and the complaint dismissed unless Board reconsideration is requested. Should the Board's staff determine that probable cause does exist, the staff shall prepare and cause to be served on the person believed to have violated subsection (c) a statement of charges fairly describing the alleged violation and the sanctions sought to be imposed for such violation. The charges shall then be certified to the Board to schedule and conduct hearings in accordance with the provisions of this chapter. The case in support of charges shall be presented by the Board's staff.
- (f) **Penalties.** If a county employee is found guilty of coercion, harassment or retaliation, the Merit System Protection Board may order the imposition of one (1) or more of the following penalties:
- (1) Any disciplinary action provided for in the personnel regulations up to and including dismissal;
 - (2) A monetary fine in any amount up to two thousand dollars (\$2,000.00);
 - (3) Reimbursement of expenses incurred by all parties;
 - (4) Other penalties as may be deemed appropriate and consistent with the charter and laws of Montgomery County, Maryland.
- (g) **Appeals.** An employee subject to the foregoing penalties based on the Merit System Protection Board's findings and decision may appeal to a court of competent jurisdiction.

Sec. 33-11. Classification; salary and wage plans.

- (a) **Classification.**
- (1) The Chief Administrative Officer must apply the classification standards in this Chapter and the Personnel Regulations to:
 - (A) establish and abolish occupational classes as necessary for effective and economical operation of the County government;
 - (B) assign all positions in the merit system to proper classes;
 - (C) assign pay grades to classes; and
 - (D) establish a procedure for the administrative review of an employee's objection to an assignment action that downgrades the employee's position.

- The Board must have a reasonable opportunity to review and comment on any proposed new classes except new classes proposed for the Management Leadership Service under paragraph (2).
- (2) The CAO may establish by amendment to the Personnel Regulations under method (1) a Management Leadership Service (MLS) to ensure that the senior management of the County government is responsive to the needs, policies, and goals of the County and is the highest quality possible. The MLS must:
- (A) be established within the Merit System;
 - (B) provide a compensation system designed to attract and retain highly competent senior managers and compensate employees on the basis of individual and organizational performance (including success in improving efficiency, productivity, quality of work or service, cost efficiency, and timeliness and complying with anti-discrimination and equal employment opportunity requirements);
 - (C) ensure that senior managers are accountable and responsible for the effectiveness and productivity of the employees they supervise;
 - (D) ensure accountability for honest, economical, and efficient government;
 - (E) recognize exceptional accomplishment;
 - (F) enable the CAO reasonably to reassign senior managers to promote the mission and goals of the County government;
 - (G) protect senior managers from arbitrary and capricious actions and maintain a Merit System free of prohibited personnel practices;
 - (H) ensure compliance with applicable personnel laws, including those related to equal employment opportunity, political activity, and conflicts of interest;
 - (I) enhance the management and leadership skills of highly competent senior managers through professional development; and
 - (J) appoint career managers to fill MLS positions to the extent practical, consistent with the effective and efficient implementation of agency policies and responsibilities.
- (3) The CAO must determine by written finding that a reclassification is necessary for the efficient and effective operation of County government before approving an upward reclassification of a position between July 1 and December 31 of any year in which the County Executive is elected.
- (b) **Uniform salary plan.**
- (1) The uniform salary plan consists of:
 - (A) salary schedules for employees represented by certified employee organizations;
 - (B) a minimum wage/seasonal salary schedule;
 - (C) a salary schedule for sworn police managers;
 - (D) a salary schedule for uniformed fire/rescue managers;

- (E) a salary schedule for employees in positions included in the Management Leadership Service; and
- (F) a general salary schedule for all other employees.
- (2) The Chief Administrative Officer may recommend to the County Council amendments to the uniform salary plan.
- (3) The Council must approve the uniform salary plan and any amendments by resolution.
- (4) In approving the salary plan or amendments, the Council may consider such factors as:
 - (A) experience;
 - (B) prevailing salary rates for comparable services in both the public and private sectors;
 - (C) County collective bargaining agreements;
 - (D) living costs; and
 - (E) other employee benefits.
- (5) A salary schedule must include grades and a salary rate or salary range for each grade.
- (6) The Chief Administrative Officer must assign each occupational class to an appropriate grade under an approved salary schedule.
- (7) The minimum wage/seasonal salary schedule must identify each occupational class assigned to the salary schedule. The Chief Administrative Officer may assign an occupational class to the minimum wage/seasonal salary schedule only if all employees in the class:
 - (A) are paid the federal minimum wage; or
 - (B) work for the County fewer than:
 - (i) 20 regularly scheduled hours per week on a continuing year- round or school-year basis; or
 - (ii) 1040 hours in a 12-month period; or
 - (C) are participants in the County's Conservation/Service Corps job training program.
- (8) The Chief Administrative Officer must base any recommendation to amend the police management salary schedule on:
 - (A) police management salary rates in neighboring jurisdictions;
 - (B) police collective bargaining agreements;
 - (C) other pay and benefits available to police management;
 - (D) availability of funds; and
 - (E) any other relevant factors.
- (9) The Chief Administrative Officer must base any recommendation to amend the fire/rescue management salary schedule on:
 - (A) fire/rescue management salary rates in neighboring jurisdictions;
 - (B) fire/rescue collective bargaining agreements;
 - (C) other pay and benefits available to fire/rescue management;
 - (D) availability of funds; and
 - (E) any other relevant factors.

