

**A G E N D A**

**JAMES CITY COUNTY BOARD OF SUPERVISORS**

**WORK SESSION**

**101-F Mounts Bay Road**

**May 25, 2004**

**4:00 P.M.**

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- A. CALL TO ORDER**
  - B. ROLL CALL**
  - C. BOARD DISCUSSIONS**
    - 1. Personnel Policy Revisions
    - 2. FY 05 Budget Amendments
  - D. ADJOURNMENT**

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## M E M O R A N D U M

DATE: May 25, 2004

TO: The Board of Supervisors

FROM: Carol M. Luckam, Human Resources Manager

SUBJECT: Personnel Policy Revisions

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At the June 8 Board meeting, I will be proposing revisions to the following personnel policies: Grievance Procedure, Drug Free Workplace, Employee Development, and Leave. The policies, with proposed changes, are attached. At the May 25 Work Session, I will be discussing the proposed changes and their rationale with you. This will give you additional time to review them and an opportunity to give feedback before the Board meeting at which they will be presented for adoption. I have briefly outlined the changes below.

Substance Abuse Policy

- C Combines the separate County and Transit policies into one policy;
- C Updates the policy to conform to changes in Federal regulations;
- C Makes this lengthy policy a separate chapter of the Manual, Chapter 3, and titles it "Drug Free Workplace." The policy is currently contained in Section 2.12 of Chapter 2, Employment Practices;
- C Reformats the policy to conform to other policies, i.e., begins with a policy statement, guiding principles, legal basis, etc;
- C Changes the terms "Non-Mandated Safety Sensitive" and "Mandated Safety Sensitive" to "County Safety Sensitive" and "Federal Safety Sensitive" respectively to better highlight those positions covered by Federal law; and
- C Clarifies that you may not drink alcohol when on standby for the County, whether or not you are in a position that is randomly drug tested.

Because of the reformatting and the combining of the two policies, it was not possible to overstrike and highlight changes in the text. To compare it with the current policy, please review the current policy on the Intranet (Section 2.12 of Chapter 2). <http://jamescity/InfoPub/PPPM/chapter2.pdf>

Grievance Procedure

- C Contains no substantial changes to the content of Chapter 8, Grievance Procedure, but reorganizes it in a manner that is easier to follow and rewords it to make it easier to understand; and
- C Updates the associated forms and makes them fillable online.

Similar to the Drug Free Workplace Policy above, because of the extensive reorganizing of the Chapter, it was not possible to overstrike and highlight changes in the text. To compare it with the current Grievance Procedure, please review the current Chapter 8 on the Intranet. <http://jamescity/InfoPub/PPPM/Chapter8.pol.pdf>

To compare the grievance forms, please review Appendix C of the Personnel Policies and Procedures Manual on the Intranet. <http://jamescity/InfoPub/PPPM/GRIEVE.FOR.pdf>

Employee Development

- C Contains no substantial changes to the content of Chapter 6, Employee Development, but makes some wording changes; and
- C Includes coaching as an employee development activity.

Leave Policies

- C Changes tracking of time away from work under the Family and Medical Leave Act from the fiscal year to a 12-month period;
- C Makes new employees eligible to participate in the Sick Leave Bank immediately after their probationary period has ended;
- C Extends the use of School Leave to include preschools;
- C Changes Personal Leave to Funeral Leave and restricts its use to the death of an immediate family member;
- C Allows up to 12 days of sick leave per year to be used for family illnesses;
- C Increases the payout of sick leave for long-term employees to approximate that of other Hampton Roads localities;
- C Immediately credits new employees with the equivalent of five (5) months of Annual Leave accrual with regular accrual commencing the sixth month of employment; and
- C Extends for an additional year the portion of the Military Leave Policy regarding a pay differential and crediting returning Reservists with leave.

Thank you for taking the time to review these policies. I look forward to discussing the rationale for the various changes and to answering questions at the Work Session.

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Carol M. Luckam

CML/adw  
poliupdate.mem

Attachments

## CHAPTER 3

### DRUG FREE WORKPLACE

#### Policy

##### Section 3.1    Policy Statement

James City County is committed to a work environment free from the use of alcohol and illegal drugs.

##### Section 3.2    Guiding Principles

- A.    Support the County's values of "Diversity, mutual respect, trust, honesty and personal responsibility" and "Demonstrating high standards of excellence, efficiency and commitment to service."
- B.    Assure that employees are not impaired in their ability to perform assigned duties in a safe and productive manner and to protect our employees and the public from the risks posed by the misuse of alcohol and the use of prohibited drugs.
- C.    Create a workplace free from the adverse effects of drug abuse and alcohol misuse.
- D.    Prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances.
- E.    Encourage employees to seek professional assistance any time personal problems, including alcohol or drug dependency, adversely affect their ability to perform their assigned duties.
- F.    Use and apply all aspects of this policy in a fair and equitable manner. Disregarding the requirements or deliberate misuse of this policy is unacceptable.
- G.    Protect individual dignity, privacy, and confidentiality throughout the testing process.

##### Section 3.3    Legal Basis

James City County is committed to ensuring that our Personnel Policies are in compliance with all applicable Federal regulations governing workplace anti-drug and alcohol programs, to include:

- A. The Federal Transit Administration of the United States Department of Transportation 49 Code of Federal Regulations Part 655, as amended, which mandates urine drug testing and breath alcohol testing for safety-sensitive positions and prohibits performance of safety-sensitive functions when there is a positive test result.
- B. Department of Transportation 49 Code of Federal Regulations Part 40, as amended, which sets standards for the collection and testing of urine and breath specimens.
- C. 49 Code of Federal Regulations Part 29, "The Drug-Free Workplace Act of 1988," which requires the establishment of drug-free workplace policies and the reporting of certain drug-related offenses to the Federal Transit Administration.
- D. Schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812), as further defined by 21 Code of Federal Regulations 1300.11 through 1300.15, which identifies illegal drugs or substances.

Section 3.4    Definitions

- A. Alcohol Screening Device – a device that measures the level of alcohol in either breath or other bodily fluids.
- B. Breath Alcohol Technician – a person who instructs and assists employees in the alcohol testing process and operates an evidential breath testing device.
- C. Commercial Driver's License – special certification to drive vehicles with a gross weight rating of 26,001 pounds or more; a combination of vehicles with gross combination weight rating of 26,001 pounds or more if the vehicle(s) being towed has a gross weight rating of more than 10,000 pounds; vehicles that carry 16 or more passengers, including the driver; or, any size vehicle that transports hazardous materials and that requires federal placarding.
- D. County Safety Sensitive Position – positions identified by James City County as having significant safety responsibilities for James City County property, staff, and citizens. All County Safety Sensitive Positions are identified in the County Compensation Plan.

- E. Department of Health and Human Services - agency of the Federal government that advises the President on health, welfare, and income security plans, policies, and programs of the Federal government.
- F. Department of Transportation - agency of the Federal government that oversees the formulation of national transportation policy and promotes intermodal transportation. Other responsibilities range from negotiation and implementation of international transportation agreements, assuring the fitness of US airlines, enforcing airline consumer protection regulations, issuance of regulations to prevent alcohol and illegal drug misuse in transportation systems, and preparing transportation legislation.
- G. Evidential Breath Testing Device – device approved by the National Highway Traffic Safety Administration for the evidential testing of breath at the .02 and above alcohol concentrations. The concentration of alcohol is expressed in terms of grams of alcohol per 210 liters of breath as measured by an Evidential Breath Testing Device.
- H. Federal Safety Sensitive Position – position defined by the Federal government as having a level of safety importance requiring drug and alcohol testing. These positions perform any duty related to the safe operation of mass transit service including the operation of a revenue service vehicle, dispatch or maintenance of a revenue service vehicle or equipment used in revenue service, and any other position that requires a Commercial Driver’s License. Performance is any period of time in which a driver is actually performing, ready to perform, or immediately after performing safety sensitive duties. All Federal Safety Sensitive Positions are identified in the County Compensation Plan.
- I. Federal Transit Administration – an agency of the Department of Transportation that assists in developing an improved mass transportation system for cities and communities nationwide. The Federal Transit Administration maintains the National Transit Images, a repository of reports, documents, and data generated by professionals and others from around the country.
- J. Legally Prescribed Drug – a drug for which an individual has a prescription or other written approval from a licensed physician for its use in the course of medical treatment. The prescription or written approval must include the patient's name, the name of the substance, the quantity/amount to be taken, and the period of authorization.

- K. Medical Review Officer - a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program who has detailed knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's confirmed positive test results, together with his or her medical history and any other relevant biomedical information.
- L. National Highway Traffic Safety Administration – an agency of the Department Of Transportation responsible for reducing deaths, injuries and economic losses resulting from motor vehicle crashes. National Highway Traffic Safety Administration sets and enforces safety performance standards for motor vehicles and equipment and effective means of bringing about safety improvements.
- M. Reasonable Suspicion - specific contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee. A supervisor or other company official who is trained in detecting the signs and symptoms of drug use and alcohol misuse must make the required observations.
- N. Refusal To Test - can include the following. This list is not all-inclusive and incorporates all circumstances of refusal list in Department of Transportation 49 Code of Federal Regulations Part 40 by reference.
1. An inability to provide a sufficient urine specimen or breath sample without a valid medical explanation.
  2. Tampering with the collection container
  3. Adulteration or substitution of the specimen
  4. Not reporting to the test site in the allotted time
  5. Refusal to sign Step 2 of the breath alcohol form
  6. Leaving the scene of an accident without a valid reason before testing is done.
  7. Failure to remain once testing has started.
  8. Failure to undergo a medical evaluation when required.

9. Failure/refusal to permit monitoring or observation where required.
  10. Refusal to take a second test.
- O. Reportable Accident - any accident:
1. With a fatality; or,
  2. Where an individual suffers a bodily injury and immediately receives medical treatment away from the scene of an accident; or,
  3. Where one or more vehicles involved incurs disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle.
- P. Safety-sensitive function - any function related to the safe operation of mass transit service including the operation of a revenue service vehicle (whether or not the vehicle is in revenue service), and the dispatch or maintenance of a revenue service vehicle or equipment used in revenue service. Maintenance functions include the repair, overhaul, and rebuild of engines, vehicles and/or equipment.
- Q. Substance Abuse Professional - a licensed physician or certified psychologist, social worker, employee assistance professional, or addiction counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission, or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse. The Substance Abuse Professional must also have clinical experience in the diagnosis and treatment of drug and alcohol related diseases.
- R. Screening Test Technician – An individual who meets the requirements to be a Breath Alcohol Technician, provided that the individual has demonstrated proficiency in the operation of the non-evidential screening device he or she is using, or an individual who has successfully completed a course concerning the procedures required for conducting alcohol screening tests.

Section 3.5 Coverage

- A. This policy applies to:

1. All employees;
2. Individuals offered employment in positions identified as Federal Safety Sensitive Positions and County Safety Sensitive Position;
3. Contract employees or contractors while on County property or when performing any safety-sensitive or non-safety-sensitive function;
4. Off-site lunch periods or breaks when an employee is scheduled to return to work; and,
5. In addition, visitors, vendors, and contract employees while on James City County premises will not be permitted to conduct James City County business if found to be in violation of the terms and conditions of this policy.

B. Employees are subject to different levels of drug and alcohol testing based on the level of safety required of their positions. The following is a listing of these groups and the testing levels required.

