

3.11. Copyright Law

Council employees have access to a wide variety of copyrighted materials, including books, textbooks, videotape, films, photographs, and computer software. It is unlawful to make copies of copyrighted materials, except brief excerpts to be used for research or instructional purposes, without a license or the permission of the copyright owner. Employees who are requested to make copies of copyrighted materials in a manner that exceeds these guidelines should refer the matter to the Clerk.

3.12. Use of Equipment, Supplies and Facilities

3.12.1 The equipment, supplies and facilities of the Council, including computer facilities and Internet access, are intended for official business and not for the private use of employees. Although brief, personal telephone calls may occasionally be made or received, employees may use personal credit cards for any toll calls.

3.12.2 Employees are not permitted to use passwords (other than his or her own) to access electronic files or retrieve stored telephone messages unless authorized to do so or unless they have been granted prior authorization from the Council member or employee whose files or messages are to be accessed.

3.12.3 All passwords and codes are the property of County Council and must be reported to the Clerk's office. No employee may use a password or voice-mail access code that has not been issued to that employee or that is unknown to the Council. Any changes made by employees to passwords must be reported to the Clerk's office.

3.12.4 Council staff shall not use office equipment, including telephones, electronic mail, the Internet, office computers or other office equipment, to download music or pornography, to play computer games or to conduct a commercial business or to call any 900 number. While Internet usage is intended for job-related activities, incidental and occasional use is

permitted within reasonable limits. Should there be a complaint to the Office Manager/Clerk of Council regarding use by staff of the above-mentioned office equipment to access music, pornography, computer games, conduct a commercial business or call any 900 numbers, excessive use will be monitored/intercepted upon the approval of a majority of members of New Castle County Council. County Council strives to maintain a workplace free from harassment. Therefore, Council prohibits the use of office equipment, including telephones, electronic mail, the Internet, or office computers in a manner that is disruptive to others, harmful to morale or that shows disrespect for others. Examples of unacceptable content may include, but are not limited to, sexual comments or images, racial slurs, gender-specific comments or any other comments that could reasonably offend someone particularly on the basis of race, gender, religious or political beliefs, national origin, sexual orientation or any other characteristic protected by law. Violation of this policy may lead to discipline up to and including termination.

3.13. Outside Employment

It is expected that the employee's principal work commitment shall be to the Council. Accordingly, any other outside employment that utilizes the same skills, training, and experience for which the employee is compensated by the Council may be accepted only with the written approval and upon terms acceptable to the Clerk. Among the factors to be considered by the Clerk is whether the outside work curtails or is in any way inconsistent with the employee's primary employment responsibility to the Council. Under no circumstances may authorized outside work be done during the employee's regular Council working or on-call hours or during any other time needed to fulfill the employee's obligations to the Council, nor may the Council's offices, equipment, materials, vehicles, name or personnel be utilized for any outside work.

3.14. Personnel Files

Employees shall have a reasonable opportunity to inspect their personnel files upon request. Unless there is reasonable cause, inspections shall be limited to once a year. In accordance with State law, they shall not be entitled to a copy of their file, but may take notes. If an employee disagrees with any information in the personnel file, and the Council refuses to remove or correct such information to the satisfaction of the employee, the employee may submit a written statement explaining the disagreement together with evidence supporting the employee's version. Such statement shall be maintained as part of the employee's personnel file and shall be included in any transmittal of the file to a third party and shall be included in any disclosure of the contested information made to a third party. The confidentiality of the personnel file shall be maintained, and thus only the employee, the immediate supervisor, which shall be defined in these Rules as the Council Member to whom the employee is assigned, and an approved representative of the Council may access the file for a lawful purpose. A "representative of the Council," as used in the Rules, shall mean only a Council Member or an employee of the Council who has expressly been authorized by the Council to have access to the file.

