

## **SECTION X**

### **DISPUTE RESOLUTION - GRIEVANCE**

#### **10.1 POLICY**

The City requires prompt and fair consideration of employee concerns. It prefers to resolve disputes or conflicts with its employees informally, and all employees are expected to make every effort to resolve problems as they arise directly with the individual(s) involved. However, when disputes or conflicts cannot be resolved informally, the City offers mediation or a more formalized dispute resolution- grievance procedure.

#### **10.2 MEDIATION**

Mediation can be an effective, efficient alternative to the more formal grievance procedure. Mediation is an assisted negotiation process designed to resolve problems between two or more City employees. The process is conducted in a confidential forum by trained neutral mediators. Mediators help the parties recognize the issues in conflict, explore alternatives and reach mutual agreement or a solution.

As a matter of policy, the City of Harrisonburg highly recommends the use of mediation to City employees for resolving problem(s) in the workplace. Preferably, the employee has met and/or spoken with the person or people directly involved, and has discussed the problem(s) with his/her immediate supervisor prior to requesting mediation.

All regular full-time and regular part-time employees may utilize the mediation process for disputes; however, some issues such as termination are not suitable for mediation. Please refer to the listing in subsection 10.4, for a complete listing of concerns, which are not eligible for mediation. In addition, temporary and seasonal employees are not eligible to request mediation.

An employee may request mediation by contacting his/her supervisor(s), a Department Director, or through the Human Resources Department. The mediation shall be scheduled through the Community Mediation Center, or other qualified mediator, as quickly as is possible.

A request for mediation may be made at any time during the course of a grievance. The applicable time periods of the grievance procedure shall be extended until the conclusion of the mediation. An employee may, at any time, choose to end the mediation, and initiate or continue a grievance.

### **10.3 EMPLOYEE GRIEVANCE PROCEDURE**

The City of Harrisonburg desires to provide an equitable method for resolving conflicts and complaints through the Employee Grievance Procedure.

Employees whose grievance(s), as defined herein, result from work situations have the right to submit a grievance for orderly resolution thereof with complete freedom from discrimination, coercion, recrimination, restraint, or reprisal. Moreover, the resolution of the grievance shall promote more effective employer-employee relationships and is in the best interest of all affected parties.

#### **A. Coverage of Personnel**

This procedure applies to all non-probationary regular full-time and regular part-time employees of the City of Harrisonburg and of the Harrisonburg-Rockingham Emergency Communications Center.

#### **B. This procedure shall not apply to the following employees:**

- Temporary, limited term and seasonal employees;
- Any law enforcement officer whose grievance is subject to the Law Enforcement Officers Procedural Guarantees Act who has elected to proceed pursuant to the provisions of such act. Virginia Code Section 9.1-500 et seq., as amended;
- Department and agency directors;
- City Council appointees;
- Elected officials, constitutional officers and their deputies and employees;
- Officials or employees who by law serve at the will or pleasure of the City Council or the City Manager;
- Deputies and assistants to the City Manager;
- Employees in their initial period of employment (See Section 2.17)

- C. A temporary, limited term, or seasonal employee is not eligible to use the grievance process, but he/she is expected to discuss any areas of conflict with his/her direct supervisor. If the issue cannot be resolved at the department level, and the issue is presented to the City Manager, then the City Manager's decision shall be final.

#### **10.4 ISSUES NOT TO BE RESOLVED THROUGH GRIEVANCE PROCEDURE**

Issues which shall not be resolved through the City's mediation or grievance procedure include:

- 1) Establishment and revision of wages or salaries, position classifications or general benefits;
- 2) Work activity accepted by the employee as a condition of employment or work activity which shall reasonably be expected to be a part of the job content;
- 3) The contents of ordinances, statutes or established personnel policies, procedures, rules and regulations including law and policy established by City Council;
- 4) Failure to promote except where the employee can show established promotional policies and procedures were not followed or applied fairly;
- 5) The methods, means and personnel by which such work activities are to be carried on;
- 6) Termination, layoff, demotion or suspension from duties because of lack of work, reduction in work force, or job abolition -- except where such action affects an employee who has been reinstated within the previous six months as the result of the final determination of a grievance; provided, however, that the City's action shall be upheld upon a showing by the City that there was a valid reason for the action and that the employee was notified of the reason in writing prior to the effective date of the action;
- 7) The hiring, promotion, transfer, assignment and retention of employees;
- 8) The relief of employees from duties of the department in emergencies.