Reason for Test	Federal Safety Sensitive	County Safety Sensitive	All Positions
Post Offer	Drug	Drug	
Post Accident	Drug and Alcohol		
Random	Drug and/or Alcohol		
Transfer to Safety Sensitive	Drug	Drug	Drug
Reasonable Suspicion	Drug and/or Alcohol	Drug and/or Alcohol	Drug and/or Alcohol
Return to Work	Alcohol	Alcohol	Alcohol

Section 3.6 Prohibited Substances

- A. Any illegal drug or any substance identified in Schedules I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), as further defined by 21 Code of Federal Regulations 1300.11 through 1300.15 is prohibited at all times unless a legal prescription has been written for the substance. This includes, but is not limited to:
  - 1. Marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine.
  - 2. Any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration.
  - 3. Misuse of legally prescribed drugs.
  - 4. Use of illegally obtained prescription drugs.
- B. Any substance that carries a warning label that indicates that mental function, motor skills, or judgment may be adversely affected, unless reported to an employee's supervisor.
- C. Any performance altering drug unless an employee has written authorization from his/her attending physician releasing the employee to perform his/her job duties.
- D. Any beverage, mixture, preparation, medication, or other substance containing alcohol.

Section 3.7    Prohibited Conduct

- A. Employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of any substance identified in Section 3.6 while on James City County or James City Service Authority premises, vehicles, uniform, or while on James City County or James City Service Authority business.
- B. Employees are prohibited from being intoxicated, impaired, or under the influence of any substance identified in Section 3.6 while on James City County or James City Service Authority premises, vehicles, uniform, or while on James City County or James City Service Authority business.
- C. Employees are prohibited from reporting for duty or remaining on duty when their ability to perform assigned functions is adversely

affected by alcohol or when their breath alcohol concentration is 0.02 or greater.

- D. Employees are prohibited from using alcohol when on duty, in uniform, while performing safety-sensitive functions, or just before or just after performing safety-sensitive functions.
- E. Employees in Federal Safety Sensitive Position or County Safety Sensitive Position are prohibited from using alcohol within four hours of reporting for duty.
- F. All employees are prohibited from using alcohol during the hours that they are on-call or on stand by status.

Section 3.8    Exceptions

The Police Chief may allow police officers assigned to undercover duty to consume alcoholic beverages while on duty when the integrity of the operation warrants. The officer must report consumption to his/her supervisor within 24 hours.

Section 3.9    Required Compliance

- A. All individuals offered employment in Federal Safety Sensitive Position or County Safety Sensitive Position will be subject to urine drug testing as a condition of employment.
- B. Any employee promoted, demoted, or transferred to a Federal Safety Sensitive Position will be subject to urine drug testing.
- C. All employees in Federal Safety Sensitive Position will be subject to random testing for drugs and alcohol.
  - 1. Drug tests can be performed any time an employee in a Federal Safety Sensitive Position is on duty.
  - 2. Alcohol tests can be performed when an employee in a Federal Safety Sensitive Position is actually performing a safety sensitive function, or just before or just after the performance of a safety sensitive function.
- D. All employees will be subject to drug and alcohol testing whenever there is reasonable suspicion that they are under the influence of drugs and/or alcohol.

- E. All employees in Federal Safety Sensitive Position will be subject to post-accident testing for drugs and alcohol when involved in a reportable accident and it is determined that their performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.
  - 1. Drug tests must be performed as soon as possible but no more than 32 hours after the reportable accident. Exceptions must be documented.
  - 2. Alcohol tests shall be conducted within two hours but no later than eight hours after the reportable accident. Exceptions must be documented.
  
- F. All employees suspended for an alcohol test between .02 and .039 will be subject to a retest before returning to duty. In order for such an employee to return to duty he/she must:
  - 1. Meet with the Substance Abuse Professional to whom James City County refers him/her and comply with the treatment plan and education prescribed by the Substance Abuse Professional;
  - 2. Upon recommendation of the Substance Abuse Professional, during the first year after testing between .02 and .039 on an alcohol test, the employee will undergo a minimum of six non-Department Of Transportation random tests. The Substance Abuse Professional will determine the frequency of the tests. Follow up testing may extend beyond a year but will not exceed 60 months; and,
  - 3. Have a result of less than .02 on the retest.

Section 3.10 Non-Compliance with Testing Requirements

- A. Any individual offered employment with James City County who refuses to submit to a drug test will have the offer of employment withdrawn.
  
- B. Any employee who refuses to submit to a drug or alcohol test shall be suspended without pay pending termination.

- C. Any employee who is suspected of providing false information in connection with a test, or who is suspected of falsifying test results through tampering, contamination, adulteration or substitution will be required to undergo an observed collection before leaving the testing site.
- D. Verification of falsified test results will result in the employee's suspension without pay pending termination.

Section 3.11 Treatment

- A. All employees are encouraged to voluntarily make use of the available resources for treatment of alcohol misuse and illegal drug use problems. Under certain circumstances, employees may be required to undergo treatment for alcohol misuse.
- B. Any employee who refuses or fails to comply with James City County requirements for treatment, after care, or return to duty shall be suspended pending termination.
- C. Treatment may be covered under James City County's Employee Assistance Program or the employee's health insurance plan. The cost of any treatment or rehabilitation services not covered will be paid for by the employee.
- D. Employees will be allowed to use accumulated sick leave and vacation leave to participate in the prescribed treatment or rehabilitation program.

Section 3.12 Required Notification of Criminal Drug Conviction

- A. All employees are required to notify their supervisor of any criminal drug statute conviction within five days after such conviction.
- B. Failure to comply with this provision shall result in suspension without pay pending termination.

Section 3.13 Drug Testing Procedures

- A. Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities that have been approved by the Department of Health And Human Services.

- B. All testing will be conducted consistent with the procedures put forth in 49 Code of Federal Regulations Part 40, as amended.
- C. The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the testing procedure, and the validity of the test result.
- D. The drugs that will be tested for include marijuana, cocaine, opiates, amphetamines, and phencyclidine and others that may be added under 49 Code of Federal Regulations 40, as amended.
- E. Urine specimens will be collected using the split specimen collection method described in 49 Code of Federal Regulations Part 40, as amended.
- F. Each specimen will be accompanied by a Department of Transportation or non-Department of Transportation Chain of Custody and Control Form and identified using a unique identification number that attributes the specimen to the correct individual.
- G. An initial drug screen will be conducted on the primary urine specimen. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry test will be performed.
- H. The test will be considered positive if the amounts present are above the minimum thresholds established in 49 Code of Federal Regulations Part 40, as amended. The minimum thresholds are listed in Attachment B.
- I. The test results from the laboratory will be reported to a Medical Review Officer. The Medical Review Officer will review the test results to ensure the scientific validity of the test and to determine whether there is a legitimate medical explanation for a confirmed positive test result.
- J. In the event of a positive laboratory result, the Medical Review Officer will contact the employee or the individual offered employment and provide opportunity for the employee or individual offered employment to explain the confirmed test result. The Medical Review Officer will subsequently review the employee's medical history/medical records to determine whether there is a legitimate medical explanation for a positive laboratory result.

- K. If no legitimate medical explanation is found, the test will be verified positive and reported to James City County's designated contact. If a legitimate explanation is found, the Medical Review Officer will report the test result as negative.
- L. Test results reported by the laboratory to be "dilute" will be repeated as follows:
  - 1. Dilute-Positive - are considered positive results.
  - 2. Dilute-Negative - requires a second test at the County's expense. If the second test is also reported as dilute, the second test becomes the test of record.
- M. The split specimen will be stored at the initial laboratory until the analysis of the primary specimen is completed.
  - 1. If the primary specimen is negative, the split specimen will be discarded.
  - 2. If the primary specimen is positive, the split sample will be retained for testing if so requested of the Medical Review Officer by the employee or individual offered employment.
- N. In instances where there is reason to believe an employee or individual offered employment is abusing a substance other than the five drugs listed above, James City County reserves the right to test for additional drugs under James City County's own authority using standard laboratory testing protocols.

Section 3.14 Alcohol Testing Procedures

- A. Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities that have been approved by the Department Of Health And Human Services.
- B. All testing will be conducted consistent with the procedures put forth in 49 Code of Federal Regulations Part 40, as amended.
- C. The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the testing procedure, and the validity of the test result.

- D. All initial and confirmatory tests for breath alcohol concentration will be conducted using a National Highway Traffic Safety Administration approved Evidential Breath Testing Device or Alcohol Screening Device operated by a trained Breath Alcohol Technician or Screening Test Technician.
- E. A drug or alcohol test is considered positive if the individual is found to have a quantifiable presence of a prohibited substance in the body above the minimum thresholds defined in 49 Code Of Federal Regulations Part 40, as amended.
- F. If the initial test indicates an alcohol concentration of 0.02 or greater, a second confirmation test will be performed to ensure that no residual mouth alcohol may have affected the test results.
- G. The Evidential Breath Testing Device will identify each test by a unique sequential identification number. This number, time, and unit identifier will be provided on each Evidential Breath Testing Device printout. If the screening test is performed with an alcohol screening device, a number assigned by the Screening Test Technician will be used and recorded on the form.
- H. The Evidential Breath Testing Device printout along with an approved alcohol testing form will be used to document the test, the subsequent results, and to attribute the test to the correct employee. If the screening test is performed with an alcohol screening device, the result along with the lot number and expiration date of the alcohol screening device will be recorded on the form.
- I. An employee in a Federal Safety Sensitive Position or County Safety Sensitive Position who has a confirmed alcohol concentration of greater than 0.02 but less than 0.04 will be removed from his/her position for eight hours unless a retest results in a concentration measure of less than 0.02.
- J. The inability to perform safety-sensitive duties due to an alcohol test result of greater than 0.02 but less than 0.04 will be considered an unexcused absence subject to James City County disciplinary procedures.
- K. An alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of this policy and a violation of the requirements set forth in 49 Code of Federal Regulations Part 655 for safety-sensitive employees.

- L. If at any time the integrity of the testing procedures or the validity of the test results is compromised, the test will be cancelled.

Section 3.15 Employee Requested Testing

- A. Any employee or individual offered employment in a Federal Safety Sensitive Position or County Safety Sensitive Position who questions the results of a required drug test under Section 3.13.A through Section 3.13.L of this policy may request that the split sample be tested.
- B. This test must be conducted at a different Department Of Health And Human Services-certified laboratory.
- C. The test must be conducted on the split sample that was provided by the employee or individual offered employment at the same time as the original sample.
- D. The employee or individual offered employment will pay all costs for such testing unless the result of the split sample test invalidates the result of the original test.
- E. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 Code Of Federal Regulations Part 40, as amended.
- F. The employee's or individual offered employment's request for a split sample test must be made to the Medical Review Officer within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted if the delay was due to documentable facts that were beyond the control of the employee or individual offered employment.

Section 3.16 Post-Offer Testing

- A. All individuals offered employment in Federal Safety Sensitive Position or County Safety Sensitive Position covered by this Policy shall undergo urine drug testing prior to hire. This also includes employees transferring from a non-safety sensitive to a Federal Safety Sensitive Position or County Safety Sensitive Position or employees who have been removed from the random pool for a period of 120 days or more.

- B. Receipt by James City County of a negative drug test result is required prior to employment.
- C. A positive post-offer drug test will disqualify an individual offered employment from applying for a position with James City County or James City Service Authority for a period of 120 days.
  - 1. After the 120 day waiting period, evidence of the absence of drug dependency from a Substance Abuse Professional that meets with the approval of James City County and a negative drug test will be required prior to further consideration for employment.
  - 2. The cost for the assessment and any subsequent treatment will be the sole responsibility of the individual.
- D. In instances where an individual is on temporary leave, i.e. vacation, sick, jury duty, no drug test is required before an individual can resume his/her safety-sensitive duties provided the individual has not been out of the random pool for more than 120 days. If selected for a random test while on temporary leave of 120 days or less, the individual will be tested if he/she returns to duty prior to the next random testing.
- E. In instances where the individual's status within the organization changes or is reclassified for more than 120 days (i.e., seasonal layoff, leave of absence, out of work or reassigned for worker's compensation), a drug test is required prior to reassignment to a safety-sensitive job function.

