

Open Work Session
July 5, 2017
Personnel Manual (Chapters 5 through 9)

Mrs. Sharon Morris, Former Assistant Director of Administration, Mr. Ed Baker, Former County Attorney, and Mr. Matt Creamer, Former Council Administrator came before Council. Mr. Creamer said they are here at Council's request to review with Council an overview perspective of Chapters 5 through 9. They will be as brief as they can, while at the same time address questions that Council might have. Mr. Cannon said he knows Mr. Baker and Mrs. Morris were on the prior committee from 2014, and Mr. Creamer has been following this for many years. Mr. Creamer said he was not a part of the work group. He said around 2015 he became involved at this level when they tried to get something together that the Council could review. Mr. Cannon thanked them for coming back and being a part of this review process.

Mr. Creamer said Chapter 5 is Salary Administration, which includes a schedule of classes and the full schedule of pay ranges and classification plan as funded according to the annual budget. He said Council just finished that process. He said section 0504 is on Grades and Pay Ranges, and Council looked at that this evening with two classifications that were approved. This is introducing a piece of legislation any time one of these positions change or is created. If something is created by legislation, it should be amended by legislation, and that has not always been the case. He is recommending that they tighten that process up, and for the past year or so he thinks that has been working better. He said there is a change in section 0506 for the Work Periods, that also was done by Council legislation involving employees of the Department of Corrections, removing them from the 28-day work period to the 7-day work period. This was reviewed by the group before, that legislation was passed, so they need to make some modification to the language in section 0506 in respect to that legislative change. Mr. Cannon asked in section 0502 where the recommendations are being made to the Executive, should that also be to the Director of Administration and the County Executive, since the Department Heads are responsible to the Director of Administration as well. Mr. Creamer said he thinks he is referring to more fully clarifying the chain of command, and if the Council feels that there should be a scheduling and involvement by the Director of Administration, who would then seek the final approval of the Executive. Mr. Cannon said to recommend the amendments to both, he thinks then everybody is on the same page, and it can always be known that everyone is involved. It is not requiring the approval of the Director of Administration, just stating that is part of that process. Mr. Creamer said Mrs. Hurley can make note of Council comments and they will bring them back to Council for further debate and discussion. Mr. Cannon said, yes, very good. Mr. Creamer said rather than go over all of this, is there anything that jumps out at Council in sections 0502-0509. He said there is a

minor modification that needs to be clarified in section 0509, where in the case of Direct Deposit of Paychecks, there are some employees who do not have checking accounts, so there needs to be a little modification of it. He said they have that for Council's consideration when they get into the discussion. He said for employees that do not have a checking account, the Department of Human Resources will provide a mechanism. Mr. Cannon said, the opt out is what you are recommending, the opt out section, because it does say there is an opt out section at the end of section 0509. Mr. Creamer said they are recommending that word itself is not needed because if an employee just opts out, without providing an alternative, there is no way the employee will receive the payroll information because he or she does not have a checking account, and if he opts out of it, the County has to provide some other means of notifying the employees what their pay is and what their deductions have been. He said they are going to give Council language that will clarify it. Mr. Dodd clarified section 509 is going to be rewritten, to which Mr. Creamer responded, yes, if an employee wants to opt out, the Department of Finance will provide alternate means for receiving a paycheck, is the language they will be modifying.

Mr. Creamer continued, he said in section 0510 Rates of Pay, following the points that Councilmembers made at the last work session, they offer for Council's consideration that within the language here, that it apply to the Executive Branch, with an additional statement that salary levels for employees within the Legislative Branch shall be determined by the County Council, provided that it is sufficient within the funding of the budget. Mr. Cannon asked where that would be going, to which Mr. Creamer responded, that would be another sentence added at the end of section 0510(a), under new employees. He said Council established the distinction between Legislative Branch and the Executive Branch previously. This carries it out in another place where it might be appropriate. Mrs. Morris asked in section 508 are they adding electronic pay stubs to that, to which Mr. Creamer responded, yes, he should have mentioned that. Mr. Cannon asked what sort of electronic paystub, to which Mrs. Morris responded electronic, employee self-service, so that the employee can go on line and get their paystubs, rather than a hard copy. Mr. Creamer said as Council may recall, they have not received a paper paystub for quite some time.

Mr. Creamer continued, he said there is a minor addition on page 21, the first subsection (b), Special Hires, they would add to that last sentence "and as provided for in the budget."

Mr. Creamer said page 22, under subsection (4), Exceptions to Rates of Pay. They had quite a bit of discussion resulting from concern about equitable treatment of employees in these situations, most likely the case in the Department of Corrections, possibly some other departments, but Corrections is a principle example where they are talking about qualifying shifts and shift differential. Mr.

