



PERSONNEL POLICIES AND PROCEDURES MANUAL

Dated – July 2023

Issued – December 2023

ARTICLE VIII GRIEVANCE HEARING PANEL

8.1 Panel Hearing

At the conclusion of the Management Steps of the Grievance process, if an employee thereafter requests to proceed to a Panel Hearing, the Human Resources Director shall, within not more than three days, submit a complete copy of the grievance record including copies of all exhibits and other supporting documents to the Office of the City Attorney along with a request for review and representation of the City in the Grievance Panel Proceeding.

This policy shall apply to all classified personnel, except Department Heads, the City Attorney, and Assistant City Attorneys, and including employees of the local Social Services Department. Any complaint by a Department Head should be discussed directly with the City Manager. The City Manager shall make the final determination. Any complaint from an Assistant City Attorney should be discussed directly with the City Attorney who shall make the final determination.

The Human Resources Department shall be responsible for securing a location for the grievance, for ensuring that panelists are properly appointed and notified in accordance with this policy, and ensure that the panelists receive all documentation necessary for their review of the grievance in accordance with this Policy.

- (1) The grievance panel shall consist of three members: one member selected by the grievant, one member selected by the Department Head and the third panel member selected by the other two panel members. Within five (5) work days, the two panel members shall select the third panel member. If the two panel members cannot agree on the selection of a third member an appointment will be made by the Chief Judge of Petersburg Circuit Court. The third person shall be the chairperson of the panel. All grievance panel selections are subject to confirmation by the Director of Human Resources for consistency with the requirements of this Policy.
- (2) To ensure an impartial panel, such panel shall not be composed of any person having direct involvement with the grievance being heard by the panel, or with the complaint or dispute giving rise to the grievance. Managers who are in a direct line of supervision of a grievant, persons residing in the same household as the grievant, and the following relatives of a participant in the grievance process or a participant's spouse are prohibited from serving as panel members: spouse, parent, child, descendants of a child, sibling, niece, nephew and first cousin. No attorney having direct involvement with the subject matter of the grievance nor a partner, associate, employee or co-employee of such an attorney shall serve as a panel member.
- (3) Witnesses may not be compelled to participate in the grievance process against their will. Each party is responsible for notifying and securing the appearance of any witness that they wish to call. Both the grievant and the respondent may call upon appropriate witnesses and be represented by legal counsel or other representatives at the panel hearing. The decision of the panel shall be final and binding and shall be consistent with provisions of law and written policy.
- (4) Procedural Challenges: The question of whether the relief granted by a panel is consistent with written policy shall be determined by the City Manager, or his or her designee, unless such person has a direct personal involvement with the event or events giving rise to the grievance (this does not include standard participation in the grievance or disciplinary process in



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his/her capacity as City Manager), in which case the decision shall be made by' the Petersburg Commonwealth's Attorney.

(5) Either party may petition the Petersburg Circuit Court for an order requiring implementation of the panel decision.

(6) Rules for Panel Hearings

- a. The panel does not have authority to formulate City policies, procedures, regulations or rules or to alter existing City policies, procedures, regulations or rules;
- b. The panel has the discretion to determine the propriety of attendance at the hearing of persons not having a direct interest in the hearing, and, at the request of either party, the hearing shall be private;
- c. At least ten (10) days prior to the Panel Hearing, the City and Grievant shall exchange their list of witnesses, and exhibits, and written summary of their respective positions along with any documents or other records that they intend to present at the hearing.

d. The panel has the authority to determine the admissibility of evidence without regard to the rules of evidence, or the order of presentation of evidence, so long as a full and equal opportunity is afforded to all parties for the presentation of their evidence;

All evidence shall be presented in the presence of the panel and the parties, except by mutual consent of the parties or as otherwise stated in this Policy;

- g. The majority decision of the panel, acting within the scope of its authority, shall be final, subject to existing policies, procedures and law;
- h. The panelists shall prepare a written decision which shall be in be provided within five (5) work days to all parties; and
- i. While all participants are expected to maintain formal decorum, the Panel may, in its discretion, proceed in less formal manner than courts or other judicial proceedings may otherwise require.

8.2 Conduct of the Hearings – The Grievant bears the burden of proof in grievance proceedings, and in order to prevail, must establish by a preponderance of the evidence that the discipline imposed or the complaining action was excessive or unwarranted. Accordingly, in disciplinary matters the Grievant presents their evidence first. The City may, upon (10) days written Notice to the Grievant and Panelists, waive its right to present its evidence first in which case, the Grievant shall be required to present their evidence first at the hearing.

Accordingly, the hearing format is as follows:

- (1) The Chair shall be responsible for ensuring the hearing is conducted in an orderly, fair and equitable fashion pursuant to the provisions of the grievance procedure and that all decisions are made by the panel as a whole. The Chair shall have the authority to limit the introduction of redundant and repetitive evidence.



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- (2) For grievances challenging a disciplinary action by the City, unless formally waived in accordance with this Policy, the Grievant shall present their case to the panel first. For grievances that are not based upon a challenge to a disciplinary action, the Grievant shall present their case to the panel first.
- (3) Opening statements shall be permitted.
- (4) All witnesses may be examined and cross-examined. The Panel may question any witness at the conclusion of the questioning by both parties.
- (5) Closing statements by the parties are permissible with the party who presented its case first presenting its closing statement first.
- (6) Each party shall be given full and equal opportunity to present all relevant and material evidence.
- (7) Prior to the hearing, any matter requiring the attention of the panel shall be communicated through the Department of Human Resources. The Department of Human Resources will serve as the liaison between the parties and the panel and provide any needed communication between the parties and the panel.
- (8) The panel hearing shall be recorded, however. At the City's discretion and expense, a court reporter may be obtained to prepare a written record of the case.

8.3 Cost of Representation – The grievant shall bear any and all costs associated with employing legal counsel to represent the grievant or in preparing or presenting his or her case. The Panel has no authority to award legal fees or punitive damage.

8.4 Remedies – The Panel authority is as follows:

- (1) The panel may uphold, reverse, or modify the action being grieved by imposing a lesser disciplinary action and in appropriate circumstances, award back pay in the amount that is equitable.
- (2) Back pay shall not exceed pay for time actually lost due to suspension or dismissal.
- (3) The panel does not have the authority to formulate or alter City policies or procedures.
- (4) The panel does not have the authority to grant greater relief than that which the grievant has requested on the grievance form.
- (5) The panel does not have the authority to award the payment of damages or attorney's fees or costs.

8.5 Panel Decisions – After the hearing the panel is to deliberate on the evidence presented and arrive at a decision. No other individual other than the panel members may be present during the panel's deliberations. The panel may decide to deliberate at the conclusion of the hearing or may decide to reconvene at a later date and time. However, all panel members must participate in the deliberations.

- (1) The decision of the panel is to be rendered within five (5) work days following the conclusion of the panel hearing. Cases must be decided on the substance of the issues presented and not on compliance matters occurring before or during the hearing.
- (2) The decision is made by a majority vote of the panel voting as a whole and is recorded on Grievance Form B. The issue statement on Form B should be as complete and detailed as possible. Each panel member must review and sign the form. The panel Chair shall inform the Director of Human



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Resources of its decision, in writing. The Director of Human Resources will send the panel decision to the grievant, grievant's attorney, Department Head, (City Attorney if representing the City) and the City Manager within five (5) workdays from receipt of such decision.

- (3) The majority decision of the Panel, acting within its scope of authority shall be final and binding and shall be consistent with the provisions of law and written policy.
- (4) Either party may petition the City of Petersburg Circuit Court for an order requiring implementation of the official Panel decision.