3.15. Reductions-in-Force

The Council may lay-off employees either as a result of reductions in the size of the workforce, restructuring of responsibilities, or elimination of specific positions. The selection of employees to be laid-off shall be based on criteria determined by the Council at the time.

Chapter 4. Hours and Wages

4.1. Hours of Work

Employees will be assigned work hours, which are subject to change. The regular starting and finishing times are 9 a.m. to 5 p.m. with one hour for lunch. An employee's working hours may be changed if approved by his or her direct supervisor and a majority of Council and upon advice to the President and Clerk. Employees shall work a minimum of seventy (70) hours per pay period.

4.1.1. Work hours may be further amended to afford a County Council employee the opportunity to pursue an advanced college degree, provided that the employee reports to the office a minimum of thirty-five (35) hours per week and provided that the weekly schedule is permanent for each semester. In order to take advantage of this section, an employee must have five (5) years' seniority working for County Council and must provide documentation (enrollment verification) that he or she is registered for an advanced program at an accredited college or university. Further, any hours change during this pursuit and pursuant to this section must be approved by the employee's direct supervisor, a majority of Council and upon advice to the President and Clerk of Council.

4.2. Telecommuting

A. Objective. To establish a telecommuting policy and procedures to allow eligible New Castle County Council employees to telecommute for the employee's convenience.

B. Definitions.

- "Alternative work arrangement" is a work arrangement that differs from an employee's on-site work location in Council offices to accommodate the needs of employees while meeting the operational needs of Council. Each alternative work arrangement requires the discretionary approval of the employee's supervisory Council member and a majority of Council members.
- "Alternative work location" is an employee's home or another location as agreed upon and reflected in the Telecommuting Agreement entered into between the employee and the supervisory Council member as a representative of Council and approved by a majority of Council.

C. Policy Purpose.

Telecommuting is the concept of working from home or another approved alternative location on a part-time basis. Telecommuting is not a formal, universal

employee benefit, nor is it an entitlement. Rather, it is an alternative work arrangement. Telecommuting is permitted as an accommodation for and at the convenience of the employee while ensuring the needs of Council are met. Council reserves its right to refuse to make telecommuting available to an employee. Additionally, a telecommuting agreement can be terminated at any time, subject to prior notice to the employee of 14 calendar days. Furthermore, employees are not required to telecommute. However, employees may request to telecommute if the option is made available.

This policy sets forth guidelines for telecommuting. Telecommuting may be appropriate depending on the operational needs of Council and the essential functions of the position. Telecommuting requests will be considered on a case-by-case basis, consistent with operational needs. Telecommuting may be approved subject to the discretion of the employee's supervisory Council member and a majority of Council.

Council recognizes the value of offering employees an opportunity to telecommute. This policy provides employees with flexibility and new opportunities to perform their work and increased options for work-life balance, provides for continuity of services during an emergency when the regular worksite is inaccessible, improves employee morale and job satisfaction, assists in attracting and retaining employees, reduces employee absenteeism and employee commute times and costs, and increases productivity, while adhering to relevant laws and legal authority.

D. Eligibility for Consideration.

4.2.1. *Telecommuting Procedure.* An employee who wishes to be considered for approval to telecommute must submit a written request along with a completed copy of the Telecommuting Agreement, attached hereto and incorporated herein by reference, to their supervisory Council member¹ and the Clerk. The supervisory Council member with a majority of Council may approve the request provided that there is no significant negative impact on Council operations.

The supervisory Council member should work with the employee to evaluate the telecommuting request, considering telecommuting suitability criteria including the examples that follow, and maintaining consistency and equity of decisions across Council. When evaluating a telecommuting request, specific position requirements, the impact on Council, any employee performance concerns, and whether the employee can perform the job duties of the position effectively while telecommuting are to be considered.