Creamer said on page 22, (ii), Work from a qualifying shift to a non-qualifying shift, a qualifying shift is a shift in which it is a graveyard shift, typically where employees are eligible to receive a shift differential of a smaller hourly increase in pay for those hours worked. He said, under these exceptions, this says work from a qualifying shift. This is a shift for which the employee would receive a differential pay rate. To another qualifying shift, the shift differential would be paid for hours actually worked, and employees who work overtime from a qualifying shift into another qualifying shift, in addition to overtime payment or compensatory time for which the employee might be entitled. He said that is qualifying to qualifying, no argument there, no question, no concern. Under (ii), working from a qualified shift to a non-qualifying shift creates concern. He said an employee has worked his or her entire shift under the qualification of the shift differential quality, and for reasons of no control to the employee, there is not a replacement person, and the employee has to stay on shift and work into what is a non-qualifying shift. The way this is written, the hours worked in a continuation of a qualifying shift beyond its normal hours to a non-qualifying shift, do not qualify for payment of shift differential, and an employee is not entitled to a shift differential for the hours worked in a non-qualifying shift. He said their recommendation is that Council would consider removing that. Striking the "not" so it would say that "an employee who worked as a continuation of a qualifying shift beyond his normal hours to a non-qualifying shift, do receive the shift differentials," because it is under no control of the employee that he or she has to work further hours. The employee has already worked all night and has to work another hour or two or three or four. They would invite Council's consideration of that language and striking the last part of that sentence which says "and an employee is not qualified to shift differential for the hours worked in the non-qualifying shift." He said if they just simply change "is entitled" they would be redundant to the language above so they would suggest Council strike it entirely.

Mr. Creamer said the language under Promotions and Demotions, is rather straightforward. He said if Council did not have any issues, he will not belabor it.

Mr. Cannon said in section 0512, Recovery of Unauthorized Salary, he was wondering if there should be some type of time limitation or time restriction for a former employee. Mr. Creamer said that is so the County would be entitled to recovery. He said he did not know if there is a statute of limitations under such things or not, but if there is a statute of limitations, he would think that would apply. Mr. Cannon said he did not know under what authority where that statute of limitations might exist, whether it is state law, or what it might be, but he said he thinks it should be considered as to whether or not there is a time restriction there. Mr. Creamer said if there is no statute of limitations on such a thing, and Council still thinks there should be a limitation of the County's recovery opportunity, then that can be considered.

Chapter 6 – Overtime and Compensatory Time. Mr. Creamer said, this Chapter raised a considerable amount of concern among the employees that Council heard from in the previous review of the revisions of the Personnel Manual. He said their efforts have tried to consider the concerns that were expressed. He said section 0601 is self-explanatory, but it needs to be said. Department Heads are expected to avoid unnecessary expenditures of overtime pay or compensatory time for foreseeable peak workloads. He said within not too many of the past years, the County went through a terrible recession and there were necessary stern measures taken to keep the County's budget balanced. He said there were furloughs, there were reduced hours, and there were layoffs. He said to some extent they fortunately passed through the worst part of the recession and are seeing light at the end of the tunnel at least. He said, but in many cases, positions were vacated and still have not been filled. He said there are other reasons that employees left and, in cases, those positions have not all been filled either. He said the reason for that is not entirely because the position was not necessary, as the work is still there. He said that brings him to the point of this section of the manual. He said while the work is still there and has to be done, it has to be done in many cases by fewer employees. He said that often may lead to the number of employees having to work more than standard hours. Mr. Creamer said it is simply a matter that when that happens, the employee is entitled to compensation for that time worked. He said the compensation is either cash or compensatory time. He said for certain categories of County employees, compensatory time is the mechanism that has been utilized. Mr. Creamer said, as Council goes through section 0602 Compensatory Time, rather than spending a lot of time on it, the issue is the granting of compensatory time is nearly a misnomer. It is a known misnomer because it is not something that could be granted, it was earned. He said it would be inappropriate for the County not to compensate employees for those extra hours worked, either by cash for its non-exempt employees, or compensatory time, or in the case of Department Heads or exempt employees, in hour for hour comp time. He said that was one of the areas of concern or the large responses from employees who were concerned over that. He said the document would clarify and maintain the policy of compensatory time when it has been properly utilized and properly authorized, and that is always the case. He said it is not just a granting, someone does not just come in on a Saturday and work, it has to be approved. Mr. Cannon asked how it came about, the total number of hours, the 240 hours for non-exempt, and the 480 hours for sworn law enforcement. Mr. Creamer said that is historic through the document he thought. Mrs. Morris responded, except for the 480, that was changed later, but the 240 and the 80. The 80 hours, they did that in accordance with the Fair Labor Standards, but the 80 hours are a compliment or benefit to exempt employees, as it does not have to be paid out, but it is a benefit to County employees who are exempt. Mr. Cannon said the reason he asked is because with the officers, it is 480 hours, it is three months of comp time. Mr. Creamer said that is part of the negotiation. Mr. Cannon said

