

**CUMBERLAND COUNTY PERSONNEL ORDINANCE**  
**(AMENDED BY THE BOARD OF COMMISSIONERS NOVEMBER 20, 2017)**

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## ARTICLE I. IN GENERAL

### Sec. 101. Purpose.

The board of commissioners, as sole legislative authority for the county, hereby adopts this ordinance, to be cited as the *Cumberland County Personnel Ordinance*, to establish the conditions governing employment for all county employees, officers and officials except as specifically exempted herein.

### Sec. 102. Equal employment opportunity.

(a) All applicants and employees of the county shall be given equal opportunity for employment without regard to race, color, religion, sex, national origin, age, handicap, political affiliation or genetic information except where specific physical requirements constitute bona fide occupational qualifications necessary to proper and efficient administration. Discrimination against any person in recruitment, examination, appointment, training, promotion, retention, discipline, salary increases, or any other term or condition of employment because of race, color, religion, sex, national origin, age, handicap, political affiliation or genetic information is prohibited.

(b) The county manager shall develop and implement personnel policies and practices that will guarantee equal opportunity for employees and applicants for employment.

### Sec. 103. Applicability.

The provisions of this ordinance and all rules and regulations adopted pursuant to it shall apply to county employees, officers and officials as follows:

(1) Elected officials shall be exempt from the provisions of this ordinance except for section 501, Code of Ethics.

(2) Appointed officials, not serving as county employees, shall be exempt from the provisions of this ordinance except for section 501, Code of Ethics.

(3) The county manager, county attorney, and clerk to the board of commissioners shall be subject to the provisions of this ordinance except for Article IV, Recruitment, Selection and Appointment; Article VII, Employee Discipline; and Article VIII, Grievances; provided, however; that in the event the provisions of any contracts of employment with any of these employees are in conflict with any provisions of this ordinance, the contract provisions shall supersede the ordinance provisions.

(4) Employees of the offices of the sheriff and register of deeds shall be subject to the provisions of this ordinance except for Article IV, Recruitment, Selection and Appointment; Article VII, Employee Discipline; and Article VIII, Grievances.

(5) The director of elections and all other employees of the county board of elections shall be subject to the provisions of this ordinance except for Article IV, Recruitment, Selection and Appointment; Article VII, Employee Discipline; and Article VIII, Grievances; provided, however; that the county board of elections may agree to subject its employees to these articles by giving written notice to the county manager.

(6) All county employees subject to the *North Carolina Human Resources Act* shall be exempt from Article VII, Employee Discipline and Article VIII, Grievances; provided, however; that these employees shall be subject to all employee discipline and grievance rules, policies and procedures applicable to these local government employees as established by the State Human Resources Commission pursuant to Chapter 126 of the North Carolina General Statutes and the administrative code regulations promulgated pursuant to it.

(7) Employees of the North Carolina Cooperative Extension Service shall be subject to all provisions of this ordinance which are not inconsistent with the provisions of any contract between the county and The North Carolina Cooperative Extension Service North Carolina State University and The North Carolina Cooperative Extension Program North Carolina A&T University for the operation of a Cooperative Extension Agency in the county (the "MOU"). To the extent any provisions of the MOU conflict with any provisions of this ordinance, the contract provisions shall supersede the ordinance provisions.

**Sec. 104. Delegation of duties.**

(a) The county manager shall:

(1) Appoint and suspend or remove all county officers, employees and agents except those who are elected by the people or whose appointment is otherwise provided for by law; and

(2) Establish policies and procedures necessary or useful for the effective administration and implementation of this ordinance and the county's personnel system in accordance with any directives by the board of commissioners; and

(3) Have the authority to delegate any responsibilities assigned to him or her in this ordinance to any subordinate at his or her discretion.

(b) The human resources director shall:

(1) Advise the county manager, department heads, supervisors, and employees on personnel policies and procedures;

(2) Maintain all employee personnel records in the custody of the human resources department in accordance with G.S. § 153A-98;

- (3) Maintain the most current version of this ordinance as amended from time to time;
  - (4) Maintain the most current version of the personnel policies and procedures established by the county manager from time to time; and
  - (5) Maintain and administer the position, classification and compensation plans as directed by the county manager.
- (c) Department heads shall:
- (1) Report to the human resources director any provisions contained in the personnel policies and procedures which they believe are inconsistent with the efficient operation of their departments or the maintenance of employee morale and make appropriate recommendations to address the matters reported;
  - (2) Report all personnel actions within their departments to the human resources director prior to implementation of any proposed personnel action;
  - (3) Report all anticipated vacancies to the human resources director; and
  - (4) Maintain all employee personnel records in the custody of their departments in accordance with G.S. § 153A-98.

**Sec. 105. Responsibility of employees.**

Employees shall be responsible for complying with the provisions of this ordinance insofar as they apply to personal conduct and performance of service.

## **ARTICLE II. POSITION CLASSIFICATION PLAN**

### **Sec. 201. Coverage of the classification plan.**

(a) The county shall maintain a position classification plan that ensures the accuracy of position duties and responsibilities and consolidates similar job functions into defined classifications. The county manager shall determine the duties of each position and shall promulgate procedures to establish, revise and maintain the classification plan to ensure it reflects the duties performed by each employee in the classification system.

(b) Subject to annual budget constraints, comprehensive salary surveys or studies shall be conducted to gather data on rates of pay for comparable work to determine the level of compensation assigned to positions.

### **Sec. 202. Administration of the classification plan.**

The county manager shall administer and maintain the position classification plan and shall have authority to establish new classifications and reallocate existing positions to the appropriate classifications within the classification plan for all county positions.

### **Sec. 203. New positions.**

New positions may only be established by the board of commissioners upon the recommendations of the county manager.

### **Sec. 204. Approval of the classification plan.**

The board of commissioners shall review and approve the classification plan annually.

## **ARTICLE III. SALARY PLAN**

### **Sec. 301. Application of this Article.**

The board of commissioners shall fix or approve pay schedules, expense allowances and other compensation of county employees through the approval of the salary plan, the annual budget and any policies established by the county manager for these purposes.

### **Sec. 302. Coverage of the salary plan.**

- (a) The board of commissioners shall establish a salary plan upon the recommendation of the county manager and shall review and approve the salary plan annually.
- (b) The salary plan shall include salary ranges with a minimum and maximum rate of pay commensurate with the responsibilities and difficulty of the work, and take into account the prevailing compensation for comparable positions in other agencies of government and other relevant factors.
- (c) Subject to annual budget constraints, the salary plan shall provide for the salary advancement of employees based upon changes in job responsibilities and prevailing labor market conditions.
- (d) Subject to annual budget constraints, the salary plan may include special compensation programs which enhance the county's competitive position for the purpose of talent acquisition, retention, and productivity. The county manager shall establish policies and procedures necessary or useful to implement any special compensation programs.
- (e) The county manager shall be responsible for the administration and maintenance of the salary plan and shall establish policies and procedures necessary or useful to this purpose to include any special compensation programs.

