

**CITY OF PORTSMOUTH**  
**ADMINISTRATIVE POLICY**

**#11**

**December 2016**

**Grievance Procedure**

**I. PURPOSE**

In an effort to establish and maintain a high degree of morale, effective communications, and efficient working relations among employees of the City of Portsmouth, a continuing system for settling employee grievances, complaints, and problems is hereby established. When an employee feels conditions affecting his/her employment are unjust, inequitable, discriminatory, or creates a problem, the employee will use the following procedures for resolution of such condition(s) or problem(s) without fear of recrimination. This procedure is administrative in nature and not a judicial proceeding.

**Any employee filing a grievance will have the right to follow all the steps of the Grievance Procedure with complete freedom from reprisal.**

The determination of a complaint as non-grievable shall in no way restrict the employee's right to seek, or the City's right to grant, administrative review and resolution of complaints outside this procedure. Such review is not a part of the grievance procedure, and does not constitute access to another grievance procedure or review by a court of law or chancery.

**NOTE: THIS DOES NOT CONFER THE RIGHT UPON ANYONE TO MAKE SLANDEROUS OR LIBELOUS STATEMENTS.**

**II. OBJECTIVE**

It is the objective of this Grievance Procedure to obtain a complete understanding of employee problems and to have them settled as soon as possible at **the lowest supervisory level commensurate with an equitable settlement**. However, there should be no hesitancy in carrying the problem to the highest level of management should there be no resolution at a lower step.

**III. DEFINITION OF GRIEVANCE**

A. A grievance is a complaint or dispute relative to an employee's employment including, (but not necessarily limited to):

1. Disciplinary actions, including dismissals, disciplinary demotions, and suspensions, provided that dismissals shall be grievable whenever resulting from formal discipline or unsatisfactory job performance;
2. Concerns regarding the application of personnel policies, procedures, rules, and regulations, including the application of policies involving the matters referred to in B3 of Section III;
3. Complaints of discrimination on the basis of race, color, religion, creed, political affiliation, age, disability, national origin, or sex;
4. Acts of retaliation for using the grievance procedure or participation in the grievance of another City employee;
5. Acts of retaliation because the employee has complied with any law of the United States of America or the Commonwealth, has reported any violation of such law to a governmental authority, or 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.

In grievances brought under the paragraphs cited above, the employee must state specific facts and circumstance in the grievance to support his or her complaints of grievability. Mere allegation of such actions or circumstance will not support grievability.

- B. Management reserves exclusive right to manage the affairs and operation of City government. Included are the rights to establish job duties, job descriptions and job requirements, to assign and direct the work of employees, to determine the methods, means, and personnel by which work activities are to be carried out, to establish personnel and operating policies, procedures, rules and regulations, to hire, promote, transfer, assign and retain employees, to establish standards for acceptable performance and conduct, and to establish wages and salaries, position classifications and general benefits, to direct the work of its employees and other similar matters, as may be deemed management right. Accordingly, the following complaints are not grievable under this procedure:

1. Establishment and revision of wages or salaries, position classification, or general benefits;
2. Work activity accepted by the employee as a condition of employment, or work activity which may be reasonably expected to be a part of the job;
3. The content of ordinances, statutes, or established personnel policies, procedures, regulations, and rules;
4. Failure to promote, except where the employee can show that established promotional policies and procedures were not followed or applied fairly;

5. The methods, means, and personnel by which City work activities are to be carried on;
6. 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, termination, layoff, demotion, or suspension from duties because of lack of work, reduction in work force, or job abolition;  
  
In any grievance brought under this exception, the action shall be upheld upon a showing by the City that there was a valid business reason for the action, and 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;
8. The relief of employees from duties of the City in emergencies.