#### **10.5 DEFINITION OF A GRIEVANCE**

- A. A grievance shall be a complaint or dispute by an employee relating to his or her employment, including, but not necessarily limited to:

- 1) Disciplinary actions, including dismissals, demotions and suspensions, provided that dismissals shall be grievable whenever resulting from formal discipline or unsatisfactory job performance;
- 2) The application of personnel policies, procedures, rules and regulations.
- 3) Acts of retaliation as the result of utilization of the grievance procedure or of participation in the grievance procedure or of participation in the grievance of another city employee;
- 4) Complaints of discrimination on the basis of race, color, creed, political affiliation, age, disability, national origin, religion or sex;
- 5) Acts of retaliation because the employee has complied with any law of the United States, or of the Commonwealth, has reported any violation of such law to a governmental authority, or has reported an incidence of fraud, abuse or gross mismanagement, or has sought any change in law before the congress of the United States of the General Assembly.

B. In addition the establishment of this procedure shall in no way remove the right of the City government to do the following, provided however, that none of these rights may be exercised in an arbitrary or capricious manner:

- 1) Direct the work of its employees;
- 2) Hire, promote, transfer, and assign employees;
- 3) Maintain the efficiency of governmental operations;
- 4) Relieve employees from duty because of a lack of work; reduction in work force or job abolition;
- 5) Take actions necessary to carry out the duties of the department in emergencies;
- 6) Determine the methods, means and personnel necessary to carry out operations.

## **10.6 HUMAN RESOURCES DEPARTMENT RESPONSIBILITIES**

The Human Resources Department ("Human Resources") shall serve as an impartial administrator of this process. Upon the filing of a grievance, Human Resources shall do the following:

- (a) open a file and assign a number to the grievance;
- (b) ensure that all parties are aware of the process;
- (c) provide access to and copies of grievance forms;
- (d) monitor procedures and time frames;
- (e) notify either party of noncompliance;
- (f) be informed of the status of the grievance by both parties at each step;
- (g) maintain appropriate documentation; and

- (h) perform all other responsibilities as specified in this Procedure.

## **10.7 GRIEVANCE PROCEDURE GENERALLY**

- A. For purposes of this procedure, “days” shall be defined as calendar days and time periods shall begin to run on the day following that on which any action is taken or report rendered, without regard to weekends or City-observed holidays. If a time period specified in this procedure ends on a weekend or holiday, the last day of the time period shall be the end of the first business day following the weekend or holiday. For example, a written grievance under Step 1 must be presented to the grievant's immediate supervisor within five (5) days of the supervisor's verbal reply to the informal grievance. The five (5) days shall begin to run on the day after receipt of the supervisor's verbal reply and shall terminate on the fifth day following. If the fifth day is a weekend or holiday, the time period shall terminate at the end of the next full business day.
- B. Time limits established under this procedure are intended to be strictly construed and enforced. However, in the interests of fairness, such time limits may be extended if both parties agree to such extensions in writing.
- C. All stages of this procedure beyond Step 1 shall be reduced to writing on forms supplied by Human Resources. At Step 3 and above, the grievant may, at his option, choose to have a representative of his choice, including legal counsel. If the grievant is represented by legal counsel or other person(s), the City likewise has the option of being represented by legal counsel, provided that a person may not serve as both a witness and a representative at any Step under this procedure.
- D. The grievant shall bear any and all costs involved in employing representation and preparing his or her case at all steps of this procedure, including but not limited to attorneys' fees and expenses and any costs of judicial filings or appeals.
- E. After the initial filing of a written grievance, failure of either party to comply with all substantial procedural requirements of this procedure, without just cause, shall result in a decision in favor of the other party on any grievable issue, provided that the noncomplying party fails to correct the noncompliance within five (5) days of receipt of written notification by the other party of the compliance violation. However, the right of the grievant to correct compliance violations shall not apply to any determinations under Steps 1 through 3, or to grievability determinations, provided that the grievant has previously received written notice of the applicable deadlines for appealing such determinations at the time the determination was rendered but has failed to respond in a timely fashion.