### **Sec. 303. Transition to a new salary plan.**

No employee shall receive a salary reduction as a result of the transition to a new salary plan and any employees receiving salary at a rate less than the minimum rate established for their new respective grades shall have their salaries raised to the minimum rate of their new grades.

### **Sec. 304. Employee compensation.**

Each new employee shall be appointed at the minimum salary which has been established for the classification in which he or she is employed except:

- (1) If the position is not subject to the *North Carolina Human Resources Act*, the employee does not meet the minimum requirements of the position, and qualified applicants for the position are not available, the county manager shall designate the employee as a trainee to be appointed at a salary no more than ten percent below the minimum salary established for the position;

(2) If the position is subject to the *North Carolina Human Resources Act*, the employee does not meet the minimum requirements of the position, and qualified applicants for the position are not available, the county manager shall designate the employee to the appointment status mandated by 25 NCAC 01I.2002 at a salary no more than ten percent below the minimum established for the position;

(3) If the county manager shall determine that there has been a demonstrated inability to recruit at the minimum salary, or if an applicant possesses exceptional qualifications or prior experience, the county manager may authorize the employment of the applicant at a salary level up to and including the maximum of the salary range provided for that position classification, subject to the availability of appropriated salary and benefit funds;

(4) If the county manager shall identify critical staffing levels of a particular work unit within a department, or when unusual or peak work demands cannot be met, the county manager may authorize the emergency assignment of employees normally assigned to another work unit in that department to temporarily staff the critically-staffed work unit. These employees must be permanently assigned to the same or similar job classification as the position for which they will be temporarily performing duties. The county manager shall determine the rate of supplemental pay, if any, for work performed during the emergency assignment, based upon the critical nature of the work to be performed and the limited resources available to perform the work;

(5) If the county manager shall identify a developing trend indicating unusual or persistent difficulty in turnover and/or retention of sufficient staffing in a particular job classification or work unit, or a specific concern regarding the retention of a critical position, the county manager may authorize a salary increase up to and including the maximum of the salary range provided for the affected position(s) subject to the availability of appropriated salary and benefit funds. Or, the county manager may authorize a separate supplemental payment to employees in the applicable positions. When determining appropriate salary or supplemental payment amounts, the county manager shall take into consideration relevant factors including salaries paid in comparable and competitive job markets, and the potential liability impact for failure to meet state staffing mandates;

(6) The County Manager is authorized to approve equity pay adjustments for employees whose salaries are inappropriately low due to unique or special circumstances pursuant to the following conditions:

(a) The County Manager may not approve equity pay adjustments for more than one percent of the county workforce in any fiscal year;

(b) The Department Head must submit a written request to the County Manager for an equity pay adjustment for a departmental employee stating the recommended amount and justification;

(c) Employees must have been employed by the county for a minimum of three

years and be in good standing to be eligible to be considered for an equity pay adjustment;

(d) All equity pay adjustments must be within the salary range of the employee's position classification as specified by the adopted County Position Classification and Pay Plan;

(e) No equity pay adjustment can exceed ten percent of the employee's current salary.

**Sec. 305. Longevity, law enforcement career development and step plans.**

(a) To the extent that longevity pay or law enforcement officers' career development pay are funded in each year's fiscal budget, only those employees who commenced county service before July 1, 2012, shall be eligible to receive it.

(b) To the extent that a law enforcement officers' step plan is funded in each fiscal year's budget, all law enforcement officers, who are otherwise eligible, shall be eligible to receive it regardless of the year they commenced county service.

(c) Any longevity pay, law enforcement officers' career development pay, or law enforcement officers' step plan pay shall be a special compensation program.

**Sec. 306 Promotions.**

An employee may receive a promotion in one of two forms. The classification of the employee may be designated to a higher level salary range, or, if qualified, the employee may be assigned to a position in a classification with a higher salary range. Any such designation or reassignment must be approved by the county manager.

**Sec. 307. Effective date of salary adjustments.**

Salary adjustments approved after the first working day of a pay period shall become effective at the beginning of the next pay period.

## ARTICLE IV. RECRUITMENT, SELECTION AND APPOINTMENT

### Sec. 401. Recruitment.

Recruitment shall be the dual responsibility of the department head and the human resources department. The human resources director shall coordinate recruitment efforts and maintain a comprehensive record of recruitment activities throughout the county government and shall provide assistance to departments as best meets the needs of the departments.

### Sec. 402. Qualification standards.

Employees shall meet the employment standards established by the position classification plan and such other reasonable minimum standards as to character, aptitude, ability to meet the public and physical condition as may be established by the department head concerned, the county manager and/or the board of county commissioners.

### Sec. 403. Veteran's preference.

Preference in employment for positions within the county subject to this ordinance shall be given to those who served in the Armed Forces of the United States on active duty (for reasons other than training) during periods of war or any other campaign, expedition, or engagement for which a campaign badge or medal is authorized by the United States Department of Defense. The preference to be accorded shall apply in initial employment. The county manager shall develop and implement policies that administer the preference granted herein.

### Sec. 404. Pre-employment background checks.

A background investigation of any final candidate for a county position shall be conducted prior to the employment of the individual. The background investigation shall include, at a minimum, a criminal record check and a drug screening. In addition, a credit check, sex offender registry check and/or driving record history may be required, depending on the position.

### Sec. 405. Types of appointment.

(a) *Probationary.* The probationary period is an essential extension of the selection process and provides the time for effective adjustment of the new employee or the dismissal of the new employee whose performance does not meet acceptable performance or conduct standards. The initial appointment of an employee to a regular position shall be a probationary appointment as follows:

- (1) If the position is not subject to the *North Carolina Human Resources Act*, the duration of a probationary appointment shall be one year.
- (2) If the position is subject to the *North Carolina Human Resources Act*, the duration of the probationary period shall be for the period established for an employee to attain career status in accordance with G.S. § 126-1.1.

(3) A probationary employee may be demoted or dismissed any time the department head determines that the employee does not and will not be able to satisfactorily perform the job duties or engages in conduct that is unacceptable. Notice of the demotion or dismissal must be given in accordance with section 702.

(4) At the end of the probationary period, if service is unsatisfactory the employee shall be dismissed or demoted. If service is satisfactory, the employee shall be retained as a regular employee.

(5) For positions subject to the *North Carolina Human Resources Act*, career status employees transferring to a position in another agency shall commence the new position in a probationary status in accordance with 25 NCAC 01I.2002. Career status employees transferring to a new position within the same agency shall retain their career status.

(6) For positions not subject to the *North Carolina Human Resources Act*, regular employees transferring to a position in within the same department or another department or agency shall retain their regular status.

(b) *Regular.* Regular appointment is an appointment to a permanent position following the satisfactory completion of a probationary and/or trainee appointment or the reinstatement of an eligible employee. For those employees subject to the *North Carolina Human Resources Act*, the appointment shall become regular when the employee attains career status in accordance with 25 NCAC 01I.2002.

(c) *Trainee.* For those positions not subject to the *North Carolina Human Resources Act*, a trainee appointment may be made to a permanent position when the county is unable to recruit an experienced or otherwise qualified employee. An employee may not remain on a trainee appointment beyond the time when education and experience requirements for the position have been completed. After the employee has successfully completed all education and experience requirements, he or she shall be given regular status.

