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| CITY OF VIRGINIA BEACH GRIEVANCE POLICY AND PROCEDURE | Policy Number: | 4.04 |
| | Date of Adoption: | 1965 |
| | Date of Prior Revision: | December 28, 2016 |
| | Date of Current Revision: | July 1, 2020 |
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1.0 PURPOSE:

To establish open communications between a supervisor and an employee for the resolution of grievances arising from employee concerns with his or her working environment. It is the objective the grievance procedure to obtain a complete understanding of employee concerns and to have them settled as soon as possible at the lowest possible supervisory level commensurate with a fair and equitable settlement.

2.0 DEFINITIONS:

For purposes of this Policy and Procedure, the terms set forth herein shall be defined as follows:

2.1 GRIEVANCE: a complaint or dispute by an employee relating to his or her employment., including but not necessary limited to the following:

- A. A grievance may include but is not necessarily limited to the following:
- (1) Disciplinary actions, including dismissals, disciplinary demotions and suspensions;
 - (2) The application of personnel policies, procedures, rules and regulations, including the application of policies, procedures, rules or regulations involving matters referred to in [Section 4.1A\(3\)](#) below, if it can be shown that a particular policy, procedure, rule or regulation was misinterpreted or applied inconsistently and that the misinterpretation or inconsistent application affected the employee filing the grievance;
 - (3) Discrimination on the basis of race, color, creed, religion, political affiliation, age, disability, national origin, sex, pregnancy, childbirth or related medical conditions, marital status, sexual orientation, gender identity, or status as a veteran.
 - (4) Acts of retaliation because the employee has (i) used or participated in the grievance procedure; (ii) complied with any law of the United States or the Commonwealth, (iii) reported any violation of law to a governmental authority;

(iv) sought any change in law before the Congress of the United States or the General Assembly, or (v) reported an incidence of fraud, abuse or gross mismanagement.

Even if an issue falls within one of the four categories listed above, an employee cannot address the issue through the grievance procedure unless the employee is or has been **personally** affected by the management decision or action that forms the basis for the grievance. This means the employee has to have a personal stake in the matter because the employee has been adversely affected by it.

- 2.2 TYPE A GRIEVANCE: Grievances pertaining to dismissal, demotion, or suspension for more than forty (40) consecutive working hours
- 2.3 TYPE B GRIEVANCE: All other grievances that involve issues other than dismissal, demotion, or suspension for more than forty (40) consecutive working hours.

3.0 ELIGIBILITY TO UTILIZE GRIEVANCE PROCEDURE:

- 3.1 All city employees who are members of the merit service, as defined in the City Code, and all employees of constitutional offices (excluding elected officials) by written consent of the elected official, are eligible to use all phases of the grievance procedure. Employees who are employed on a *temporary, probational, or seasonal basis, including part time employees*, are eligible to use the grievance procedure only up to and including step 3, and only to address a grievable issue other than dismissal. For the purposes of the grievance procedure, whether someone is employed on a temporary or seasonal basis will be decided on a case-by-case basis, at the time a grievance is filed, based on all of the relevant circumstances.
- 3.2 All permanent police officers will be given written notice of the right to proceed under either this grievance procedure or the Law Enforcement Officer's Procedural Guarantees as cited in the Code of Virginia, but not both.
- 3.3 All permanent firefighters and emergency medical technicians subjected to an interrogation which could lead to dismissal, demotion or suspension for punitive reasons will be governed by the Firefighter's and Emergency Medical Technician's Procedural Guarantees, set forth in the Code of Virginia.

