

NOTE: *The groups below are taken directly from the 1992-1994 Commonwealth of Virginia Employee Handbook.*

## **18 - GRIEVANCE PROCEDURES**

The grievance procedures quoted below apply to all classified employees of the city of Waynesboro. Law enforcement officers within the police department have the option to use either the city's grievance procedure or use the Law Enforcement Officer's procedure as defined under Section 2.1-116.1 to 2.1-116.9 of the Code of Virginia, as amended.

Following is the city of Waynesboro's grievance procedure, as outlined in Ordinance Number 1991-38, quoted verbatim.

### **ORDINANCE NUMBER 1991-38**

#### **AN ORDINANCE AMENDING THE APPEALS AND GRIEVANCE PROCEDURE OF THE CITY OF WAYNESBORO TO BRING THEM INTO CONFORMITY WITH STATE LAW AND TO AUTHORIZE THE CERTIFICATION OF THE SAME TO BE FILED WITH THE CIRCUIT COURT**

**BE IT ORDAINED**, by the Council of the City of Waynesboro, Virginia, that the Appeals and Grievance Procedure of the city be, and the same hereby is amended to read henceforth as follows:

#### **Policy**

Section 15.2-1506 of the Code of Virginia provides that cities like Waynesboro have a grievance procedure which affords an immediate and fair method for the resolution of disputes arising between the municipality and employee. The local grievance procedure is designed to comply with the requirements of the State Grievance Procedure.

#### **General Purpose**

The general purpose of this Grievance Procedure is to afford an immediate and impartial method for the resolution of disputes arising between the municipality and employees in municipal service, so that they have an orderly resolution of complaints and grievances with complete freedom from discrimination, coercion, recrimination, restraint, or reprisal, thereby creating a more efficient and harmonious work force.

## **GRIEVANCE PROCEDURES & FORMS (cont'd)**

### **Coverage of Personnel**

12. All non-probationary local government permanent full-time and part-time employees are 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 an appointing authority.
3. Deputies and executive assistants to the city manager.
4. Agency heads or chief executive officers of government operations.
5. Employees whose terms of employment are limited by law.
6. Temporary, limited term, and seasonal employees.
7. Law enforcement officers, as defined in Section 2.1-116.1 et.seq. of Title 2.1, whose grievance is subject to the provisions of Chapter 10.1 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 the resolution of these procedures.

B. Notwithstanding the exceptions set forth in subdivision A above, the city may voluntarily include employees in any of the excepted categories within the coverage of their grievance procedures.

C. The city manager, or his designee, 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.

### **Definition of Grievance**

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

1. Disciplinary actions, including dismissals, disciplinary actions, disciplinary demotions, and suspensions, provided that dismissals shall be grievable whenever resulting from formal discipline or unsatisfactory job performance.

## GRIEVANCE PROCEDURES & FORMS (cont'd)

2. The application of personnel policies, procedures, rules, and regulations, including the application of policies involving matters referred to in subdivision B (3) below.

3. Acts of retaliation as the result of utilization of the grievance procedure or participation in the grievance of another local government employee.

4. Complaints of discrimination on the basis of race, color, creed, political affiliation, age, disability, national origin or sex.

5. Acts of retaliation because the employee has complied with any law of the United States or of the Commonwealth, has reported any violation of such law to a governmental authority, or has sought any change in law before the Congress of the United States or the General Assembly.

6. Local Government Responsibilities – The city government shall retain the exclusive right to manage the affairs and operations of government. Accordingly, the following complaints are non-grievable:

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 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 to be carried on.

6. Except when such action affects an employee who has been reinstated within the previous six (6) 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.

7. The hiring, promotion, transfer, assignment, and retention of employees within the local government.

8. The relief of employees from duties of the city's government in emergencies.

## **GRIEVANCE PROCEDURES & FORMS (cont'd)**

In any grievance brought under the exception to provision six of this subsection, the action shall be upheld upon a showing by the city government that: (1) there was a valid business reason for the action; and (2) the employee was notified of the reason in writing prior to the effective date of the action.

### **Determining Grievability/Qualification for a Panel Hearing**

Decisions regarding grievability and access to the procedure shall be made by the city manager, or his designee, at any time prior to the panel hearing, at the request of the city or grievant, within ten (10) calendar days of the request. The city attorney, or attorney for the Commonwealth, is not authorized to decide the question of grievability. A copy of the ruling shall be sent to the grievant. Decisions of the city manager may be appealed to the Circuit Court having jurisdiction in the city for a hearing on the issue of whether the grievance qualifies for a panel hearing. Proceedings for review of the decision of the city manager shall be instituted by the grievant by filing a notice of appeal with the city manager within ten (10) calendar days from the date of receipt of the decision, giving a copy thereof to all other parties. Within ten (10) calendar days thereafter, the city manager shall transmit to the clerk of court a copy of the decision of the city manager, 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 city manager to transmit the record shall not prejudice the rights of the grievant. The court, on motion of the grievant, may issue a writ of certiorari requiring the city manager to transmit the record on or before a certain date.