(d) *Temporary.* For those positions not subject to the *North Carolina Human Resources Act*, a temporary appointment may be made to a regular or temporary position for a specific duration of time which will not exceed ninety days, except where a temporary appointment is necessary due to an on-the-job injury. All temporary appointments must be approved in advance by the county manager. Temporary employees shall not be entitled to receive any of the employee benefits available to regular employees unless mandated by state or federal law.

(e) For those positions subject to the *North Carolina Human Resources Act*, such additional forms of appointment as are appropriate for the position being filled shall be made in accordance with 25 NCAC 01I.2002 and shall comply with all program requirements applicable to the position.

(f) Appointments to positions requiring a normal work week of at least 40 hours shall be full-time appointments and those which require a normal work week less than 40 hours shall be part-time appointments.

**Sec. 406. Final selection and appointment.**

- (a) Final selection of a department head rests with the appointing authority for the position.
- (b) Final selection of an applicant for all positions rests with the department head concerned. This selection shall be made from those applicants that have been certified by the human resources director as being best qualified and suited for the position in question. After selection of an applicant for a position by a department head, the human resources director shall recommend the position classification and starting salary to the county manager for approval. All such actions will be subject to final review and approval by the county manager, who may delegate such review and approval authority to the human resources director.

**Sec. 407. Agreements for employment.**

No agreement for employment with the county shall be valid unless in writing and approved by the board of commissioners. Further, no agreement for employment shall be valid unless funds for compensation for such services shall have been appropriated by the board of commissioners.

## ARTICLE V. CONDITIONS OF EMPLOYMENT

### Sec. 501. Code of ethics.

(a) *Declaration of policy.* It is the policy of the county that the proper operation of democratic government requires that public officials and employees be independent, impartial and responsible to the people; that governmental decisions and policy be made in proper channels of the governmental structure; that public office not be used for personal gain; and that the public has confidence in the integrity of its government. In recognition of these goals, a code of ethics for all county employees is adopted.

(b) This code has four purposes as follows:

- (1) To encourage high ethical standards in official conduct by county employees;
- (2) To establish guidelines for ethical standards of conduct for all county employees by setting forth those acts or actions that are incompatible with the best interests of the county;
- (3) To require that county employees disclose private financial or other interests in matters affecting the county; and
- (4) To serve as a basis for disciplining and/or punishing those employees who refuse to abide by its terms.

(c) *Definitions.* As used in this code of ethics, the following terms shall have the following meanings unless the context clearly indicates that a different meaning is intended:

- (1) *Business* shall mean a corporation, partnership, sole proprietorship, firm, organization or other legal entity carrying on business;
- (2) *Confidential information* shall mean information which is not available to the general public and which is obtained only by reason of an employee's position.
- (3) *County* shall mean the County of Cumberland.
- (4) *Employee* shall mean all officials, officers, members and employees, whether elected or appointed and whether paid or unpaid, of the government of the county and of all of its agencies. Employees shall include former employee if the violation occurred during county employment.
- (5) *Financial interest* shall mean any interest which shall yield, directly or indirectly, any monetary or other material benefit to a county employee. The term, financial interest, shall not include the employee's salary or other compensation received pursuant to county employment. The fact that an employee owned ten percent or less of the stock of a corporation or has a ten percent or less ownership in any business entity or is an employee of said business entity does not create a financial interest.
- (6) *Official act* shall mean an official decision, vote, approval, disapproval or other action which

involves the use of decision-making authority.

(7) *Personal interest* shall mean any interest arising from blood or marriage relationships or from employment or business whether or not any financial interest is involved. A blood or marriage relationship for the purpose of this section shall mean wife, husband, mother, father, brother, sister, daughter, son, grandmother and grandfather, grandson and granddaughter, aunts and uncles. Included are the step, half, in-law, in loco parentis relationships and persons living within the same household.

(8) *Political activity* shall mean any act aimed at supporting or opposing the election of any candidate for public office or supporting or opposing a particular political party.

(d) *Standards of Conduct.* Employees must in all instances maintain their conduct at the highest standards. Official conduct guided by high ethical standards gives the public confidence in the integrity of its government and assures the public that government is responsible to the people. The following standards of conduct are goals which public employees should strive to attain so as to avoid even the appearance of impropriety in the conduct of the public's business:

(1) Employees have an obligation to act morally and honestly in discharging their responsibilities;

(2) Employees shall conduct themselves with propriety, discharge their duties impartially and fairly and make continuing efforts toward attaining and maintaining high standards of conduct;

(3) Employees shall not improperly use, directly or indirectly, their county positions to secure any financial interest or personal benefit for themselves or others;

(4) Employees shall not use nor attempt to use their positions to improperly influence other employees in the performance of their official duties; and

(5) While in the conduct of their official duties employees shall not request other employees to grant or make available to any person any consideration, treatment, advantage or favor beyond that which it is the general practice to grant or to make available to the public at large.

(e) *Use of County Resources.*

(1) No employee shall use or permit the use of county employees or county-owned material, property, funds, or other resources of any kind for the private gain, personal benefit, or political advantage of any person, except where such use is made available to the public at large. Nothing herein shall be interpreted or construed to limit the use of county-owned facilities for public gatherings in accordance with established facilities use policies.

(2) County-owned vehicles shall not be used for the personal business of any employee. No county automobile shall be used by a county employee going to or from home, except when such use is for the benefit of the county and such use has been authorized by the department head, county manager or sheriff.

(f) *Conflict of Interest.*

(1) No employee shall engage in any employment or business which conflicts with the proper discharge of his or her official duties.

(2) No employee shall have a financial interest, directly or indirectly, in any transaction with any county agency as to which the employee has the power to take or influence official action. No employee shall take or influence official action in any transaction with any county agency that would confer a benefit based on a personal interest where such benefit is not made available to the public at large.

(3) If an employee has any direct or indirect financial interest in the outcome of any matter coming before the agency or department of which he or she is a member or by which he or she is employed, such employee shall disclose on the record of the agency or department and to his superior or other appropriate authority the existence of such financial interest. An employee having such an interest shall not engage in deliberations concerning the matter, shall disqualify himself from acting on the matter and shall not communicate about such matter with any person who will participate in the action to be taken on such matter. However, the excusal from voting by members of the board of county commissioners shall be governed exclusively by G.S. § 153A-44.

(4) No employee shall represent or appear on behalf of any individual or entity, either personally or through an associate or partner, against the interests of the county or any of its agencies in any action or proceeding in which the county or any of its agencies is a party, unless the action or proceeding is sufficiently remote from his official duties, so that no actual conflict of interest exists.

(5) Nothing herein shall be interpreted or construed to prohibit any employee from exercising his or her legal rights as to his or her own personal interests in processing a claim against, making a request to the county or any of its agencies or in defending a claim made against him or her by the county or any of its agencies, or to prohibit an employee from testifying as a witness in any administrative or judicial proceeding.

(g) *Confidential Information.*

(1) No employee shall, without legal authority, disclose confidential information gained as a result of his or her employment or position with the county.