Section 3.17 Reasonable Suspicion Testing

- A. All employees may be subject to urine and/or breath testing when there are specific contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee that may indicate drug use or alcohol abuse.
- B. A reasonable suspicion referral for testing will be made on the basis of documented objective facts and circumstances that are consistent with the short-term effects of substance abuse or alcohol misuse.
- C. Reasonable suspicion referrals must be made by a supervisor who is trained to detect the signs and symptoms of drug and alcohol use and who reasonably concludes that an employee may be adversely

affected or impaired in his/her work performance due to possible prohibited substance abuse or alcohol misuse.

Section 3.18 Post-Accident Testing

- A. All employees in Federal Safety Sensitive Positions are required to undergo urine and breath testing if they are involved in a reportable accident with a James City County or James City Service Authority vehicle regardless of whether or not the vehicle is in revenue service and whether or not their performance could have contributed to the accident.
- B. This includes all surviving safety-sensitive employees that are operating the vehicle and any other whose performance could have contributed to the accident.
- C. Following an accident, employees in Federal Safety Sensitive Position shall be tested as soon as possible, but not to exceed eight hours for alcohol testing and 32 hours for drug testing.
- D. Any employee in a Federal Safety Sensitive Position involved in a reportable accident must refrain from alcohol use for eight hours following the accident or until he/she undergoes a post-accident alcohol test.
- E. Any employee in a Federal Safety Sensitive Position who leaves the scene of the accident without justifiable explanation prior to submission to drug and alcohol testing will be considered to have refused the test and will be placed on suspension without pay pending termination.
- F. Employees tested under this provision will include not only the operations personnel, but also any other covered employee whose performance could have contributed to the accident.
- G. If James City County is unable to perform a Federal Transit Administration drug and alcohol test (i.e., employee is unconscious, employee is detained by law enforcement agency), James City County may use drug and alcohol post-accident test results administered by State and local law enforcement officials provided the tests are performed in accordance with Federal Transit Administration/Department Of Transportation requirements. The State and local law enforcement officials must have independent

authority for the test and the employer must obtain the results in conformance with State and local law.

Section 3.19 Random Testing

- A. Employees in Federal Safety Sensitive Position will be subjected to random, unannounced testing.
- B. The selection of safety-sensitive employees for random alcohol testing will be made using a scientifically valid method that ensures each covered employee that they will have an equal chance of being selected each time selections are made.
- C. The random tests will be unannounced and spread throughout the year. Tests can be conducted at any time during an employee's shift (i.e. beginning, middle, end).
- D. Employees are required to proceed immediately to the collection site upon notification of their random selection.

Section 3.20 Return-To-Duty Testing

- A. All employees who previously tested between .02 and .04 on an alcohol test must test below 0.02 on a return-to-duty test and be evaluated and released to duty by a Substance Abuse Professional before returning to work.
- B. Before scheduling the return to duty test, the Substance Abuse Professional must assess the employee and determine if the required treatment has been completed.

Section 3.21 Consequences

- A. Any employee who has a confirmed positive drug test or breath alcohol test greater than .04 will be:
  - 1. Suspended without pay pending termination;
  - 2. Informed of educational and rehabilitation programs available; and,
  - 3. Provided the names of Substance Abuse Professionals.

- B. Assessment by a Substance Abuse Professional or participation in James City County's Employee Assistance Program does not shield an employee from disciplinary action.

Section 3.22 Information Disclosure

- A. All drug and alcohol testing records will be maintained in a secure manner so that disclosure of information to unauthorized persons does not occur. Information will only be released in the following circumstances:
  - 1. To a third party only as directed by specific, written instruction by the employee;
  - 2. To the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on the behalf of the employee tested;
  - 3. To a subsequent employer upon receipt of a written request from the employee;
  - 4. To the National Transportation Safety Board during an accident investigation;
  - 5. To the Department Of Transportation or any Department Of Transportation agency with regulatory authority over the employer or any of its employees, or to a State oversight agency authorized to oversee rail fixed-guideway systems; or
  - 6. To the employee, upon written request.

Section 3.23 Records Retention and Disposition

Drug and alcohol screening or testing records that document the administration and results of screening or testing of job applicants or employees for illegal drug or alcohol use will be retained for five years after administration of tests and then destroyed.

Section 3.24 Employee and Supervisor Training

- A. All employees in Federal Safety Sensitive Position will undergo a minimum of 60 minutes of training on the signs and symptoms of

drug use including the effects and consequences of drug use on personal health, safety, and the work environment. The training must also include manifestations and behavioral cues that may indicate prohibited drug use.

- B. Employees in supervisory positions will also receive 60 minutes of reasonable suspicion training on the physical, behavioral, and performance indicators of probable drug use and 60 minutes of additional reasonable suspicion training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.
- C. Information on the signs, symptoms, health effects and consequences of alcohol misuse is presented in Attachment A of this policy.

Section 3.25 Prior Substance Abuse Violations

- A. Employees or individuals offered employment who have a prior record of substance abuse must furnish the following to be considered for employment.
  - 1. A release to work statement from a Substance Abuse Professional.
  - 2. A negative test for drugs and/or alcohol.
  - 3. An agreement to submit to random testing.
  - 4. An agreement to follow specified after care requirements with the understanding that violation of the agreement is grounds for termination.

Section 3.26 System Contacts

Any questions regarding this policy or any other aspect of the drug free workplace policy should be referred to the Drug Alcohol Coordinator, Medical Review Officer or Substance Abuse Professional listed in Attachment C of this policy.

## Alcohol Fact Sheet

Alcohol is a socially acceptable drug that has been consumed throughout the world for centuries. It is considered a recreational beverage when consumed in moderation for enjoyment and relaxation during social gatherings. However, when consumed primarily for its physical and mood-altering effects, it is a substance of abuse. As a depressant, it slows down physical responses and progressively impairs mental functions.

## Signs and Symptoms of Use

- Dulled mental process
- Lack of coordination
- Odor of alcohol on breath
- Possible constricted pupils
- Sleepy or stuporous condition
- Slowed reaction rate
- Slurred speech

(Note: Except for the odor, these are general signs and symptoms of any depressant substance.)

## Health Effects

The chronic consumption of alcohol (average of three servings per day of beer [12 ounces], whiskey [1 ounce], or wine [6 ounce glass]) over time may result in the following health hazards:

- Decreased sexual functioning
- Dependency (up to 10 percent of all people who drink alcohol become physically and/or mentally dependent on alcohol and can be termed alcoholic)
- Fatal liver diseases
- Increased cancers of the mouth, tongue, pharynx, esophagus, rectum, breast, and malignant melanoma
- Kidney disease
- Pancreatitis
- Spontaneous abortion and neonatal mortality
- Ulcers
- Birth defects (up to 54 percent of all birth defects are alcohol related).

## Social Issues

- Two-thirds of all homicides are committed by people who drink prior to the crime.
- Two to three percent of the driving population is legally drunk at any one time. This rate is doubled at night and on weekends.
- Two-thirds of all Americans will be involved in an alcohol-related vehicle accident during their lifetimes.
- The rate of separation and divorce in families with alcohol dependency problems is 7 times the average.
- Forty percent of family court cases are alcohol problem related.
- Alcoholics are 15 times more likely to commit suicide than are other segments of the population.
- More than 60 percent of burns, 40 percent of falls, 69 percent of boating accidents, and 76 percent of private aircraft accidents are alcohol related.

## The Annual Toll

- 24,000 people will die on the highway due to the impaired driver.
- 12,000 more will die on the highway due to the alcohol-affected driver.
- 15,800 will die in non-highway accidents.
- 30,000 will die due to alcohol-caused liver disease.
- 10,000 will die due to alcohol-induced brain disease or suicide.
- Up to another 125,000 will die due to alcohol-related conditions or accidents.

## Workplace Issues

- It takes one hour for the average person (150 pounds) to eliminate one serving of an alcoholic beverage from the body.
- Impairment in coordination and judgment can be objectively measured with as little as two drinks in the body.
- A person who is legally intoxicated is 6 times more likely to have an accident than a sober person is.

## Minimum Thresholds for Tested Drugs

<b>Drug</b>	<b>Initial Levels Mg/ml</b>	<b>Confirmation Levels Mg/ml</b>
Marijuana	50	15
Cocaine	300	150
Opiate	2,000	2,000
Phencyclidine (PCP)	25	25
Amphetamines	1,000	500

DRAFT

**System Contacts**

Drug Alcohol Coordinator:

Name: Sandra P. Hale  
Title: Human Resource Specialist II  
Address: James City County  
P. O. Box 8784  
Williamsburg, VA 23187-8784  
Telephone Number: (757) 253-6681  
FAX Number: (757) 253-6878

Medical Review Officer:

Name: Dr. Michael Williams  
Address: Safety Management, Inc.  
5129 Stannart Street  
Norfolk, VA 23503  
Telephone Number: (757) 461-1430  
FAX Number: (757) 461-1352

Substance Abuse Professional:

Name: Sentara Employee Assistance Program  
Address: Koger 11, Suite 142  
Norfolk, VA 23502  
Telephone Number: (800) 899-8174  
FAX Number: (757) 461-0833

## CHAPTER 5

### EMPLOYEE BENEFITS

[Section 5.1 Policy - General](#)

[Section 5.2 Eligibility - General](#)

[Section 5.3 Holidays](#)

[Section 5.4 Leave](#)

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[Section 5.6 Retirement, Long-Term Disability, and Life Insurance](#)

[Section 5.7 Workers' Compensation \(Policy\) \(Procedures\)](#)

[Section 5.8 Tax-Related Benefits](#)

[Section 5.9 Credit Union](#)

Chapter 5  
Employee Benefits

Section 5.1    Policy - General

It is the policy of James City County to provide employee benefits that complement the County's values and strategic direction, that help meet certain needs of County employees and their families, and that help the County to attract and retain quality employees. The County strives to offer high quality benefits, at a reasonable cost to both employees and the County, which prove valuable and useful to employees. The County will communicate the availability of these benefits to eligible individuals and will provide assistance in understanding and using them.

Section 5.2    Eligibility - General

The benefits contained in this chapter are available to all employees in full-time permanent and limited-term positions. Benefits are also available to employees in part-time permanent and limited-term positions, to former employees and retirees, and to employees in temporary positions where specifically indicated in the policy. Eligibility of employees in other positions varies by department and is recorded in the Human Resource Department.

Section 5.3    Holidays

The County observes the following eleven designated holidays:

New Year's Day	January 1
Lee/Jackson/King Day	3rd Monday in January
George Washington's Birthday	3rd Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1st Monday in September
Veterans' Day	November 11
Thanksgiving Day	4th Thursday in November
Day After Thanksgiving	Friday following Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

The Board of Supervisors may declare any other day an additional holiday.

- A. Eligibility. Employees in part-time permanent and limited-term positions are eligible for paid holidays or compensatory leave in the amount of their monthly sick leave accrual rate.