To be eligible for consideration to telecommute, an employee must have no record of performance problems or disciplinary action within the

¹ In the limited circumstances related to the Deputy Clerk and staff in the Office of the Auditor, the applicable employees must submit necessary requests to the Clerk of Council and the County Auditor, respectively. Hereafter, as the context dictates and consistent with the limited applicability noted above, the term "supervisor," which shall be understood to mean the Clerk or Auditor, as circumstances warrant, is to be read in place of the term "supervisory

Council member.”

preceding 2 years, unless circumstances arise which require telecommuting for continuity of operations. A request for an exception to the eligibility requirements must be submitted in writing by the supervisory Council member to and considered by Council, which shall approve or deny the request. In the case of a new hire, Council may conduct a thorough reference check with past employers to determine whether an employee is eligible.

Each employee Telecommuting Agreement is expressly conditioned upon and shall not take effect unless and until approved by a majority of Council. Telecommuting does not alter the employee's duties, obligations, responsibility, or terms and conditions of employment with Council. Moreover, telecommuting employees remain subject to compliance with all applicable laws and Council and County rules, policies, practices, and procedures. In addition, professionalism in terms of job responsibilities, work output, and constituent orientation will continue to follow the standards set by the supervisory Council member and Council, generally.

If there is uncertainty about the potential effectiveness of a proposed telecommuting arrangement, the supervisory Council member may consider allowing the employee to telecommute on a pilot basis. A review period should be established, upon the completion of which the supervisory Council member may approve or disapprove the continuation of the telecommuting arrangement.

4.2.2. *Telecommuting Time Allocations.* Employees who are approved to telecommute, subject to the terms of an approved Telecommuting Agreement, may do so up to 60% of a pay period, for a maximum of 42 regular work hours. Employees must spend a minimum of 40% of their work hours (*i.e.*, at least 28 hours) per pay period personally at the employee's assigned work location in the Council offices. In the case of special temporary circumstances as discussed at Policy Section 4.2.15., which for example includes a situation where an employee has contracted a contagious disease and must temporarily quarantine, these percentage requirements may be waived at the discretion of the employee's supervisory Council member and approved pursuant to Policy Section 4.2.15., with notification to the Clerk.

4.2.3. *Telecommuting Work Location.* The employee's alternative work location must be in Delaware, Maryland, New Jersey, or Pennsylvania. The alternative work location is not intended to permanently replace the employee's assigned work location in Council offices. Employees shall continue to use the address for Council offices and Council phone numbers for all communications and email signatures.

The employee's situs of employment remains New Castle County, Delaware. The employee is expected to report to Council offices periodically, as may be required by the employee's supervisory Council member, at a minimum in compliance with the above time allocations. When in-person meetings are called, the meetings will be held in Council

offices, or as otherwise directed by the supervisory Council

member. Moreover, the employee is supervised and receives work instructions by and through Council in New Castle County, Delaware. Furthermore, the employee's employment and performance of work is governed by the laws of the State of Delaware, without regard to choice of law rules.

All employees must agree to submit all state claim disputes arising out of or in connection with their employment to the exclusive jurisdiction of a Delaware state court of competent jurisdiction in New Castle County, Delaware. Additionally, employees must agree to submit all federal law claim disputes arising out of or in connection with their employment to the jurisdiction of the U.S. District Court for the District of Delaware. The laws of the State of Delaware will apply to the Telecommuting Agreement and any claim that arises out of or in connection with any employee's employment while working out of the State of Delaware. No employee shall bring claims in any other forum or seek to apply any law other than the laws of the State of Delaware to an employee's dispute.

4.2.4. *Employee's Obligations.*

A. *Workspace.* Employees who are approved to telecommute must create and maintain an appropriate work environment with a designated workspace and certify as such to the Clerk, in writing. Employees must designate a workspace within the remote work location for placement and installation of equipment to be used while telecommuting. This space must include furniture, which is suitable for long periods of computer work, e.g., a suitable table or desk and chair which meets the same or similar standards as required within an office environment. Suitable furniture, if not already available in their home, must be purchased at the employee's own expense.