(2) No employee shall use confidential information gained as a result of his or her employment or position with the county to advance his or her own financial or personal interest or the financial or personal interests of any other person.

(3) Nothing in this subsection shall be construed as prohibiting the disclosure of information required by law to be disclosed.

(h) *Gifts, Gratuities, and Favors.* No employee shall knowingly solicit or accept a gift, whether in the form of money, things, favor, loan or promise, or gratuity, from any person or entity which, to the employee's knowledge, is interested directly or indirectly, in any manner whatsoever, in a transaction with

the county or any of its departments or agencies as to which the employee has the power to take or influence official action. This section is not intended to prevent the gift and/or receipt of the following:

- (1) Honorariums in an amount not to exceed \$25.00 or expenses to include meals, travel and lodging for participating in meetings, seminars, conferences, grand openings, or anniversary celebrations of businesses, or other similar activities where the official or employee is either a speaker, participant or invited in his or her official capacity;
- (2) Nominal advertising items or souvenirs of \$25.00 or less in value, or meals furnished at banquets;
- (3) Customary gifts or favors received by any employee from friends, relatives or other employees where it is clear that it is the relationship of the donor which is the motivating factor for the gift or favor;
- (5) Gifts, favors, discounts, and gratuities offered by commercial enterprises to members of the general public; and
- (6) Political contributions by elected county officials.

(i) *False Statements Prohibited.*

- (1) No employee shall willfully make any false statement, or in any manner commit any fraud, conceal any wrongdoing or fail to answer fully and truthfully questions about wrongdoing connected with the business of the county or connected with the work-related conduct of any county employee.
- (2) No employee shall willfully make any false statement, certificate, mark, report or rating with the intent to obtain public funds or other public benefit for himself or herself or anyone else to which the employee or such other person is not by law entitled or otherwise authorized.
- (3) No person seeking appointment to, or promotion in, the service of the county, shall either directly or indirectly give, render or pay any money, service or other valuable thing to any person for, on account of or in connection with his or her test, appointment, proposed appointment, promotion or proposed promotion; provided, however, that this provision shall not apply to payments made to duly licensed employment agencies or educational institution.

(j) *Nepotism Prohibited.* No relative of a county employee, by blood or marriage, may be employed in any position with the county in which the employee may be able to supervise directly or control or influence the work or employment status of the relative or the affairs of the organizational unit in which the relative is employed. Relative for the purposes of this section shall mean wife, husband, mother, father, brother, sister, daughter, son, grandmother and grandfather, grandson and granddaughter, aunts and uncles. Included are the step, half, in-law, in loco parentis relationships and persons living within the same household.

(k) *Outside Employment.* Except for county elected officials or appointees, no employee shall engage in outside employment without prior approval of the employee's department head. Approval will be granted

except where the employment has a probability of creating a conflict with the performance of the county's business or creating a division of loyalty, or where the performance of the outside duties would most likely impair the employee's ability to perform his or her county duties.

(l) *Political Activity.*

(1) *Generally.* Every employee of the county has a civic responsibility to support good government by every available means and in every appropriate manner except where in conflict with the law. County employees may join or affiliate with civic organizations of a political nature, may attend political meetings, may serve as officers of civic or political organizations, and may advocate and support principles or policies of civic or political organizations in accordance with the Constitution and laws of the United States and North Carolina.

(2) *Prohibitions.* No employee of the county shall:

(a) Engage in any political activity while on duty, unless serving as an elected county official;

(b) Place any pressure, direct or indirect, on any employee to support any candidate or party, contribute to, solicit for, or act as custodian of funds for political purposes;

(c) Offer any county position, promotion, job related benefit, remuneration or other advantage to any person as a reward for political activity or support;

(d) Take adverse action against any employee based on that employee's engaging in or refusing to engage in permitted political activity; or

(e) Permit or require any county employee to engage in political activity while the employee is on duty.

(3) *Candidates running for public office; etc.* Engaging in political activity while on duty shall not include the casual greeting or encounter by employees with persons running for public office. Candidates for public office visiting public offices shall be received and treated with respect. For the purpose of this section, employees who are on authorized breaks or on lunch periods shall not be deemed to be on county time.

(m) *Violations.* Any violation of this section shall be deemed improper conduct and may subject an employee to disciplinary action, dismissal, or removal, as appropriate. Additionally, a violation of subsection (e), use of county resources, or subsection (i), false statements prohibited, is declared a misdemeanor and may be punished as provided by law. The board of county commissioners, upon notice and hearing, may declare void and rescind any contract, grant, subsidy, license, right, permit, franchise, use, authority, privilege, benefit certificate, ruling, decision, performance of any service, or transfer or delivery of anything which the board determines was awarded, granted, paid, furnished, or otherwise performed in violation of this article.

**Sec. 502. Unlawful workplace harassment and retaliation.**

The county manager shall develop strategies, policies and practices to ensure that all employees are guaranteed the right to work in an environment free from unlawful workplace harassment, sexual harassment or retaliation based on opposition to unlawful workplace harassment.

**Sec. 503. Work week, work schedules.**

(a) The established work week for the county for pay purposes is a seven-day period beginning Sunday at 12:00 a.m. and ending Saturday at 11:59 p.m.

(b) County offices shall be open for business on weekdays from 8:00 a.m. until 5:00 p.m.; provided, however; that department heads, with the approval of the county manager, shall schedule those hours necessary to conduct the operations of their departments and may vary work schedules and business hours to best meet the needs of the department's customers and the operations of the department.

(c) Full time employees shall normally work forty (40) hours per week.

(d) Department heads shall work the hours necessary to assure the satisfactory performance of their departments but not less than forty (40) hours per week.

**Sec. 504. Overtime.**

Department heads shall arrange the work schedules of their employees so as to accomplish the required work within the normal workweek schedule. The county manager shall establish policies and procedures to administer any overtime and/or compensatory time that may become necessary due to unforeseen circumstances. All overtime and compensatory time shall be administered in compliance with the *Fair Labor Standards Act*.

**Sec. 505. Accountability for work time.**

All employees shall accurately reflect the hours worked by the employee in a form prescribed by the county manager for this purpose.

**Sec. 506. Travel time.**

(a) County employees shall be credited with hours of work for all time spent in official travel, to include time spent travelling during non-duty hours. Official travel is travel performed at the direction or approval of the department head. An employee is deemed to be in an official status from the time of his or her departure from a designated location in the county and until arrival at his or her destination. Time spent travelling from the destination until returned to the county shall also be deemed official travel.

(b) The county manager shall establish policies and procedures to implement and administer travel time credit, taking into account standards to require the least-cost means of travel and applicable regulations of the United States Department of the Treasury.

**Sec. 507. Reduction in force.**

(a) In the event that a reduction in force (“RIF”) becomes necessary, employees will be notified a minimum of 30 days prior to their dismissal date due to the RIF. Consideration will be given to the needs of the county, seniority, and relative job performance in determining those employees to be retained.

(b) Any regular employee who is otherwise in good standing at the time of his or her dismissal due to a RIF shall be referred for interview and evaluation for any vacancy for which his or her training and experience qualify him or her for a period of one year from the date of the official RIF notification, or until he or she should decline an interview for or an offer of a position at the same or higher classification held at the time of the RIF, whichever should first occur.