that answers that, it is negotiated. Mr. Cannon then asked what is an example of an exempt employee getting compensatory time, to which Mrs. Morris responded, some employees are exempt by professional positions, such as there are some in Finance who are exempt employees. She then said an exempt employee is supervisory level and above. A person is may work a number of hours, rather than be given overtime pay because of the position. For instance, a Roads Engineer that is exempt works after hour after hour during a snow storm, the hours may be accumulated and then it is up to the person who is above them to authorize the compensatory time. Mr. Cannon clarified it is for extreme emergencies. Mr. Creamer said the 80 that was mentioned, is suggested here as a compromise because that is a new number, the 80 would limit the amount of time that an exempt employee can accumulate. Mrs. Morris said it is actually not new in this document because in the 2003 version, exempt employees, she thinks, were included. Mr. Creamer said he knows that exempt employees were included in the 2003 document, but he was talking about the 80 hours, the 80 hours was during the reduction, it was reduced. He said he did not remember the number of hours offhand, but that is an effort to somewhat limit the liability to the County that exempt employees would have to use their hours to keep them below 80 hours, and that would encourage the employees to take the time off. Mr. Cannon said he thinks there should be some stipulation in the 240 hours as well. Mr. Creamer said the 240 is an existing number, so if Council wants to consider modification of that, that is Council's prerogative. Mr. Cannon asked, on (e) where it talks about unused compensatory time may be paid at any time, why would it be comp time if there is an allowance to pay them for that time, to which Mrs. Morris responded, if it is earned beyond 40 hours, then it is compensatory time for hours worked. Mr. Cannon said if you are giving someone comp time as opposed to overtime to begin with, why would you then turn around and pay them. Mr. Creamer said the difference is comp time is straight time and overtime is time and a half or double time, depending upon what it is. Mrs. Morris asked if Mr. Cannon's question is why would the County pay compensatory time or allow an employee to earn compensatory time verses paying them overtime, to which Mr. Cannon said he can understand if an employee leaves and then you have to look at how you are going to pay them because they did not use all of their comp time. He said but if the employee is still working, why would you pay them, why would you not just insist on the comp time being used, to which Mr. Creamer responded to keep that number from growing. Mr. Ed Baker said to lessen the impact of an employee leaving, to try and reduce that. Mrs. Morris said for an example, an employee who has been in the County system for several years, and was a person who had furloughs instead of time they could take off and they have accumulated for instance 240 hours. If they are a higher paid employee, and they are paid out at one time, the department's budget also has to be, so that it can pay that time and, in a lot of times, that may not be the case. If the department has not allowed for that kind of compensation, then they have to come back to Council in order to have their

budgets increased. She said that is also considered in the compensatory payout. Mr. Creamer said there are provisions in there as well, remembering that comp time is controlled by the Department Heads or the Supervisors. Mrs. Morris said before they leave that subject, in (c), it also says it is determined by the County, and that needs to be clear when it says the County; who is that, it should either be the Director of Administration as a recommendation on the Executive side, or the Council Administrator on the Legislative side, but it should be more clear than saying the County, because this was not done at the time when the branches were divided. Mr. Creamer said this has been somewhat of a moving target because they were working over a period of time.

Mr. Creamer continued, he said on page 25, (f), Use of Compensatory Time. Employee should be permitted to use approved compensatory time within a reasonable period after making a request, provided the requested use will not unduly disrupt the operations of the County or the effected department. He said section 0603, The Authority for Overtime. This breaks out the pay for overtime worked in that it shall be approved in units of not less than 15 minutes. He said they have heard them say they would recommend outside legal counsel review some of these. He thinks this is one of them. He thinks a 15 minute segment would be in compliance with FLSA requirements, but some attorneys bill on a 6 minute schedule, 8 minutes, or 10 minutes. He said they do not know if FLSA would accept 15 minutes, that is a quarter hour. It may have to be something smaller, but 15 minutes is the current language, but that needs to be checked. Mr. Creamer said no overtime or compensatory time shall be authorized unless specifically requested and approved by the Department Head. That is one of the measures of trying to contain overtime or compensatory time.

Mr. Creamer said, section 0605 provides that the County will notify employees with as much advance notice as possible if the employee is going to have to work extra hours, but it may not be possible to give very much advanced notice, it simply says this in the documents. He said if an employee says they want to take their girlfriend out for supper tonight and now they have to work, this provides for action if an employee refuses to work, that is section 0606. Mr. Cannon asked if that is in line with the Fair Labor Standards, to which Mr. Creamer said he did not know, but he thinks it is.