#### **IV. DETERMINATION OF ACCESS, GRIEVABILITY & COMPLIANCE**

- A. The issue of grievability may occur at any step of the procedure, subsequent to the reduction of the grievance to writing and prior to the panel hearing, but once raised, the issue must be resolved before further processing of the grievance.
- B. Decisions regarding grievability shall be made by the Director of Human Resource Management as the City Manager's designee. The City or the grievant may request a determination of grievability, and such determination shall be made within ten (10) calendar days from receipt of such request. The grievant will be provided a copy of this determination.
- C. Decisions regarding grievability may be appealed to the Circuit Court of the City of Portsmouth by the grievant. Such appeal may be instituted by the grievant by filing a notice of appeal with the City Manager (Chief Administrative Officer) within ten (10) calendar days after receipt of the Director of Human Resource Management's initial decision on grievability. The Director of Human Resource Management shall transmit to the Clerk of the Circuit Court of the City of Portsmouth within ten (10) calendar days thereafter, the decision of grievability, 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.
- D. Within thirty (30) days of receipt of such records by the Clerk, the Court, sitting without a jury, shall hear the appeal on the record transmitted by the Director of Human Resource Management 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 Director of Human Resource Management and shall render its decision within fifteen (15) calendar days from the date of the conclusion of the hearing. The decision of the Court is final and is not appealable.

- E. The time periods outlined in this policy constitute substantial procedural requirements. However, such time periods may be extended by mutual agreement between the grievant and the appropriate level of management to whom the time period is applicable. Whenever a person is required or permitted under this procedure to do an act within a prescribed time after receipt of a document, three (3) days shall be added to the prescribed time when the document is served by mail. Employees have the responsibility to report to their department head for disciplinary meetings when directed to do so. Employees shall themselves be available even when they are on administrative leave.
- F. The determination of a complaint as “non-grievable” shall not be construed to restrict an employee’s right to seek management’s right to provide customary administrative review of complaints outside the scope of the grievance procedure.
- G. The issues of access and grievability shall be decided prior to the panel hearing or they shall be deemed to have been waived.

#### **IV. ELIGIBILITY**

Unless otherwise provided by law, all non-probationary full-time and part-time City employees are eligible to initiate a grievance under this policy. An employee or person who comes within one or more of the following groups is not eligible to initiate a grievance under this procedure:

- A. Employees in the employment probationary period or in a formal extension of the employment probationary period.
- B. Officials appointed by the City Council of the City of Portsmouth.
- C. Officials and employees who by City Charter/Code serve at the will or pleasure of the City Manager, if different from paragraph D of this section.
- D. Department Heads, and the equivalent, and deputies to the City Manager.
- E. Temporary, limited terms, and seasonal employees.
- F. Law enforcement officers as defined in Chapter 30 (Secs. 2.2-3000 et. seq.) of Title 2.2 of the Code of Virginia whose grievance is subject to the provisions of Chapter 30 and who have elected to proceed pursuant to those provisions in the resolution of their grievance, or any other employee electing to proceed pursuant to any other existing procedure in resolution of their grievance. Such

employees may use only one procedure for any single issue. They will not be permitted to use more than one procedure either simultaneously or in a sequence. Selection of the City Grievance Procedure in these matters will be subject to determination of grievability in accordance with Section III of this procedure.

- G. Employees whose terms of employment are limited by law.
- H. Employees who have resigned may not have access to the grievance procedure after the effective date of the resignation unless the grievance was initiated prior to the effective date.
- I. The Director of Human Resource Management shall determine the officers and employees excluded from the grievance procedure, and shall be responsible for maintaining an up-to-date list of the affected positions.

## V. PROCEDURE

### A. Management Steps

The first three steps of the grievance procedure provide an immediate process for resolution of complaints and disciplinary matter.

### B. General Provisions

- a. The first two management steps involve the employee's immediate supervisor. In departments with several levels of supervision, the department may specify the management level designated as the immediate supervisor for grievance purposes.
- b. In grievances in which the action grieved (whether disciplinary or otherwise) was action taken by the department head, Steps I and II shall be waived.
- c. In situations where the employee's immediate supervisor is also the department head, Steps II and III shall be combined.
- d. Personal face-to-face meetings between the appropriate level of management and employee are required at all steps.
- e. With the exception of Step III, the only persons who may normally be present in the management step meetings are the grievant, the appropriate manager at the level at which the grievance is being heard, and appropriate witnesses for each side. Witness shall be present in the management step meetings only while actually providing testimony. At Step III, the grievant and management may each have present a representative of his or her choice. If the grievant is represented by legal counsel, management likewise has the option of being

represented by counsel. When an employee is represented, any cost of representation is at the employee's expense.