B. Observance of Holidays

1. If a holiday falls on a Saturday, the preceding Friday shall be observed as the holiday; if a holiday falls on a Sunday, the following Monday shall be observed as the holiday. County operations which are open on holidays shall observe the actual holiday for purposes of holiday pay.
2. If an observed holiday falls on a day an employee is not otherwise scheduled to work, the employee shall earn compensatory leave in the amount of his monthly sick leave accrual rate for the observed holiday. In cases where this would present a hardship because of workload, the department manager may authorize payment in lieu of the compensatory leave if the budget permits.
3. An employee who is on approved leave with pay during a period in which a holiday falls, shall not be charged leave for the observed holiday.
4. An employee who is on military leave with pay during a period in which a holiday falls shall not receive any additional pay or compensatory leave for the holiday.
5. An employee forfeits eligibility to be compensated for the holidays observed by the County unless the employee works the last scheduled work day before the holiday and the first scheduled work day after the holiday. The forgoing does not apply to employees who are on authorized leave with pay.

C. Working on Holidays

1. If an employee is required to work on an observed holiday, he shall receive holiday pay as outlined in Chapter 4, Section 4.12.
2. Certain employees who are called to work on a County-observed holiday on which they are not scheduled to work may be eligible for premium pay as outlined in Chapter 4, Section 4.14.

Section 5.4 Leave

- A. Policy Statement - James City County recognizes the importance of balancing the productivity needs of the County with the needs of County employees and their families by providing employees with time away from work. It is the policy of the County to provide employees with continued income and benefits during certain approved absences of specified durations.
- B. Eligibility - Employees in part-time permanent and limited-term positions are eligible for leave on a pro-rated basis.

- C. Definition of Immediate Family - The immediate family is defined as: spouse, parent, spouse's parent, son, daughter, brother, sister, grandparents, grandchildren, step-children, step-parents, guardian, and any persons residing in the same household as the employee.
- D. Family and Medical Leave Act (FMLA) of 1993 - is a Federal law which guarantees employees who have worked for the County at least 1,250 hours in the previous 12 months, up to 12 weeks away from work during a ~~fiscal year~~ *12-month period* for the purposes outlined below. *The 12-month period is measured backward from the date an employee uses leave under FMLA.* An employee must use the appropriate type of leave during the absence. An employee who is absent under the FMLA will retain his employee benefits. Upon returning to work, the employee will return to the same job or a job with equivalent status, pay, and benefits.
1. Purpose - FMLA protects employees' jobs and benefits for specified periods of time, if they are absent from work because of:
    - a. the birth of a child and the care of that child;
    - b. the adoption or foster care placement of a child with the employee;
    - c. the need to care for a spouse, child, or parent with a serious health condition; or
    - d. the serious health condition of the employee that makes the employee unable to perform the essential functions of his position.
  2. Definition - For purposes of this policy, a week is defined as the annual authorized hours of the employee's position divided by 52.
  3. Employee Requirements - An eligible employee wishing to take time off for one of the purposes listed in 1. above must comply with certain requirements. An employee must:
    - a. inform his supervisor that he is requesting leave under the FMLA and of the purpose of the leave;
    - b. work with his supervisor to identify the type of County leave(s) which will be taken during the FMLA absence;
    - c. provide medical certification of the situation necessitating the absence and a date on which the employee can be expected to return to work on a form provided by the County;
    - d. keep the supervisor informed of the status of the absence, including any change in the circumstances for which the leave is being taken, and the employee's intent to return to work; and
    - e. provide a fitness for duty certification from a physician before returning to work if the leave was taken for the employee's own serious health condition.

4. Supervisor Responsibility - If an employee requests leave for one of the purposes listed in 5.4.D.1 above, the supervisor may inform the employee that it qualifies under FMLA and ask the employee to follow the requirements covered in 5.4.D.3 above. The supervisor shall inform the employee who has requested or taken leave under FMLA, in writing, of his rights and responsibilities.
- E. Types of Leave - The County offers the following types of leave. A brief summary of purposes for which leave may be used is listed below. For more details, see individual subsections.

Annual Leave	Any purpose.
Sick Leave	Personal doctor appointment, illness, or short-term disability. Immediate family member doctor appointment or illness (three days per fiscal year).
<del>Personal</del> <u>Funeral</u> Leave	<del>Death or life threatening illness</del> of immediate family member (three days per incident).
Civil Leave	Serving on a jury. Attending court as a witness under subpoena.
Military Leave	National Guard or reserve member to engage in annual active duty for training or called forth by Governor during a disaster (15 days per Federal fiscal year).
School Leave	Meet with teachers, attend school functions, or do volunteer work in any public or private school grades K-12 <u>or a licensed preschool or daycare center</u> (eight hours per fiscal year).
Leave Without Pay	Unpaid absences from work.

1. Annual Leave - may be used by an employee to provide paid absences for any purpose.

a. Accrual -

- 1) *New employees will have available up to the equivalent of five (5) months of annual leave accrual upon employment. The leave will be available immediately and leave accrual will begin in the sixth (6) month.*

- 2) *Beginning in the sixth (6) month of employment*, annual leave shall be accrued in accordance with the chart below:

Monthly Accrual Rate			
Annual Authorized Hours	< 5 years of service	5<15 years of service	≥ 15 years of service
< 261	1	1.5	2
261-520	2	3.0	4
521-780	3	4.5	6
781-1,040	4	6.0	8
1,041-1,300	5	7.5	10
1,301-1,560	6	9.0	12
1,561-1,820	7	10.5	14
1,821-2,080	8	12.0	16
2,081-2,340	9	13.5	18
2,341-2,600	10	15.0	20
2,601-2,860	11	16.5	22
>2,860	12	18.0	24

- 2) The maximum amount of leave that an employee may accumulate is the amount of leave he can earn in a two-year period.
- 3) The employee's leave balance must be within the maximum accumulation amount on July 1 of each year or the excess shall be forfeited.

b. Payment for Accumulated Leave Upon Separation from Employment

- 1) *No payment shall be made for any unused portion of annual leave if an employee leaves employment within the first five months.*
- 2) Employees shall receive the monetary equivalent of their annual leave balance up to the annual maximum accumulation *except as noted in item one (1) above*. If two weeks' notice is not given by an employee, the equivalent of one day shall be deducted from the leave payments for each day that the employee failed to give notice of termination up to a two-week maximum. Exceptions may be made by the department manger.

2. Sick Leave - may be used by an employee to provide paid absences for health-related reasons as outlined below. Accumulated sick leave provides continued income for employees during periods of disability.

a. Purpose - Sick leave provides paid absences for the following reasons:

- 1) A personal illness, injury, and/or disability not incurred in the line of duty, which incapacitates the employee from being able to perform assigned duties;
- 2) Appointments for examination and/or treatment related to health when approved in advance by the department manager and when such appointments cannot reasonably be scheduled during nonwork hours.
- 3) An illness or appointment for examination and/or treatment related to the health of an immediate family member requiring the attendance of the employee and approved by the department manager, not to exceed ~~three (3)~~ *twelve (12)* days per fiscal year. Use of additional sick leave requested in excess of the permitted allowance may be approved if recommended by the department and approved by the Human Resource Manager.

b. Accrual

1) Sick leave shall be accrued in accordance with the chart below:

Annual Authorized Hours	Monthly Accrual Rate
< 261	1
261-520	2
521-780	3
781-1,040	4
1,041-1,300	5
1,301-1,560	6
1,561-1,820	7
1,821-2,080	8
2,081-2,340	9
2,341-2,600	10
2,601-2,860	11
>2,860	12

2) There is no limit to the amount of sick leave an employee may accrue.

- c. Payment for Accumulated Leave Upon Separation from Employment - Employees with two (2) years or more of continuous service with the County shall be compensated for their sick leave balance at the rate of one hour's pay for every four hours of accrued sick leave or \$1,000 *the maximum amount listed below*, whichever is less. If two weeks' notice is not given by the employee, or if the employee is discharged for disciplinary reasons, sick leave payments shall be forfeited. Exceptions may be made by the department manager.

<i>Years of Service</i>	<i>Maximum Payment</i>
<i>2 – 14</i>	<i>\$1,000</i>
<i>15 – 24</i>	<i>\$2,500</i>
<i>25 or more</i>	<i>\$5,000</i>

- d. Sick Leave Bank - Employees may elect to pool accumulated sick leave into a sick leave bank for the purpose of providing participating employees additional leave for extended illness or injury. Such a bank shall be administered by employees, supported by employees, and shall cease to exist should there be insufficient employee interest.
3. Personal Funeral Leave - may be used by an employee to provide paid absences upon the death of a member of an employee's immediate family ~~or upon the life threatening illness of a member of an employee's immediate family which requires the employee's attendance.~~
    - a. Amount of Leave - ~~Personal Funeral~~ Funeral leave, if requested by the employee, shall be granted by the supervisor for up to three (3) days per death ~~or life threatening illness which requires the attendance of the employee of an employee's immediate family member.~~ Exceptions may be granted by the department manager.
  4. Civil Leave - may be used by an employee to provide paid absences while serving on a jury, or attending court as a witness under subpoena.
    - a. Compensation - An employee compensated for civil duties, as by jury or witness fees, shall either take annual or compensatory leave, or turn over compensation received to the County.
    - b. Exclusion - In those circumstances where a County employee is acting as an expert witness in a court proceeding which is not directly related to his duties for the County, the employee shall be charged annual or compensatory leave or leave without pay.

5. Military Leave - may be used by an employee who is a member of the organized reserve forces of any of the armed services of the United States, National Guard, or naval militia to provide paid absences of up to fifteen days per Federal fiscal year during which he is engaged in annual active duty for training, or when called forth by the Governor during a disaster.

a. Special Circumstances - Employees who are members of the forces listed above and are involuntarily called to Federally funded military active duty shall receive the following:

1) A Military Pay Differential in the amount of the difference between the employee's military base pay plus basic allowances for housing and subsistence, and the employee's regular County base pay. If the employee's military pay plus allowance exceeds the County pay, no differential shall be paid.

2) Up to one year's accrual of sick and annual leave credited to the employee 30 days after return to employment. Exceptions may be granted by the County Administrator.

*(This section shall expire on 6/30/2004.)*

6. School Leave - may be used by an employee to provide paid absences to perform volunteer work in a school, to meet with a teacher or administrator concerning the employee's children, step-children, or children over whom the employee has custody, or to attend a school function in which such a child is participating. School leave may be used for these purposes in a public or private elementary, middle, or high school, *or a licensed preschool or daycare center.*

a. Amount of Leave

1) Employees in full-time permanent and limited-term positions may take up to eight (8) hours of School Leave per fiscal year.

2) Employees in part-time permanent and limited-term positions may take up to the number of hours of their monthly sick leave accrual rate per fiscal year.

7. Leave Without Pay - may be used by an employee to provide unpaid absences for a variety of reasons outlined below including any mutually agreeable reason.

a. Purpose - An employee shall be on leave without pay under the following circumstances:

- 1) Approved absence for which the employee has insufficient accrued leave, or for which the employee elects, with the concurrence of the department manager, not to use accrued leave.
- 2) Absences authorized as a condition of employment; or
- 3) Unapproved absence from the job during a scheduled work period;

b. Other Benefits and Conditions of Employment

- 1) Sick and annual leave shall not be earned for any pay period during which an employee takes leave without pay that is not approved prior to use or which exceeds one full work day.
- 2) An employee's performance increase date shall be deferred one calendar month for each period of thirty (30) consecutive calendar days the employee is on leave without pay. If the performance increase date is not changed, the first performance increase after the employee returns to work shall be prorated.
- 3) The County shall pay its share of County health and life insurance premiums, and for up to three (3) months of long-term disability premiums during approved leave without pay unless otherwise provided in writing to the employee.
- 4) Should an employee fail to return to work by the date the employee agreed to in writing, the County Administrator may declare the employee to have terminated voluntarily as of the expected return to work date, except where the employee requires additional leave under the Family and Medical Leave Act, Chapter 5, Section 5.4.D of this Manual. An employee who accepts employment elsewhere while on leave without pay, unless approved, shall be considered to have terminated employment with the County without notice as of the original date the leave was begun.