Mr. Creamer said, section 0608 Multiple County Jobs, regular full- time county employees shall normally be ineligible for selection to work a regular second County job. He said to be approved for a regular second county job, the employee's Department Head must recommend this to the Department of Human Resources, and Human Resources will forward their request to the Director of Administration for approval or denial. If selected for a County job, the following applies. Mr. Creamer said Council can read that and there is nothing special there, but the circumstances that brought about the second County job

occurred quite a number of years ago for the first time with the Youth and Civic Center. He said some County Finance Department employees were recruited to work at some of the events at the Civic Center because personnel at the Civic Center knew the employees of the Finance Department could be trusted. It did not conflict with their regular work schedule because they worked from 9-5. He said, as he recalls, there was a judgement against the County by the IRS that said the County could not do it the way they were doing it, and they had to make provisions for these second County jobs and that is how this provision came about. Mr. Creamer said, of course, it shows exceptions for occasional or sporadic work and law enforcement, which falls under different rules all together.

Mr. Creamer said the next couple of pages are self-explanatory. There is a fairly new section in 0616, County Executive Declared Emergency. This worked out a few years ago and reflects in this document as it was amended by Council legislation.

Mr. Creamer said, on page 29, after Travel Time, at the top of the page, there is a (c), that he thinks he just noticed, it says all other employees not deemed essential may be on administrative leave and paid according. He said "paid accordingly" is not very clear. Perhaps language needs to be made more specific about that.

Mr. Creamer said he did not think there was any change in Holiday pay or how it is done. He said the only thing that might be fairly recent is that if an employee has to work on a holiday, they get to take another day off and this provides that it has to be taken within a year.

Mr. Creamer said next is Chapter 7, Probationary Period. He said this is rather straight forward, and he did not think there were any changes to this language, on page 29. He said he did not think there was anything new here at all. He said there are different probationary periods for different types of employees, and then in every respect a probationary period can be extended. Mr. Cannon said in section 0707, the very last one under (a) where it says, request that the Director of Human Recourses extend it, he would say notify the Director of Human Resources of the extension. He said it would not be the Director of Human Resources responsibility to grant a request if you are extending a probationary period. He then asked does it have to be approved by the Director of Administration, to which Mrs. Morris responded, if it is extended, it is normally at the request of the Department Head who has evaluated the employee. The Department Head then informs HR. Mr. Cannon clarified instead of request, you notifying HR to extend, to which Mrs. Morris responded, yes, notify HR to extend. Mr. Cannon said at that point in time, he would think that should be to notify the Director of Administration. Ms. Morris said Council can certainly have it however it wants, but the way it is written, it is only done because that position would then do the necessary paperwork to make that change. Mr. Cannon said he would

say notify the Director of Administration that you are extending a probationary period. Mrs. Morris said then that person can notify the HR Director because they have to know. Mr. Cannon said he did not know if there are other processes in place that might make certain of that. He said he did not know what the job description of the Director of Administration is. Mrs. Morris said that has to be done because there has to be a personnel action generated. Mr. Cannon asked if that is the responsibility of the HR Director. Mr. Creamer said thinking along the lines of communication with the Director of Administration, about extending a probationary period, there might be a high probability that there would be conversations between the Department Head and the Director of Administration anyway.

Mr. Creamer said, Chapter 8, Work Rules. He said work rules covers a panoply of subjects. He said there is almost everything from soup to nuts but it is all part of the work rules process. Mr. Cannon said starting out with the County vehicles, it talks about the operators, they have to have permission to use the County vehicle, something to that effect. He then asked what happens if they do not, should there be something that states what happens. Mrs. Morris clarified if an unauthorized person drives a County vehicle, to which Mr. Cannon responded in 822(b)(6) it does talk about that you could lose your job, or there are certain violations that could occur but, in a lot of these other categories, it does not really say what happens. He said he did not know if there was another all-encompassing document, or somewhere else in this manual that says this is what happens. He said this just says you cannot do it. He asked if there was some general clause that says if you are in violation, you are suspended or you could be facing suspension. Mr. Creamer said section 0805 covers driver operators, substance impairment, official business documentation, and traffic violations. He said if Council saw fit, and the need for it, it could add a subsection (f) to state that violation of provisions of this section may make the employee subject to discipline. Mr. Cannon said it does state that specifically in some places. Mr. Dodd said it is vague throughout. Mr. Cannon said in regard to (e), Traffic Violations, employees are personally responsible for the payment of any traffic fines. He said he thinks there should be something in there about if there are multiple traffic violations, he thinks there should be accountability there as well. Mr. Creamer said that gets into the supervisors' responsibility for overseeing the employees. Mr. Cannon said, nothing distinguishes it, but they cannot have 20 traffic violations. He said sooner or later someone has to take the vehicle away from them. Mr. Creamer said his point is, while these regulations seem to be very specific, there comes a point where the supervisor has to take his or her responsibility. Mr. Joe Holloway said there is nothing in there, if you take (b), Substance Impairment, basically somebody could be employed by Wicomico County and get 3 DWI's, 3 DUI's, and still maintain the license for work purposes, and they would still have this individual driving a County car, which is pretty high risk, as it says they are supposed to report it. There is nothing that says the County