- f. All grievances processed through Steps II and III shall be processed on forms provided by the city. Human Resource Management will provide procedural assistance to both parties in the completion of grievance forms.
  - g. Once a grievance has been reduced to writing, it may not be changed or amended unless agreed to by the grievant and the level of management at that step. Any different or additional grievance issues must be pursued through a separate grievance proceeding.
- C. **Step I -Verbal** - The grievant must present the grievance verbally to the immediate supervisor within twenty (20) calendar days of the date of its occurrence or knowledge of its occurrence. The supervisor will meet with the employee **face-to-face** and will give an answer, verbally in a discussion format, within fifteen (15) calendar days of the date of the oral presentation of the grievance. In the event that no settlement or verbal response is made by the supervisor within fifteen (15) calendar days of the oral presentation, the grievant may proceed to Step II immediately. Failure on the part of the employee to initiate the action required within the time stated herein shall terminate the employee's right to initiate a grievance on that issue.
- D. **Step II** - If there is no resolution or verbal response within the time limit provided in Step I, the grievant may file a written grievance on the appropriate form provided by the City to the immediate supervisor, with copies to the Department Head and the Director of Human Resource Management, within fifteen (15) calendar days of the immediate supervisor's verbal response or immediately thereafter when the supervisor fails to respond.

**This statement will be the employee's explanation of what had occurred, and must state specifically what relief is requested as a remedy. Such relief must be tangible, rational, and within the power of the City of Portsmouth to grant.**

The employee's supervisor must meet **face-to-face** with the employee and render a decision and comments, in writing, on the form provided by the City, with copies to the Department Head and the Director of Human Resource Management, within fifteen (15) calendar days after receiving the written grievance. The only persons who may be present at this meeting are the employee, the immediate supervisor, and appropriate witnesses for each side.

The Director of Human Resource Management will review the grievance for compliance with the procedure and grievability. He/she will advise all interested and proper parties in a timely manner of any administrative, grievability, other actions or rulings affecting the grievance.

**E. Step III - Middle Management Level**

If the grievance is not settled at the immediate supervisor level, the employee may appeal the immediate supervisor's decision in writing on the grievance form, provided by the City, to the next level of management, with a copy to the Department Head and the Director of Human Resource Management, within fifteen (15) calendar days of the immediate supervisor's response.

The intermediate manager receiving the grievance will meet with the employee **face-to-face**. The only persons who may be present are the grievant, the intermediate manager, and appropriate witnesses for each side. The intermediate manager will render a written decision and comments on the form provided by the City and return it to the employee, with a copy to the Department Head and the Director of Human Resource Management, within fifteen (15) calendar days after receiving the appeal. If this level of management is the Department Head, Steps Two and Three are consolidated into a single step, as approved by the Director of Human Resource Management.

If the employee does not agree with the decision reached, or if the intermediate manager fails to provide resolution of the grievance as outlined above, the employee may present an appeal, in writing, on the form provided by the City, to the Department Head, with a copy to the Director of Human Resource Management, within fifteen (15) calendar days of the intermediate manager's response.

**F. Step IV - Department Head Level**

The Department Head, upon receiving the grievance, will meet **face-to-face** with the employee and discuss the grievance. The grievant may have a representative of their choice present as well as appropriate witnesses; if the grievant elects to have legal representation, the Department Head may likewise do so.

The grievant must notify the Department Head of the name of their attorney within five (5) calendar days of the scheduled meeting. The presence of attorneys shall not alter the fact that this is an administrative, informal, fact-finding process involving a meeting and discussion between a department and an employee.

The Department Head will render a written decision and comments on the form provided by the City and return it to the employee, with copies to the Director of Human Resource Management, within fifteen (15) calendar days after receiving the appeal.

If the Department Head's response does not resolve the grievance, the employee may request a panel hearing.

## **VI. Panel Hearing**

### **A. Request for a Panel Hearing**

A panel hearing may be requested when the Department Head's response in Step III of the grievance procedure does not resolve the grievance.

1. The employee must make a request for a panel hearing to the Director of Human Resource Management in writing on the original grievance form within fifteen (15) calendar days of receipt of the Department Head's decision. The employee shall also complete a panel hearing request form which shall include the name of the panel member selected by the grievant and the name of the grievant's legal counsel, if any, within five (5) calendar days of their intent to appeal.