- (10) The Chief Administrative Officer must ensure that all occupational classes, except those on the minimum wage/seasonal salary schedule, police management salary schedule, fire/rescue management salary schedule, and Management Leadership Service salary schedule, involving comparable duties, experience, responsibilities, and authority are paid comparable salaries that reflect the relative value of the services performed.
 - (11) The Chief Administrative Officer may recommend compensation policies for overtime, pay differentials, and other salary and wage benefits to the County Council. The County Council must approve any such policy or benefit.
 - (12) Any plan, policy, or schedule approved by the County Council under this subsection is subject to the provisions of this Chapter regarding employees who are represented by a certified employee organization.
- (c) **Salary policies.** Employees are paid on a biweekly basis. Except as specifically provided by federal, state, or county law, the Chief Administrative Officer must determine any applicable payroll deductions and charges for such deductions, including state income tax withholding for any state of residence of an employee. When an employee leaves county employment, any debts the employee owes to the county may be set off and deducted from any unpaid salary, accrued annual or compensatory leave, or retirement contributions due to the employee.
- (d) **Other compensation policies.** The Chief Administrative Officer may establish other compensation policies to recognize employees who perform in an extraordinary manner either on a sustained performance basis or in recognition of a specific act or service. These compensation policies may include monetary awards to employees making suggestions which result in better public service, cost savings or more efficient operations. Compensation policies may be in the form of cash awards or be part of the uniform salary plan.

Sec. 33-12. Appeals of disciplinary actions; grievance procedures.

- (a) **Appeals of certain disciplinary actions.** Any merit system employee, excluding those in probationary status, who has been notified of impending removal, demotion or suspension shall be entitled to file an appeal to the Board, which shall cause a hearing to be scheduled without undue delay unless the appeal has been settled during administrative review of the appeal by the Chief Administrative Officer or a designee. Any merit system employee who is the subject of other disciplinary action not specified above may file an appeal with the Board, but such appeal may or may not require a hearing as the Board may determine.

- (b) **Grievances.** A grievance is a formal complaint arising out of a misunderstanding or disagreement between a merit system employee and supervisor with reference to a term or condition of employment. The determination of the Board as to what constitutes a term or condition of employment shall be final. Grievances do not include the following: Classification allocations, except due process violations; failure to reemploy a probationary employee; or other employment matters for which another forum is available to provide relief or the Board determines are not suitable matters for the grievance resolution process. A grievance shall include termination by resignation which is found by the Board to have been submitted under circumstances which cause the resignation to be involuntary; in the event of such a finding, the Board shall require the appointing authority to substantiate the termination as in the case of a removal. The County Executive shall prescribe, in the personnel regulations adopted under method (1) of section 2A-15 of this Code, procedures which seek to secure at the lowest possible level a fair, prompt and mutually satisfactory resolution to a grievance. In providing these procedures, the county executive shall ensure that any grievance based upon an alleged improper application of a merit system law or regulation concerning a disputed issue of fact is entitled to resolution after a fact-finding inquiry authorized by the Board. Grievances based upon an alleged improper interpretation of merit system laws or regulations do not require a hearing during the grievance resolution process.
- (c) **Hearing examiners.** The Board may utilize hearing examiners to conduct grievance investigations and other hearings, authorized under this section, who shall make findings and recommendations subject to objection by the parties and final Board approval under such procedures as established by the Board. A party to any proceeding which has been assigned to a hearing examiner shall be afforded the opportunity to present an oral argument on the record before the Board prior to a final decision.

Sec. 33-13. Appeal procedures.

The County Executive shall prescribe by personnel regulations, adopted under method (1) of section 2A-15 of this Code, procedures covering appeals, including grievances which shall include the time limit for filing such appeal, the granting of administrative leave pending appeal, filing and cost of the administrative record, conduct of hearings, requirements for written notice, special evidentiary proceedings in cases where the remedy of employee reinstatement was a contested and unresolved issue in an ordinary appeal hearing and provisions for summary actions by the Board.