4.0 POLICY:

4.1 Grievability

A. Management retains the exclusive right to manage the affairs and operations of city government. Accordingly, the follow complaints are not grievable:

- (1) The establishment and revision of wages or salaries, position classifications or general benefits;
- (2) Work activity that (i) is accepted by an employee as a condition of employment; (ii) is part of the job description; or (iii) may be reasonably expected to be a part of job content;
- (3) The contents of ordinances, statutes or established personnel policies, procedures, rules and regulations;
- (4) Failure to promote, except where an employee can show that established promotional policies or procedures were not followed or applied fairly;
- (5) The methods, means and personnel by which work activities are to be performed;
- (6) Termination, layoff, demotion, or suspension from duty 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 (6) months as a result of the final determination of a grievance. Such action will be upheld upon a showing that (i) there was a valid business reason for the action, and (ii) the employee was notified of the reason in writing prior to the effective date of the action.
- (7) Administrative termination as defined in the city's Separation from Employment Policy, No. 6.01(A).
- (8) A non-disciplinary oral counseling; provided the oral

counseling has not been reduced to writing and included in the employee's official personnel file which is maintained by the department of human resources;

- (9) The measurement and assessment of work activity through a performance feedback/evaluation; except where the employee can show that the feedback/evaluation was arbitrary or capricious;
 - (10) The hiring, promotion, transfer, assignment and retention of employees within the City;
 - (11) The relief of employees from their duties in the case of an emergency; and
 - (12) Management's rights as outlined in [Section 4.9](#) of this policy.
- B. If there is a question of grievability, either the grievant or management must contact the director of human resources immediately, in writing, to request a determination of grievability. The question of grievability may only be raised once the grievance has been placed in writing (**step 2**) but before a Personnel Board hearing has been convened.
- C. A decision regarding whether or not a matter is grievable will be made only by the city manager or director of human resources within **ten (10) consecutive calendar days** of the receipt of the request in writing.
- D. The decision of the city manager or the director of human resources as to grievability may be appealed to the Virginia Beach Circuit Court by filing a notice of appeal with the director of human resources within **ten (10) consecutive calendar days** of receipt of the decision.
- (1) Within **ten (10) consecutive calendar days** of the filing of the notice of appeal, the city will send to the clerk of the Court and the grievant a copy of the decision, a copy of the notice of appeal and the exhibits.

- (2) A list of any evidence furnished to the Court will also be furnished to the grievant.
- (3) The failure of the city to transmit the record to the Virginia Beach Circuit Court will not prejudice the grievant's right of appeal.
- (4) Within thirty (30) calendar days of receipt of the record, the Circuit Court will hear the appeal.
- (5) The Court may affirm, reverse, or modify the decision of the city.
- (6) The decision of the Court, which is final and not appealable, will be issued no later than fifteen (15) calendar days from the date of the hearing.

4.2 Time Limits

The time limits set forth herein refer to consecutive calendar days. This means that the various consecutive calendar day periods referred to throughout this policy will include all leave days, holidays, and unauthorized absence time, as well as normal work days and weekend days for all employees.

4.3 Failure to Meet Time Limits

- A. If there are extenuating circumstances, the director of human resources may alter the time limits.
 - (1) After the initial filing of a written grievance, failure of either party to comply with all substantial procedural requirements of the grievance procedure 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 non-compliance within five (5) consecutive working days of receipt of written notification from the director of human resources of the compliance violation.
 - (2) The initial written notification of non-compliance by the grievant or the department must be made to the director of human resources, who will notify the other party.

- B. Failure of either party, without just cause, to comply with all substantial procedural requirements at the Personnel Board hearing will result in a decision in favor of the other party on any grievable issue.
- C. Compliance determinations will be subject to judicial review by filing a petition with the Virginia Beach Circuit Court within thirty (30) days of the date of such a determination.

4.4 Provision Applicable to Both Type A and Type B Grievances

- A. The “immediate supervisor” refers to the person who was responsible for providing immediate supervision to the employee at the time the discipline or other action being grieved was imposed.
- B. If, at any step of the grievance procedure, a reduction in the level of discipline originally imposed is offered to, but rejected by, the grievant, the grievance will proceed to the next step of the procedure with the original level of discipline in place. Any offer to reduce the discipline or otherwise reach a resolution will not be considered at the next step of appeal.

4.5 Waiving Steps in the Grievance Procedure

The waiving of steps within the grievance procedure is prohibited. If a case of grievability is appealed to the Virginia Beach Circuit Court for review, a determination of grievability by the Court does not allow the waiving of the remaining steps in the grievance procedure.