- F. The City Manager may require a clear written explanation of the basis for any requests for just cause extensions or exceptions, and shall determine all compliance issues. Such determinations by the City Manager are subject to appeal by the grievant by filing a petition with the Circuit Court of Rockingham County within thirty (30) days of the compliance determination. The grievant shall be solely responsible for filing such petition.

## **10.8 GRIEVABILITY**

- A. The City Manager retains sole authority to render decisions regarding grievability, including the question of access to this procedure. In the event that a question regarding grievability arises at any stage of this procedure, the City Manager shall be notified by Human Resources so that a proper decision regarding grievability can be made. A copy of the City Manager's decision concerning grievability shall be sent to the grievant, to the department head and/or immediate supervisor and to Human Resources.
- B. Decisions by the City Manager that an issue or complaint is not grievable may be appealed by the grievant to the Circuit Court of Rockingham County for a hearing de novo on the issue of grievability as provided in Virginia Code § 15.2-1507(A)(9). Proceedings for the review of the City Manager's decision regarding grievability shall be instituted by filing a notice of appeal with the City Manager within ten (10) days from the date of receipt of the decision and giving a copy thereof to all other parties. Within ten (10) days thereafter, the City Manger shall transmit to the Clerk of the Circuit Court of Rockingham County a copy of his decision, a copy of the notice of appeal, and any exhibits that may have been provided in connection with the resolution of the issue of grievability. A list of the evidence furnished to the court shall also be furnished to the grievant.
- C. The failure of the City Manger to transmit the record shall not prejudice the rights of the grievant. If the City Manager fails to transmit the record within the time required, the Circuit Court, on motion of the grievant, may issue a writ of certiorari requiring the City Manager to transmit the record on or before a certain date.
- D. Within thirty (30) days of receipt of such records by the clerk, the Circuit Court, sitting without a jury, shall hear the appeal on the record transmitted by the City Manager and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The Court, in its discretion, may receive such other evidence as the ends of justice require. The Court may affirm, reverse or modify the decision of the City Manager. The decision of the Court shall be rendered no later than the fifteenth (15th) day from the date of the conclusion of the hearing. The decision of the Court is final and is not appealable.

- E. The issue of grievability may be raised at any step of the Grievance Procedure prior to the hearing provided in Step IV of this procedure, or it shall be deemed waived by all parties. Once raised, the issue shall be resolved before further processing of the complaint. A request that grievability be determined shall toll the time limits under this procedure. Time limits shall begin to run again the day after the decision on grievability is made by the City Manager or the Circuit Court.
- F. The classification of a complaint as nongrievable by either the City Manager or the Circuit Court of Rockingham County shall not be construed to restrict any employee's right to seek, or management's right to provide, customary administrative review of complaints outside the scope of the Grievance Procedure.

## **10.9 CONSOLIDATION OF GRIEVANCES**

If more than one grievance is filed arising from the same factual circumstances, the City Manager may, at any time prior to a hearing officer hearing, consolidate those grievances for joint processing, including grievability determinations. If consolidation occurs, all time limits set forth in this procedure shall thereafter be calculated from the date of the last filed grievance. Once consolidated, the grievances shall all be processed as a single matter pursuant to this procedure.

## **10.10 GRIEVANCE PROCEDURE**

An employee wishing to file a grievance shall have the right to follow all the steps of this procedure as listed below with complete freedom from reprisal. This does not, however, confer the right upon anyone to make slanderous or libelous statements.