Sec. 33-13A. Audits, investigations and inquiries.

The Merit System Protection Board is authorized to conduct audits, investigations or inquiries, to assure that the merit system is administered in accordance with the provisions of this chapter and regulations promulgated pursuant thereto, and may administer oaths, require the

attendance of witnesses and the production of records or other material in connection with an investigation, audit or inquiry. The results of each audit, investigation or inquiry shall be transmitted to the county council, county executive, and Chief Administrative Officer, with appropriate recommendations.

There is hereby created the position of special personnel investigator. The special personnel investigator shall exercise the following powers and perform the following duties and functions:

- (a) Investigate any matter referred to him by the Merit System Protection Board, including matters arising under section 33-10, in which case he shall be deemed Board staff as provided in section 33-10(e).
- (b) File a complaint with the Merit System Protection Board where, as result of his investigation of matters referred to him by the Board, he has probable cause to believe that the merit system has not been administered in accordance with the provisions of this chapter or regulations promulgated pursuant thereto.
- (c) Recommend corrective action on matters which have been referred to him by the Merit System Protection Board.
- (d) Designate, with the approval of the council, an alternate special personnel investigator for matters in which he has a conflict of interest or is otherwise unable to pursue.

The special personnel investigator is appointed by the county council for a term of 5 years, or until a successor is appointed and qualified. The council may remove the special personnel investigator on the vote of 6 members of the council. The special personnel investigator must:

- (1) have experience in law or personnel matters;
- (2) be paid a per diem fee set by contract with the county; and
- (3) be reimbursed for necessary expenses.

When an audit, investigation or inquiry gives the Board cause to believe that the merit system has not been administered in accordance with the provisions of this chapter or regulations promulgated pursuant thereto, the Board may refer the matter to an appropriate investigative entity, including the special personnel investigator, at the Board's option. Where a complaint is filed by the special personnel investigator, or on its own motion, the Board may hold a hearing and issue a decision ordering such corrective action as it determines to be necessary, including those remedies provided in section 33-14(c). Where the Board holds a hearing on its own motion, the Board's staff or the special personnel investigator shall be the charging party. In any hearing, the responding party shall include all individuals who may be adversely affected. All investigatory proceedings under this section shall include due process protections consistent with the purposes of this chapter and procedures shall be included in the personnel regulations adopted under method (1) of section 2A-15 of this Code, which specify these protections in further detail. Nothing herein shall be construed to prohibit the Board from initiating and acting upon audits, investigations or inquiries until such regulations are adopted.

Sec. 33-14. Hearing authority of Board.

- (a) **Hearing requirements.** Hearings before the Board are quasi-judicial in nature and shall be conducted in formal session in accordance with the provisions and authority contained in the county administrative procedures act. Board members shall be provided orientation and training as required to properly implement the requirements of the county administrative procedures act and conduct administrative evidentiary proceedings. With respect to hearings which go beyond one (1) session, the Board shall endeavor to schedule such hearings so that a minimum amount of time elapses between sessions. When required for continuity and minimum loss of time in concluding a case, the Board shall also endeavor to schedule hearings during daytime, weekday hours. Hearing shall be open to the public with reasonable notice, if requested by the employee.
- (b) **Board counsel.** The Board may request special counsel when the Board and the county attorney determine that a representational conflict exists within the county attorney's office. The special counsel shall be an individual acceptable to the Board. The county attorney may assign an attorney to the Board as its general counsel who shall represent the Board exclusively on matters concerning the merit system.
- (c) **Decisions.** Final decisions by the Board shall be in writing, setting forth necessary findings of fact and conclusions of law. A copy of such decision shall be furnished to all parties. The Board shall have authority to order appropriate relief to accomplish the remedial objectives of this article, including but not limited to the following:
 - (1) Order retroactive promotion or reclassification with or without back pay;
 - (2) Order change in position status, grade, work schedule, work conditions and work benefits;
 - (3) Order priority consideration be given to an employee found qualified before consideration is given to other candidates;
 - (4) Order reinstatement with or without back pay, although the Chief Administrative Officer may reinstate either to a position previously held or to a comparable position of equal pay, status and responsibility;
 - (5) Order cancellation of personnel actions found in violation of law or personnel regulation provided that such action may not without due process, adversely affect the employment rights of another employee;
 - (6) Grant employee participation in an employee benefit previously denied (training, educational program or assistance, preferential or limited work assignments and schedules, overtime pay or compensatory leave);
 - (7) Order removal from administrative or personnel records any reference or document pertaining to an unwarranted disciplinary or adverse personnel action;
 - (8) Order corrective measures as to any management procedure adversely affecting employee pay, status, work conditions, leave or morale;

