



## **Administrative Regulations**

### **Office of the Mayor**

**Title:** GRIEVANCE POLICY FOR CLASSIFIED SERVICE

**A.R. Number:** 5.19 **Effective Date:** 7/1/2023 **Page:** 1 of 10

**Supersedes:** N/A **A.R.:** N/A **DATED:** N/A

#### **I. PURPOSE**

This procedure provides a timely and fair process for the resolution of employee grievances initiated by eligible employees of the City of Richmond. Each appointing authority/department head or designee shall take appropriate steps to implement these procedures within their agency. A copy of the city's grievance procedure shall be made available to all city employees. Each employee shall be assured that the filing of a grievance will have no adverse effect on their status within city service.

#### **II. POLICY**

##### **A. Cost of Representation**

The grievant shall bear any and all cost involved in employing representation or in preparing or presenting their case. The Personnel Board has no authority to award legal fees or punitive damages.

##### **B. Coverage**

All city employees who are in permanent positions (either full-time or part-time) and who are on tenured status (completed the applicable probationary period) are covered by and eligible to file grievances, with the following exceptions:

1. Appointees of elected groups or individuals.
2. Officials and employees who by charter or other law serve at the will or pleasure of the appointing authority/department head or designee.
3. Deputies and executive assistants to the Chief Administrative Officer or designee.
4. Agency heads or chief executive officers.
5. Members of the unclassified service. Any employee who moves from a position in the classified service to a position in the unclassified service will automatically lose all rights to the grievance and appeal process.
6. Employees whose terms of employment are seasonal or limited by law.
7. Employees occupying temporary or limited term positions.
8. Law enforcement officers as defined in Chapter 5 (§ 9.1-500 et seq.) of Title 9.1 whose grievance is subject to the provisions of Chapter 10.1 of the Code of Virginia and who



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have elected to proceed pursuant to those provisions in the resolution of their grievances.

9. Any employee who elects to pursue their grievance or complaint by any other existing procedure in the resolution of their grievance.

#### **C. Definition of Grievance**

A grievance shall be a complaint or dispute by an employee relating to their 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. The application of personnel policies, procedures, and regulations, including the application of policies involving ordinances, statutes or established personnel policies, procedures, rules, and regulations.
3. Complaints of 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 military status.
4. Acts of retaliation as a result of utilization of the grievance procedure or participation in the grievance of another employee.
5. Performance demotion.
6. Acts of retaliation because the employee has complied with any law of the United States, the Commonwealth of Virginia, or the City of Richmond, 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, the General Assembly of the Commonwealth, the City Council, or has reported an incidence of fraud, abuse, or gross mismanagement.

For the purposes of clause Section 2.C.4. and 6., there shall be a rebuttable presumption that increasing the penalty that is the subject of the grievance at any level of the grievance shall be an act of retaliation.

#### **D. Rights Reserved**

Nothing in these grievance and appeal procedures is intended to circumscribe or modify the exclusive right of the city to manage the affairs and operation of the city government.



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Accordingly, the following complaints are non-grievable:

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 may 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.
4. Failure to promote except where the 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 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 force, or job abolition.
7. The hiring, promotion, transfer, re/assignment, and retention of employees within the city government.
8. The relief of employees from duties of the city government in emergencies.

In any grievance brought under the above 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.

#### **E. Determination of Grievability**

At any time after a complaint has been filed under this policy but prior to a hearing before the appointing authority/department head or designee (step two), the Chief Administrative Officer or designee, or the Personnel Board (direct appeals), a determination as to whether such complaint is grievable shall be made by the Department of Human Resources.

Such a request shall be in writing and signed by the party seeking a ruling. If not previously determined, the Department of Human Resources shall make a grievability determination in writing on all complaints prior to such complaint being heard at the second step, except for direct appeals, which shall be made prior to the fourth step. The Department of Human Resources may initiate a determination of grievability at any step. For the purpose of this



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policy, "grievability" shall mean whether or not the grievance qualifies for a Personnel Board hearing.

Grievability determinations shall be made by the Department of Human Resources within ten (10) calendar days of receipt of the request.

The determination shall be in writing and a copy shall be sent via electronic mail and certified mail to the complainant and the appointing authority/department head or designee. If the grievance is determined to be non-grievable by the Department of Human Resources, the grievance process is concluded unless a timely appeal is filed.

In no case shall the City Attorney be authorized to decide the issue of grievability.

#### **F. Appeals of Grievability Decisions**

Decisions regarding grievability may be appealed to the City of Richmond Circuit Court for a hearing on the issue of whether the employee's complaint qualifies as a grievance. Such appeal shall be made by filing a notice of appeal with the Department of Human Resources within ten (10) calendar days from the date of receipt of the decision. Within ten (10) calendar days thereafter, the Department of Human Resources shall transmit to the Clerk of the Court a copy of the decision of the Department of Human Resources, the notice of appeal and the exhibits constituting the record of the grievance. A list of evidence furnished to the court shall also be furnished to the grievant. The court, on motion of the grievant, may issue a writ of certiorari requiring the city to transmit the record on or before a certain date.