### **B. Panel Selection**

1. The panel shall be selected in the following manner: one (1) selected by the grievant, one (1) selected by the City Manager, and the remaining member selected by the two (2) appointees. The grievant will have ten (10) calendar days to make this selection. The City Manager or designee has ten (10) calendar days after the employee makes their selection, to make the Management selection. The panel members selected by the grievant and the City Manager or his/her designee will have ten (10) calendar days to select a third member who will be the panel's chairperson. When a selection cannot be agreed upon, the Director of Human Resource Management will request the Chief Judge of the Circuit Court of the City of Portsmouth to select a third City employee as a panel member and chairperson.
2. Panel members shall be active, regular full-time city employees. The panel is an impartial body selected to hear and decide the grievance on its merits. Therefore, in order to provide an impartial panel and to ensure the protection of city employees, the following persons may not serve as panel members:
  - a. The following relatives of any participant in the grievance process and the relatives of any participant's spouse: spouse, parent, child, descendants of a child, sibling, niece, nephew and first cousin.
  - b. Supervisors and managers who are in the direct line of supervision of a grievant. Employees in the same department as the grievant may not serve on the panel.

- c. Any person having direct involvement with the grievance including any representative of the grievant and witnesses who have been involved at the management steps.
  - d. Any attorney having direct involvement with the subject matter or a partner, associate, employee, co-employee or client of such an attorney.
  - e. Employees of the Human Resource Management, the City Attorney's Office, and the City Manager's office.
  - f. Persons who are or have been residents of the same household as the grievant, also are prohibited from serving on the panel.
3. Any person selected as a panel member may decline appointment in which the case the appropriate party may make another selection.

C. Panel Procedure

1. The full panel will set the date, time, and place for the hearing which shall be held within twenty (20) calendar days following date of the selection of the full panel.
2. Parties to the grievance shall not discuss the substance of any grievance or the problem giving rise to the grievance with any panel members prior to the hearing.
3. The Director of Human Resource Management, or designee, will coordinate the panel hearing and may correspond with panel members, grievant, the grievant's attorney, witnesses, and others directly on behalf of the panel.
4. The Director of Human Resource Management, or designee, will provide the panel with copies of the grievance record prior to the hearing and provide the grievant with a list of documents furnished to the panel at least ten (10) days prior to the scheduled panel hearing. Documents, exhibits, and list of witnesses shall be exchanged between the grievant's attorney and management's attorney at least ten (10) calendar days in advance of the hearing. The exchange shall be made by 2:00 p.m. of the tenth day. Human Resource Management will coordinate the exchange of material between the parties in advance of the hearing.

D. Conduct of the Panel Hearing

1. The grievant and the Department Head or representative shall be present at all panel hearings and may be represented by legal counsel or other representatives of their choice. Such representatives may

- examine, cross-examine, question, and present evidence on behalf of the grievant or the department to the panel.
2. The taking of photographs in the hearing room during the progress of the grievance proceedings and the broadcasting of grievance proceedings by radio or television are prohibited.
  3. The panel shall conduct its hearing with its three (3) members present.
  4. The panel has the authority to determine the admissibility of evidence without regard to the burden of proof, or the order of presentation of its evidence, so long as a full and equal opportunity is afforded to all parties for the presentation of their evidence.
  5. At the option of each party, opening statements may be made at the beginning of the hearing setting forth the issue(s) and the panel may ask for such statements in order to clarify the issue(s) involved in the grievance.
  6. There is no subpoena power to compel the attendance of witnesses in the grievance procedure. The panel may, however at the request of either party or in its own discretion, request the voluntary appearance of witnesses. Witnesses shall be permitted in the hearing room only when given their testimony. The sworn statement of absent or unavailable witness shall be received as evidence by the panel.
  7. The panel hearing is an administrative process and is not meant to be conducted like proceedings in court. Panels are not bound by technical rules of evidence and shall take into account all reliable and substantial evidence produced at the hearing. It is within the province of the panel to determine relevancy and materiality. The panel may require either party to demonstrate relevancy and materiality of any evidence and the need for any requested extensions of the hearing panel.
  8. All evidence shall be presented in the presence of the panel and the parties unless by mutual consent of the parties.
  9. Evidence may be presented by the grievant along with any exhibits which shall be marked and made part of the record. The panel may question any witness, including the grievant, and the grievant or his attorney may question any witnesses. The city's designated representative or attorney representing the city may also question witnesses and present evidence in the same manner afforded the grievant.
  10. The panel shall deal with the grievance before them. Evidence and testimony as to how other employees or situations have been handled in the past are not relevant. No personnel file or record may be

examined by the panel or introduced into evidence, except that of the grievant.