4.6 Use of Open Door and Mediation Policy and/or Grievance Procedure for the Same Issue is not Permissible

An employee may not use the Open Door and Mediation policy and/or the Grievance policy on the same issue; he or she must elect which procedure to use.

4.7 Mediation

- A. A grievance may be referred to mediation:
 - (1) If a grievance referred to mediation is resolved to the satisfaction of the involved parties, the resolution will be

binding, and the grievant must sign a statement agreeing to waive his or her right to further pursue the grievance procedure.

(2) If a grievance referred to mediation is not resolved to the satisfaction of the involved parties, the grievance will be returned to this procedure at whatever step it had reached at the time it was referred to mediation.

B. With authorization from the director of human resources, the grievance procedure may be held in abeyance for up to ninety (90) days from the date a grievance is referred to mediation.

4.8 Freedom from Reprisal

It is inappropriate for an employee filing a grievance or participating in another employee's grievance to be subject to reprisal solely for taking part in the grievance procedure.

4.9 Management Rights

Noting in this policy is intended to circumscribe or modify the existing rights of management to do the following:

- A. Direct the work of its employees;
- B. Hire, promote, transfer, assign, and retain employees' positions within the agency provided such action is not taken for disciplinary purposes;
- C. Maintain the efficiency of governmental operations;
- D. Relieve employees from duties because of lack of work;
- E. Take actions as may be necessary to carry out the duties of the agency in emergencies; and,
- F. Determine the methods, means and personnel by which operations are to be performed.

5.0 PROCEDURE:

5.1 Grievance Procedure for Type A Grievance

Type A grievances are grievances that involve dismissal, demotion, or suspension for more than forty (40) working hours.

- A. Type A grievances may be appealed directly to the Personnel Board at the discretion of the grievant.
 - (1) Written notice of the intent to appeal to the Personnel Board must be received by the department of human resources within ***twenty (20) consecutive calendar days***.
 - (2) If an employee does not appeal a Type A grievance directly to the Personnel Board, the procedure for Type B grievances must be followed.
- B. Upon notice of the grievant's intent to appeal directly to the Personnel Board, the director of human resources, or a designee, will arrange the time and place of the Personnel Board hearing and notify all affected parties within fourteen (14) consecutive calendar days.
- C. Unless otherwise agreed, the Personnel Board hearing will be scheduled no later than thirty (30) consecutive calendar days from the end of the aforementioned fourteen (14) consecutive day period.
 - (1) If the director of human resources determines that the grievant is continually uncooperative or is not appropriately following the Personnel Board procedures, the director of human resources will, prior to the convening of the Personnel Board, send written notification to the employee specifying the grievant's non-compliance and allowing the grievant five (5) consecutive working days to comply with the procedures of the Personnel Board.
 - (2) If the grievant does not comply with the Personnel Board procedures within five (5) consecutive working days after receipt of the written notification, the director of human resources will have full authority to cancel the Personnel Board hearing and the grievant will forfeit all rights to such a hearing.

- D. The Personnel Board's decision regarding Type A grievances are final and binding and must be consistent with law and written policy.
- E. The city manager, or his/her designee, will ensure that the Personnel Board's decision is consistent with written policy.
- F. Further, the grievant or management may petition the Virginia Beach Circuit Court for an order requiring implementation of the decision of the Personnel Board.

5.2 Grievance Procedure for Type B Grievances

Type B grievances are those grievances that involve issues other than dismissal, demotion, or suspension for more than forty (40) consecutive working hours.

A. Steps for completing a Type B grievance are:

(1) Step 1

- a. The grievant must discuss the grievance with the immediate supervisor in person within **twenty (20) consecutive calendar days** from the date of its occurrence or knowledge of its occurrence.
- b. The immediate supervisor must verbally reply to the grievant within **ten (10) consecutive calendar days** of the date of this discussion.