Within thirty (30) calendar days of receipt by the Clerk of such records, the court, sitting without a jury, shall hear the appeal on the record transmitted by the Department 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 court may affirm, reverse, or modify the decision of the Department of Human Resources.

The decision of the court shall be rendered no later than the fifteenth day from the date of the conclusion of the hearing. The decision of the court is final and is not appealable.

#### **G. Procedural Compliance**

After the initial filing of the written grievance, the failure of either party to comply with all substantial procedural requirements of the grievance procedure, including the Personnel Board 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 non-compliance



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within five (5) workdays of receipt of written notification by the other party of the compliance violation. Such written notification shall be made to the Department of Human Resources, who shall determine all compliance issues.

Written notification of non-compliance shall be on forms approved and provided by the Department of Human Resources. The Department of Human Resources, at its option, may require a clear written explanation of the basis for any just cause extensions or exceptions.

Compliance determinations shall be made by the Department of Human Resources and shall be subject to judicial review by filing a petition with the City of Richmond Circuit Court, and a copy thereof with the Department of Human Resources, within thirty (30) calendar days of the compliance determination.

#### **H. Time Limitations**

The parties to the grievance, by mutual consent, may permit the Department of Human Resources to extend any or all of the time periods established in this procedure. When a time period deadline falls on a Saturday, Sunday or city holiday, the next calendar day that is not a Saturday, Sunday or city holiday shall be considered the time period deadline day.

#### **I. Standard/Burden of Proof**

The grievant must prove by the greater weight of the evidence that the discipline imposed including termination or the complaining action was excessive or unwarranted. All parties are to be afforded a full and equal opportunity for presentation of their evidence.

#### **J. Representation During the Management Steps**

With the exception of the final management step (step three), the only persons who may be present in the management step meetings are the grievant, the appropriate city official at the level at which the grievance is being heard, a representative from the Department of Human Resources and appropriate witnesses for each side. Witnesses shall be present only while actually providing testimony.

Employees who are necessary participants at a grievance hearing shall not lose pay for the time necessarily lost from their jobs and will not be charged leave because of their attendance at such hearings. During the management steps the grievance hearings shall not be recorded and recording devices are not permitted in the room in which a grievance hearing is being heard.

At the final management step (step three) the grievant may, at their option and expense, have present a representative of their choice. If the grievant is represented by legal counsel, the



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city has the option of being represented by legal counsel. The grievant shall provide the name, mailing address, email address and telephone number of the grievant's representative or legal counsel on the city grievance form at least five (5) days prior to the grievance hearing.

### III. PROCEDURE

#### A. Steps of the Grievance Process

Eligible employees may file a grievance by following the herein listed procedures.

1. **Step One** – Informal Meeting - An employee who has a complaint shall discuss the complaint informally with their immediate supervisor within twenty (20) calendar days of the occurrence of the incident giving rise to the grievance.

The employee is not required to reduce their complaint to writing although it is recommended that such complaint be in writing, so all issues are clear. The purpose of this meeting is to have an informal discussion in an attempt to resolve the complaint in as expeditious manner as possible.

The supervisor shall within fifteen (15) calendar days provide in writing whether resolution or no resolution can be reached regarding the complaint.

2. **Step Two** – Formal presentation to the appointing authority/department head or designee - If the complaint is not resolved at the Step One informal meeting, the grievant may, within fifteen (15) calendar days thereafter; appeal the decision of the supervisor by reducing their complaint to writing on a city grievance form (obtainable from the Department of Human Resources) and forwarding the complaint to the appointing authority/department head or designee and the Department of Human Resources accompanied with all supporting documentation and the written decision from the prior management step. Failure to provide the supporting documentation may delay the grievance hearing and the time period limitations set thereof.

At any time prior to the hearing with the appointing authority/department head or designee a determination of grievability shall be made by the Department of Human Resources within ten (10) business days of receipt of such complaint from the grievant or the appointing authority/department head or designee. The determination shall be in writing and a copy sent via certified mail and email to the grievant and the appointing authority/department head or designee.

Within fifteen (15) calendar days of receipt of such determination of grievability and provided the complaint is determined as grievable, the appointing authority/department



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head or designee shall meet in person with the grievant, unless the grievant waives this right, and issue a written decision regarding the grievance. A copy of the decision shall be provided to the Department of Human Resources. If the decision of the appointing authority/department head or designee at Step two amends any previous actions (i.e., partial relief may have been granted) only the remaining issue (if any) may be appealed.