11. The grievant shall not be permitted to introduce any evidence before the panel which has not been previously presented or submitted during the management steps for management consideration.
12. The panel by majority vote may decide procedural questions and rule upon objections raised during the course of the hearing.
13. The parties shall produce such evidence as required by the panel.
14. After both parties have had the opportunity to present their evidence, the panel chairperson shall inquire of both parties whether they have further evidence. Upon receiving negative replies, the hearing shall be closed. Both parties shall be given the opportunity to make closing statements, following which the panel shall retire to its deliberation.
15. A court reporter shall record the grievance hearing, and the city shall bear the cost of the reporter's appearance fee. Any party ordering a copy of the transcript of the hearing shall bear the cost thereof. By agreement, the parties may waive having the hearing recorded by a court reporter.

**E. Panel Decision**

1. The panel shall render its decision on the appropriate City form and distribute copies to the grievant, Department Head, and the Director of Human Resource Management within fifteen (15) calendar days of the conclusion of the hearing.
2. The panel shall decide the case on the merits, not whether there has been compliance with the procedural requirements of this article.
3. The panel does not have the authority to formulate policies or procedures nor to alter existing policies and procedures. The panel shall make its decision within the following standards of review:
  - a. The panel shall uphold the city if the evidence shows that the charges of misconduct were reasonable. If the panel finds that the charges were not reasonable, the panel has the same authority and limitations of management to determine the appropriate charges and disciplinary action in accordance with applicable city policy.
  - b. In grievances involving termination for unsatisfactory work performance, failure to meet job standards, unacceptable attendance or matters, the panel shall uphold the city's action if it determines that the action was reasonable under the circumstances.

The panel is not empowered to establish or modify job standards, job requirements, or performance standards nor may the panel determine or change an employee's evaluation rating.

- c. In grievances involving complaints regarding application of policy, discrimination, and other non-disciplinary issues, the panel will determine if policies and procedures have been appropriately applied. The panel is not empowered to promote, assign, or transfer employees to establish salaries nor to take any other action which is in the purview of management rights.
  - d. The panel does not have the authority to consider determinations of grievability, determinations of access to the grievance procedure, or compliance determinations.
  - e. The majority decision of the panel, acting within scope of its authority, shall be final, subject to existing policies, procedures, and law. In cases of law enforcement officers who have elected to proceed pursuant to section 9.1-504 of the Code of Virginia, 1950, as amended, the panel decision is advisory only to the city manager, but shall be afforded significant weight.
  - f. The panel may not award back pay or benefits, damages, or attorney's fees.
4. The City Manager, after consultation with the Director of Human Resources has discretion to order all or some back pay and/or benefits to the grievant if the panel finds that the charges or action taken by the city were not reasonable.
  5. The Director of Human Resource Management may remand a decision which appears to be inconsistent with law and written policy to the panel for further consideration. All parties will be notified when a decision is remanded. All three panel members must participate in the decision making process. The question of whether the relief granted by the panel is consistent with existing written and unwritten policies, procedures, and laws shall be determined by the Director of Human Resource Management unless such person has a direct personal involvement with the event(s), in which case the decision shall be made by the Commonwealth's Attorney for the City of Portsmouth.
  6. The Director of Human Resource Management is responsible for ensuring that the panel decisions are implemented. Either party may petition the Circuit Court of the City of Portsmouth for implementation of the panel decision within thirty (30) days of the date of the non-implementation decision.

## **VII. TIME PERIODS**

The Director of Human Resource Management, with the mutual agreement of the City and the grievant, may extend the time limits within the four steps.

No permanent changes shall be made in this procedure without the approval of the City Manager.

## **VIII. COMPLIANCE**

- A. After the initial filing of a written grievance, failure of either party to comply with all substantial procedural requirements of the grievance procedure, including the panel hearing, without just cause shall 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) **work days** of the receipt of written notification by the other party of the compliance violation. Such written notification by the grievant shall be made to the Director of Human Resource Management.
- B. Compliance and/or exception determinations shall be made by the Human Resource Management Director, and once made, shall be subject only to judicial review by filing a petition with the Circuit Court within thirty (30) days of the compliance determination.

## **IX. STANDARDS OF CONDUCT POLICY**

The City of Portsmouth has an Administrative Policy concerning Standards of Conduct and Disciplinary Action which constitutes a written policy governing all matters of discipline, and same shall be the basis on which all employees are disciplined.