Section 5.5 Health Related Benefits

- A. Policy Statement - James City County recognizes the importance of the physical and mental health of employees and their dependents to the employees' quality of life and productivity at work. It is the policy of James City County to provide employees with assistance to care for their physical and mental health.

B. Health Insurance

1. Group Health Insurance Plan - The County shall provide at least one group health insurance option.

2. Eligibility and Cost

a. Employees in full-time permanent and limited term positions, their spouses, and dependent children are eligible for group health insurance coverage. The County shall pay at least a portion of the cost of the group health insurance coverage for active employees.

b. Retirees, at least 50 years of age, who have worked for the County for at least 15 years or who have worked for the County fewer than 15 years but have retired because of a line of duty injury, are eligible to continue group health insurance for themselves and their dependents until they are eligible for Medicare, if they elect to participate prior to leaving County employment. The County bears none of the cost for this coverage.

c. Employees who are terminating employment or reducing their hours to part-time may elect to continue the group insurance coverage for themselves and their dependents at that time. This option is available only for as long as the employee or eligible family member is not covered by another group plan and only for designated periods of time. The County bears none of the cost of this coverage and an administrative charge is added to the premium.

3. Medicare - Both the County and the employee contribute to the Medicare account of employees in full-time and part-time permanent, limited-term, temporary, and on-call positions as required by law. All questions regarding Medicare coverage should be directed to the Social Security Administration.

C. Employee Assistance Program - The County shall offer a program to provide confidential counseling and referral services.

1. Eligibility - Employees in full-time and part-time permanent and limited-term positions, their spouses, and dependent children are eligible for counseling and referral services.

2. Cost - The County shall bear the cost of short-term counseling and referral services. The Employee Assistance service provider shall refer the employee and dependents to an affordable community resource, including coordination with the employee's health insurance plan, for longer-term counseling.

- D. Fitness Program - The County shall assist employees in accessing at least one fitness center and in obtaining educational materials on wellness.

Section 5.6 Retirement, Long-Term Disability and Life Insurance

- A. Policy Statement - James City County recognizes the importance of income after retirement and in the event of disability, and the financial needs of surviving family members in the event of death. It is the policy of the County to assist employees in meeting these needs through financial contributions to retirement and insurance plans or by providing group plans in which employees may choose to participate at their own expense.
- B. Retirement - James City County believes that an employee is best served by having retirement income from more than one source. It is the policy of the County to contribute towards Social Security (FICA) and the Virginia Retirement System (VRS), on behalf of the employee. The County also provides an IRS Section 457 Deferred Compensation Plan to which the employee may choose to contribute.
  - 1. Social Security (FICA) - Both the County and the employee contribute to the social security account of employees in full-time and part-time permanent, limited-term, temporary, and on-call positions as required by law. All questions, including those regarding estimated retirement income, account balances, and the like, should be directed to the local Social Security Administration Office.
  - 2. VRS Service Retirement - The VRS provides an employee with retirement benefits if the employee is at least 50 years old and has at least five (5) years of contributions in the VRS. The amount of retirement benefits varies based on factors such as years of covered service, age upon retirement, and salary. The County pays the full cost of the VRS contribution for the employee.
  - 3. Deferred Compensation - The County sponsors a deferred compensation plan to allow County employees to save a portion of their pretax salary for retirement purposes. The plan is voluntary and is administered in accordance with appropriate Federal and State laws. Employees in full-time and part-time permanent and limited-term positions are eligible to participate.
- C. Long-Term Disability - The County recognizes the employee's need for income during a long-term disability of a temporary or permanent nature.
  - 1. VRS Disability Retirement - Provides an employee with disability retirement if the employee becomes mentally or physically unable to perform the employee's present duties, the disability is likely to be permanent, and the employee is under age 65. Employees are eligible

from the first day of employment, provided the disability did not exist at the time of employment, and regardless of whether the cause of the disability is work-related or is compensable under Workers' Compensation. The County pays the full cost of the VRS contribution for the employees.

2. Long-Term Disability Insurance - Provides an employee with payments after the employee is out of work for a specified period of time, and is unable to perform the employee's present duties. The disability need not be permanent, and rehabilitation services are provided. Payments are coordinated with other employee income. The County pays at least a portion of the cost of coverage for the group long-term disability coverage.

D. Life Insurance

1. VRS Standard Life Insurance - Provides payment to an employee's designated beneficiary in the event of the employee's death or to the employee in the event of his dismemberment. A medical examination is not required in order to be covered by this insurance. The County pays the full cost of the coverage. The insurance continues at a reduced amount for employees who retire and receive VRS payments and may be converted to an individual policy by employees who are terminating employment.
2. VRS Optional Life Insurance - Employees may, at their own expense, purchase additional life insurance for themselves as well as coverage for their spouses and dependent children through a VRS-sponsored program. A medical examination is not required for some levels of coverage.

Section 5.7 Workers' Compensation

A. Policy Statement

When an employee experiences an employment-related injury or illness as defined in the Workers' Compensation Act of the Virginia Code, the County provides medical reimbursement lost wage payments, and fixed awards as outlined in the Code. The County also provides a salary supplement to help offset the difference between the lost wage payment and the employee's normal net pay, after taxes. Where the injury or illness is outside the scope of the Code, employees are encouraged to contact the Human Resource Department to determine what other benefits may apply.

B. Eligibility

Employees in full-time and part-time permanent, limited-term, temporary, and on-call positions are eligible for workers' compensation benefits.

Section 5.8 Tax-Related Benefits

- A. Policy Statement - James City County recognizes the value of paying certain expenses outlined in IRS Code Section 125 with pretax dollars. It is the policy of the County to offer such opportunities where there are a sufficient number of interested employees.
- B. Pretax Health Insurance Premiums - Also called Premium Conversion, allows employees who pay a portion of their County-sponsored group health insurance plan premiums to pay them before taxes. Employees are automatically enrolled unless they waive participation.
- C. Reimbursement Accounts - Also called Flexible Spending Accounts, allow employees in full-time and part-time permanent and limited-term positions who enroll in the program to pay for eligible health care or dependent care expenses with pretax dollars on a reimbursable basis.

Section 5.9 Credit Union

Employees in full-time and part-time permanent, limited-term, temporary, and on-call positions and members of their families are eligible to join any credit union with which James City County is affiliated and receive the membership benefits available.

Revised 5/18/04

Chap5\_cml51804\_v2

## **CHAPTER 6**

### **Employee Development**

#### **Policy**

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[Section 6.2 Guiding Principles](#)

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[Section 6.4 Eligibility](#)

#### **Forms**

[Tuition Payment Application](#)

[K.S.A. Worksheet](#)

## CHAPTER 6

### EMPLOYEE DEVELOPMENT

#### Policy

##### Section 6.1    Policy Statement

James City County values employees who demonstrate high standards of excellence, efficiency, and commitment to service. To achieve this, James City County supports broad involvement, learning and information sharing. James City County supports activities that promote employee development and provides assistance within available resources.

##### Section 6.2    Guiding Principles

- A. The opportunity for employees to participate in development activities is essential to achieving the County's mission and is an important tool for recruiting and retaining a quality workforce.
- B. It is a joint employee and ~~County~~ *supervisor* responsibility to review and assess employee performance and development needs on a regular basis and to establish and implement a ~~Development P~~lan to meet those needs.
- C. The County supports a variety of development activities, including those that address current job needs, help develop the necessary skills to perform other jobs within the organization, and prepare employees for advancement opportunities. In allocating available resources, the priority is to support activities that assist employees in performing their current jobs.
- D. Employees participating in development activities should share and implement their ideas where appropriate. Supervisors are encouraged to discuss with employees skills learned through development activities and to provide opportunities for employees to use and to share acquired skills and ideas.

##### Section 6.3    Definitions

- A. Employee Development Activities include, but are not limited to: learning opportunities such as on-the-job training; mentoring; internships; job swaps; challenging assignments; college classes; courses of study leading to certificates, diplomas, or degrees; conferences; institutes; workshops; seminars; self-study; correspondence courses; testing for and receiving job or promotion-related certifications; *coaching*; video and audiotapes; and

computer and satellite-based learning. The supervisor and employee select the optimum method for attaining the knowledge or skill identified.

- B. Employee Development Plan is developed during the employee's performance evaluation by the supervisor and employee, and identifies learning objectives, needed Knowledge, Skills, and Abilities (KSAs), and opportunities to acquire KSAs through various activities *actions which will be taken to improve performance or to further develop the employee's knowledge or skill.* Although an individual needs to possess the minimum qualifications for a position before being hired, the County recognizes that job requirements change due to changes in legislation, regulations, and scope of duties, technology, and other factors.
- C. Employee Development Assistance is a subsidy of the costs associated with participation in development activities. Funds for employee development assistance are identified in the approved budget. ~~and may include, based on the activity~~ *Based on the activity, it may include full or partial payment of fees, tuition, tests, certifications, travel costs, books, materials or time off. Employee development activities must be satisfactorily completed or full or partial repayment may be required. Certain activities may require a signed agreement to reimburse the cost of the course to the County if the employee voluntarily leaves employment. The County may require full or partial repayment under certain circumstances.*
- D. Tuition Assistance is one category of development assistance. It is an advance or reimbursement of tuition costs only, for a course or degree program offered by an accredited high school, junior or community college, university, technical, vocational, or trade school. This category of assistance may be covered by separate IRS rules. *The County may require full or partial repayment under certain circumstances.*

#### Section 6.4 Eligibility

- A. Employee Development Activities

All employees are eligible to participate in development activities.

- B. Tuition Assistance

Employees in full- and part-time permanent and limited-term positions are eligible for tuition assistance.

**CHAPTER 8**  
**Grievance Procedure**

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## CHAPTER 8

### GRIEVANCE PROCEDURE

#### Section 8.1 Policy

To support our value of “Communicating openly and constructively and working in a collaborative manner,” James City County provides a process to afford an immediate and impartial method for the resolution of disputes that may arise between the County government and employees.

#### Section 8.2 Legal Basis

James City County hereby provides this Grievance Procedure for all eligible employees in accordance with §15.2-1506 et seq. of the Code of Virginia.

Sworn Police personnel also have access to the Law Enforcement Officers’ Procedural Guarantee Act, in accordance with the Code of Virginia, Chapter 5, Title 9.1 (§ 9.1-500 et. eq.).

#### Section 8.3 Definitions

The following definitions shall apply to this Chapter:

- A. County Administrator - shall be either the County Administrator or his designee.
- B. Human Resource Manager - shall be either the Human Resource Manager or her designee.
- C. Department Manager - shall also include the General Registrar, County Treasurer, Commissioner of the Revenue, Library Director, and Executive Director, Williamsburg Area Medical Assistance Corporation.
- D. Grievant - shall be any employee eligible to use this procedure having a grievance, as defined in Section 8.7 (A).
- E. Management - shall be the Board of Supervisors and its designees who establish policy for James City County.
- F. Days - shall be defined as calendar days, including weekends and holidays.
- G. Workdays - shall be defined as Monday through Friday, excluding weekends and legal holidays, as defined in §2.2-3300 of the Code of Virginia.

Section 8.4    Time Periods

- A.    Computation of Time - For the purpose of the Grievance Procedure, the time period for any action or report shall begin on the day following that on which the action is to be taken or report rendered.