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 city manager or his designee, and such additional evidence as may be necessary to resolve any controversy as to the correction of the record. The court, in its discretion, may receive such other evidence as the ends of justice require. The court may affirm the decision of the city manager or his designee, or may reverse or modify the decision. The decision of the court shall be rendered no later than the fifteen (15) days from the date of the conclusion of the hearing. The decision of the court is final and is not appealable.

### **Procedure**

Most employee concerns or complaints can be resolved informally through communication between employee and supervisor. Accordingly, employees are encouraged to take their complaints to their immediate supervisor and then to upper-management levels to seek a solution. Employees are also encouraged to pursue grievable issues through the grievance procedure and supervisors are to assist them in this process.

## **GRIEVANCE PROCEDURES & FORMS (cont'd)**

### **Procedural Noncompliance**

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 noncompliance within 5 work days of receipt of written notification by the other party of the compliance violation. Such written notification by the grievant shall be made to the city manager. Failure of either party without just cause to comply with all substantial procedural requirements at the panel hearing shall result in a decision in favor of the other party. (Section 2.1-114.5:1 (D) (4) of the Code of Virginia, as amended).

### **Disciplinary Actions**

If an employee's work performance or behavior is unsatisfactory, the following types of disciplinary action may be taken, depending on the circumstances; oral admonishment, written reprimand, withholding of performance pay increase, suspension, reduction in pay, demotion, or dismissal. Dismissal from the city service shall be upon approval of the city manager.

### **Procedures of Settlement**

All grievable disputes, as defined in the preceding paragraphs, will be administered in the specified manner and processed within the stated time limits.

The employee filing a complaint shall have, at every step of the procedure, the right to present witnesses and evidence to support his/her complaint with complete freedom from reprisal.

**STEP 1:** An employee who has a grievance shall discuss (orally) the problem with his/her immediate supervisor. The employee must present his/her initial grievance to his/her immediate supervisor within thirty (30) working days of the complaint occurrence. The immediate supervisor shall investigate and respond to the employee within three (3) working days after the employee's initial discussion of the matter with him/her.

**STEP 2:** If the response from STEP 1 is not acceptable to the grievant, the grievant may file, within five (5) working days from receipt of the immediate supervisor's response, a written grievance with his/her immediate supervisor with a copy of the grievance forwarded to the respective department head. The written grievance must be filed on a completed Grievance Form and must specify the relief expected.

## **GRIEVANCE PROCEDURES & FORMS (cont'd)**

The department head shall meet face to face with the grievant within two (2) working days after receipt of the written grievance. The only persons who may be present are the grievant, the department head, and appropriate witnesses for each side.

A written reply by the department head shall be made to the grievant with three (3) working days following the meeting.

**STEP 3:** If the department head's reply from STEP 2 is not acceptable to the grievant, he/she may request in writing, within three (3) working days from receipt of the reply, a meeting with the city manager for further consideration of the grievance. This face-to-face meeting shall be scheduled within five (5) working days from receipt of this request.

The city manager shall hear both sides of the dispute, shall investigate the cause of the dispute, and shall provide a written reply to the grievant within five (5) days of the meeting.

The grievant may have a representative of his/her choice at this meeting. If the grievant is represented by legal counsel, the city manager may also be represented by counsel. Either the grievant or the city manager may present witnesses at this step of the grievance procedure. Notwithstanding the foregoing paragraphs, the assistant city manager shall serve as the final decision maker on all issues regarding compliance or noncompliance with procedural requirements.

**STEP 4:** If the reply from STEP 3 is not acceptable to the grievant, he/she may submit his/her grievance for a hearing before an impartial panel. The request for panel hearing shall be made on the Grievance Hearing Request Form. Request for a panel hearing must be received by the city manager within five (5) days after the receipt of the third step reply.

(12) Selection of the Grievance Panel – The final step in the grievance procedure shall be a hearing before an impartial three-member panel composed of one member appointed by the grievant and one member appointed by the city manager. Both such appointments shall be made within ten (10) working days after the city manager's receipt of the request for a hearing. The third member of the panel shall be selected by the first two panel members. They shall accomplish this selection within twenty (20) working days after the city manager's receipt of the request for a hearing. In the event that agreement cannot be reached as to a final panel member within thirty (30) working days after receipt of the city's request for the selection. In all cases, the third panel member shall be chairperson of the panel.