### **A. STEP I.**

An employee who has a grievance, as defined herein, shall within 20 days of the occurrence of the action or event causing the grievance, or of the date when the employee could have reasonably been expected to have learned of the act or event, contact his immediate supervisor for a discussion of the grievance. The supervisor shall immediately discuss the grievance with the employee if possible or practicable, but in any case within five (5) days or on such other date as the parties may agree. The supervisor shall thereafter give the employee a written reply within 5 days. The failure of any employee to identify the grievance within the time specified above shall constitute a waiver of any rights to proceed further

and shall terminate the grievance.

If the employee's supervisor is also his department director or agency head, or if the department director or agency head decided the matter that is the subject of the grievance, the employee shall pass by STEP II of this procedure and proceed immediately to STEP III. If the employee's supervisor is the City Manager, he shall pass by STEP III and proceed immediately to STEP IV.

**B. STEP II.**

If a satisfactory resolution is not received as a result of STEP I, the employee may within five (5) days after receiving the Step I written reply, submit a written grievance to his/her Department Director with a copy to his/her immediate supervisor and Human Resources. The employee shall be sure that the written grievance is complete in all details at this state of the procedure and shall submit the written grievance on forms provided by Human Resources. No additions, deletions or adjustments to the original grievance shall be allowed or accepted at a later point within the procedure. The Department Director shall then meet with the employee within five (5) days. If witnesses are used for either party at any step of the procedure, that witness may appear only long enough to present his or her evidence or testimony and then be dismissed. The Department Director shall, after the conclusion of this hearing, give the employee a written reply within five (5) days.

**C. STEP III.**

If the Department Director's response does not result in a satisfactory resolution, the employee may within five (5) days after receiving the Step II written reply, submit a written request with the City Manager for a hearing, containing both the employee's and management's explanation of what has occurred. Upon receipt of a written request for a hearing and verification that STEPS I and II have been exhausted, the City Manager shall schedule and hold a meeting with the grievant within ten (10) days or receipt of the submission.

If the employee is represented by legal counsel, the City likewise has the option of being represented by legal counsel. If the employee elects to be represented by legal counsel, he or she must notify the City Manager at the time that the scheduled hearing date is finalized. The City Manager shall, after conclusion of the hearing, give the employee a written reply within five (5) days.

If the employee does not appear for the hearing, as previously scheduled



and agreed upon by all parties, the City Manager shall determine that the case is no longer grievable, and the case shall be closed.

D. STEP IV.

If the City Manager's reply does not resolve the grievance, the employee may within five (5) days thereafter request, in writing, to the City Manager, a hearing before an administrative hearing officer (“hearing officer”). In submitting this written request, it is not necessary that the employee again provide a written explanation of what has occurred, as this was contained in his written request submitted at STEP II and III and as part of the record will be made available to the hearing officer. Within ten (10) days after the date of the written request for the grievance, the City Manager shall contact the City Attorney and request that he initiate a request to the Supreme Court of Virginia for the appointment of a hearing officer to hear and preside over the grievance hearing. The hearing officer shall be appointed by the Executive Secretary of the Supreme Court of Virginia and shall be made from the list of hearing officers maintained by the Executive Secretary pursuant to the Code of Virginia. In the alternative, the City Attorney may request the appointment of a hearing officer from the Virginia Department of Human Resource Management. The City shall bear all expenses associated with the hearing officer’s services.

The hearing officer shall set the time for the hearing. The hearing officer is responsible for interpreting the application of appropriate City policies and procedures in the case. The hearing officer does not have the prerogative to formulate or to change policies or procedures.

The employee may have present at the hearing legal counsel at his or her own expense. If the employee plans to be represented by legal counsel, he or she shall notify the City Manager within two workdays of being notified of the scheduled hearing date.

Copies of the written record in the case from all STEPS shall be provided the hearing officer by the City.

