

Town of Windsor

Memorandum

July 14, 2015

TO: The Honorable Mayor and Town Council
FROM: Michael Stallings, Town Manager *MS*
SUBJECT: Grievance Procedure

As you are aware, we identified some shortcomings with our existing grievance procedure over the past year. The Town Attorney and I have revised our grievance procedure to include time restraints to help prevent a grievance from becoming a prolonged endeavor. We have also updated some of the language in our procedure to reflect State Code. Language has also been added to limit the number of people that are subject to the grievance procedure.

The bulk of the new language mirrors State Code as well as grievance procedures that are in place in other localities. The Town of Christiansburg was used heavily when we developed our proposed changes.

I have attached a copy of our proposed changes. The new language is underlined in red, and any language that we are removing is struck through.

I recommend that Council adopt the revised grievance procedure as presented.

Recommended Motion

Move that Council adopt the revised grievance procedure as presented.

Grievance Procedure Policy
Town of Windsor, Virginia
November 12, 2008

Goal and Objective

The objective of this policy is to afford an immediate and fair method for the resolution of disputes which may arise between the Town and its employees. The Town's goal is to resolve disputes as fairly and expeditiously as possible and at the lowest possible level in the organization.

Applicability

~~All employees, excluding any employees appointed by Town Council to serve at its pleasure, may file grievances regarding certain disputes that may arise between them and the Town as their employer.~~

~~The provisions of this policy shall not apply to law enforcement officers as defined in Section 9.1-500 of the Code of Virginia whose grievances are subject to Chapter 5 of Title 9.1 of the Code of Virginia and who have elected to resolve such grievances under those provisions.~~

All permanent town personnel, excluding probationary employees, are eligible to file grievances as provided in this policy with the following exceptions:

- A. Employees appointed by Town Council to serve at its pleasure;
- B. Employees that report directly to the Town Manager including Directors and department heads;
- C. Temporary, limited term, and seasonal employees;
- D. Law-enforcement officers as defined in Section 9.1-500 of the Code of Virginia whose grievances are subject to Chapter 5 of Title 9.1 of the Code of Virginia and who have elected to resolve such grievances under those provisions.

Definition of Grievance

Grievance — A complaint or dispute by an employee relating to his employment, including but not necessarily limited to:

- A. The following actions:
 - 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, rules and regulations, including the application of policies involving the contents of ordinances, statutes or established personnel policies, procedures, rules and regulations;
 3. Acts of retaliation as the result of utilization of the grievance procedure or of participation in the grievance of another employee;
 4. Complaints of discrimination on the basis of race, color, creed, religion, political affiliation, age, disability, national origin or sex; and
 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 Virginia General Assembly or has reported an incidence of fraud, abuse or gross mismanagement.
- B. In accordance with Section 15.2-1507 A2 of the Code of Virginia, some complaints involving the following are not grievable under this procedure: ~~They include:~~
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 which may reasonably be expected to be a part of the job content
 3. Contents of ordinances, statutes or established personnel policies, procedures, ~~and~~ rules and regulations;
 4. Methods, means, and personnel by which work activities are to be carried on
 5. Failure to promote except where the employee can show that established promotional policies or procedures were not followed or applied fairly;
 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 work force, or job abolition;
 7. Hiring, promotion, transfer, assignment, and retention of employees within the agency
 8. Relief of employees from duties of the agency in emergencies.

In any grievance brought under the exception to clause 6 above, the action shall be upheld upon a showing by the Town of Windsor that (i) there was a valid business reason for the action and (ii) the employee was notified of the reason in writing prior too the effective date of the action.