(c) The county manager shall establish further policies and procedures to implement this section.

**Sec. 508. Performance evaluations.**

The County Manager shall establish policies and procedures to implement a performance management system that will include planning, managing, and appraising employee performance based on a 12-month work cycle.

**Sec. 509. Objection to material in personnel file for employees not subject to the State Human Resources Act.**

(a) This section shall only apply to employees and former employees whose positions are or were not subject to the State Human Resources Act and applicants for positions which were not subject to the State Human Resources Act.

(b) An employee, former employee, or applicant for employment who objects to material in the employee's file may place in his or her file a written statement relating to the material the employee considers to be inaccurate or misleading.

(c) An employee who objects to material in the employee's file because he or she considers it inaccurate or misleading may seek to amend or attach a rebuttal of such in accordance with the grievance procedure of Article VIII. A former employee or applicant may seek to amend or attach a rebuttal of material he or she considers inaccurate or misleading by written request to the county manager. If the department head, county manager, or board of commissioners determines that material in the employee's file is inaccurate or misleading, the human resources director is authorized to amend or attach a rebuttal to the inaccurate material to ensure that the file is accurate. Nothing in this subsection shall be construed to permit an employee to appeal the contents of a performance appraisal or written disciplinary action.

## **ARTICLE VI. EMPLOYEE BENEFITS**

### **Sec. 601. Insurance programs.**

The county shall make group disability and group hospitalization insurance programs available for employee participation. Employees may enroll in the programs at their election and in accordance with the provisions of the social security program. Hospitalization coverage is available only to those permanent employees working 30 hours or more per week.

### **Sec. 602. Local governmental employees' retirement system.**

Each employee other than law-enforcement officers who join the law-enforcement officers' benefit and retirement fund shall be required to join the local governmental employees' retirement system as a condition of employment.

### **Sec. 603. Social security.**

Each county employee shall be covered by the old age, survivors and disability insurance program and may become eligible for disability or retirement benefits in accordance with the provisions of the social security program.

### **Sec. 604. Law enforcement officers' benefit and retirement fund.**

Law enforcement officers primarily engaged in enforcing the criminal laws of the state are eligible for membership in the law enforcement officers' benefit and retirement fund.

### **Sec. 605. Holidays.**

(a) The County shall observe the same holidays as the State of North Carolina. All employees in a pay status the day before the holiday shall receive holiday pay.

(b) The County manager shall develop and implement holiday pay administration procedures consistent with applicable federal and state laws.

### **Sec. 606. Annual leave.**

(a) It shall be the policy of Cumberland County to grant paid annual leave as a privilege for its employees.

(b) All employees subject to the Local Government Employees' and Law Enforcement Officers' Retirement Systems who are in pay status for ten or more workdays, 80 hours, in a pay period earn annual leave.

The following table indicates the amount of annual leave accrued per pay period based on years of *Cumberland County* service:

<u>Leave Code</u>	<u>Years of Completed Aggregate Service</u>	<u>Hours Earned Each Pay Period</u>	<u>Days Earned Annually</u>
1	0-2	3.7000	12.0250
2	2	4.6167	15.0043
3	5	5.5500	18.0375
4	10	6.4667	21.0168
5	15	7.4000	24.0500
6	20	8.3167	27.0293

The following table indicates the amount of annual leave accrued per pay period based on years of *Cumberland County* service for *Law Enforcement Officers Only*.

<u>Leave Code</u>	<u>Years of Completed Aggregate Service</u>	<u>Hours Earned Each Pay Period</u>	<u>Days Earned Annually</u>
A	0-2	3.9500	12.0117
B	2	4.9333	15.0018
C	5	5.9333	18.0428
D	10	6.9167	21.0234
E	15	7.9000	24.0234
F	20	8.8833	27.0135

(c) Employees whose normal work week is less than or more than 40 hours per week shall earn leave proportionately.

(d) Employees shall be credited with annual leave accrued during time lost due to on-the-job injuries.

(e) Annual leave may be accumulated without any applicable maximum until June 30 of each calendar year. Annual leave accumulations over 240 hours for 40-hour employees and 257 hours for 171-hour employees shall be transferred to sick leave on July 1.

(f) Upon separation from service, employees scheduled to work 40 hours per week, shall be paid for their annual leave balance, up to a maximum 240 hours. Employees working a 171-hour monthly schedule shall be paid for their annual leave balance, up to a maximum of 257 hours. Upon separation from service, employees scheduled to work less than 40 hours per week, shall be paid for their annual leave balance, up to a maximum 120 hours.

(g) Annual leave shall be authorized in minimum increments of one-quarter hour periods.

**Sec. 607. Sick leave.**

(a) *Sick leave credits.* All employees subject to the Local Government Employees' and Law Enforcement Officers' Retirement Systems who are in a pay status for ten or more workdays, 80 hours, in a pay period earn sick leave at the rate of 3.7000 hours per pay period or 12.0117 days

per year. Employees whose normal work week is less than or more than 40 hours per week shall earn sick leave proportionally.

(b) Employees shall be credited with sick leave accrued during time lost due to on-the-job injuries. Sick leave accrued during this period of disability shall be manually posted to the monthly leave log.

(c) Sick leave may be used for illness or injury which prevents an employee from performing usual duties and for the actual period of temporary disability and for:

(1) Medical appointments; and

(2) Illness of a member of the employee's immediate family. For purposes of this section, immediate family shall be as defined under the *Family and Medical Leave Act*.

(d) Sick leave shall be authorized in minimum increments of one-quarter hour periods.

(e) Sick leave is cumulative indefinitely.

(f) The department head may require a statement from a health care provider or other acceptable proof that the employee was unable to work due to personal illness, family illness, or medical appointment.

(g) Only scheduled workdays shall be charged in calculating the amount of leave taken. Holidays shall not be counted as sick leave.

(h) No payment shall be made for accumulated sick leave credits at the time of the employee's separation.

(i) Unused sick leave shall be accepted for employees hired, rehired or reinstated within three years of their last workday provided the employee earned sick leave while under the State Employees' and Teachers' Retirement System, Local Government Employees' Retirement System, or Law Enforcement Officers' Retirement System.

#### **Sec. 608. Family and medical leave.**

(a) Family and medical leave shall be provided in compliance with the *Family and Medical Leave Act of 1993*, as amended ("FMLA") and the rules and regulations of the U.S. Department of Labor concerning FMLA. The County manager shall develop and implement family and medical leave policies and procedures consistent with the FMLA.

(b) The county shall elect to require that employees shall use paid leave concurrently with any approved FMLA leave.

**Sec. 609. Worker's compensation.**

- (a) An employee absent from duty because of sickness or disability covered by worker's compensation laws may receive only those benefits provided under the worker's compensation laws of the state.
- (b) During any period of sickness or disability, the employee shall receive all county benefits as if the employee were on the job.
- (c) Any employee injured while performing duties of the position that he or she holds must report this injury immediately to the department head. The department head shall immediately notify the human resources and risk management directors of the reported injury.