has disciplinary action for failure to report. His question is, if you have a County employee that has multiple violations, it does not have to be DWI's, it could be speeding. Mr. Creamer said he was suggesting that maybe an addition of subsection, a (f), pertaining to all of these to say that a violation of this section subjects an employee to disciplinary action up to and including dismissal. Mrs. Morris said this manual also makes reference to several other County policies. There is a vehicle policy and it may be included in that. Mr. Cannon agreed that it could be. Mr. Creamer said they have not been provided those policies yet. Mr. Creamer said they have been provided two or three, but there are several more that they are waiting to receive. Mr. Cannon said to give an example, under section 0823 (b)(6), it talks about Internet Policies, and it specifically says employees who violate these policies are subject to disciplinary action up to and including discharge, very succinct. He said that may be (f). Mr. Creamer said that is what he was thinking.

Mr. Creamer said, section 0806 Flex Time, spells out everything. There is nothing in this section that is unusual or outrageous. He said for example, an unauthorized absence, any employee that is absent without permission for three consecutive work days is considered to have resigned from their position with the County. He said if a person is unable to work, that is (c) above on page 34, there are certain requirements. He said reporting to work late, leaving work early, break period, they are all defined. Mr. Joe Holloway said he thought there was a policy that they were not going to let employees work from home. He then asked is that something new, to which Mr. Creamer said an employee can work from home if their position is conducive to such arrangement, and the Department Head approves the arrangement in advance. He said what Mr. Joe Holloway was referring to is just for that particular individual, or maybe for the entire Council staff. Mr. Joe Holloway asked if that language has always been there or is it new, to which Mr. Creamer responded, no, it is not new. Mrs. Morris said it is new since 2003. She said one of the reasons this was done is because there was a key employee who was pregnant and because that employee was essential to operations in Finance, they were allowed to work from home because it was necessary. There was no one at that time who could do their job. She said that was considered, and then going forward it was decided that that could happen again with a key employee, and that language is in there, but it is certainly optional. Mr. Joe Holloway said they should talk to the County Attorney about this. He said he understands the need, but there is a lot of liability there. He said you can have people working at home, but the County does not know the working conditions. A workers' compensation case could arise when they are working, such as an employee slipped on an ice cube in the kitchen. He said he thinks it needs to be better defined as to what the responsibilities would be from working at home. Mrs. Morris said that is the reason it was there, but certainly that could be something to be considered. Mr. Cannon said perhaps Mr. Taylor or Mr. Baker could tell Council whether there is liability from their experience. Mr. Taylor

said he can see the concern, it may not be the ice cube on the kitchen floor, but there could be other aspects of it. Mr. Baker said he did not know that there is that much increased liability, but there is probably somewhat of an increase if they picked up a laptop and twisted, or if they were balancing on their lap, as there could be some items. Council needs to clarify that with the Workers Compensation Commission to make sure they are covered under the County's insurance. Mr. Joe Holloway said it could be more defined. He then asked could they put in there if they are working from home, it releases the County from liability in some of those workers' compensation cases. Mr. Baker said that is a whole wide-open area that they have to take a look at. Mr. Taylor said another possibility might be privacy with some of the things they are working on because if they are working back and forth over the internet, particularly if they are hooked into the County system, that raises an issue of privacy. Mr. Joe Holloway said he thinks it needs to be nailed down as to what the responsibilities are. Mr. Creamer said it is a rarely used practice in this workplace, but it seems to be becoming a growing practice in certain segments of the private sector, and this might be the time to flex something out more if Council thinks that the incidents of working from home is likely to increase. Mr. Cannon said what Mr. Taylor said is probably more important than liability, and that is who is going to work at home and not use the internet, as that could compromise the County system. Mr. Baker said he thinks if Council checks with Mr. Micciche that is why the County has gone to the cloud system. Mr. Creamer said when he was recuperating from his knee surgery, IT gave him access to what is called Virtual Private Network and if he was on the Virtual Private Network, it would be exactly as if he was at his desk. Mr. Cannon said it sounds to him like it is an administrative issue to see whether or not this needs to be in or out, based on the environment. Mrs. Morris said that is why it was put in, but the points are well taken for risk, liabilities, and exposure. Mr. Taylor said his concern was to some extent who might also be at your desk. In other words, the Internet connection itself might be secure, but at one end it might not be secure just on a general basis. Mrs. Morris said it might be easier to remove it than to define it. Mr. Joe Holloway said he sees the need of working at home in some situations but, he did not think it was a practice to encourage and he thinks it can be better defined.

Mr. Baker said going back to section 0837, on page 45, makes any violation of the Work Rules subject to discipline and discharge. Mr. Cannon said he thought it would be somewhere. He said that does raise a question, if it is going to be in the personnel manual, they should not have to search to find some things, even if you are being repetitive, they should not have to go down to section 0835 to verify something. Mrs. Morris said there are some other areas where they noticed that as well.

