



CITY OF CHESAPEAKE, VIRGINIA

NUMBER: 2.07

CITY DIRECTIVE

EFFECTIVE DATE: 3/23/2021

**SUBJECT: DEPARTMENT OF HUMAN RESOURCES
GRIEVANCE POLICY AND PROCEDURE**

SUPERSEDES: 8/20/1996

I. PURPOSE

In order to effectively accomplish the work of the City, it is necessary for open communication to exist between supervisors and their employees. It is the intent of this Grievance Policy and Procedure to provide a formal method of open communication for the resolution of problems which may arise in connection with an employee's working environment. Employees are encouraged to discuss work-related problems with their supervisors before using the formal Grievance Procedure.

II. OBJECTIVES

- A.** To provide employees with an effective and acceptable means to bring work-related problems to the attention of management.
- B.** To afford an immediate and fair method for the resolution of work-related problems at the lowest possible level of management.
- C.** To provide a method to ensure proper application of management policies and procedures and determine supervisory effectiveness and fairness.

III. DEFINITION OF GRIEVANCE

- A.** For the purpose of this Policy and Procedure, a "grievance" is defined as a complaint or dispute of an employee relating to his/her employment with the City of Chesapeake, including but not necessarily limited to the following:
 - 1. Disciplinary actions, including written reprimands, terminations, disciplinary demotions, and disciplinary suspensions, provided that terminations shall be grievable when resulting from formal discipline or unsatisfactory job performance;
 - 2. The application of personnel policies, procedures, rules and regulations, including the application of policies involving matters referred to in subsection B (3) below;
 - 3. Discrimination on the basis of race, color, creed, religion, political affiliation, age, disability, national origin, sex, marital status, pregnancy, childbirth or related medical conditions, sexual orientation, gender identity, or status as a veteran; and

4. Acts of retaliation resulting from the use of, or participation in, the grievance procedure or because the employee has complied with any law of the United States or of the Commonwealth, has reported any violation of such law to a governmental authority, has sought any change in law before the Congress of the United States or the General Assembly, or has reported an incidence of fraud, abuse, or gross mismanagement.

B. Management reserves the exclusive right to manage the affairs and operations of local government. Accordingly, the following complaints are non-grievable:

1. Establishment and revision of wages or salaries, position classifications, or general employee benefits;
2. Work activity accepted by the employee as a condition of employment or which may be reasonably expected to be a part of the job content and the measurement and assessment of work activity through a performance evaluation;
3. The contents of ordinances, statutes, or established personnel policies, procedures, rules and regulations;
4. Failure to promote except where the employee can show established promotional policies or procedures were not followed or applied fairly;
5. The methods, means, and personnel by which City operations are to be carried on;
6. Termination, demotion, layoff, suspension of 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 a final determination of a grievance. In any grievance brought under this exception, the action shall be upheld upon a showing by the City that (1) there was a valid business reason for the action, and (2) the employee was notified of such reason in writing prior to the effective date of the action;
7. The hiring, promotion, transfer, assignment, and retention of employees within the City; or
8. The relief of employees from duties of the City in emergencies.

The classification of a complaint as “non-grievable” 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 this Grievance Procedure.

C. For purposes of this policy, the Director of Human Resources shall be the City Manager’s designee, unless provided otherwise herein.

IV. GRIEVABILITY/QUALIFICATION FOR PANEL HEARING

If there is a question as to whether an employee has access to the Grievance Procedure or whether an employee's concern is clearly a "grievance," the Department Head must correspond with the Director of Human Resources to request a ruling. The Director of Human Resources will rule on the question of grievability within ten (10) calendar days of the request and extend the Grievance Procedure time limits accordingly. A copy of the ruling will be sent to the grievant.

Such determination of grievability must be requested after the reduction of the grievance to writing in Step 2 and prior to the Panel Hearing. If the issue of grievability is not determined during the management steps, the Director of Human Resources shall make a determination of whether an issue qualifies for a Panel Hearing within ten (10) calendar days of receipt of a request for a Panel Hearing.

Decisions of the Director of Human Resources may be appealed by the grievant to the City of Chesapeake Circuit Court for a hearing based on the record on the issue of grievability.