If the time period ends on a weekend or holiday, the last day of the time period shall be the first working day following the weekend or holiday.

In all instances, the deadline for any action or report is 5:00 p.m. on the last day of the time period.

- B.    Failure to Comply with Time Limits - Time limits established under this procedure are intended to be strictly construed and enforced to ensure a timely resolution to the grievance. Failure by either party to comply with the time limits may result in a decision in favor of the other party in accordance with Section 8.5 below.
- C.    Time Limit Extensions - Any time limits may be extended if both parties agree to such extensions in writing.

Section 8.5    Compliance with Procedural Requirements

- A.    Effect of Noncompliance - Failure of either party to comply with all substantial procedural requirements of the Grievance Procedure, including the time limits imposed by this Procedure, without just cause, shall result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the noncompliance within five (5) workdays of receipt of written notification of the compliance violation.

- B.    Notification of Noncompliance - Written notification by the Grievant shall be made to the Human Resource Department. The Human Resource Department shall be responsible for providing written notification to the appropriate party.

If the Grievant is not in compliance, the immediate supervisor, Department Manager, or County Administrator shall notify the Human Resource Department. The Human Resource Department shall be responsible for providing written notification to the Grievant.

- C.    Determinations of Noncompliance - The County Administrator shall determine compliance issues. The County Administrator may require a clear written explanation of the basis for just cause extensions or exceptions.

Compliance determinations made by the County Administrator shall be subject to judicial review by filing a petition with the Circuit Court within thirty days of the compliance determination.

Section 8.6 Eligibility to Use the Procedure

- A. Eligible - The Grievance Procedure shall apply to all non-probationary employees in permanent and limited-term positions in the following:
1. James City County, James City Service Authority, Williamsburg Area Transport, Williamsburg Regional Library, and Williamsburg Area Medical Assistance Corporation;
  2. Department of Social Services of James City County, in accordance with Section 15.2-1507(A)(4) of the Code of Virginia;
  3. Office of the General Registrar of James City County;
  4. Office of the Commissioner of the Revenue; and
  5. Office of the Treasurer
- B. Ineligible - The Grievance Procedure shall not apply to the following:
1. Appointees of elected groups or individuals;
  2. Officials and employees who by charter or other law serve at the will or pleasure of an appointing authority;
  3. Deputies and executive assistants to the chief administrative officer of James City County;
  4. Agency heads or chief executive officers of James City County defined as department managers reporting directly to the County Administrator;
  5. Employees whose terms of employment are limited by law;
  6. Employees in temporary or on-call positions, or employees in their probationary period; and
  7. Law-enforcement officers as defined in Chapter 5 (§9.1-500 et seq.) of Title 9.1 of the Code of Virginia whose grievance is subject to the provisions of Chapter 10.1 of the Code of Virginia and who have elected to proceed pursuant to those provisions in the resolution of their grievance, or any other employee electing to proceed pursuant to any other existing procedure in the resolution of his grievance.

- C. Inclusion of Excepted Categories - The Board of Supervisors may include employees in any of the excepted categories, found in Section 8.6(B), within the coverage of this Grievance Procedure.
  
- D. Officers and Employees Excluded from Procedure - The County Administrator shall determine the officers and employees excluded from the Grievance Procedure, pursuant to Subsection (B), and shall be responsible for maintaining an up-to-date list of the affected positions. Accordingly, the County Administrator has determined that the following officers and employees are excluded from the Grievance Procedure:
  - 1. Assistant County Administrator
  - 2. Circuit Court Judge
  - 3. Clerk of Circuit Court and employees of that office
  - 4. Commissioner of Revenue
  - 5. Commonwealth Attorney and employees of that office
  - 6. Community Services Manager
  - 7. County Administrator
  - 8. County Attorney
  - 9. Court Appointed Special Advocate (CASA) Program employees
  - 10. Development Manager
  - 11. Financial and Management Services Manager
  - 12. Fire Chief
  - 13. Fire Marshal
  - 14. General Registrar
  - 15. Human Resource Manager
  - 16. James City Service Authority General Manager
  - 17. Library Director
  - 18. Merrimac Juvenile Detention Center Director and employees
  - 19. Executive Director, Williamsburg Area Medical Assistance Corporation
  - 20. Police Chief
  - 21. Sheriff and employees of that office
  - 22. Treasurer
  - 23. Victim-Witness Assistance Program employees
  - 24. Virginia Peninsula Regional Jail Director and employees

Section 8.7    Grievability

- A. Issues that are Grievable - A grievance shall be a complaint or dispute by an eligible employee relating to her employment, including, but not limited to, the following:
  - 1. Disciplinary actions, including dismissals resulting from formal discipline or unsatisfactory job performance, demotions, and suspensions;

2. The application of personnel policies, procedures, rules and regulations, including the application of policies involving matters referred to in Section 8.7 (B)(3) below;
3. Discrimination on the basis of race, color, creed, religion, political affiliation, age, disability, national origin, sex or sexual orientation;
4. Acts of retaliation as the result of the use of or participation in the grievance procedure or because the employee has complied with any law of the United States or of the Commonwealth, has reported any violation of such law to a governmental authority, has sought any change in law before the Congress of the United States or the General Assembly, or has reported an incidence of fraud, abuse, or gross mismanagement. For the purpose of this subsection, there shall be a rebuttable presumption that increasing the penalty that is the subject of the grievance at any level of the grievance shall be an act of retaliation; and,
5. Any additional complaint or dispute by an employee relating to his employment not specifically excluded in Section 8.7 (B) below.

B. Issues That are Not Grievable - In accordance with §15.2-1507 of the Code of Virginia, local governments retain the exclusive right to manage the affairs and operations of government. Accordingly, the following issues are deemed nongrievable:

1. The establishment and revision of wages or salaries including performance evaluations and/or accompanying pay raises, position classifications or general benefits;
2. Work activity accepted by the employee as a condition of employment or work activity which may reasonably be expected to be a part of the job content;
3. The contents of ordinances, statutes or established personnel policies, procedures, rules and regulations;
4. The failure to promote, except where an employee can show established promotional policies or procedures were not followed or fairly applied;
5. The methods, means and personnel by which work activities are to be carried on;
6. Termination, layoff, demotion or suspension from duties because of lack of work, reduction in work force, or job abolition except when such action affects an employee who has been reinstated

within the previous six months as the result of the final determination of a grievance.

In any grievance brought under the exception to this subsection, the action shall be upheld upon a showing by the County that there was a valid business reason for the action and the employee was notified of such reason in writing prior to the effective date of the action;

7. The hiring, promotion, transfer, assignment and retention of employees within the County service; and
8. The relief of employees from duties of the County in emergencies.

Section 8.8 Decisions Regarding Grievability and Employee Eligibility

- A. Who May Raise Issue of Grievability - The Grievant or his Department Manager may raise the issue of grievability or employee eligibility.
- B. Deadline for Raising Issue of Grievability - The issues of grievability and employee eligibility may be raised at any time prior to the Panel Hearing described in Section 8.12 below. Parties are encouraged to raise the issues of grievability and employee eligibility as soon as practicable.

Once raised, the issue shall be resolved before further processing of the grievance. A request that grievability be determined shall suspend the time limits under this procedure. Time limits shall begin to run again the day after the decision on grievability is made by the County Administrator or the Circuit Court.

- C. Procedure for Raising Issue of Grievability - Pursuant to §15.2-1507 (A)(9) of the Code of Virginia, decisions regarding grievability and employee eligibility shall be made by the County Administrator in accordance with the following procedure:

1. The Grievant or her Department Manager shall raise the issue of grievability or employee eligibility by filing Grievance Form B with the County Administrator. The party filing Grievance Form B shall also provide copies to the other party and the Human Resource Department.
2. The other party has, within five (5) days of receipt of Grievance Form B, the option to file a written response with the County Administrator. The other party shall provide copies of the response to all filing parties and the Human Resource Department.
3. The County Administrator shall render his decision on Grievance Form B within five (5) days of receipt of the written response, or

within ten (10) days of the initial request if no response is filed. The County Administrator shall provide copies of his decision to all parties and the Human Resource Department.

- D. Appealing Decision of County Administrator - Decisions by the County Administrator that an issue is not grievable or that an employee is not eligible to file a grievance may be appealed by the Grievant to the Circuit Court of James City County for a hearing on the issue as provided in §15.2-1507(A)(9) of the Code of Virginia:
1. Proceedings for review of the decision of the County Administrator shall begin by the Grievant submitting written notification of intent to appeal on Grievance Form B to the County Administrator within ten (10) days from the date of receipt of his decision. The Grievant shall also provide a copy of Grievance Form B to the Human Resource Department.
  2. Within ten (10) days after receiving Grievance Form B, the County Administrator shall transmit the following to the Clerk of Circuit Court of James City County: a) a copy of his decision; b) a copy of the written notification to appeal; and c) any exhibits the County Administrator used to make the decision. The County Administrator shall provide to the Grievant a list of the exhibits furnished to the Court.
  3. The failure of the County Administrator to transmit the record within the allowed time period shall not prejudice the rights of the Grievant.
  4. If the County Administrator fails to transmit the record within the time allowed, the Circuit Court, on motion of the Grievant, may issue a Writ of Certiorari requiring the County Administrator to transmit the record on or before a certain date.
  5. Within thirty (30) days of receipt by the Clerk of Court, the Court, sitting without a jury, shall hear the appeal on the record and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The Court, in its discretion, may receive such other evidence as the ends of justice may require. The Court may affirm, reverse or modify the decision of the County Administrator. The decision of the Court shall be rendered no later than the fifteenth (15th) day from the date of conclusion of the hearing. The decision of the Court is final and is not appealable.
- E. Resolution of Nongrievable Complaints - The classification of a complaint as nongrievable by either the County Administrator or the Circuit Court of James City County shall not be construed to restrict any employee's right

to seek, or management's right to provide, customary administrative review of complaints outside of the scope of the Grievance Procedure.

Section 8.9    First Step: Immediate Supervisor Level

A.    Informal Process

1.    Time Limit for Notifying Immediate Supervisor of Grievance - No later than twenty (20) days after the occurrence or condition giving rise to the grievance, the employee shall identify the grievance verbally to her immediate supervisor.

The failure of the employee to identify the grievance within the time specified above shall constitute a forfeiture and a waiver of any rights to proceed further and shall terminate the grievance.

2.    Immediate Supervisor's Response - The Grievant's immediate supervisor shall provide a verbal response within seven (7) days of the Grievant's notification.
3.    Resolution - If the parties reach a mutually acceptable resolution to the grievance, the grievance is terminated and no further steps are necessary.

If the Grievant is not satisfied with her immediate supervisor's response, the Grievant may proceed with filing a written grievance, as described below.

B.    Filing Written Grievance

If the parties do not reach a satisfactory resolution through the informal process, the Grievant shall notify the Human Resource Department of the intent to file a written grievance and complete a copy of Grievance Form A.

1.    Time Limit for Filing Written Grievance - The Grievant shall deliver a copy of the written grievance to his immediate supervisor within seven (7) days of the immediate supervisor's verbal response described above. The Grievant shall also provide the Human Resource Department with a copy of the written grievance.
2.    Content of Written Grievance - The Grievant shall identify, in detail, the nature of the grievance, including all facts giving rise to the grievance and the expected remedy.

Grievants shall be entitled, should they prevail in their grievance, only to the relief specifically requested. Relief requested may include reversal of action taken by the County, such as, but not

limited to, reinstatement to a former position; back pay; a lesser disciplinary action, or removal of information contained in the Grievant's personnel files or other files maintained by the County.