Mr. Creamer continued, he said on page 34, after section 0808, they were talking about working hours, overtime, and compensatory time. He said there is a section 0815, which he did not realize was in here. It states, Volunteer Work for County. County employees may not perform volunteer services for the County for the same type they are regularly employed to perform.

Mr. Creamer said, on page 35, section 0816, they were recommending an addition of subsection (h) for Department Heads. Mrs. Morris said the question is secondary employment. This section pertains to the employee and the question whether a Department Head should be allowed to engage in secondary employment. Mr. Creamer said this section 0816 Secondary employment was a conundrum because they talked about a second job as a County employee in another capacity. He said they talked about that earlier. This section, secondary employment, means another job, not working for the County. He said secondary employment is not allowed when it may present a conflict of interest or interfere with an employee's ability to perform their assigned duties. An employee must notify the Department Head prior to accepting secondary employment. Secondary employment may be subject to the ethics law. He said then it provides that secondary employment is not at all uncommon for members of the Sheriff's Office. He said they provide security and other services for municipalities, service clubs, schools, and so forth. He said for most County employees, secondary employment would be unusual, especially if it took place during the workday, unless the employee was on shift work or leave. If an employee was on leave time, it would be a different matter. To undertake a second job during the regular work schedule time, not on leave, would be a clear violation. Mr. Dodd said he sees that County uniformed employees shall not wear County uniforms to work at a secondary jobsite. He then asked does that pertain to the Sheriff's Office as well, to which Mr. Creamer responded, no, in many cases a deputy sheriff would not be very effective if he was not in uniform. Mr. Baker said, paragraph (b) right before that, secondary employment is mandated by the Sheriff's Office policy. Mr. Dodd said when he read that section, he was just thinking that it meant approval for the job and not anything to do with the uniforms that they wear. Mr. Baker said, he has a whole series of regulations. Mr. Dodd said the whole thing is kind of vague. Mr. Creamer clarified, on page 35, the suggestion for a subsection (h) under Secondary Employment, the County Department Heads would not be allowed to have secondary employment during normal County work hours unless the employee is on accumulated leave.

Mr. Cannon said, on page 38, it says, to ensure that the use of electronic and telephonic communications systems and business equipment is consistent with the County's legitimate business interests, authorized representatives of the County may monitor the use of such equipment in the Executive Branch of government from time to time. This includes monitoring Internet usage of any kind. This may also include listening to stored voicemail messages. Mr. Cannon

said he thinks there needs to be a separation between the Executive and Legislative Branch. He said he thinks that same exemption should be noted in that section as well. He said you have to guarantee the separation. Mr. Creamer said he understands what he is saying and as it is worded partially recognizes it because it says in the Executive Branch of government from time to time. Mr. Cannon said that just allows the Executive Branch to look at all of the emails. Mr. Creamer clarified in the Executive Branch, to which Mr. Cannon said in the entire County. Mr. Creamer asked if there should be clarification there, a limitation, to which Mr. Cannon said, yes. Mr. Cannon asked who are the authorized representatives of the County. It says that authorized representatives of the County may monitor the use of such equipment in the Executive Branch of government. He then asked who in the County is an authorized representative that does not work for the Executive Branch that can go in and monitor and read their email. Mr. Cannon said they work for the Executive Branch. Mr. Creamer asked what direction do you think that section should go, to which Mr. Cannon said he guesses what they are trying to say is accountability needs to be held at all levels, but he thought it was rather vague, to say authorized representative, and at this time he did not have a recommendation or suggestion. He said he thinks that is a very weak section in two aspects. Mr. Dodd asked if there was anything in the Personnel Manual about social media, to which Mr. Creamer responded he thought that was in a separate policy. Mr. Dodd said he was looking at telephone calls received, and he was thinking about people tweeting all day long. Mr. Creamer said he did not think there was any reference to tweeting or social media. Mr. Cannon said it is a common practice if you are working at your desk on your work computer, you are subject to whatever management wants to see. He said they can monitor every letter that you type on your computer and every keystroke. He said he thinks there needs to be a separation with this to a certain degree with how it works with the Executive and Legislative Branch. He said this authorized representatives being able to monitor the Executive Branch does not sound to him like a real solution. Mr. Creamer said he made a note to come back to this section for rewording both with regard to the Legislative Branch and who is the authorized County representative. Mrs. Morris said that person would still work for the Executive Branch. Mr. Cannon said you have to find that third party. He said Mr. Roser may be the only one that might fall into that qualification, would that not be correct, as the Internal Auditor for the County. Mrs. Morris responded it would not be incorrect. Mr. Creamer said the Charter gives the Internal Auditor access to virtually all County records. Mr. Cannon said that may be the solution to it. Mr. Creamer said he would want to read that Charter language again to see whether it goes that far. Mr. Cannon said this would have to be done in concert with everybody, the Executive Branch, Mr. Roser, the Council, which is no small challenge. Mr. Creamer continued, he said on page 38 after Other Electronic Communications and Information Systems is (c) under (6), on page 86. As a condition of employment and continued employment, employees are required to adhere to the email

policies, Internet usage policies and software policy. He said they would recommend that Council include all of those policies as individual appendices to this document. He said that serves two purposes. One purpose is that it places all those policies in one place so somebody can see what they are buying into, and the second is, once this is adopted by legislation, the changing, modification, or addition of any of those policies would have to be done by legislation.