Proceedings for review of the decision of the Director of Human Resources shall be instituted by filing a notice of appeal with the Director of Human Resources within ten (10) calendar days after the date of receipt of the decision and giving a copy of the notice to all other parties. Within ten (10) calendar days thereafter, the Director of Human Resources shall transmit to the Clerk of the Court to which the appeal is taken a copy of the Director's decision, a copy of the notice of appeal, and the exhibits. A list of the evidence furnished to the Court shall also be furnished to the grievant. The failure of the Director of Human Resources to transmit the record within the time allowed shall not prejudice the rights of the grievant. The Court, on motion of the grievant, may issue a writ of certiorari requiring the Director of Human Resources to transmit the record on or before a certain date.

The Court may affirm the decision of the Director of Human Resources or may reverse or modify the decision. The Code of Virginia provides that within 30 days of receipt of such records by the clerk, the Court, sitting without jury, shall hear the appeal on the record transmitted by the Director of Human Resources 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 Code of Virginia further provides that the decision of the Court shall be rendered within fifteen (15) days of the conclusion of the hearing. The Court's decision determining grievability and qualification for a Panel Hearing is final and may not be appealed.

V. ELIGIBILITY

- A.** Except as otherwise indicated in this section, all full-time and regular part-time City employees, who have completed their original entrance probationary period, shall have access to all provisions of this Grievance Procedure. Temporary, seasonal, and original entrance probationary employees shall not be eligible to grieve a written reprimand, suspension of more than five working days, demotion, dismissal, or termination. Other

grievances may be processed under this Procedure through Step 2 (Department Head). An employee serving a probationary period as a result of a promotion, reclassification, or career progression plan shall not be eligible to grieve their removal from the position for their inability to perform their work satisfactorily.

- B.** The following employees do not have access to this Grievance Procedure: elected officials; appointed officials; City Manager; Deputy City Managers; Assistant to the City Manager; department heads appointed by the City Manager; Executive Director of Chesapeake Integrated Behavioral Healthcare; and Constitutional Officers and their employees. The City Manager shall determine the officers and employees (by position) who are excluded from this grievance procedure, and shall maintain a list of such excluded positions in the Department of Human Resources.
- C.** A law enforcement officer who has a grievance subject to the provisions of this procedure may proceed under either this Grievance Policy and Procedure or the Law-Enforcement Officers Procedural Guarantee Act (§§9.1-500 et seq. of the Virginia Code), but not both.
- D.** Any employee who elects to process his/her grievance under another existing procedure is not eligible to access this procedure.

VI. RIGHTS AND CONDITIONS

- A.** The grievant shall be allowed, during the second management step and at the Panel Hearing, to be accompanied or represented by an individual of his/her choice, which may be legal counsel. Any cost of representation will be at the grievant's expense. Management has the option of being represented by counsel at the Panel Hearing, and may have counsel present at the second management step if the grievant is represented by legal counsel.
- B.** To provide for extenuating circumstances and upon mutual agreement of the parties, the Director of Human Resources may extend time limits specified in the Grievance Procedure. The action granting an extension of time shall be set out in writing and should state the reasons for the time extension.
- C.** After the initial filing of a grievance, failure of either party to comply with all substantial procedural requirements of this Grievance Procedure, including the Panel Hearing, without just cause, will result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the noncompliance within five (5) working days of receipt of written notification of the noncompliance from the Department of Human Resources. Written notification of non-compliance by either party shall be made to the Director of Human Resources. The Director of Human Resources may require a clear written explanation of the basis for just cause extensions or exceptions. The Director of Human Resources shall determine compliance issues. Compliance determinations made by the Director of Human Resources shall be subject to judicial review by filing a petition with the City of Chesapeake Circuit Court within 30 days of the compliance determination.

