

900. MEDIATION/DISCIPLINARY ACTIONS/GRIEVANCE RESOLUTION AND APPEAL

This section of the Personnel Rules and Regulations includes the City policy for the following programs: Mediation Program; Disciplinary Actions; Grievance Resolution; and Appeal from Suspension, Demotion and Dismissal.

901. MEDIATION PROGRAM

City employees and supervisors are encouraged to use the Employee Mediation Program to address work place conflict, including conflict between employees and conflict between an employee and a supervisor. Participation in the mediation program is voluntary and will not affect access to other procedural remedies for employees.

The Employee Mediation Program is established to:

- A. Encourage City employees to resolve work place conflicts early, informally and with minimum intervention from the administration; and
- B. Address conflict in the work place constructively through communication and collaboration whenever possible; and
- C. Aid direct communication and problem solving between individuals; and
- D. Provide neutral mediators to help informal, direct communication and conflict resolution within each department of the City; and
- E. Provide a resource to each department to minimize the costs of conflict.

Any City employee or supervisor may initiate mediation by contacting the Mediation Program Coordinator. Employees and supervisors should attempt to use the mediation process at an early stage in their conflict resolution efforts but may be initiated at any point.

The mediation will take place during business hours in a neutral site at a time mutually acceptable to the participants and will be conducted in accordance with the Employee Mediation Program guidelines. Any resolution resulting from the mediation must comply with all applicable laws, policies, rules and procedures.

902. DISCIPLINARY ACTIONS

Employees may be disciplined by written reprimand, suspension, demotion or dismissal. Just cause for discipline is any behavior significant or substantial in nature relating to the employee's work or conduct that is inconsistent with the employee's obligation to the City.

902.1 Reasons for Disciplinary Actions

Employees may be reprimanded, suspended, demoted or terminated for any justifiable cause including, but not limited to:

- A. Violence or threats of violence on City premises or on City time. City premises includes but is not limited to work sites, property or vehicles (owned, rented or leased), parking garages and parking lots; or
- B. Commission of a felony or misdemeanor related to the position held by the employee or conviction of a crime involving moral turpitude; or
- C. Incompetence, inefficiency or inadequate performance of an employee's duties; or
- D. Deliberate falsification or omission of information on an employment application, resume, timecard/record or other city documents; or
- E. Insubordination or uncooperative behavior; or
- F. Misappropriation or personal use of city funds, property, possessions or resources or theft or fraud; or
- G. Misconduct; or
- H. Harassment or sexual harassment; or
- I. Violation of confidentiality or the release of confidential information; or
- J. Being absent from duty without proper authorization, regardless of the length of time; or
- K. Violation of the Substance Abuse Policy; or
- L. Violation of the Personnel Rules and Regulations or rules promulgated pursuant to the Merit System Ordinance and/or the Conflict of Interest Ordinance; or
- M. Other disciplinary reasons, including but not limited to conduct on or off-duty, which may:
 - 1. Call into question the employee's ability to perform assigned duties or job functions; or
 - 2. Would harm public respect for City employees or confidence in the operation of City services; or

3. Would impair the operation or efficiency of any City department.

902.2 Disciplinary Procedures

Before discipline is imposed, the employee shall be notified of the reasons for which discipline is contemplated, a summary of the evidence against the employee, and the employee's right to respond to the proposed action. After giving the employee the notice of contemplated action and before the employee makes any written or oral response, the supervisor contemplating the discipline shall request review by the City Employee Mediation Program Coordinator of the circumstances on which the contemplated action is based in an effort to avoid the discipline. Mediation shall occur if it is deemed appropriate by the Coordinator. After this review or if mediation is unsuccessful, the supervisor may continue with the contemplated disciplinary procedure by giving the employee the right to respond to the notice of contemplated action.

902.3 General Provisions

Suspensions shall not exceed ninety (90) calendar days for any offense. The Chief Administrative Officer or designee or department director has the option, on a suspension of five (5) days or less, to prohibit the employee from attending the work place or to allow the employee to work through the suspension with pay. Fair Labor Standard Act exempt employees may not be suspended for less than one (1) workweek. Disciplinary actions, with the exception of dismissals, may be held in abeyance for no more than six (6) months.. The Chief Administrative Officer, or designee, a department director or an acting director may impose any discipline. A division manager may issue a reprimand and suspend an employee for five (5) days or less after informing the department director. An employee's immediate supervisor may issue a reprimand after informing the division manager or department director.

