

PERSONNEL POLICIES AND PROCEDURES MANUAL

Dated – March 2014

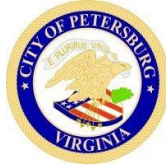
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ARTICLE VII GRIEVANCE AND APPEAL PROCEDURES (as Amended – September 15, 2020)

- 7.1 **Policy-** The City of Petersburg desires to resolve employee grievances fairly and promptly. Employees are encouraged to freely discuss their concerns with immediate supervisors and upper management levels when disagreement or dissatisfactions arise. A copy of the grievance procedure shall be made available to all City employees and each employee shall be assured that the filing of a grievance will have no adverse effect on his or her employment status.
- 7.2 **Purpose -** The purpose is to establish an objective and fair procedure to resolve a complaint or a dispute of an employee concerning his or her employment with the City of Petersburg. All problems, complaints or disputes, even of a minor nature should be resolved.
- 7.3 **Applicability -** All non-probationary permanent full-time and permanent part-time employees, including employees of the Department of Social Services of the City of Petersburg shall be covered under this policy. The following shall be deemed to be in the “excepted category” and excluded from the application of this grievance policy as follows:
- a. Appointees of elected groups or individuals;
 - b. Department Heads;
 - c. Deputies and executive assistants to the City Manager;
 - d. Police staff who have elected to use the Procedural Guarantees procedures provided by State law;
 - e. Employees of constitutional officers;
 - f. Employees who serve at the pleasure of the City Attorney excluded in accordance with 2-192 of the City Code;
 - g. Members of the unclassified service. Any employee who moves from a position in the classified service to a position in the unclassified service shall automatically lose all rights to the grievance and appeal process; and
 - h. Any employee who elects to pursue his or her grievance or complaint by any other lawfully permitted procedure in the resolution of their grievance.

The City Manager or designee shall be responsible determining the officers and employees excluded from the grievance procedure and shall be responsible for maintaining an up-to-date list of the affected positions.

- 7.4 **Definition of Grievance -** A grievance shall be defined as a complaint or dispute by an employee relating to his or her employment, including but not necessarily limited to:
- a. Disciplinary actions, including dismissals, disciplinary demotions, and suspensions, provided that dismissals shall be grievable whenever resulting from formal discipline or unsatisfactory job performance;
 - b. The application of personnel policies, procedures, rules, and regulations, including the application of policies involving the contents of ordinances, statutes, or established personnel policies, procedures, rules, and regulations;
 - c. 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 status as a veteran; and
 - d. 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 this clause, 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.



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Management Responsibilities – The City retains the exclusive right to manage the affairs and operations of City government. Accordingly, the following complaints are nongrievable under this procedure:

- a. Establishment and revision of wages or salaries, position classification or general benefits;
- b. 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;
- c. The contents of ordinances, statutes or established personnel policies, procedures, rules and regulations, and personnel actions in conformance therewith;
- d. Failure to promote except where the employee can show established promotional policies or procedures were not followed or applied fairly;
- e. The methods, means and personnel by which work activities are to be carried on;
- f. 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;
- g. The hiring, promotion, transfer, assignment and retention of employees within the City; and
- h. The relief of employees from duties of the City in emergencies.

In any grievance brought under the exception in f, the action shall be upheld upon a showing by the City that: (i) there was a valid business reason for the action, and (ii) the employee was notified of such reason in writing prior to the effective date of the action.

7.5 Determination of Grievability - Decisions regarding grievability and access to the procedure shall be made by the City Manager or designee at any time prior to the panel hearing, at the request of the Department Head or grievant or within ten (10) calendar days of the request. The Department of Human Resources may initiate a determination of grievability at any step. For purposes of these Policies, grievability shall mean whether or not a complaint qualifies, at any step in the grievance process, for a hearing. A copy of the ruling shall be sent to the grievant and the Department Head or designee. If the grievance is determined to be non-grievable by the City Manager, the grievance process is concluded unless a timely appeal is filed.

- a. Decisions of the City Manager may be appealed to the Petersburg Circuit Court 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 and giving a copy thereof to all other parties.
- b. Within ten (10) calendar days thereafter, the City Manager shall transmit to the Clerk of the Court to which the appeal is taken: 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.



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- c. 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 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 the decision of the City Manager or may reverse or modify the decision. 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 not appealable.

- 7.6 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 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 City Manager.

The City Manager, at his or her option, may require a clear written explanation of the basis for just cause extensions or exceptions. The City Manager shall determine compliance issues. Compliance determinations made by the City Manager shall be subject to judicial review by filing petition with the Circuit Court within thirty (30) days of the compliance determination.

This procedure is provided as a means for employees to resolve problems and complaints without the cost often associated with legal counsel. However, if an employee using the procedure would feel more comfortable in having such support, the employee shall be responsible for related expenses.

- 7.7 Standard/Burden of Proof** – The grievant bears the burden of establishing by a preponderance of the evidence that the discipline imposed or the complaining action was excessive or unwarranted. All parties are to be afforded an equal opportunity for presentation of their evidence.

- 7.8 Grievance 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.

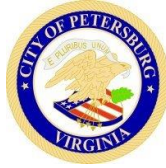
Step 1. The employee shall identify the grievance verbally to the immediate supervisor in an informal face-to-face meeting within thirty (30) calendar days after the event or action which is the basis for the grievance.

The supervisor shall give a verbal response to the employee within five (5) work days following the meeting. If a resolution is not reached at this point, the employee shall submit to the supervisor on the Grievance Form, the nature of the grievance and the specific relief requested within five (5) work days following the date of receipt of the verbal response.

The supervisor, in turn, shall give the employee a written response on the Grievance Form within five (5) work days.

Step 2. If the grievance is not resolved at the first step, the employee should indicate on the Grievance Form the desire to have the grievance advanced to the next step within five (5) work days following the supervisor's written response.

The grievant shall forward a copy of the grievance form to the Department Head and a copy to the Department of Human Resources accompanied with all supporting documentation and the decision of the supervisor.



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A meeting to review the grievance shall be held between the employee and the Department Head within five (5) work days after receipt of the grievance. The time limit between the second step submission and the second meeting may be extended by mutual agreement. A second step written reply to the grievance shall be provided to the employee within five (5) work days after the second step meeting.

Step 3. If a satisfactory resolution is not reached at the second step, the employee may so indicate on the Grievance Form and submit the grievance to the City Manager within five (5) work days with a copy to the Department of Human Resources accompanied with all supporting documentation.

A meeting to discuss the grievance shall be held between the City Manager and the grievant within five (5) work days after the receipt of the grievance. The time between the third step submission and the third step meeting may be extended by mutual agreement. The employee may have a representative of his or her choice present at the third step meeting.

If the grievant is represented by legal counsel, the City Manager may also have legal counsel present. The City Manager shall render a written reply to the grievance within five (5) work days following the third step meeting.

Step 4. Appeal to the Panel. If a grievance is not settled in Step 3, the grievant may proceed to a hearing before an impartial panel. A written request for a panel hearing must be submitted to the City Manager within seven (7) work days of the receipt of the third step reply with a copy to the Department of Human Resources.

7.9 Representation During the Grievance Management Steps – With the exception of the of the final management step (Step 3), the only persons who may be present in the management step meetings are the grievant, the appropriate City official at the level which the grievant is being heard, a representative from the Department of Human Resources if requested 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 any 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 shall not be recorded and recording devices are not permitted in the room in which a grievance hearing is being heard.