- D.** To provide for extenuating circumstances, the Director of Human Resources can consolidate steps in the Grievance Procedure or authorize the grievant to skip certain steps. This action must be documented in writing and be consented to by the grievant. Modifications of the time limits may be authorized in writing by the Director of Human Resources in conjunction with such consolidation.
- E.** The jurisdiction and authority of the Panel shall be confined to judging the City's action in the application of the City's policies, rules, and regulations. The Panel shall have no authority to add to, delete from, ignore, or amend City policies, rules, and regulations.
- F.** All reasonable efforts will be made to process grievances during normal working hours. All City employees involved shall be considered to be on duty during the proceedings, including witnesses, and shall be compensated accordingly.
- G.** Once an employee reduces his/her grievance to writing, he/she must indicate the specific relief which is sought through the use of the Procedure. The relief shall relate only to the grievant. Written grievances that do not include relief sought will be considered incomplete and not in compliance with the substantial procedural requirements of the Grievance Procedure. The Director of Human Resources will make this determination. In the event particular forms of relief sought by a grievant are beyond the scope of a grievance panel's authority (e.g., punitive damages, attorneys' fees, job transfers, etc.), the Director of Human Resources shall so advise the grievant, the management representative, and the members of the grievance panel in writing prior to the panel hearing.
- H.** The grievance submitted in writing to the department head shall be considered the entire grievance of the employee. Additional complaints of grounds for grievance may not be added after submission of the written grievance, and must be submitted as separate grievances under this Procedure.
- I.** The use of recording devices or a court reporter is not permitted at the Step 1 meeting. A recording can be made of the Step 2 meeting by either party. The fact that the meeting is being recorded must be disclosed to the other party prior to the start of the Step 2 meeting. The Panel Chairperson or designee will record the proceedings of the Hearing at Step 3. There will be no other recordings permitted. If the grievant desires a transcript of the Hearing, he/she shall bear the costs thereof.
- J.** When a deadline falls on a Saturday, Sunday, or City holiday, the next day that is not a Saturday, Sunday, or City holiday shall be considered the last day.
- K.** Whenever a party is required or permitted under these rules to perform an act within a prescribed time after service of a paper upon him/her, and the paper is served by mail, the date of receipt shall be considered to be the date of the mailing plus three calendar days.

- * “Executive Director” is to be substituted for all references to the “City Manager” when the procedure is used by employees of Chesapeake Integrated Behavioral Healthcare.

VII. PROCEDURE FOR FILING A GRIEVANCE

Step 1:

An employee who has a grievance shall notify his/her immediate supervisor of this fact within 20 calendar days after the occurrence or knowledge of the occurrence prompting the grievance. The supervisor shall meet with the employee to discuss the matter fully. The grievance need not be reduced to writing by the employee at this step, and there will be no representative present. The supervisor shall meet with the employee and respond in writing, on a Grievance Form obtained from the Department of Human Resources, within five (5) full working days of notification. Copies of the supervisor’s written response shall be sent to the affected department head and the Department of Human Resources. The use of a recording device or court reporter is not permitted at the Step 1 meeting.

Step 2:

If, after receiving the reply from his/her supervisor, the employee believes that the grievance is not satisfactorily resolved, he/she may, within five (5) full working days of the response, reduce his/her grievance to writing on the Grievance Form. The written grievance will be the grievant’s explanation of what has occurred. It shall include a statement of the facts on which the grievance is based and the remedy or correction sought and shall constitute the entire complaint (see Section VI, G & H). The grievant will submit the written grievance to his/her immediate supervisor, who will send it within three (3) full working days to the department head. (Employees who are not able to read or write should be encouraged to seek assistance in using this procedure.)

The department head will meet with the grievant within five (5) full working days of the department head’s receipt of the written statement. Appropriate witnesses for the grievant and department head may attend the meeting. Such witnesses may only be in attendance long enough to present evidence. Once that task is completed, the witness must leave the meeting. The grievant may have present at this meeting a representative or legal counsel at his/her expense. If the grievant chooses to have counsel present, the department head may request legal counsel to represent management. A recording can be made at the Step 2 meeting by either party. The fact that the meeting is being recorded must be disclosed prior to the start of the meeting.

A written reply by the department head, submitted on the Grievance Form, shall be made to the grievant within five (5) full working days following the meeting. A copy of the grievant’s statement and the department head's response shall be sent to the Department of Human Resources.

In cases where the department head is also the grievant's immediate supervisor, the Step 2 grievance meeting shall be bypassed and the grievant shall submit his/her Step 3/Request for Panel Hearing to the City Manager.

Step 3:

If a satisfactory resolution of the grievance cannot be reached between the employee and the department head, the grievant may proceed with the grievance by requesting a Panel Hearing. This request is made in writing to the City Manager and states the reasons for a Panel Hearing. This request must be submitted, on the Grievance Form, to the City Manager within ten (10) full working days of the grievant's receipt of a response from Step 2.

