## Sec. 66-31. - Grievance procedure.

(a) *Grievance procedure.* Access to procedure: Because many employee concerns or complaints can be resolved through communication between the employee and the supervisor, employees are encouraged to take their concerns informally to their supervisors as soon as possible. This informal process does not, however, extend the time frames outlined in this procedure.

(1) *Coverage.* All nonprobationary classified city employees shall have access to the grievance procedure, with the exceptions as listed in subsection (a)(2) below.

(2) *Exclusions.* The following categories of employees do not have access to the grievance procedure:

a. Probationary employees;

b. Appointees of elected groups or individuals;

c. Department heads;

d. Constitutional officers and employees of their offices;

e. Law enforcement officers electing to pursue a grievance under Chapter 10.1 of Title 2.1.

(3) *Resignation.* An employee who has voluntarily resigned shall not have access to this grievance procedure after the effective date of the resignation. However, any grievance initiated by an employee prior to separation from service may, at the employee's option, continue to be processed through the grievance procedure.

(4) *Grievance initiated after removal.* An employee who has been removed shall not have access to the grievance procedure, except to grieve a termination resulting from formal discipline, unsatisfactory job performance, or a disciplinary action which occurred less than 30 days before the removal.

(b) *Definition of grievance.*

(1) *Grievable issues.* A grievance shall be a complaint or dispute by an employee relating to his employment, including but not necessarily limited to:

a. Disciplinary actions, including dismissals (whether resulting from formal discipline or unsatisfactory job performance), demotions and suspensions.

b. The application of personnel policies, procedures, rules, regulations, ordinances and statutes.

c. Acts of retaliation as a result of utilization of the grievance procedure or of participation in the grievance of another employee.

d. Acts of retaliation as the result of complying with state or federal law, reporting a violation of any such law to a governmental authority, or seeking to change a law before Congress or the General Assembly.

(2) *Nongrievable issues.* Management reserves the exclusive right to manage the affairs and operation of city government. Accordingly, the following complaints are not grievable.

a. Establishment and revision of wages, salaries, position classifications 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 part of the job content.

c. The measurement and assessment of work activity through a performance evaluation, except where the employee can show that the evaluation was

arbitrary or capricious.

d. The contents of established personnel policies, procedures, rules, regulations, ordinances and statutes.

e. Failure to be promoted, except where the employee can show that established promotional policies or procedures were not followed or applied fairly.

f. The hiring, transfer, assignment and retention of employees, provided such actions do not constitute disciplinary actions.

g. The relief of employees from duties in emergencies.

h. Termination, layoff, demotion or suspension from duties because of lack of work, reduction in the work force or job abolition.

(3) *Determining grievability of issues.*

a. If, during the first step procedures, management response indicates that a given issue is not grievable, the employee may appeal to the circuit court. To request a circuit court hearing, the employee must submit a written request to the city manager within five days of receipt of the grievability decision. The city manager shall forward copies of the grievance record and any exhibits furnished by either party to the circuit court having jurisdiction in the locality in which the grievance arose within ten work days after receiving the request from the employee.

Both the employee and the city may call upon appropriate witnesses and be represented by legal counsel before the court. Such representative may examine, cross-examine, question and present evidence on behalf of the employee or the agency before the court.

(4) *Circuit court authority.* The city manager will forward the grievance record within ten workdays to the circuit court. Within 30 calendar days of receiving the grievance record, the court sitting without a jury should hear the appeal on the record and such additional evidence as may be necessary to resolve the issue of grievability. The court may receive other evidence at its discretion. The employee may have legal representation or represent himself at the hearing.

Because the appearance of witnesses is within the discretion of the court, the parties must notify the court that they are requesting permission to have witnesses testify at the hearing.

The court may affirm or reverse the decision of the city or, appropriate circumstances, choose a modified remedy.

The decision of the court is final and binding. The city manager shall be responsible for ensuring that the court's decision is implemented.

The city manager will be responsible for distribution of copies of the court's decision to the department head, and the employee within five work days of its receipt from the court.

(c) *Management review.* Employees may pursue grievable issues through the grievance procedure, as provided, and supervisors are encouraged to assist in this process.

(1) *First step.*

a. The employee shall identify the grievance orally to the immediate supervisor in an informal face-to-face meeting within 30 calendar days after the event or action which is the basis for the grievance.

The immediate supervisor is the individual who is responsible for evaluating the performance of the grievant.

b. The immediate supervisor shall give an oral response to the employee within five work days following the meeting. Prior to providing any response to the grievant,

the immediate supervisor will provide through his/her chain of command, the city manager the details of the grievance. At this point in the procedure, the city manager will issue a decision on the issues' grievability.

c. If resolution is not reached at this point, the employee may initiate the grievance in writing within five work days of the oral response.