Employees are to maintain the workspace in a safe condition, free from hazards and other dangers to the employee and equipment. Council may approve the site chosen as the employee's remote workspace and may direct the design of the workspace. The employee may be asked to submit photos of the workspace at any time to their supervisory Council member and the Clerk. Council, through the Clerk or a designee thereof, is authorized to inspect the employee's alternative work location with 48 hours advance notice to ensure the alternative work location is safe and free from hazards, and to maintain, repair, inspect, or retrieve County- owned equipment, software, data, or supplies.

Employees must immediately report, in writing, to their supervisory Council member and the Clerk any material change to their workspace. Injury resulting from unsafe working conditions at the employee's alternative work location, which is not in the control of Council, shall be at all times the employee's sole responsibility. Any Council materials taken home should be kept in the designated work area at home, not be made accessible to others in the alternative location, and ultimately be returned to Council.

B. *Communication.* The telecommuting employee is responsible for maintaining regular contact with his or her supervisory Council member. The supervisory Council member shall be the telecommuting employee's primary contact within Council. It is expected that the supervisory Council member and the telecommuting employee will act together to keep each other apprised of events or information obtained during the working day.

Employees must be available by phone and email, or virtual meeting where applicable, during the employee's agreed upon work hours. When working, employees are expected to respond to telephone calls and emails promptly. Employees must be available for staff meetings and other meetings deemed necessary by their supervisory Council member. Employees will not hold in-person business visits or meetings with professional colleagues, customers, or the public at their alternative work location.

Telecommuting employees must perform Council work during scheduled work hours. Employees may not engage in activities while telecommuting that would not be permitted at their regular worksite in Council offices. Employees are required to comply with all timekeeping regulations as set forth in County Code, and Council and applicable County policies. Additionally, employees must obtain their supervising Council member's written approval, and ultimately Council's, for any alterations to the employee's work schedule.

- 4.2.5. *Technology and Data Integrity.* Council will not assume responsibility for operating costs, home maintenance, or other costs incurred by an employee in the use of the employee's alternative work location. Examples of such costs include but are not limited to hardware/software repair of non-County issued equipment, telephone equipment, service or repair of any of the above, travel costs which would not otherwise be incurred, office desk or chair expenses, and broadband/internet access.

Employees must comply with all personnel policies and procedures regarding proprietary information, security, and acceptable use of technology resources. Subject to all other applicable Council policies, Council reserves the right to monitor and log, without notice, all telecommuting activity, including email. Employees who are telecommuting should have no expectation of privacy in the use of County-related resources or business. Employees also must use the Cisco Z3 (aka black box) or NetMotion Mobility software, or other similar device assigned to the employee by the County to remotely connect to the office securely and remotely access their work phones to ensure maintenance of operations.

Employees must comply with all County and Council procedures to assure that security measures are in place to protect equipment and data from physical damage, theft, loss, or access by unauthorized individuals. Employees must protect information from modification, destruction, or inappropriate release. This includes protection from family members or

other individuals who may have access to the employee's equipment at the alternative work location.