The City Manager will send the grievance to the Director of Human Resources within five (5) full working days of receipt of the request. (While no formal hearing will be held by the City Manager, this shall not preclude the City Manager from exercising his/her inherent authority to modify management's action at any time during the grievance process by reducing the disciplinary action or otherwise providing all or part of the relief sought by the grievant.)

The selection and composition of the Panel shall be in accordance with Section VIII of this Policy.

The grievant may have present at the Panel Hearing a representative or legal counsel at his/her expense. If the grievant chooses to have counsel present, the department head may request legal counsel to represent management. Advance notice shall be given by the grievant regarding his/her intention to have representation at the hearing as well as a list of all witnesses. Copies of the written grievance shall be provided by the Department of Human Resources to the Panel members. (See Section X, A)

The majority decision of the Panel shall be final and binding in all its determinations and shall be consistent with the provisions of law and written policy.

VIII. COMPOSITION OF GRIEVANCE PANEL

- A.** Each department head shall provide to Human Resources a listing of diverse management and non-management employees (taking into consideration race, color, religion, sex [including pregnancy, gender identity, and sexual orientation], national origin, age [40 or older], disability or genetic information) who can serve on a grievance panel. The listing shall be supplied in odd years in January and must include names consisting of 10% of the department's full-time employees, or minimally one employee, whichever is greater. Based on this information, Human Resources will compile and retain a City-wide list of employees designated to serve on grievance panels for a two-year term. The employees on the list could be selected multiple times to serve on a grievance panel within their two year term.
- B.** The grievant's department head and the grievant will be supplied with the list.

The panel shall be composed of three (3) members chosen from the list as follows:

1. One (1) member shall be selected by the department head;
 2. One (1) member shall be selected by the grievant; and
 3. The remaining member, who will serve as Chairperson, shall be chosen by the two appointees. The Director of Human Resources, or his/her designee, shall meet with the two chosen Panel members within five (5) full working days of their selection to select the third member. Should the two appointees be unable to select a third member from the list, the Chief Judge of the Circuit Court will appoint, from the list, the third Panel member.
- C.** The grievant and department head must select their respective Panel members and notify the Department of Human Resources of their selection within five (5) full working days of receipt of the list.
- D.** No person involved in an earlier phase of the grievance, or who might reasonably be expected to become involved in or have other than an unbiased opinion of the grievance at hand, may serve on the Grievance Panel. Such Panel shall not be composed of any persons having direct involvement with the grievance being heard by the Panel, or with the complaint or dispute giving rise to the grievance. Managers who are in a direct line of supervision of a grievant, persons residing in the same household as the grievant, and the following relatives of a participant in the grievance process or a participant's spouse are prohibited from serving as panel members: spouse, parent, child, descendants of a child, sibling, niece, nephew, aunt, uncle, and first cousin. No attorney having direct involvement with the subject matter of the grievance, nor a partner, associate, employee or co-employee of such attorney shall serve as a panel member.

In the event that a selected Panel member is unable to serve on the Panel, the Director of Human Resources may ask the parties to choose another member from the list within five full working days of notification of the Panel member's inability to serve.

IX. PANEL RESPONSIBILITY

- A.** The Panel members shall set the time for the Hearing which shall be held within 15 full working days unless mutually agreed upon by both parties after the Panel has been selected, and notify the grievant and other parties and witnesses. Parties should make every effort to schedule the Panel Hearing as soon as possible.
- B.** The Panel shall not conduct its own investigation prior to the Panel hearing. Panel members are prohibited from discussing the grievance with the grievant, the management representative, legal counsel for the grievant or management representative, other Panel members, or any of the witnesses prior to the hearing. The Panel shall not initiate any pre-

hearing contact with these people, and if any of these contact a Panel member prior to the hearing, the Panel members shall notify the Director of Human Resources.