## **GRIEVANCE PROCEDURES & FORMS (cont'd)**

The following persons may not serve on the panel:

(a) Persons involved in an earlier step of the particular grievance or with the complaint or dispute that gave rise to the grievance;

(b) Managers who are in a direct line of supervision of a grievant;

(c) The spouse, parent, child, descendants of a child, sibling, niece, nephew, or first cousin of a participant in the grievance procedure and these relatives of a participant's spouse; and

(d) An attorney having direct involvement with the subject matter of the grievance nor a partner, associate, employee, or co-employee of the attorney.

(2) Conduct of Hearing - The panel shall set the time for the hearing, which shall be held as soon as practicable but not more than ten (10) working days after the panel has been selected, and shall notify the grievant in writing of the date and time of the hearing. The grievant may have present at the hearing a representative or legal counsel at his/her expense. Copies of the grievance file shall be sent by the city manager or designee to the panel members.

The conduct of the hearing shall be as follows:

(a) The panel shall determine the propriety of attendance at the hearing of the persons not having a direct interest in the hearing, provided that at the request of the grievant, the hearing shall be private. A record of the hearing shall be made.

(b) At the beginning of the hearing, the panel may ask for statements clarifying the issues involved.

(c) Exhibits, when offered by the grievant or the city, may be received in evidence by the panel, and, when so received, shall be marked and made part of the record.

(d) First the city and then the grievant present their claims and proofs and witnesses who shall submit to questions or other examination. The panel, at its discretion, may vary this procedure but shall afford full and equal opportunity to all parties and witnesses for presentation of any material or relevant proofs.

## **GRIEVANCE PROCEDURES & FORMS (cont'd)**

(e) The parties shall produce any additional evidence the panel may deem necessary for an understanding and determination of the dispute. The panel shall be the judge of relevancy and materiality of the evidence offered. All evidence shall be taken in the presence of the panel and of the parties.

(f) The majority decision of the panel shall be final and binding in all its determinations and shall be consistent with provisions of law and written policies.

The panel chairman shall inquire specifically of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the chairman shall declare the hearing closed.

The hearings may be reopened by the panel on its own motion or under application of a party for good cause shown at anytime before the award is made.

(3) Decision-the decision of the panel shall be filed in writing by the chairman with the city manager not later than fifteen (15) full working days after the completion of the hearing, and shall be final and binding. The decision shall be made in the format specified in Part B of the grievance form. The panel chairman shall have the authority to extend this time limit as deemed necessary.

Copies of the decision shall be transmitted to the grievant and the grievant's supervisor.

Either the grievant or the city manager may petition the Waynesboro Circuit court for an order requiring implementation of the panel decision.

(4) The city manager shall implement any remedy to the extent that it is consistent with the provisions of law and written policies. If either party believes the decision not consistent, he/she shall inform the panel and the other party within five (5) work days of receipt of the decision.

**AND BE IT FURTHER ORDAINED** that the aforesaid procedure be certified by the Waynesboro Circuit Court by the city manager and city attorney as required by law.



**STEP TWO**

**Second Step Remedy:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Department Head Signature      Date

\_\_\_\_\_ Acceptable    \_\_\_\_\_ Not Acceptable    \_\_\_\_\_  
Grievant Signature      Date

**STEP THREE**

**Third Step Remedy:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
City Manager's Signature      Date

\_\_\_\_\_ Acceptable    \_\_\_\_\_ Not Acceptable    \_\_\_\_\_  
Grievant Signature      Date



**CITY OF WAYNESBORO**  
**Grievance Form**

**PART C**

**PANEL HEARING**

**Grievant:** \_\_\_\_\_ **Date of Submission:** \_\_\_\_\_

**Nature of Grievance:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Reason for Requesting Hearing:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature

**DECISION OF PANEL HEARING**

**Date of Hearing:** \_\_\_\_\_ **Place of Hearing:** \_\_\_\_\_

**Panel Members:** \_\_\_\_\_ (Employee Selection)  
\_\_\_\_\_ (City Manager Selection)  
\_\_\_\_\_ (Selected by Other Panel Members)

**Issue:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Decision/Award:** \_\_\_\_\_  
\_\_\_\_\_

*Signed:* \_\_\_\_\_  
Panel Member                      Panel Member                      Panel Member