- 4.2.6. *Office Supplies.* Office supplies will be provided by Council as needed. Out-of-pocket expenses for other supplies will not be reimbursed.
- 4.2.7. *Dependent Care.* Telecommuting is not a substitute for dependent care. All personal activities, including child and dependent care, pet care, housework, yardwork, personal errands, etc. should be done during established break times, lunch time, before, or after work hours only unless approval is requested and received by the employee's supervisory Council member prior to the activity. Council as a whole reserves the right to grant special circumstances as necessary.
- 4.2.8. *Income Tax.* Each employee is responsible for determining any income tax implications of maintaining a home office area and working from home or an alternative work location. Council will not provide tax guidance, nor will Council assume any additional tax liabilities. Employees are encouraged to consult with a qualified tax professional to discuss income tax implications of telecommuting.
- 4.2.9. *Insurance.* Since working from home on a regular basis may affect an employee's home insurance policies, employees are encouraged to inform their insurance company before commencing with telecommuting. If, as a result, the home insurance premium for either contents or buildings is increased, employees may be liable for such costs. Employees should also check that the terms of their mortgage allow for working from home. Council will not provide guidance on these issues, nor will Council assume any liabilities or responsibilities relating to same.
- 4.2.10. *Compensation and Work Hours.* The employee's compensation, benefits, and work status will not change due to participation in the telecommuting program. Likewise, the amount of time an employee is expected to work per day and pay period will not change as a result of participation in the telecommuting program. Moreover, an employee's telecommuting work hours will be consistent with the employee's work hours approved while working personally in Council offices.
- 4.2.11. *Use of Leave.* Any request to use Sick Leave, Vacation, or Personal Leave or any other kind of applicable accrued leave while telecommuting must be requested and approved in the same manner as when an employee is personally working from Council offices.
- 4.2.12. *Personnel Policies.* Each employee must comply with all personnel rules, policies, and procedures regarding confidential and proprietary information, security, and acceptable use of technology resources. Subject to all other applicable policies, an employee's supervisory Council member, in consultation with the Clerk of Council and Counsel to Council, reserves the right to enforce the ability to monitor and access, without further notice, all

telecommuting activities including electronic mail when

County property is utilized. Employees who are telecommuting should have no expectation of privacy in the use of County-related resources or business.

- 4.2.13. *Policy Termination.* An employee may be removed from the telecommuting program at any time, with the requisite prior notice, if the employee does not comply with the terms of the employee's Telecommuting Agreement or this policy. An employee's supervisory Council member may deny, end, or modify a telecommuting agreement for any reason that is not arbitrary and capricious. Similarly, a telecommuting employee may end or request to change the employee's Telecommuting Agreement by submitting a written request to their supervisory Council member and the Clerk.

No change, however, shall become effective without, first, the approval of an employee's supervisory Council member and a majority of Council, with notification to the Clerk. If there is a change in an employee's direct supervisory Council member, the Telecommuting Agreement shall terminate unless the new supervisory Council member approves the agreement along with the approval of a majority of Council.

- 4.2.14. *Workers' Compensation.* Council will provide workers' compensation protection as obligated by State statute for the employee while in the course of employment within the agreed upon alternative work location and defined work schedule. Council assumes no responsibility for any activity, damages, or injury which is not directly associated or resulting from the official job duties for which the Council has no ability to exercise control. Additionally, Council assumes no liability for injuries occurring in the employee's home workspace outside the agreed-upon work hours.

Council is not liable for any loss, destruction, or injury that may occur in or to the employee's alternative work location. This includes family members, visitors, or others who may become injured within or around the employee's alternative work location. Additionally, Council assumes no responsibility for damage or injury to the employee's real or personal property.

- 4.2.15. *Telecommuting - Unexpected and Limited Circumstances.* Council recognizes there may be circumstances where time does not allow for a majority vote of Council to occur to authorize employees, under limited situations, to telecommute. Such situations include but are not limited to inclement weather, building emergencies, a declared state of emergency, and medical situations including a quarantine. During such instances, the Council President, or President Pro Tempore if the Council President is unavailable, with the consent of an employee's supervisory Council member, if available, may authorize an employee or employees, as circumstances warrant, to dismiss from Council offices and work remotely at each employee's alternative work location. If a special circumstance persists for an extended length of time, a vote of a majority of Council is to be obtained at the next available Council meeting.

4.2.16. *Telecommuting on a Limited Basis During Inclement Weather, Other Emergency Conditions, or for the Employee's Convenience.* In instances of inclement weather, other types of limited emergencies, or for the employee's convenience on a limited basis, eligible employees who do not otherwise have an approved Telecommuting Agreement may request to telecommute for the period of inclement weather, emergency, or convenience on a limited basis.