- C.** The Panel has the responsibility to review and determine the appropriateness of grievable actions in light of applicable City policies, rules, and regulations. The Panel shall have no authority to add to, delete from, ignore, or amend City policies, rules, and regulations.
- D.** The decision and recommendation of the Panel may not expand the issue or the relief requested in the original grievance. The Panel may grant a lesser degree of relief than that requested by the grievant. In the case of disciplinary actions, the Panel may uphold or void the disciplinary action, or impose whatever lesser discipline the Panel determines to be appropriate. The decision of the Panel shall be final and binding and shall be consistent with provisions of law and written policies.
- E.** The question of whether the relief granted by a panel is consistent with written policy shall be determined by the City Manager. Any challenge of a Panel decision on the grounds of inconsistency with law and written policy shall be submitted, in writing, by either party (department head or grievant) to the Director of Human Resources within five (5) working days of receipt of the decision. In addition, after receipt of the Panel decision, the Director of Human Resources may on his/her own action remand to the Panel for further consideration a decision which appears to be inconsistent with law or written policy. Where the Director of Human Resources has direct personal involvement with the event or events giving rise to the grievance, the decision on whether the relief granted by the Panel is consistent with written policy shall be determined by the Chesapeake Commonwealth's Attorney.

X. CONDUCT OF HEARING

- A.** The Department of Human Resources shall provide the Panel with copies of the grievance record prior to the Hearing, and shall provide the grievant with a list of the documents furnished to the Panel at least ten (10) days prior to the scheduled Panel Hearing. The grievant and his/her attorney shall have access to and copies of all relevant files intended to be used in the grievance proceedings, provided, that in no case shall the privacy of personal records of other employees be impaired. The parties will exchange documents, exhibits and lists of witnesses at least five (5) days before the scheduled Panel Hearing.
- B.** The Panel shall determine the propriety of attendance at the Hearing of persons not having a direct interest in the Hearing provided that, at the request of either party, the Hearing shall be private.
- C.** A record will be kept of what takes place at the Hearing.
- D.** The Panel may, at the beginning of the Hearing, ask for statements clarifying the issues involved.

- E.** The Panel shall determine the admissibility of evidence without regard to the burden of proof, or the order of presentation of evidence, so long as full and equal opportunity is afforded to all parties for the presentation of their evidence. Exhibits, when offered, may be received in evidence by the Panel, and when so received, shall be marked and made part of the record.
- F.** Management and then the grievant, or their representatives, shall present their claims, proofs, and witnesses. Both grievant and management may call upon appropriate witnesses and be represented by legal counsel or other representatives at the Panel Hearing. Witnesses shall submit to questions or other examination. The Panel may, at its discretion, vary this procedure; but shall afford full and equal opportunity to all parties and witnesses for presentation of any material or relevant proof.
- G.** The parties may offer evidence and shall produce such additional evidence as the Panel may deem necessary to an understanding and determination of the dispute. All evidence shall be taken in the presence of the Panel and of the parties except by mutual consent of the parties.
- H.** The Panel Chairperson shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the Chairperson shall declare the Hearing closed. The Hearing may be reopened by the Panel on its own motion or upon application of a party for good cause shown at any time before the award is made.
- I.** The Panel shall have the authority to uphold management's action. If it finds, based on the greater weight of the evidence, that the grievant has been denied a benefit or wrongly disciplined without just cause (where such cause is required), the Panel shall have the authority to reverse, reduce, or otherwise modify such action and, where appropriate, to order the reinstatement of such employee with all or a portion of back pay.

 - 1. Back pay shall be in an amount the Panel believes to be equitable, not to exceed pay for time actually lost due to suspension or discharge.
 - 2. Any award of back pay shall be offset by interim earnings the grievant received during the period of separation.
- J.** Agreement by two of the Panel members shall constitute a decision on the grievance under review. The decision by the Panel and the reasons supporting that decision shall be filed in writing with the City Manager not later than fifteen (15) full working days after the completion of the Hearing. Copies of the final decision shall be transmitted by the City Manager to the grievant, department head and Director of Human Resources within five (5) full working days of receipt of the decision.
- K.** The City Manager shall implement the Panel decision to the extent that it is consistent with the provisions of law and written policy. If either party believes the decision to be

inconsistent, he shall inform the Director of Human Resources in writing within five (5) full working days of receipt of the Panel decision in accordance with Section IX, E of this Policy.

- L. Either party may petition the Circuit Court having jurisdiction in the locality in which the grievant is employed for an order requiring implementation of the decision of the Panel.

APPROVED AS TO FORM AND CONTENT:

Melissa A. Hamann
Melissa A. Hamann, Assistant City Attorney

10/5/2020
Date

APPROVED AND ADOPTED:

Christopher M. Price
Christopher M. Price, City Manager

12.22.20
Date