- Step Three** – Appeal to Chief Administrative Officer or designee - If the decision of the appointing authority/department head or designee does not resolve the grievance, the grievant may appeal the decision to the Chief Administrative Officer or designee within fifteen (15) calendar days after receipt by submitting their appeal in writing on a form (obtainable in the Department of Human Resources) accompanied with all supporting documentation and the written decisions from the prior management steps. Failure to provide the supporting documentation may delay the grievance hearing and the time period limitations set thereof.

The Chief Administrative Officer or designee, within fifteen (15) calendar days of their receipt of the appeal shall meet with the employee and issue a written decision. The Chief Administrative Officer or designee shall only consider the actions, which result from the Step two hearing. The Chief Administrative Officer or designee is required by this policy to meet with the grievant in person unless the grievant waives this right. The Chief Administrative Officer or designee shall give due consideration to the facts presented and forward their decision to the grievant, to the grievant's appointing authority/department head or designee and the Department of Human Resources. If the decision of the Chief Administrative Officer or designee at Step three amends the previous actions (i.e., partial relief may have been granted) only the remaining issue (if any) may be appealed.

- Step Four** – Appeal to Personnel Board - If the decision of the Chief Administrative Officer or designee does not resolve the grievance and the complaint is still grievable, the grievant may appeal such decision to the Personnel Board. Every appeal to the Personnel Board shall be directed to the Department of Human Resources on a grievance form (obtainable from the Department of Human Resources) and shall be filed within fifteen (15) calendar days after receipt of the Chief Administrative Officer or designee's decision. The grievance appeal shall be accompanied with all supporting documentation and written decisions from the prior management steps. Failure to provide the supporting documentation may delay the grievance hearing and the time period limitations set thereof.

Upon receipt of an appeal to the Personnel Board, the Department of Human Resources shall schedule a hearing before the Personnel Board. A hearing date shall be established



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by the Secretary of the Personnel Board within a reasonable timeframe from the date of filing the appeal. Upon the conclusion of the Personnel Board hearing, they shall render a written decision within ten (10) calendar days of the conclusion of the hearing.

Procedures for the Personnel Board hearing are provided in the Personnel Board Policy. The decision of the Personnel Board shall be final and binding and shall be consistent with the provisions of law and written policy. The question of whether the relief granted by the Personnel Board is consistent with written policy shall be determined by the Chief Administrative Officer or designee, unless such person has a direct personal involvement with the grievance, in which case the decision shall be made by the city's Commonwealth Attorney.

- B. **Direct Appeals to The Personnel Board** – An eligible employee who is dismissed shall have the right of appeal directly to the Personnel Board without otherwise exhausting his or her rights under this Section III; Direct appeals must be executed by the employee within twenty (20) calendar days of the event or notification of the event, whichever occurs first. Failure to file will result in a waiver. Direct appeals must be filed with the Department of Human Resources in writing on a grievance form (obtainable from the Department of Human Resources). The grievance direct appeal shall be accompanied with all supporting documentation. Failure to provide the supporting documentation may delay the grievance hearing and the time period limitations set thereof.

A hearing date shall be established by the Secretary of the Personnel Board within a reasonable timeframe from the date of filing the direct appeal. The Secretary of the Personnel Board shall notify the grievant and Appointing Authority or designee in writing of the time and place of the Personnel Board Hearing.

#### IV. RESPONSIBILITY

**Appointing Authorities and/or Department Heads** – Appointing authorities/department heads or designee are responsible for receiving grievance appeals from employees and issuing written decisions regarding grievance appeals.

**Chief Administrative Officer** – The Chief Administrative Officer is responsible for receiving grievance appeals from employees and issuing written decisions regarding grievance appeals.

**Department of Human Resources (HR)** – HR is responsible for oversight and administration of this policy. HR is the central repository for all personnel files and information, including grievance complaints by employees. HR shall make available all necessary procedures and forms to departments and employees and provide guidance when questions arise. HR shall determine the grievability of the employee's complaint.



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**Employees** – Employees are responsible for abiding by the requirements and processes of this policy.

**Supervisors** – Supervisors are responsible for discussing the initial grievance complaint with the employee and provide in writing whether resolution can be achieved regarding the complaint.

**Personnel Board** – The Personnel Board is responsible for receiving grievance appeals from employees and issue written decisions regarding grievance appeals.

#### **V. DEFINITIONS**

Words and phrases contained within this policy are interpreted by the Director of Human Resources and can be made available upon request.



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**VI. REGULATION UPDATE**

Modifications to this policy shall be the responsibility of the Department of Human Resources under the advisement of the Chief Administrative Officer.

**Approval**

  
CHIEF ADMINISTRATIVE OFFICER

  
MAYOR