**Sec. 610. Military leave.**

Military leave shall be granted in accordance with the provisions of federal and state law. The county manager shall publish procedures implementing these provisions.

**Sec. 611. Civil leave.**

An employee called for jury duty, or as a court witness for the federal or state governments or a subdivision thereof, shall be entitled to leave with pay for such duty in addition to keeping fees received for such duty.

**Sec. 612. School participation leave.**

(a) An employee who is a parent, guardian, or person standing in loco parentis of a school-aged child shall be granted up to four hours of paid leave per fiscal year so the employee may attend or otherwise be involved at that child's school, subject to the following conditions:

- (1) The leave shall be at a mutually agreed upon time between the department head and the employee.
- (2) The department head may require an employee to provide the employer with a written request for the leave at least 48 hours before the time desired for the leave.
- (3) The department head may require that the employee furnish written verification from the child's school that the employee attended or was otherwise involved at that school during the time of the leave in a form prescribed by the county manager

(b) For the purpose of this section, "school" means any (i) public school, (ii) private church school, church of religious charter, or nonpublic school described in Parts 1 and 2 of Article 39 of Chapter 115C of the General Statutes that regularly provides a course of grade school instruction, (iii) preschool, and (iv) child care facility as defined in G.S. 110-86(3). (1)The employee must provide the department head written verification from the child's school that the employee attended or was otherwise involved at that school or daycare during the time of the leave in the form prescribed by the county manager. *State Law Reference: G.S. § 95-28.3.*

**Sec. 613. Leave to obtain relief under Chapters 50B or 50C.**

No employee shall be discharged, demoted, denied a promotion, or disciplined because he or she took reasonable time off from work to obtain or attempt to obtain relief under Chapter 50B or Chapter 50C of the North Carolina General Statutes. Any employee who is absent from the workplace for this purpose shall comply with all usual time-off policies and procedures, including notice to the employee's supervisor, unless an emergency prevents the employee from doing so. *State Law Reference: G.S. § 95-270.*

**Sec. 614. Wellness clinic leave.**

Employees shall be granted leave for visits from the employee's worksite to the county employees' wellness clinic under such terms as may be established by the county manager.

**Sec. 615. Leave without pay.**

A probationary or regular employee may be granted a leave without pay for up to six (6) months by the department head. This leave may be used for extended personal or family disability or other personal reasons. Leave without pay for purposes of covered service in the military or Public Health Service shall be granted in accordance with federal law.

**Sec. 616. Voluntary shared leave.**

The county manager is authorized to establish rules and procedures whereby employees may donate annual leave to fellow employees who have exhausted all accumulated leave and are out of work for an FMLA-qualifying reason or for reasons of extreme hardship.

**Sec. 617. Administrative leave with pay.**

The county manager and department heads are authorized to place an employee on administrative leave with pay when it is determined to be in the best interest of the county and only after prior consultation with the human resources director. Any proposal to extend administrative leave with pay more than thirty (30) days must be approved in advance by the county manager. Administrative leave with pay shall not be construed as an adverse personnel action and is not grievable.

## **ARTICLE VII. EMPLOYEE DISCIPLINE**

### **Sec. 701. Progressive discipline.**

- (a.) Discipline of employees shall be progressive and shall take into consideration the employee's years of county service and quality of job performance. Progressive discipline may take the form of written warnings, suspension without pay, demotion or dismissal.
- (b) The county manager and/or department heads, as appropriate, shall publish in writing the general categories of conduct which warrant the various degrees of progressive discipline. These rules shall be applied uniformly throughout the county and/or applicable department.
- (c) A copy of all department disciplinary rules shall be filed with the county human resources director. Department heads shall insure that current county and department disciplinary rules are communicated to all employees.
- (d) Nothing contained herein shall limit the authority of the department head pursuant to section 703.

### **Sec. 702. Dismissal of temporary or probationary employees.**

- (a) A temporary or probationary employee whose work or conduct is not satisfactory may be dismissed at any time by the department head. The department head must inform the employee of the reason for the dismissal in writing.
- (b) A temporary or probationary employee shall not have the right to submit a grievance or appeal the employee's dismissal except where the employee claims that the dismissal was in violation of law.

### **Sec. 703. Dismissal of regular employees.**

- (a) A regular employee whose work is not satisfactory shall be notified of the performance deficiency by the department head. The employee's deficiencies shall be explained in writing and the employee shall be advised of those actions the employee must take to bring the employee's work to an acceptable level. The employee shall sign and date such notice. After a reasonable time, the employee may be dismissed in accordance with section 704 if the employee continues to fail to perform at an acceptable level.
- (b) The dismissal of a regular employee other than for performance deficiencies shall only be for good cause and after a pre-discipline conference as required by section 704. Grounds for dismissal include, but are not limited to, the following:
  - (1) conduct for which no reasonable person should expect to receive prior warning; or
  - (2) job related conduct which constitutes a violation of state or federal law; or

- (3) conviction of a felony or an offense involving moral turpitude that is detrimental to or impacts the employee's service to the county; or
- (4) the willful violation of any written departmental disciplinary policy issued or approved by a department head and filed with the county personnel director; or
- (5) the willful violation of any written county disciplinary policy issued or approved by the county manager and filed with the county personnel director; or
- (6) the willful violation of any written county or departmental safety rules or regulations; or
- (7) conduct unbecoming an employee that is detrimental to the county's service; or
- (8) the abuse of client(s), patient(s), or a person(s) over whom the employee has charge or to whom the employee has a responsibility, or of an animal owned by or in the custody of the county; or
- (9) falsification of an employment application or other employment documentation; or
- (10) insubordination, which is the willful failure or refusal to carry out a reasonable order from an authorized supervisor; or
- (11) absence from work after all authorized leave credits and benefits have been exhausted; or
- (12) unexcused absence from work without leave; or
- (13) inexcusable neglect of duty; or
- (14) gross inefficiency in the performance of duties; or
- (15) dishonesty with respect to any aspect of duties; or
- (16) engaging in political activity in violation of the code of ethics, section 501.

**Sec. 704. Dismissal authority.**

- (a) Subject to the provisions of section 103, department heads have the authority to dismiss employees subordinate to them and the county manager has the authority to dismiss department heads subject to the disciplinary authority of the county manager.
- (b) Prior to dismissal, the dismissing authority shall notify the employee in writing of the proposed dismissal. The notice shall include the reason(s) for the proposed dismissal and a summary of the facts that constitute the basis for the proposed dismissal. The dismissing authority

shall inform the employee of the date, time, and place when the employee may explain the employee's side of the matter at a pre-discipline conference.

(c) In those cases where the dismissing authority determines that immediate removal of the employee from the job would be in the best interest of the department, the employee shall be placed on administrative leave with pay until a pre-discipline conference can be held.

(d) The employee shall be afforded a pre-discipline conference before the dismissing authority and a third person. The third person shall be a county employee or representative, not a member of that department, selected by the dismissing authority after consultation with the human resources director. The purpose of the pre-discipline conference is fact-finding, and, therefore, the employee is not entitled to have a representative or attorney at the conference. The employee shall be given an opportunity to present facts or reasons why the employee should not be terminated at the conference. The pre-discipline conference shall normally be conducted within 24 hours after the employee is notified in writing of the employee's proposed dismissal. Based on the employee's responses to the charges, the dismissing authority should determine whether there are reasonable grounds to believe that the charges are true, and if true, whether there are any reasons that would warrant the taking of less serious disciplinary action.

