



GRIEVANCE PROCEDURE POLICY

Policy Topic: Grievance Procedure
Policy Contact: Human Resources
Version: II
Effective Date: 8/14/17
Approved By: HR/Legal/City Manager

Application

The grievance procedure below applies to all classified employees of the city of Waynesboro: 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. Employees whose terms of employment are limited by law.
5. Temporary, limited term, and seasonal employees.
6. Law enforcement officers, as defined in Section 9.1-5000, whose grievance is subject to the provisions of Chapter 5 and who have elected to resolver such grievances under those provisions. This version mirrors Section 2.2-3002 of the Code of Virginia. Section 2.2-3000, et.seq. is the state grievance procedure and section 9.1-500 et.seq., is the Law-Enforcement Officers Procedural Guarantee Act.

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

Statement of 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 as detailed by Section 15.2-1507 of the Code of Virginia.

The general purpose of the City of Waynesboro’s grievance procedure as required by Section 15.2-1507 of the Code of Virginia is to afford an immediate and impartial method for the resolution of disputes arising between the City of Waynesboro 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.

Definition of Grievance

A grievance shall be a complaint or dispute by an employee relating to his or her employment with the City of Waynesboro, including but not necessarily limited to (i) disciplinary actions, including dismissals, disciplinary demotions, and suspensions, provided that dismissals shall be grievable whenever resulting from formal discipline or unsatisfactory job performance; (ii) the application of personnel policies, procedures, rules and regulations, including the application of policies involving matters referred to in subdivision 2 (iii) below; (iii) discrimination on the basis of race, color, creed, religion, political affiliation, age, disability, national origin or sex; and (iv) acts of retaliation as the result of 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. For the purposes of clause (iv) 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.

The City of Waynesboro shall retain the exclusive right to manage the affairs and operations of government. Accordingly, the following complaints are nongrievable: (i) establishment and revision of wages or salaries, position classification or general benefits; (ii) 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; (iii) the contents of ordinances, statutes or established personnel policies, procedures, rules and regulations; (iv) failure to promote except where the employee can show that established promotional policies or procedures were not followed or applied fairly; (v) the methods, means and personnel by which work activities are to be carried on; (vi) 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; (vii) the hiring, promotion, transfer, assignment and retention of employees within the local government; and (viii) the relief of employees from duties of the local government in emergencies. In any grievance brought under the exception to clause (vi) of this subdivision, the action shall be upheld upon a showing by the local government 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.

Grievance Procedure Overview

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 twenty (20) calendar 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. The department head will 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, they 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 will hear both sides of the dispute, will investigate the cause of the dispute, and will provide a written reply to the grievant within five (5) days of the meeting.

The grievant may have a representative of their 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 will 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, they may submit their grievance for a hearing before an impartial panel. The request for panel hearing will 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.

Selection of the Grievance Panel

The final step in the grievance procedure will 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 will 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, The Chief Judge of the Circuit Court will select the third panel member within thirty (30) working days after receipt of the City's request for the selection. In all cases, the third panel member will be chairperson of the panel. The following persons may not serve on the panel:

1. Persons involved in an earlier step of the particular grievance or with the complaint or dispute that gave rise to the grievance.
2. Managers who are in a direct line of supervision of a grievant.
3. 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.
4. An attorney having direct involvement with the subject matter of the grievance nor a partner, associate, employee, or co-employee of the attorney.

Conduct of Hearing

The panel will set the time for the hearing, which will be held as soon as practicable but not more than ten (10) working days after the panel has been selected, and will 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 their expense. Copies of the grievance file will be sent by the City Manager or designee to the panel members. **The conduct of the hearing shall be as follows:**

1. The panel will 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 will be private. A record of the hearing will be made.
2. At the beginning of the hearing, the panel may ask for statements clarifying the issues involved.
3. Exhibits, when offered by the grievant or the City, may be received in evidence by the panel, and, when so received, will be marked and made part of the record.
4. First the City and then the grievant present their claims and proofs and witnesses who will submit to questions or other examination. The panel, at its discretion, may vary this procedure but will afford full and equal opportunity to all parties and witnesses for presentation of any material or relevant proofs.
5. The parties will produce any additional evidence the panel may deem necessary for an understanding and determination of the dispute. The panel will be the judge of relevancy and materiality of the evidence offered. All evidence will be taken in the presence of the panel and of the parties.
6. The majority decision of the panel will be final and binding in all its determinations and shall be consistent with provisions of law and written policies.

The panel chairman will inquire specifically of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the chairman will 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 any time before the award is made.

Decision

The decision of the panel will 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 will be final and binding. The decision will be made in the format specified in Part C of the grievance form. The panel chairman will have the authority to extend this time limit as deemed necessary. Copies of decision will be transmitted to grievant and grievant's supervisor. Either grievant or City Manager may petition Waynesboro Circuit Court for an order requiring implementation of the panel decision. The City Manager will 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, they will inform the panel and the other party within five (5) work days of receipt of the decision.

Compliance

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 or administrative 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 workdays 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, or a designee.

The City, or a designee, at its option, may require a clear written explanation of the basis for just cause extensions or exceptions. The City, or a designee, shall determine compliance issues. Compliance determinations made by the City shall be subject to judicial review by filing petition with the circuit court within 30 days of the compliance determination.

Interpretation and Administration

The City Manager and Human resources are responsible for the interpretation and administration of this policy and its various provisions. The City of Waynesboro has the authority to change, modify, or approve exceptions to this policy at any time without notice.

Revisions and Approvals

Date	Version	Approver	Change Description
8/14/17	II	Nichole Nicholson	Removed referenced Code sections that have been repealed. Amended the timeline for filing a grievance from 30 days to 20 days to align with the Code of Virginia requirement of 20 days. Clarified procedures for panel selection and hearings to meet comply with Code of Virginia requirements.

CITY OF WAYNESBORO
Grievance Form

PART A
PAGE 1

STEP ONE

PLEASE PRINT

Grievant: _____
(Full Name)

(Department) (Division/Bureau)

(Date of Occurrence which prompted grievance)

Grievance: *(Explain in your own words the event(s) which prompted your original complaint of this grievance.)*

Specific Relief Expected: _____

Grievant Signature Date

Supervisor's Reply: _____

____ Acceptable

Supervisor Signature Date

____ Not Acceptable

Grievant Signature Date

STEP TWO

**Part A
PAGE 2**

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