Mr. Cannon said, the solicitation distribution comment he made, these were only definitions. He thinks that was the intent, for only definitions, no guidelines, no policies, just definitions, to which Mr. Creamer said, solicitations are prohibited. He said Mr. Matt Holloway brought this up at the last session and that was under subsection (b) on page 39, Solicitation on County property is prohibited. He said there is (4) Wicomico County may grant exceptions to this section under its discretion pursuant to Resolution 345 as amended from time to time. He said Resolution 345 gives that obligation to the Director of Administration to approve whether or not a solicitation may be exempted. Mr. Cannon asked if they could include that Resolution as an addendum to this, to which Mr. Creamer said, they have that. He said they were thinking of deleting all together the discretion to not prohibit a particular type of solicitation. If solicitations are not allowed, they are now allowed. Mr. Cannon said he did not know what Resolution 345 says. Mr. Baker said the resolution was entered into a long time ago, dealing with the criteria back in that time frame, the payroll system was very limited, and the number of items to put on it to deduct. United Way was one of the parties, so that resolution set out certain qualifications for a non-profit, and if you met those qualifications you could be exempt from the solicitation policy. Mr. Creamer said they do not have that kind of limitation now, but if the County would get into the business of exempting from their prohibition of certain nonprofits or certain fundraising purposes, every conceivable entity is going to be beneficial for somebody. He said sooner or later an entity would make the request of the County to be able to offer a solicitation to County employees, and it would be something so egregious to almost anybody. He asked if the County had created exemptions to other groups, what would be the defense against allowing such groups. Mr. Hall asked if the County did food drives and flu shots now, to which Mr. Baker said flu shots are not solicitations, but other groups, what would be the defense. Mr. Hall asked are these solicitations, to which Mr. Baker responded they are benefits offered to employees. Mr. Hall said it is still a solicitation. Mr. Cannon said they had bake sales to raise money. Mr. Baker said he just questioned the flu shots. Mr. Hall said you do not want to make an exemption, but there are also employee benefits that are employee initiatives. Mr. Baker said you do not have to allow everything unless you are doing it under some guidance. Mr. Cannon said they need to come back to that section and take a look at Resolution 345. He said he understands what Mr. Creamer is saying. Mr. Hall said he understands, but he does not like it.

Mr. Creamer said there is room for discussion on page 41 with regard to Searches, section 0832 Searches, (a). He said while the County provides offices, desks, lockers, file cabinets and similar items to its employees in order to facilitate the performance of their work for the County, these items remain the sole property of the County. The County reserves the right to open and inspect offices, desks, lockers, file cabinets, other storage areas, and reserves the right to inspect their contents. Mr. Dodd asked if it should mention search of County vehicles, to which Mr. Creamer said, he would think so. Mr. Dodd said he did not see that in mentioned. Mr. Joe Holloway said the County provides uniforms to some people. He then asked would that mean if they provide uniforms, they could search the person. He said he is not advocating that, he is just asking if that could be read that way. Mr. Creamer said he was not qualified to answer that question.

Mr. Cannon asked what does it mean in (c), the provisions of sections 832 shall be applicable to the Legislative Branch at the sole discretion of the County Council, to which Mrs. Morris responded, this was written before some addendums were made. She said the County personnel or HR policies with some oversight by Council, that is why. She said this was done solely because of the Executive Branch. Mr. Cannon said, the provisions shall be absolutely the Legislative Branch, that is us, at the sole discretion of Council. Mr. Creamer said it cannot take place without Council as a body. Mr. Creamer said he thinks they look at this generally speaking as to whether an employee might be keeping something that might be considered contraband or illegal, that is what they usually think of in something like this. He said but a search of County Council files and records, which may or may not be public, by a designated representative of the Executive Branch, is different. Mr. Cannon said and vice versa, this is another one of these problems where he thinks there has to be oversight on everybody, but how are they going to do that. He said he thinks the County Council is just as much subject to this as any employees might be, and the Executive Branch is subject to this, just as any employees might be. He asked who does it, how, and the oversight. Mrs. Morris said the County Executive does not supervise the Council staff. She said if you want your staff to be applicable to Council, you would have to authorize that and that is what this gives the discretion to do. Mr. Cannon asked what about individual Councilmembers because they are employees as well. Mr. Cannon said this is one they have to revisit. Mr. Joe Holloway said, going back to (a), what bothers him about that, and he understands the reason for it, is the people who are doing the search are probably not trained to do what they are doing, so there is suspicion, they go into somebody's desk or locker or file cabinet and they find something that is possibly illegal, and they let somebody go, and this person comes back and says this person was not trained in how to do searches and seizures. He said he was wondering if it would be better to put in there when this is done that there would be appropriate law enforcement agency present. Mr. Creamer said he was going to call their attention to one of very few of such situations that are within his