3. Immediate Supervisor's Response to Written Grievance - The Grievant's immediate supervisor shall provide a written response to the Grievant within seven (7) days of the supervisor receiving the written grievance. The supervisor shall also provide a copy of the response to the Human Resource Department.
4. Resolution - If the parties reach a mutually acceptable resolution to the grievance at this stage, the parties shall so indicate on Grievance Form A, and shall provide a copy to the Human Resource Department.

If the Grievant is not satisfied with the immediate supervisor's response, the Grievant may proceed to the Second Step – Department Manager level, described in Section 8-10 below.

If the Grievant's immediate supervisor is the Department Manager, the Grievant shall skip the Second Step of the Grievance Procedure and go directly to the Third Step – County Administrator level, described in Section 8.11 below. If the Grievant's immediate supervisor is the County Administrator, the Grievant shall proceed directly to the Fourth Step – Grievance Panel level, described in Section 8.12 below.

#### Section 8.10 Second Step: Department Manager Level

If the parties do not reach a satisfactory resolution of the grievance at the First Step above, the Grievant shall so indicate on Grievance Form A and notify the Human Resource Department.

- A. Time Limit for Proceeding with Grievance - The Grievant shall submit Grievance Form A, including the immediate supervisor's response, to the Department Manager within seven (7) days of receipt of the immediate supervisor's written response.
- B. Meeting with Department Manager - Within seven (7) days of receipt of the written grievance, the Department Manager shall schedule and hold a meeting with the Grievant to review the Grievance. The Department Manager shall notify the Human Resource Department of the time and place of the scheduled meeting.

The only persons who may be present at this meeting are the Department Manager, the Grievant, and appropriate witnesses for each side. Witnesses shall be present only when actually providing testimony.

The parties may adjourn the meeting to another time or place by mutual agreement. The parties shall notify the Human Resource Department of the new dates and places for the meeting.

- C. Department Manager's Response to the Grievance - The Department Manager shall provide a written response to the Grievance within seven (7) days after the conclusion of the meeting. The Department Manager shall provide a copy of the written response to the Grievant and to the Human Resource Department.
- D. Resolution - If the parties reach a mutually acceptable resolution to the grievance at this stage, the parties shall so indicate on Grievance Form A, and shall provide a copy to the Human Resource Department.

If the Grievant is not satisfied with the immediate supervisor's response, the Grievant may proceed to the Third Step – County Administrator Level.

#### Section 8.11 Third Step: County Administrator Level

If the parties do not reach a satisfactory resolution of the grievance at the previous step, the Grievant shall so indicate on Grievance Form A and notify the Human Resource Department.

- A. Time Limit for Proceeding with Grievance - The Grievant shall provide a copy of Grievance Form A, including the responses from all previous steps, to the County Administrator within seven (7) days of receipt of the response.
- B. Meeting with County Administrator - Within seven (7) days of receipt of the written Grievance, the County Administrator shall schedule and hold a meeting with the Grievant to review the grievance. The County Administrator shall notify the Human Resource Department of the time and place of the scheduled meeting.

The Grievant, at her option, may have a representative, including legal counsel, present at the meeting. The Grievant shall bear any cost involved in employing representation and in preparing the case. The person representing the Grievant shall not serve as both a witness and a representative. Witnesses shall be present only when actually providing testimony.

If the Grievant is represented by legal counsel, the County likewise has the option of being represented by counsel. The Grievant shall notify the County Administrator and the Human Resource Department at least five (5) days prior to the meeting if the Grievant will have legal counsel present at the meeting.

The parties may adjourn the meeting to another time or place by mutual agreement. The parties shall notify the Human Resource Department of the new dates and places for the meeting.

- C. County Administrator's Response to the Grievance - The County Administrator shall provide a written response to the grievance within seven (7) days after the conclusion of the meeting. The County Administrator shall provide a copy of the written response to the Grievant and to the Human Resource Department.
- D. Resolution - If the parties reach a mutually acceptable resolution to the grievance at this stage, the parties shall so indicate on Grievance Form A, and shall provide a copy to the Human Resource Department.

If the Grievant is not satisfied with the immediate supervisor's response, the Grievant may proceed to the Fourth Step – Grievance Panel Hearing.

#### Section 8.12 Fourth Step: The Grievance Panel Hearing

If a satisfactory resolution to the Grievance is not reached at the Third Step, the Grievant shall notify the Human Resource Department and so indicate on Grievance Form A, and request a hearing before a Grievance Panel (Panel).

- A. Time Limit for Proceeding with Grievance - The Grievant shall submit the request for a hearing to the Human Resource Department within seven (7) days of receipt of the County Administrator's response to the grievance.
- B. Selection of Panel Members - A new impartial Grievance Panel shall be created for each grievance. The Human Resource Manager shall coordinate the Panel selection in accordance with the procedures set forth in Section 8.13, below.

If the Human Resource Manager is a party to the grievance, the Grievant shall submit the request form to the County Administrator and the County Administrator shall make the necessary arrangements.

#### Section 8.13 Composition of the Grievance Panel

- A. The Panel shall be composed of three (3) members who are County employees and who shall be chosen in the following manner: One member shall be appointed by the Grievant, one member shall be appointed by the County Administrator, and the third member shall be selected by the first two members. To ensure objectivity, the Panel shall not be composed of the following persons:
  - 1. The Grievant;
  - 2. The County Administrator;
  - 3. The Assistant County Administrator;

4. The Grievant's Department Manager
  5. The Grievant's immediate supervisor;
  6. Any person directly involved with the grievance being heard or the complaint or dispute giving rise to the grievance;
  7. Persons residing in the same household as the Grievant;
  8. The following relatives of anyone directly involved with the grievance or that person's spouse: spouse, parent, child, descendants of a child, sibling, niece, nephew, and first cousin;
  9. An attorney having direct involvement with the subject matter of the grievance or a partner, associate, employee, or co-employee of the attorney; and
  10. Managers who are in the direct line of supervision of the Grievant.
- B. Both the Grievant and the County Administrator shall make their appointments to the Panel on Grievance Form C. These two members shall select the third member. All appointments shall be made by notifying the Human Resource Manager on Grievance Form C. A complete panel shall be designated on Grievance Form C within ten (10) days of the request for a panel hearing.
- C. In the event the first two members cannot reach an agreement as to the third member within ten (10) days, as provided above, the Human Resource Manager, after confirming such fact, shall immediately notify the County Attorney's Office. The County Attorney shall request the Chief Judge of the Circuit Court to appoint the third member.
- D. The third member of the Panel shall serve as Chairperson. The Chairperson shall set the time for the hearing and notify the Grievant, the County Administrator, and the Human Resource Manager. The Grievant and the County Administrator shall be responsible for arranging the presence of their witnesses. The hearing shall be held as soon as possible after the date of the original request for a hearing, allowing sufficient time for access to records as specified in 8.14(B) below. Either party may have an attorney or a representative of his choice present at this hearing.

Section 8.14 Rules for Grievance Panel Hearing

- A. The Panel is constituted solely for the purpose of determining whether a grievance filed by an employee is merited and what remedy, if any, should be provided. The Panel may not formulate or change policy, rules or procedures. The Panel shall determine whether the Grievant has demonstrated, by a preponderance of the evidence, that the action complained of was without cause, or done in violation of a law, regulation, procedure, or other policy. It shall not otherwise substitute its judgment for that of management.
- B. The Human Resource Manager shall provide the Panel with copies of the Grievance Forms, including any attachments, prior to the hearing, and

provide the Grievant with a list of documents furnished to the Grievance Panel.

The Grievant and his attorney shall be allowed access to and copies of all relevant files or materials intended to be used in the proceeding at least ten (10) days prior to the scheduled hearing.

- C. Documents, exhibits, and lists of witnesses are to be exchanged between the parties at least ten (10) days in advance of the hearing.
- D. The Panel shall conduct the hearing as follows:

- 1. Persons Who May Attend the Hearing - The Grievant, and her attorney or representative and the County Administrator and his attorney or representative, may be present at the hearing. The Grievant shall notify the County Administrator and the Human Resource Department if she intends to have an attorney present at the hearing at least ten (10) working days prior to the hearing. Failure to provide this notice shall preclude the Grievant from having an attorney present at the hearing.

Additionally, the parties may call witnesses to testify on their behalf. Such witnesses may only be present during their own testimony.

- 2. Issues Covered - The issues presented to the Panel shall be limited to those issues arising out of the grievance and the expected remedy, as identified by the Grievant on Grievance Form A.

Unless the Grievant and the County Administrator shall agree, in writing, the Panel shall consider any Grievance without regard to any proposed disposition at any other steps in the Procedure.

The Panel may at any time ask the parties or their representatives for statements clarifying the issues involved in the grievance.

- 3. Exhibits and Evidence - The Grievant or the County Administrator may introduce exhibits into evidence. Such exhibits shall be marked and made a part of the record.

The Panel may, at its discretion, exclude any such exhibits or evidence if the party introducing the evidence did not disclose the evidence to the other party at least ten (10) days prior to the hearing.

- 4. Procedure - The Grievant shall proceed first, and shall bear the ultimate burden of persuasion. At the conclusion of the Grievant's

evidence, the County Administrator shall have the opportunity to present his evidence.

The parties may offer evidence and cross examine witnesses and shall produce such additional evidence as the Panel may deem necessary to an understanding and determination of the dispute. There shall be no formal rules of evidence for the Panel; however, the Panel shall be the judge of the relevancy of any evidence offered. All evidence shall be taken in the presence of the Panel and the parties, except by mutual consent of the parties.

At the conclusion of the County Administrator's presentation, the Chairperson shall specifically inquire of all parties whether they have any further proof to offer or witnesses to be heard. If there is none, the Chairperson shall permit the parties to summarize their cases and shall then declare the hearing closed.

5. Reopening Hearing - The hearing may be reopened by the Panel on its own motion or upon application of a party for good cause shown at any time before a final decision is made.
6. Record Retention - Upon the request of the Panel, the County Administrator or the Grievant, the Human Resource Manager shall ensure that a record of the hearing is made and retained for not less than 12 months. The record may be in writing or by a taped recording. The Grievant shall be entitled to a copy of such record upon payment of a reasonable fee, including the costs of labor in providing the record.
7. Policy Interpretation - The Human Resource Manager may be called upon by the Panel as a witness at any time to provide specific policy interpretation or clarification of applicable County policy and these procedures.
8. Procedures Not Addressed - In all matters not otherwise covered by this section, the Panel shall determine the procedures to be followed.

#### Section 8.15 Decision of Grievance Panel

- A. Written Decision by Board - The Panel Chairperson shall deliver the decision of the Panel, in writing, on Grievance Form D to the Grievant, and the County Administrator, not later than fifteen (15) days after the completion of the hearing. The decision shall state in full the reasons for the decision, and the remedy to be granted. Decisions shall be by majority vote of the entire Panel. The decision of the Panel shall be final and binding and shall be consistent with law and written policy.

- B. Consistency with Written Policy - The question of whether the decision of the Panel is consistent with written policy shall be determined by the Human Resource Department Manager, unless she has a direct personal involvement with the event or events giving rise to the grievance, in which case the decision shall be made by the Commonwealth Attorney of James City County. The Commonwealth Attorney shall request the Grievance Panel to reconsider any decision which in his judgment is not consistent with the policies applicable to grievance resolution. He shall not disturb any decision consistent with the written policies.
- C. Remedy - If the Panel determines that the Grievant prevails on any grievable complaint or dispute, it may remedy the complaint by awarding all or some of the relief that the Grievant has specifically requested. The Panel may not award relief beyond that requested by the Grievant, nor may it increase the severity of any action taken by the County.