4.2.17. *Procedure to Request Telecommuting on a Limited Basis.* An eligible employee who wishes to telecommute on a limited basis must request approval from the employee's supervisory Council member prior to the start of the employee's shift by email, telephone, or other approved form of communication. The employee must submit a request to the employee's supervisory Council member with a copy to the Clerk.

An employee who is approved to telecommute on a limited basis shall not be required to execute a Telecommuting Agreement provided that the employee does not telecommute for more than 3 days within a pay period. Such employees shall be expected to adhere to all applicable laws and applicable County and Council policies and procedures. The Clerk is encouraged to work with the employee to consider telecommuting as an option during inclement weather or other emergencies when Council remains open.

4.3. Time Records

Each employee is required to maintain an accurate record of all time worked. Staff should sign in upon arrival each workday at the receptionist's desk (with name and time of sign-in). Employees are expected to report to work on time. Any falsification or abuse of time records (including recordation of an inaccurate arrival time upon sign-in) is an act of misconduct and is grounds for disciplinary action. Employees should inform the receptionist when they are leaving the office and when they expect to return. Hourly employees are required to submit their timecards in accordance with the payroll schedule. Any falsification or abuse of time records is grounds for discipline up to, and including, termination. Legislative Aides and Assistants will take turns, under the Clerk's supervision, to cover telephones when the receptionist is absent. A monthly schedule for breaks and lunch hours will be posted. If a person is unavailable at the scheduled time, he or she should arrange a trade-off. The receptionist must notify the person scheduled or the Clerk if the relief person did not show at the designated time.

4.4. Compensatory Time

Compensatory time will be earned for attendance at meetings and traveling time to and from such meetings, as well as for specific projects undertaken for Council outside of the normal work hours. Compensatory time is awarded for work time accumulated at the specific request of and benefit to the supervisor or the Clerk of Council.

County Council staff may accrue compensatory ("comp") time at the rate of one hour for each hour worked outside of the regular work hours within the regular 35 hour work week. At no time shall the accrual of compensatory time exceed seventy (70) hours.

- 4.4.1 Compensatory time will not be earned while on a leave of absence, on sick leave, or while on vacation unless pursuant to a specific request by a supervising Council member through the Clerk and unless the employee has indicated that there is no medical impediment to his or her returning to work.
- 4.4.2 In order to receive credit for compensatory time, it must be specified and broken down by particular project and hours spent working on each project. A broad category of work for a large number of hours is not acceptable.
- 4.4.3 Requests to take compensatory time must be approved in advance by the Clerk and the supervising Council Member. Requests to take compensatory time in excess of one week at a time must be approved by the supervising Council member through the Clerk.
- 4.4.4 Compensatory time records shall be maintained jointly by the employee and the Clerk in the form of an ongoing log of time worked, time earned, time taken and balance available. Compensatory time logs must be reviewed and signed biweekly by each staff member's supervisor. The original signed copy must be forwarded to the Clerk's Office contemporaneously with payroll timecards. Since Council recognizes that employees are entitled to an unpaid lunch hour, a requirement by a supervisor to work through the lunch hour and prior approval of the same will be a rare exception and shall not occur on a routine or frequent basis.

4.5. Authorized Overtime

An employee may work overtime only when the supervisor authorizes it. Likewise, an employee is expected to work overtime when requested to do so by a supervisor.

4.6. Pay Period and Pay Day

All employees are paid biweekly on every other Friday. Each paycheck will include earnings for all work performed through the end of the previous payroll period. In the event that a regularly scheduled payday falls on a day off such as a weekend or holiday, employees will receive pay on the last day of work before the regularly scheduled payday.

4.7. Lunch Breaks

Employees are entitled to an unpaid sixty (60) minute lunch after working no more than five (5) consecutive hours

4.8. Emergency Conditions

Council will follow County personnel policies relating to emergency conditions, which are contained in the New Castle County Office of Human Resources Personnel Policy Number 1.03 or its successor.