experience. He said some Councilmembers were here then. He said an employee was dismissed for cause summarily, and when that employee was notified, by a letter written by the County Council President, the Sheriff's Office was notified, and a detective from the Sheriff's Office came over and actually conducted the removal and the search of that employees' things. He said that is along the lines of what you are saying. Mr. Joe Holloway said he thinks there should be something interjected in there that somebody with experience in search and seizure laws, perhaps a County Department Head. Mr. Creamer said a Department Head may or may not have any experience. Mr. Joe Holloway said it happens so infrequently, it does not happen very often. Mr. Creamer said that is a good thing. He said they will revisit that section too. Mrs. Morris said, to Mr. Dodd's point, he mentioned the County vehicles, again that is an instance where there is a myriad of other policies that are embedded in the manual, so that vehicle policy would also have to be updated to include his comments.

Mr. Cannon said he had a question on section 833 – Harassment. He said it comes down to that same question under 833 (d), Investigation on page 43. He said upon receipt of a complaint, the Department of Human Resources shall conduct a prompt and thorough investigation of allegations. He said he did not know if there should be a third-party involved in that or not. He said he did not think any Department Head should be addressed with harassment. There should be some type of grievance committee, or something to that effect. He said he thinks a lot of the times employees are concerned about going to one individual Department Head or another to file a complaint, or they may be afraid of retaliation. He said he would never suggest it, but what if the fact that the investigation of the complaint was actually with the Department of Human Resources, where would that employee go, because the manual says to go to the Department of Human Resources. Mrs. Morris said, later it says the Director of Administration shall attend the grievance when there is a grievance, so that would be the other person. She said certainly an outside person could be appointed from the County Attorney. He said they are leaving it up to the Director of Human Resources to initiate the investigation, and he would say if that if it was the Director of Human Resources, or Director of Recreation and Parks, or any other Department Head, he did not think it works to have a grievance be directed to a Department Head. He said he thinks there needs to be a third party, an outside source that an employee can go to, whether it is a grievance committee. Mrs. Morris said if he was speaking only to the sexual harassment, that is one thing, but if they are going to go to the grievance section, they could probably address it there because that is a broader view. Mr. Cannon said they could, but right now it says in this particular section that this is the department that is supposed to investigate an allegation. He said he thinks there needs to be some qualifier there in case that specific department is subject to the investigation. Mrs. Morris said the reason it is there is because it was taken outside of the department, and taken to another place which the employees should be

able to go to. Mr. Cannon said if next week the problem is in Human Resources, what recourse does that employee have, to which Mrs. Morris said, she is not sure where else they would report it other than on the hotline. Mr. Joe Holloway suggested that the hotline be added in that section. Mr. Creamer said when this particular language was written, the hotline did not exist. Mr. Joe Holloway said he thinks adding the hotline in there might be good. Mr. Cannon said they can take 90% of the issues to the Human Resources Department, and then as Joe Holloway said, put another note in there that another avenue for recourse would be the hotline. Mrs. Morris said in section 0820, the disclosure of illegal or improper acts, that is the note they actually had on that since the revision of the County adopting a hotline process, and it should be added, and that would be considered an improper act. Mrs. Morris said the division of the people who are on the hotline needs to be considered because the hotline complaint has to go someplace, so for instance you say it is in one department and the hotline complaint goes to that department. Mr. Creamer asked if a hotline complaint is relative to a member of the team that receives the complaints, is there is a provision to avoid that. Mr. Roser clarified, there is, normally fraud type complaints go to the Internal Auditor and Human Resources type complaints go to the HR Director. He said if that particular person is mentioned in the complaint, then it is escalated to someone else, usually the County attorney.

Mr. Creamer said that is all he has for Chapter 8. He said the next time they get together they will pick up on Chapter 9 and go through Chapter 12. Mr. Cannon said this took a long time. It may not be an easy discussion. Mr. Creamer said they will discuss Chapters 9-11. Mr. Cannon said from what he has seen, he would not do more than three chapters a meeting. Mr. Cannon said they have done Chapter 9 already. Mr. Creamer said they are getting into some testy areas. Mr. Creamer said Chapters 9 and 10 are fine. They will be prepared to go further if Council has an appetite for it.

Signatures on next page.

**Open Work Session
July 5, 2017
Personnel Manual (Chapters 5 through 9)**



John T. Cannon, President



Larry W. Dodd, Vice President, District 3



Ernest F. Davis, District 1



Marc Kilmer, District 2

John B. Hall, District 4



Joe Holloway, District 5

Matt Holloway, At-Large



Laura Hurley, Council Administrator