The role of the hearing officer is limited to a determination of whether a grievance filed by an employee is substantiated and what remedy, if any, should be provided. The hearing officer may not formulate or change City policy, rules, or procedures. The hearing officer shall determine whether the employee has demonstrated, by a preponderance of the evidence, that the action complained of was without cause, or done in violation of a law, rule, regulation, or other policy. The hearing officer shall not otherwise substitute his or her judgment for that of management.

The rules for conduct of the hearing shall be as follows:

1. At the request of either party, the hearing shall be private and limited to the employee, the hearing officer, the legal counsel or other representative of the employee and the City, appropriate witnesses as they testify, and any court reporters or other official recorders of the hearing. At the request of either party, witnesses shall be separated from the hearing room and allowed to be present only during the time that they actually testify.
2. The hearing officer shall consider the grievance without regard to any proposed disposition (including offers of settlement) by any lower authority, unless the employee and the City Manager shall agree in writing that the issue(s) shall be so limited. In all other cases, the hearing officer shall consider the matter as if presented to it in the first instance.
3. The hearing officer may at any time ask the parties or their representatives for statements clarifying the issues involved in the grievance.
4. Exhibits, when offered by the employee or the City, may be received as evidence by the hearing officer, and when so received shall be marked and made a part of the record.
5. Both parties shall have the right to make opening statements, starting with the City. After opening statements, the order of the hearing shall be as follows: The City shall present first. At the conclusion of the City's evidence, the employee shall have the opportunity to present his or her evidence, and shall bear the ultimate burden of persuasion. At the conclusion of the employee's presentation, the hearing officer shall specifically inquire of all parties whether they have any further evidence to offer or witnesses to be heard. Upon receiving a negative response, the hearing officer shall permit the parties to summarize their cases, beginning with the City, and shall then declare the hearing closed.
6. Both parties have the right to offer evidence and cross-examine witnesses, and shall produce such additional evidence as the hearing

officer deems necessary for understanding and ruling upon the dispute. There shall be no formal rules of evidence at the hearing; however, the hearing officer shall have the right to determine the relevancy of any evidence offered. All evidence shall be taken in the presence of the hearing officer and the parties, except by mutual consent of the parties.

7. The hearing may be reopened by the hearing officer on his own motion or upon application of either party for good cause shown at any time before a final decision is made.
8. Upon the request of the hearing officer, the City or the employee, the Human Resources Director shall insure that a verbatim record of the hearing is made and retained for not less than 12 months. The record may be in writing or by a taped recording. The party requesting the record shall bear the costs of preparation and transcription, including any costs associated with attendance of a court reporter. If both the employee and the City request such a record, they shall share equally in all costs incurred.
9. The Human Resources Director or designee may be called upon by the hearing officer or either party as a witness at any time to provide specific policy interpretation or clarification of applicable City policy and these procedures.
10. In any matters not covered by this section, the hearing officer shall determine the applicable procedures to be followed.

The hearing officer shall provide a written decision to the City Manager and the grievant, with copies to Human Resources and the City Attorney, no later than twenty (20) calendar days after the completion of the hearing. The decision shall summarize the grievance and the evidence, shall make specific findings of fact, and shall state in full the reasons for the decision, and the remedy (if any) to be granted. The decision of the hearing officer shall be consistent with law and written policy, and as such shall be considered final and binding.

The City Manager shall implement any remedy to the extent that it is consistent with the provisions of law and written policies.

The City Manager shall forward a copy of the decision to the employee and the employee's supervisor. All time periods listed in this appeal procedure may be extended by mutual agreement of the employee and the City Manager. After the initial filing of a written appeal, failure of either party to comply with all substantial procedural requirements of the appeal procedure without just cause will result in a decision in favor of the other party on any appealable issue, provided the party not in compliance fails to correct the noncompliance within (5) work days of receipt of written notification of the compliance violation. Such written notification by the employee shall be made to the City Manager. In the event that either party fails to comply with the decision and requirements of the hearing officer, the City Manager shall designate an individual who has had no prior involvement with the appeal procedure to be the final decision maker on compliance issues. Failure of either party without just cause to comply with all substantial procedural requirements at the hearing shall result in a decision in favor of the other party.