Grievability

- A. The Town Manager shall decide whether or not a matter is grievable, including the question of an employee's access to the grievance procedure.
- B. If the grievant raises the question of whether or not a matter is grievable, then the Town Manager shall make such decision within ten calendar days of such request. Such determination of grievability shall be made subsequent to the reduction of the grievance to writing but prior to the panel hearing.
- C. The grievant may appeal decisions of the Town Manager as to grievability to the Isle of Wight Circuit Court for a hearing on the issue of grievability pursuant to Title 15.2-1507 of the Code of Virginia, as amended.
- D. Proceedings for review of the decision of the Town Manager shall be instituted by the grievant filing an appeal with the Isle of Wight Circuit Court within thirty calendar days after the date of the decision and giving a copy thereof to all other parties.
- E. Within ten calendar days of the receipt of notice of that filing the appeal, the Town Manager shall transmit to the clerk of the court a copy of the decision of the Town Manager and the exhibits, and a list of all evidence used in the determination to the grievant.
- F. The court may affirm the decision of the Town Manager or may reverse or modify the decision. The decision of the court is final and not appealable.
- G. The issue of grievability may occur at any step of the procedure prior to the panel hearing, but once raised the issue must be resolved before further processing of the grievance. In any event, the issue of grievability must be resolved prior to the panel hearing or it shall be deemed to have been waived.
- H. The classification of a complaint as non-grievable shall not be construed to restrict any employee's right to seek or management's right to provide customary administrative review of complaints outside of the scope of the grievance procedure.

Procedure for Filing a Grievance

- A. All stages of the grievance beyond the first step shall be in writing on the **Grievance Submission Form** supplied by the Town, and this form shall be available in the Town Clerk's office. Beyond the first step both the grievant and the respondent may call upon appropriate witnesses and be represented by legal counsel or other persons as provided in this procedure.
- B. Once an employee reduces his grievance to writing, he or she must specify on the appropriate form the specific relief he expects to obtain through use of this procedure.

- C. 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 that 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 Town 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.

Procedure for Processing a Grievance

A. First step: supervisor level.

1. Within thirty calendar days after the occurrence or condition giving rise to the grievance, the employee affected may identify the grievance verbally, in person, to the employee's immediate supervisor.
2. Within three working days of such presentation, the supervisor shall give his or her response to the employee verbally, in person, regarding ~~with respect to~~ the grievance or shall advise the employee that additional time for such decision is needed, in which case a decision must be given the employee within five working days thereafter.
3. If a satisfactory resolution is not reached by this process, the employee shall reduce the grievance to writing, identifying the nature of the grievance and the desired remedy on the Town's **Grievance Submission Form**.
4. The employee shall present such written grievance to his or her immediate supervisor within three working days of the supervisor's verbal reply. The supervisor must then reply, in writing, within three working days.

B. Second step: upper management level.

1. If a satisfactory resolution is not reached at the first step, the employee may submit the grievance to the Town Manager. The employee shall make such submission to the second step within ten working days of the first step reply.
2. The Town Manager will meet with the employee within three working days or indicate an extension is necessary. Such extension shall not exceed three additional work days except by mutual agreement.
3. The employee may have legal counsel or a fellow employee of his or her choice present at this meeting. The Town Manager may have legal counsel or a witness of his choice likewise in attendance.
4. The Town Manager shall render a written reply to the grievance within three working days following the second step meeting.

C. Third step: panel hearing.

1. If the reply from the second step meeting is not acceptable to the grievant, he or she may submit the grievance to a third step panel hearing. The request for a third step panel hearing shall be indicated by the employee on *Section III* of the **Grievance Submission Form** and submitted to the Town Manager.
2. The employee must submit to the Town Manager said form stating his or her request for panel hearing within ten working days of the second step reply.
- ~~3. The Town Manager shall arrange for the selection of a three member panel and schedule the panel hearing.~~
4. To ensure an objective panel, the panel shall not be composed of any persons having direct involvement with the grievance being heard by the panel or with the complaint or dispute giving rise to the grievance. Persons 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. Panels chosen in compliance with these requirements shall be deemed to be impartial.
5. A panel shall be chosen which shall be composed of three members and shall be chosen in the following manner:
 - a. one member appointed by the grievant,
 - b. one member appointed by the Town Manager, and
 - c. a third member selected by the first two.
6. ~~In the event that agreement cannot be reached as to the final panel member, the Chief Judge of the Isle of Wight Circuit Court shall select such third panel member.~~
7. All panel members shall be employees of a local government within the 5th Judicial Circuit of the State of Virginia.
8. The Town Manager and the grievant shall select the first and second members of the panel within five working days after the request for the hearing has been filed.
9. The third panel member shall be selected within ten working days after the selection of the first two members. In the event that agreement cannot be reached as the final panel

member within ten working days after the selection of the first two members, the Chief Judge of the Isle of Wight Circuit Court shall select such third panel member.