(2) Step 2

- a. If the grievance is not settled in step1, the grievant may, within **ten (10) consecutive calendar days** of the immediate supervisor's verbal reply, submit the grievance in writing to the same supervisor attached to the "Employee Grievance Form for Type B Grievances" that is available from the department of human resources or any city- owned or leased information bulletin board and on the city intranet.
- b. The immediate supervisor must reply in writing to the grievant and attach the response to the

“Employee Grievance Form for Type B Grievances” within **ten (10) consecutive calendar days** of receipt of the written grievance.

(3) **Step 3**

- a. If the grievance is not settled in step 2, the grievant may appeal the immediate supervisor's decision by forwarding the “Employee Grievance Form for Type B Grievances” to the department director within **ten (10) consecutive calendar days** of the immediate supervisor's response.
- b. The department director, or his/her designee, must meet with the grievant to discuss the grievance and the department director, or a designee, must reply in writing to the grievant and attach the response to the “Employee Grievance Form for Type B Grievances” within **ten (10) consecutive calendar days** of the receipt of the written grievance.
- c. If the immediate supervisor is the department director, steps 2 and 3 are consolidated into a single step.

(4) **Step 4**

- a. If the grievance is not settled in step 3, the grievant may appeal the decision to the Personnel Board.
- b. The decision of the Personnel Board will be final and binding and must be consistent with law and written policy.
- c. The “Employee Grievance Form for Type B Grievances” and all attached documents must be sent to the director of human resources within **ten (10) consecutive calendar days** of the department director's response.

- d. Upon notification of the grievant's intent to appeal, the director of human resources, or his/her designee, must arrange the time and place of the hearing and notify all affected parties of the time and place within fourteen (14) consecutive calendar days.
 - e. The Personnel Board hearing will be scheduled, if possible, within thirty (30) consecutive calendar days from the end of the aforementioned fourteen (14) consecutive day period.
 - f. Either the grievant or management may petition the Virginia Beach Circuit Court for an order requiring implementation of the decision of the Personnel Board.
- B. A member of the Personnel Board will be disqualified from hearing a grievance if (i) he/she has direct involvement with the grievance being heard or with the complaint or dispute giving rise to the grievance; (ii) he/she is in a direct line of supervision of the grievant or is one of the following relatives of a participant in the grievance process or a participant's spouse: spouse, parent, child, descendants of a child, sibling, niece, nephew or first cousin; or, (iii) he/she is an attorney having direct involvement with the subject matter of the grievance or is a partner, associate employee or co-employee of such an attorney.
- C. With the exception of step 3, the only persons who may normally be present in the management steps are the grievant, the appropriate management representative at the level at which the grievance is being heard, and appropriate witnesses for each side. A witness may only be present while actually providing testimony.
- D. The time frames set forth in the grievance procedure may be extended by mutual agreement of the city and the grievant.

6.0 ASSISTANCE FOR EMPLOYEES WHO CANNOT READ OR WRITE AND ACCOMMODATIONS FOR DISABLED EMPLOYEES:

An employee who is not able to read or write, or who has a disability and needs a reasonable accommodation in order to use the grievance procedure, shall be

referred by his or her immediate supervisor to the department of human resources for assistance.

7.0 REPRESENTATION:

At steps 3 and 4, the grievant may be accompanied or represented by an individual of his/her choice, who may be legal counsel. Representation of the grievant will be at the expense of the grievant. Management may likewise be represented by legal counsel (who may be a city attorney or a designated alternate attorney) at steps 3 and 4; however, management may not be represented by legal counsel at step 3 unless the grievant also has legal representation, or at step 4 of this procedure unless the grievant is represented by a third party. A city attorney or a designated alternate attorney may not simultaneously provide counsel to the Personnel Board while serving management on the same grievance”

8.0 REVISIONS:

City Manager, or designee, may revise this policy at any time.

Revision History

| Version | Revision Date | Description of Revision |
|----------------|----------------------|---|
| 1 | July 1, 2020 | Revision History tracking started this date |
| 2 | July 1, 2020 | Updated discrimination types to mirror City Code. |