(e) If the dismissing authority finds the charges against the employee are true and that dismissal is appropriate, the dismissing authority shall dismiss the employee and notify the employee of the dismissal in writing. The written notice of dismissal shall state the specific acts or omissions that are the basis of the dismissal. If the dismissing authority is unable to determine that the employee should be dismissed at the time of the pre-discipline conference, the employee shall be placed on administrative leave with pay until the dismissing authority makes a determination to dismiss or reinstate the employee.

(f) When an employee is dismissed, the dismissing authority shall immediately submit a copy of the written notice of dismissal setting forth the specific acts or omissions that are the basis of the dismissal to the human resources director.

### **Sec. 705. Suspension.**

(a) During the investigation, hearing or trial of an employee on any criminal charge, or during any administrative or civil proceeding which reflects or could reflect upon the employee's continued fitness for public service, the department head may place the employee on administrative leave with pay.

(b) Employees involved in repeated infractions of written work rules or in conduct described in section 703 which do not warrant dismissal, may be suspended by the department head, without pay, for a period not to exceed ten workdays or eighty (80) hours, whichever is less.

(c) Prior to suspending an employee, a department head shall provide the employee written notice of the proposed action and conduct a pre-discipline conference in accordance with the procedures outlined in section 704.

**Sec. 706. Demotion.**

(a) An employee whose work fails to meet the requirements for his position may be demoted, rather than dismissed, by the department head if the employee shows promise of becoming a satisfactory employee in a lower position. The employee may be demoted to any position for which the employee is qualified.

(b) Prior to demoting an employee, a department head shall provide the employee written notice of the proposed action and conduct a pre-discipline conference in accordance with the procedures outlined in section 704.

## ARTICLE VIII. GRIEVANCES

### Sec. 801. Filing a grievance.

(a) A grievance is a complaint by an employee alleging a violation of local, state or federal law or concerning a term or condition of employment, to include but not be limited to, adverse personnel actions. Performance evaluations, written warnings, the department's organization, staffing, method of operation, hours, or the employee's assignment, classification, salary or benefits are not subject to grievance.

(b) The employee shall make known his grievance within ten days of his or her gaining knowledge of the grievable condition or within ten days after he or she should have had knowledge of the grievable condition.

(c) Grievances shall be settled on an informal basis by the employee and his immediate supervisor, if possible. Grievances shall be discussed by the immediate supervisor and the employee within two working days following the employee's notification to the immediate supervisor of the grievance. The employee shall state, in at least general terms, the nature of the employee's grievance when the employee initially notifies the employee's immediate supervisor of the grievance.

(d) Grievances which are not settled by the employee and the immediate supervisor may be appealed. The appeal procedure may be a two-step process, first to the department head and then, if not resolved to the satisfaction of the employee, to the county manager. The employee shall submit an appeal in writing to the department head within ten days after the date of the informal conference with the employee's immediate supervisor. The department head shall, within five working days, make a decision on the appeal and issue a written reply to the employee.

(e) The employee may appeal to the county manager within ten working days after the date on which the department head issued a written reply to the employee. The county manager shall make a decision on the appeal and issue a written reply. The county manager may make the decision solely on the written materials provided by the employee and the department head; direct the employee, the department head or the human resources director to provide further information; or conduct a hearing and question witnesses. If the county manager decides to conduct a hearing and question witnesses, the employee shall be entitled to be represented by an attorney at the hearing. The county manager shall establish the rules as to how appeal hearings will be conducted. The action of the county manager shall be final except for those cases discussed in subsection (f) below.

(f) Department heads under the disciplinary authority of the county manager may file a grievance with the county manager. Grievances by department heads which are not resolved by the county manager may be appealed to the board of county commissioners. The decision of the board of commissioners shall be final.

(g) The board of county commissioners, in its discretion, may accept an appeal in any other case and its decision in such case shall be final.

(h) All appeals shall be in writing, shall state specifically the basis for the appeal, the action the appellant desires taken and the reasons for it. Copies of all appeals, responses to appeals, reports of hearing, and judgments arising out of a grievance shall become a permanent part of the employee's official personnel record.

(i) Appeal and grievance rights of employees subject to the *North Carolina Human Resources Act* shall be conducted in accordance with state personnel regulations governing employees of local governments.

## **Sec. 802. Grievances based on sexual harassment.**

(a) *Policy.* Sexual harassment of employees or applicants for employment, in any form, is prohibited. No personnel decisions shall be made on the basis of a granting or denial of sexual favors. All employees are guaranteed the right to work in an environment free from sexual harassment. The county manager shall establish policies and programs to ensure that worksites are free from sexual harassment. Department heads shall be responsible for preventing and/or correcting sexual harassment and for ensuring that no internal interference, coercion, restraint, or reprisal is taken against any person complaining of alleged sexual harassment.

(b) *Definition.* "Sexual harassment" is the deliberate, unsolicited and unwelcomed verbal and/or physical conduct of a sexual nature or with implications which:

(1) Has or may have an effect on an employee's wages, terms or conditions of employment based on the employee's acceptance or rejection of such conduct;

(2) Creates an intimidating, hostile, or offensive working environment; or

(3) Interferes with an individual's work performance. Examples of sexual harassment include, but are not limited to, intentional physical contact (touching, patting, pinching), verbal abuse (offensive jokes, requests for sexual favors, demeaning statements), and taking employment action on the basis of sexual considerations.

(c) *Reporting sexual harassment.* Any county employee who feels he or she has been sexually harassed or believes another employee may be the subject of sexual harassment may file a grievance. A grievance may be filed with:

(1) The employee's immediate supervisor in the case where the alleged harasser is a co-worker or member of the public;

(2) The appropriate department head in those cases where the alleged harasser is in the direct supervisory chain of the employee and/or where the supervisor of the alleged harasser had knowledge of the harassment and took no action to prevent it;

(3) The county manager, if the department head either was the harasser or had knowledge of the harassment and took no action to prevent or remedy it; or

(4) The personnel director, if the employee does not wish to file a grievance under the departmental grievance system.

## ARTICLE IX. CLAIMS AGAINST COUNTY OFFICERS AND EMPLOYEES

### Sec. 901. Definitions.

- (a) *Act, conduct, duties performed.* The terms "act," "conduct" and "duties performed" shall include any activity undertaken by an employee or officer which reasonably appears to be within the scope of duties of such employee or officer or which the employee or officer reasonably believes to be within the scope of his or her duties of employment based upon all the facts and circumstances known to the employee or officer at the time.
- (b) *Challenged conduct.* "Challenged conduct" shall include all acts or conduct, whether it be an act of commission or omission, which is alleged to be unlawful or not authorized by law, whether or not such conduct is, in fact, improper, unlawful or not authorized by law.
- (c) *Claim.* "Claim" shall include any demand for compensation, whether referred to as all the possible rights accrued under a cause of action or as one particular item or issue for which relief is sought.
- (d) *Covered.* "Covered" under the meaning of this article shall include an employee or officer, if the employee's or officer's action was such as is described under subsection (a) of this section, and the employee or officer has not breached any of the five exclusion criteria listed in section 902.
- (e) *Employees and officers.* The terms "employees" and "officers" as used herein shall include all former and present elected officials; appointed officials, whether serving as employees of the county or as volunteer members of boards or committees appointed by the board of commissioners or appointed by other lawful authority; employees or officers of the county or of any agency of the county, including the sheriff's office or the office of the register of deeds, who might hereafter have claims filed, or judgments entered against them for duties performed when they were employees or officers of the county.