1. If the grievance deals with a disciplinary action (including dismissal, demotion, or suspension), the employee has the option of submitting a written grievance to the immediate supervisor or, if the immediate supervisor did not take the disciplinary action, to the individual who took the discipline.

2. In all other grievances, a written grievance should be submitted to the immediate supervisor.

3. The nature of the grievance and the specific relief requested should be clearly stated.

d. The respondent at the first step shall given the employee a written response to his/her grievance within five work days of receipt of employee's written grievance.

(2) *Second step.*

a. If the employee does not accept the response from the first-step respondent, the employee may submit in writing the desire to have the grievance advanced to the next step. The employee must submit a written request to second step respondent (generally the next direct management level) within five work days of receipt of the first-step respondent's reply.

b. The second step respondent shall meet with the employee within five work days of receipt of the written request to proceed to next step. The only persons to be present at this meeting are the employee and the second-step respondent. Appropriate witnesses may be called and may remain in the room only while giving their own testimony.

c. The second-step respondent shall provide the employee a written response within five work days following the meeting as described in subsection (c)(2)b. above.

(3) *Third step.*

a. If the employee does not accept the response from the second-step respondent the employee may submit in writing the desire to advance the grievance to the third step respondent within five work days of receipt of the second-step respondent's reply.

b. The third-step respondent shall be the city manager.

c. The third-step respondent shall meet with the employee within five work days following receipt of employee's written request to proceed to third step. The only persons present at this meeting are the employee and the third-step respondent. Appropriate witnesses may be called and may remain in the room only while giving their testimony.

d. The third-step respondent shall give the employee a written response within ten work days following the meeting.

(4) *Fourth step.*

a. If the employee does not accept the response from the third step respondent, the employee may submit in writing, a request that the grievance be advanced to a hearing before an impartial panel as set out hereafter.

b. Panel composition: Except in cases grieving termination of employment, a panel

shall consist of three members: one member appointed by the grievant, one appointed by the city manager, and third member appointed by the other two members. In the event that agreement cannot be reached as to the final panel member, the chief judge of the circuit court of the jurisdiction wherein the dispute arose shall select the third panel member. In the case of termination of employment, the city will appoint a hearing officer from the state maintained list as the third panel member. The city will bear all cost of the hearing officer. 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. 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 the attorney shall serve as a panel member.

c. Panel selection: The grievant shall file a request in writing with the city manager within ten work days of the step 3 decision. Within five work days after such filing, the grievant and city manager shall submit the name of one member to serve on the panel. Within five work days thereafter, the two panel members so appointed shall appoint a third member. In the event that agreement cannot be reached for selection of a such a third member, the two members shall request the judge of the circuit court of the city to appoint a third member. In the case of termination of employment, the city will appoint a hearing officer from the state maintained list as the third panel member.

d. Panel hearing date: The full panel shall set the date, time and place for the hearing which shall be held within 15 work days following the selection of the third member. The panel shall select its own chairperson who shall notify each of the participants of the hearing date.

e. Case presentation: The grievant and city manager may be represented by legal counsel or other representatives of their choice at the panel hearing. Such representatives may examines, cross-examine, question or present evidence in their behalf.

f. Panel decision: The panel shall render its decision in writing within 15 work days following the conclusion of the hearing. Copies thereof shall be distributed to the grievant, grievant's department head, city manager, and city attorney. The majority decision of the panel shall be final and binding.

(5) *Management rights retained.* Nothing in this procedure is intended to circumscribe or modify the existing management right of the city government to do the following:

a. Direct the work of its employees as well as establish and revise wages, salaries, position classification and general employee benefits;

b. Hire, promote, transfer, assign and retain employees within the agency;

c. Maintain the efficiency of governmental operation;

d. Relieve employees from duties of the agency in emergencies; and

e. Determine the methods, means and personnel by which operations are to be carried on.

None of these rights may be exercised in an arbitrary or capricious manner, nor shall any supervisor, department head, or other management official make a reprisal against any employee by reason of having invoked the grievance procedure.

Failure by the grievant to comply with all substantial procedural requirements of the grievance procedure without just cause will terminate the right to further appeal.

Failure of the respondent to comply with all substantial procedural requirements of the grievance procedure without just cause will, at the option of the grievant, advance the grievant to the next step in the grievance process. Failure of the respondent, without just cause, to comply with all substantial procedural requirements of the final step of the grievance procedure shall result in a decision in favor of the grievant.

The time periods established throughout this grievance procedure are deemed to constitute substantial procedural requirements. However, such time periods may be extended by mutual agreement between the grievant and the appropriate supervisors, department heads and city manager to whom the time period is applicable.

At all steps beyond step 1 in the procedure, the grievant shall be permitted to be accompanied or represented by an individual of their own choice. Representation of the grievant shall be at their own expense; however, if the hearing is held during regular working hours and the grievant's representative is another city employee, the city will authorize representative to attend the hearing without charge to leave balance.

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