If the Panel finds procedures governing promotion, demotion, transfer, hiring or layoff were not followed, it shall remand the grievance to that Department Manager with the instruction that the action taken be rescinded, and proper procedures be followed.

#### Section 8.16 Implementation of Remedy

- A. The County Administrator shall implement any remedy that may be ordered by the Grievance Panel, provided that such decision is consistent with law and written policies.
- B. The Grievant or the County Administrator may petition the Circuit Court for an order to implement the decision of the Panel.
- C. The review of the Circuit Court shall be limited to the question of whether the Panel's decision was consistent with provisions of law and written policy.
- D. If the Circuit Court finds the Panel's decision was consistent, the County Administrator will implement the decision.

#### Section 8.17 Human Resource Department Responsibilities

The Human Resource Department shall serve as an impartial administrator of this process. The Human Resource Department shall: Open a file and assign a number to the grievance; ensure that all parties are aware of the process; monitor procedures and time frames; notify either party of noncompliance; be informed of the status of the grievance by both parties at each step; maintain appropriate documentation, and perform all other responsibilities as specified in the Procedure. In the event that the Grievant is an employee of the Human Resource Department, the Assistant County Administrator shall serve as the impartial administrator of the process.

Section 8.18 Consolidation of Grievances

If more than one grievance is filed arising from the same factual circumstances, the County Administrator may, at any time prior to a panel hearing, consolidate those grievances for joint processing unless one of the Grievants objects. If the grievances are consolidated, all time limits set forth in this Procedure shall thereafter be calculated from the date of the last filed Grievance. Once consolidated, the grievances shall all be processed as a single matter.

Section 8.19 Voluntary Termination of Grievance

A Grievant may voluntarily terminate the Grievance at any time by notifying the Human Resource Department. The Human Resource Department shall notify all parties to the Grievance.

The decision to voluntarily terminate a grievance shall be final and shall preclude the Grievant from filing a grievance arising under the same facts.

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**GRIEVANCE FORM A**

Grievant Name: \_\_\_\_\_ Department: \_\_\_\_\_  
Date the Event Giving Rise to the Grievance Occurred: \_\_\_\_\_

**Informal Process**

Date Grievance was Verbally Discussed with Immediate Supervisor: \_\_\_\_\_

**Written Grievance**

Describe the event that gave rise to this grievance and why you feel a different action should have been taken (Use additional paper if necessary):

Specific Remedy Requested (See Section 8.9B.2 of Grievance Procedure):  
Describe what you would like the County to do to change the situation:

**FIRST STEP**

Grievant's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

First Step Remedy (to be filled out by Supervisor):

Proposed Remedy:

Action Stands

Supervisor's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Acceptable  Not Acceptable Grievant's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

If acceptable, date remedy implemented: \_\_\_\_\_ HR Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**SECOND STEP**

Date of Meeting with Department Manger: \_\_\_\_\_

Second Step Remedy (to be filled out by Department Manager):

Proposed Remedy:

Action Stands

\_\_\_\_\_

Department Manager's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Acceptable  Not Acceptable Grievant's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

If acceptable, date remedy implemented: \_\_\_\_\_ HR Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**THIRD STEP**

Date of Meeting with County Administrator: \_\_\_\_\_

Third Step Remedy (to be filled out by County Administrator):

Proposed Remedy:

Action Stands

\_\_\_\_\_

County Administrator's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

I DO  DO NOT desire a hearing before a Grievance Panel.

Grievant's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

If acceptable, date remedy implemented: \_\_\_\_\_ HR Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**GRIEVANCE FORM B**

**DETERMINATION OF GRIEVABILITY**

**A. REQUEST FOR DETERMINATION OF GRIEVABILITY**

I request that the County Administrator review the grievability of Grievance No. \_\_\_\_\_ for the following reason(s):

\_\_\_\_\_  
Name: \_\_\_\_\_ Job Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Written response of other party is  Attached  Waived

**B. COUNTY ADMINISTRATOR DETERMINATION**

Grievable  Not Grievable:

Reason (only if not grievable):

\_\_\_\_\_  
County Administrator: \_\_\_\_\_ Date: \_\_\_\_\_

**C. APPEAL**

I DO NOT wish to appeal the decision on grievability.

I DO wish to appeal. Please transmit the necessary papers to the Circuit Court as required by the Grievance Procedure.

Grievant: \_\_\_\_\_ Date: \_\_\_\_\_

**GRIEVANCE FORM C**

**APPOINTMENTS TO GRIEVANCE PANEL**

1st MEMBER (Grievant appointee):

I hereby name \_\_\_\_\_ to be my appointed member to the Grievance Panel established to hear my grievance.

Appointee Work Phone Number: \_\_\_\_\_

Signed: \_\_\_\_\_  
(Grievant)

Date: \_\_\_\_\_

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2nd MEMBER (County Administrator appointee):

I hereby name \_\_\_\_\_ to be my appointed member to the Grievance Panel established to hear this grievance.

Appointee Work Phone Number: \_\_\_\_\_

Signed: \_\_\_\_\_  
(Appointing Authority)

Date: \_\_\_\_\_

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3rd MEMBER (Mutually agreed upon or chosen by Circuit Court pursuant to Section 8.13 of the Grievance Procedure):

\_\_\_\_\_ is hereby selected to serve as the third member to the Grievance Panel established to hear this grievance.

Appointee Work Phone Number: \_\_\_\_\_

Signed: \_\_\_\_\_  
(Grievant's Appointee)

Date: \_\_\_\_\_

\_\_\_\_\_  
(County Administrator's Appointee)

Date: \_\_\_\_\_

**GRIEVANCE FORM D**  
**DECISION OF GRIEVANCE PANEL**

Date(s) of Hearing: \_\_\_\_\_ Place(s) of Hearing: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Summary of Grievance: (Use additional paper if necessary)

Reasons for Decision (state in full, including evidence and facts considered):

Remedy:

These members concur in the above-stated decision:

\_\_\_\_\_  
Date: \_\_\_\_\_ Date: \_\_\_\_\_ Date: \_\_\_\_\_

This member dissents from the above-stated decision: \_\_\_\_\_ Date: \_\_\_\_\_

A dissenting member may file a written statement of the reasons for his or her dissent.

Decision and Remedy  are  are not consistent with written policy. \_\_\_\_\_  
HR Manager Date

Remedy was implemented \_\_\_\_\_  
Date HR Manager

MEMORANDUM

DATE: May 25, 2004  
 TO: The Board of Supervisors  
 FROM: Sanford B. Wanner, County Administrator  
 SUBJECT: Adjustments to the FY 2005 County Budget

The recently adopted State budget will result in some changes impacting both the Schools and the County. The purpose of this Work Session is to explore, with the Board, a process for adjusting the budget previously adopted for FY 2005 to accommodate these changes. If the increase in the budget exceeds \$500,000, a Public Hearing will be necessary before an adjustment can be made. That Public Hearing will be scheduled for one of the two June meetings. The purpose of this Work Session is to solicit guidance prior to advertising the changes.

For discussion purposes, the guidance is being sought under four components: Schools, State Sales Tax; the \$2 a night Room Tax, and Constitutional offices.

**Williamsburg-James City County (WJCC) Schools**

The WJCC School Board adopted a budget for FY 2005 that was not fully funded by State and local appropriations; there was a "gap" of \$1,220,857.

The State budget included \$938,220 in additional State basic aid revenue, which should be an ongoing source of revenue. It also included \$862,000 in spending reductions for a smaller teacher Virginia Retirement System (VRS) increase in FY 2005. The full increase will go into effect in FY 2006. The impact for FY 2005 is as follows:

Original "Gap"	(\$ 1,220,857)		
Additional State Aid	938,220		
VRS expenditure reductions	<u>860,000</u>		
Net Over funding	\$ 579,363	\$ 521,427 County	\$ 57,936 City

Staff recommends that the Schools be allowed to retain the \$579,363, since it resulted from a temporary VRS expenditure reduction that won't occur next year. The Schools would be asked to agree to investing those monies in either capital projects or capital outlay items - non-recurring expenditures that would not add to the base for next year. If the Board agrees with this approach, then no adjustment is needed in the FY 2005 operating contribution to the WJCC Schools.

This would have the following effect on FY 2005 School revenues and spending:

Revenues: Funded budget \$82,061,604 plus \$938,220 in new SOQ funds = \$82,999,824

Expenditures: School Board Adopted \$83,282,461 less VRS reduction of \$862,000 = \$82,420,461

The difference is \$579,363 to the good, funded beyond what was requested by the School Board in its adopted budget (adjusted for the VRS change).

This proposal was discussed by the School Board at its meeting on May 18, 2004.

### **State Sales Taxes**

Another component of the State budget solution relates to the increase in the sales tax and the distribution of part of that revenue as State Sales Tax for Education - directly to the localities. Both the City and County would see increases in State sales taxes, the County share for FY 2005 would be \$780,000. This is County revenue and this \$780,000 could free up previously budgeted local taxes for schools.

One other unrestricted State revenue source will increase beyond that shown in the FY 2005 Budget and that is HB599 funding. This adds an additional \$170,000 to the State sales tax revenue, for a total of \$950,000 in new, unrestricted funding in the County budget.

Staff recommends that the \$950,000 be committed as follows:

- \$250,000 in the Capital Budget to invest in an interpretive structure at Freedom Park;
- \$200,000 in the Operating Budget to add to the \$230,000 previously approved for underground utilities;
- \$200,000 in the Operating Budget as an additional contribution to the Debt Service Fund Balance - anticipating additional commitments;
- \$122,000 in the Operating Budget for three Grounds Assistant positions and equipment to create a work crew that would focus on BMP and other stormwater facility maintenance needs as well as maintenance of County trails, bikeways, and sidewalks;
- \$100,000 in the Operating Budget for grants match to add to the \$205,000 previously appropriated to enhance our ability to offer local funds as matching amounts for Federal, State, and private grants for both operating and capital projects; and
- \$78,000 in the Operating Budget to provide additional funds for motor fuels in anticipation of a 30 percent increase in costs over those budgeted in FY 2005. The last 60 days have seen an increase in wholesale costs from \$1.10 to \$1.45 a gallon. The County does not pay Federal and State gasoline taxes, which keeps the costs down.

We will advertise these changes, with any amendments agreed upon in the Work Session, for the Public Hearing in June.

### **Additional Room Tax Proceeds**

We will also be including in the appropriation resolution and budget amendment in June a resolution to appropriate the \$2 a night fee the Board recently adopted - \$850,000 in additional room tax proceeds going to the Visitor's Bureau. This is housekeeping but it is large enough that it does require Board action.

### **Constitutional Office Salary Improvements**

The County has received detailed information from the State Compensation and State Electoral Boards that will define exactly what additional State funds will be made available to the County to implement the salary improvements adopted as part of State budget. These include 3 percent raises, effective on December 1, 2004, for elected Constitutional officers other than the Sheriff; the General Registrar and members of the Electoral Board; and appointed staff in the offices of the Clerk of the Circuit Court and Commonwealth Attorney. A pay raise of 4.82 percent will be awarded to the Sheriff and his employees.

Adjustments to the FY 2005 County Budget

May 25, 2004

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The adjusted State funding will cover the cost of the increases in pay and associated fringe benefit costs in their entirety.

Staff looks forward to Board discussion and guidance in each of the four areas above. A final decision would need to be deferred until after a Public Hearing on the proposed changes.

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Sanford B. Wanner

SBW/gb  
bud05adj.mem