### Sec. 902. Policy of county.

- (a) It shall be the policy of the county to defend its employees and officers against civil claims and judgments which arise out of the performance of their official duties prescribed or approved by the board of county commissioners or otherwise directed by law, and to satisfy such claims and judgments, either in part or whole, unless it is determined that the employee or officer violated the following exclusion criteria in that he or she willfully:
- (1) Acted or failed to act because of actual fraud, corruption or actual malice;
  - (2) Acted or failed to act as a result of, or at a time when, the employee or officer was intoxicated or under the influence of any illegal drugs used or consumed either before or during work hours, or was under the influence of any lawfully prescribed drugs that substantially impaired their judgment while on duty;

(3) Acted or failed to act in a specific factual occurrence, except in emergencies or in the existence of extenuating circumstances, directly contrary to the clear instructions from his or her superior, or directly contrary to the clear advice of the county attorney;

(4) Acted or failed to act in such manner as to constitute a willful criminal act (as, for example, misappropriation of property or funds); or

(5) Acted or failed to act in such a manner as to constitute gross negligence, inexcusable neglect or wanton or willful misconduct.

(b) An employee or officer shall give the county attorney written notice of a claim within 72 hours of the employee or officer receiving notice of the claim.

(c) The determination of whether the employee or officer has breached the exclusion criteria, and is thereby not covered within the meaning of this article, shall be made through the following preliminary screening procedure which may be initiated by the sheriff, the county attorney or the county manager upon notice of the possibility of a civil claim.

(1) Civil liability investigation by the internal affairs unit of the sheriff's office,

(2) Review by the county attorney,

(3) Report by the sheriff's office legal advisor to the county attorney,

(4) County attorney's interview with employee or officer and subsequent determination, or

(5) Direct appeal by an employee or officer to the board of county commissioners.

(d) If it is determined that the county will defend such officer or employee, the county shall notify such officer or employee immediately and provide the employee or officer a reasonable period of time to decide to accept the county's or hire private counsel.

### **Sec. 903. Litigation assistance.**

Legal representation of any covered employee or officer shall be provided by the county attorney or his or her designee. Court costs and miscellaneous expenses of defending any action shall be provided by the county.

### **Sec. 904. Vicarious liability assistance account.**

(a) Any covered employee or officer named as a defendant in a civil suit, who took no direct action and was only remotely or indirectly involved in the complained of incident, shall be provided legal representation by the county attorney or his or her designee.

(b) In the event a judgment is rendered against a covered employee or officer under a claim subject to this section, the county may pay out of its vicarious liability assistance account in aid of

settlement of any judgment, amounts up to the account at the time the defendant's request for payment is approved by the board of county commissioners. No payment made shall include punitive damages.

**Sec. 905. Limitations of coverage.**

(a) The policies specified herein shall not be applicable unless notice of the claim or suit is given to the board of county commissioners prior to the time the claim is settled or civil suit is litigated and judgment is entered.

(b) This provisions of this article shall not be interpreted in any way to relieve any insurance company of its obligation under any insurance policy to protect the interests of any insured under such policy, or to reduce or eliminate the rights of any officer or employee of the county against any other party. Further, except as expressly stated herein, this article is not to be interpreted as a waiver of any rights the county has against any party.

(c) Notwithstanding any of the provisions of this article, the board of commissioners hereby expressly reserves its governmental immunity from suit against the county or other county employees. It further expressly states that the purpose of this article is to establish the county's policy concerning the defense of employees or officers pursuant to G.S. § 160A-167(c).

(d) No payment of judgments shall be made unless the covered employee or officer makes a request to the board of county commissioners and the board determines that:

(1) The employee or officer, whether present or former, acted in good faith and reasonably at all times during the conduct upon which the claim arose; and,

(2) The employee or officer, upon being specifically informed that the employee's or officer's activities were illegal, took reasonable steps to mitigate damages of the injured party; or, upon being specifically informed that the employee's or officer's activities may be illegal, took reasonable steps to clarify the legality of the employee's or officer's actions, and to mitigate damages if it is learned that the employee or officer is acting illegally, unless an emergency should preclude such inquiry.

**Sec. 906. Procedure for settlement of administrative claims.**

(a) The county manager shall receive and investigate claims. The county manager shall determine whether any such claim arises from an accident, occurrence, or omission which is covered by existing liability insurance and shall promptly forward to the appropriate county insurance carrier any claim covered by such liability insurance. If the claim is uninsured, then the county manager shall cause a prompt investigation and process such claim.

(b) The county manager as provided in subsection (a) shall receive and investigate every judicial or administrative process served upon the county or upon a county employee or officer which makes a claim against the county or an employee or officer of the county. The county manager shall forward a copy of every judicial or administrative process to the county attorney's office upon receipt. The county manager shall promptly inform the county attorney whenever any

judicial or administrative action is not covered by liability insurance and is to be processed as a retained risk. Under such circumstances, the county attorney may undertake or otherwise provide for the defense of the county and, where consistent with county policy and uniform standards, its employees or officers.

(c) The county manager is authorized to compromise or to settle any claim made against the county or any employee or officer of the county that is neither covered by insurance nor by governmental immunity whenever the county manager determines that:

- (1) There is no insurance coverage for the claim;
- (2) The amount of the proposed settlement or compromise is \$5,000.00 or less;
- (3) There is legal basis for the claim asserted;
- (4) The claim of the complaining party is meritorious; and
- (5) With respect to claims against county employees or officers, the compromise or settlement of the claim by the county on behalf of the employee or officer is consistent with the policy and uniform standards of the county in such matters.

(d) The county manager may deny a claim for good reason.

(e) The county manager shall consult with the county attorney before the denial, settlement, or compromise of a claim pursuant to this section.

(f) The county manager shall maintain a record of every claim which is settled or compromised pursuant to this section. Such records shall be in sufficient detail to disclose the nature of the settlement, the amount and terms of the settlement, and the parties thereto. The records so maintained shall be public records. The county manager shall make a report to the board of commissioners of claims which the county manager has settled or compromised on the agenda for the board's next meeting.

This ordinance shall become effective at the time it is adopted and shall repeal and supersede the Cumberland County Personnel Ordinance in effect at the time this ordinance is adopted.

Adopted by the Board of Commissioners in regular meeting June 20, 2016.

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W. Marshall Faircloth, Chairman

Attest:

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Candice H. White, Clerk to the Board