10. In all cases, the third panel member shall be the Chairperson of the panel, and he or she shall, in consultation with the other two panel members, set the time for the hearing and notify the employee and Town Manager. ~~The hearing shall be held no later than ten working days after the date of the request unless the selection involves the use of the Circuit Court. In such case, the hearing shall be held as soon as practicable, but no more than ten working days after the final panel member has been selected.~~ The Town Manager shall send the three panel members copies of the grievance. The Chairperson, in consultation with all persons involved, shall set the time for the hearing which shall be as soon as practical, but no more than thirty days after the panel has been selected. The Chairperson shall notify the grievant and the Town Manager of the time of the hearing.
11. The panel has the responsibility to interpret the application of appropriate Town ordinances and procedures in the case. It does not have the prerogative to formulate or to change policies or procedures.
12. The conduct of the hearing shall be as follows:
 - a. The panel shall determine the propriety of attendance at the hearing of persons not having a direct interest in the hearing.
 - b. The Town Manager shall provide the panel with copies of the grievance record prior to the hearing, and provide the grievant with a list of the documents furnished to the panel, and the grievant and his or her attorney, at least ten days prior to the scheduled panel hearing, shall be allowed access to and copies of all relevant files intended to be used in the grievance proceeding.
 - c. The parties shall exchange documents, exhibits, and list of witnesses in advance of the hearing.
 - d. The panel may at the beginning of the hearing ask for opening statements from both parties clarifying the issues involved.
 - e. The panel shall have the authority to determine the admissibility of evidence without regard to burden of proof, or the order of presentation of evidence, so long as the panel affords all parties a full and equal opportunity for the presentation of their evidence.
 - f. Exhibits, when offered by the grievant or the Town, may be received in evidence by the panel and when so received shall be marked and made part of the record.
 - g. All evidence shall be presented in the presence of the panel and the parties.

- h. The grievant and Town, or their representatives, shall then present their claims and proofs and witnesses who shall submit to questions or other examination. The panel may, at its discretion, vary this procedure but shall afford full and equal opportunity to all parties and witnesses for presentation of any material or relevant proofs.
 - i. The parties may offer evidence and shall produce such additional evidence as the panel may deem necessary to an understanding and determination of the dispute.
 - j. The panel Chairman shall specifically inquire 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.
 - k. The hearings may be reopened by the panel on its own motion or upon application of a party for good cause shown at any time prior to the panel making its decision.
 - l. The panel shall not have authority to formulate policies or procedures or to alter existing policies or procedures.
13. The panel Chairman shall file the panel's decision in writing with the Town Manager and the grievant not later than five full working days after the completion of the hearing.
14. The majority decision of the panel, acting within the scope of its authority, shall be final and binding subject only to an appeal by either party to the Isle of Wight Circuit Court within thirty calendar days of the decision.
15. Either party may petition the Isle of Wight Circuit Court for an order requiring the implementation of the decision of the panel.
16. The parties to the grievance, by mutual agreement, may extend any or all of the time periods established in this procedure.
17. Regardless of the out come of the grievance, the grievant shall bear any and all costs involved in employing representation or in preparing or presenting his or her case.
18. A working day shall be Monday through Friday excluding any holidays or other closures that the Town may have. All time periods under this procedure shall begin on the day following that on which any actions is to be taken or response rendered.
19. Time limits established under this procedure are intended to be strictly construed and enforced. Time limits may be extended by mutual agreement of all parties.