- (9) Order the county to reimburse or pay all or part of the employee's reasonable attorney's fees. The reasonableness of the attorney fees shall be determined by the following factors;
 - a. Time and labor required;
 - b. The novelty and complexity of the case;
 - c. The skill requisite to perform the legal service properly;
 - d. The preclusion of other employment by the attorney due to acceptance of the case;
 - e. The customary fee;
 - f. Whether the fee is fixed or contingent;
 - g. Time limitations imposed by the client or the circumstances;
 - h. The experience, reputation and ability of the attorneys; and
 - i. Awards in similar cases;
- (10) Order such other and further relief as may be deemed appropriate consistent with the charter and laws of Montgomery County.

Sec. 33-15. Judicial review and enforcement.

- (a) Any aggrieved merit system employee, or applicant, or the Chief Administrative Officer may obtain judicial review of a Merit System Protection Board order or decision from the circuit court for the county in the manner prescribed under chapter 1100, subtitle B of the Maryland Rules of Procedure. In addition, with respect to orders or opinions relating to personnel of Montgomery County fire and rescue corporations, the independent fire and rescue corporation affected by the Merit System Protection Board order, as well as any aggrieved fire and rescue corporation employee, may obtain judicial review of the Board's order or decision as provided in this section.
- (b) The court, in hearing the case, shall apply the judicial review standards as set forth in the Maryland administrative procedures act, article 41, Maryland Code Annotated, section 255. The court review shall be on the basis of the record before the Board. Judicial review of Board decisions issued hereunder also includes appellate review by the special courts of appeals of Maryland.
- (c) When the Chief Administrative Officer is the party seeking judicial review of a Board order or decision in favor of a merit system employee, the county shall be responsible for the employee's legal expenses, including attorneys' fees which result from the judicial review and are determined by the county to be reasonable under the criteria set forth in subsection (c)(9) of section 33-14.
- (d) Upon the failure of a party to invoke the judicial review provision of section (a) above or the exhaustion thereof and upon noncompliance with any final decision or order of the Board, the Board may certify the matter to the county attorney for enforcement. The county attorney shall promptly institute appropriate civil

proceedings in the circuit court for Montgomery County to seek enforcement of the decision or order and for any other appropriate relief.

Sec. 33-16. Conflicting provisions.

In the event of any conflict between the provisions of this article and any provisions of the personnel regulations or administrative rules or regulations, the provisions of this article shall control.

Sec. 33-17. Prohibited personnel practices; criminal penalty.

- (a) No county employee or other person acting in concert with a county employee shall threaten, promise to take, or take any official action with respect to any individual employee for the purpose of inducing or coercing political activity of any county employee or applicant for county employment (including the providing of any political contribution or service), or take any official action against any county employee or applicant for county employment as a reprisal for the refusal of the person to engage in any political activity.
- (b) No person shall willfully make any false statement, certificate, mark, rating or report with regard to any test, certification or appointment made under any provisions of this law or in any manner commit or attempt to commit any fraud preventing the impartial execution of this law and any regulations issued thereunder.
- (c) No county employee or other person acting in concert with a county employee shall, directly or indirectly, give, render, pay, offer, solicit or accept any money, service or other valuable consideration for the purpose of providing any appointment, proposed appointment, promotion or proposed promotion to, or any advantage in, county employment.
- (d) No county employee or other person acting in concert with a county employee shall willfully defeat, deceive or obstruct any person in his right to examination, eligibility, certification or appointment under this law, or furnish to any person special or confidential information for the purpose of affecting the rights of any person with respect to employment under the county merit system.
- (e) No county employee or other person acting in concert with a county employee shall willfully grant any preference or advantage contrary to law, rule or regulation to any merit system employee or applicant for merit system employment (including preselection or defining the scope or manner of competition or the requirements for any position primarily for the purpose of improving or ensuring the prospects of a particular person for a merit system position rather than for the purpose of advancing or improving service to the public, contrary to merit system principles).

- (f) No county employee or other person acting in concert with a county employee shall willfully take or cause to be taken a personnel action with respect to a merit system position or merit system employee on the basis of political affiliation or family relationship.

Any person who shall violate any of the above provisions shall be guilty of a misdemeanor and shall, on conviction thereof, be punished by a fine not to exceed one thousand dollars (\$1,000.00), or by imprisonment for a term not to exceed six (6) months or by both.