No person except the Chief Administrative Officer shall discipline department directors or the Internal Auditor. The Chief Administrative Officer shall not discipline the Internal Auditor without the concurrence of the Internal Audit Committee. The Internal Auditor may discipline other employees of the Office of Internal Audit. The Director of Council Services may discipline other employees of the Department of Council Services.

All disciplinary actions shall be noted in the employee's personnel file. Disciplinary actions held in abeyance will not be forwarded to the personnel file until the disciplinary action is served.

903. GRIEVANCE RESOLUTION

The Grievance Resolution Procedure provides a means for reconciling complaints concerning minor disciplinary actions and working conditions or departmental rules. The purpose of this grievance procedure is to promote harmonious relations among employees, supervisors and managers; to encourage the settlement of disagreements informally at the employee-supervisor level; to provide an orderly procedure to handle grievances through the various supervisory levels when necessary; to resolve grievances as quickly as possible; and to discourage the filing of unfounded grievances.

Grievances are formal written complaints of an employee concerning letters of reprimand, suspensions of five (5) days or less, or application of existing rules or policies.

The grievance procedure applies to all classified employees who are not covered by collective bargaining agreements. Employees who claim to be aggrieved by the interpretation or application of a collective bargaining agreement shall be referred to the Labor-Management Relations Board.

Employees categorized as unclassified, probationary, seasonal or temporary are not entitled to the rights provided in this section.

903.1 Grievable/Non-Grievable Issues

- A. To be grievable an issue must:
 - 1. Concern matters of specific incidents that have occurred; and
 - 2. Result from an act or omission by management regarding aspects of employee-employer relations over which the department director has control; and
 - 3. Arise out of a specific situation or act that has resulted in inequity or damage to the employee.
- B. An issue is not grievable if it is a matter which:
 - 1. Is subject to management rights which are necessary to exercise control and discretion over the organization and efficiency of the operations of the City and include the following rights:

- a. To direct the work of its employees; and
 - b. To hire, promote, evaluate, transfer and assign employees; and
 - c. To reprimand, suspend, demote or discharge employees for just cause; and
 - d. To determine staffing requirements; and
 - e. To maintain the efficiency of City government and ensure the continuation of normal management functions; and
 - f. To take actions as may be necessary to carry out the mission of City government in emergencies; and
 - g. To manage and exercise judgment on all matters not specifically prohibited by law or by a collective bargaining agreement in effect between the City and an employee organization.
2. Would require modification of a policy established by the City Council, state or federal law; or
 3. Has been reviewed via another grievance procedure (as authorized in a collective bargaining agreement); or
 4. Is subject to review under the Personnel Rules and Regulation or another administrative procedure; or
 5. Is subject to the provisions of the Labor-Management Relations Ordinance.

903.2 General Provisions

- A. Grievances may be initiated only by the employee concerned and may not be pursued without the affected employee's consent.
- B. Once a grievance has been investigated and denied, repeated filing of grievances on the same issue will not be permitted.

- C. While the grievant may designate a representative at any step of the grievance procedure, labor unions do not have representation rights for nonbargaining unit employees. A grievance committee is not required to recognize more than one (1) representative for any grievance.
- D. If the grievance involves a group of employees or if several employees file separate grievances on the same matter, the grievances may be handled as a single grievance.
- E. Whenever possible, grievances will be handled during regularly scheduled work hours of the parties involved.
- F. If the day on which an action is to be taken falls on a Saturday, Sunday or holiday, the action must be taken on the next business day.
- G. Any grievance will be considered resolved at the completion of any step if all parties are satisfied or if the employee concerned chooses not to present the matter to the next step of the procedure within the prescribed period.
- H. If the grievant refuses to appear or participate in the grievance resolution procedure at any stage the grievant forfeits the right to use the grievance resolution procedure to resolve that grievance.
- I. The department director shall ensure the grievant experiences no retaliation for having pursued the grievance.
- J. The entire grievance resolution process shall operate without discrimination, restraint, coercion, or reprisal on the part of any supervisor or employee.
- K. The filing of a grievance, or the intention to file, does not relieve any employee in any way of his or her responsibility to perform any and all of his or her assigned duties promptly, efficiently and completely.

903.3 Grievance Procedure

- A. The grievance procedures consists of three (3) steps:
 - 1. Review by the City Mediation Program.
 - 2. Review by the department director.

3. Investigation and recommendation by the Grievance Resolution Committee if the dispute is determined to be grievable.

If the employee fails to take action at any step within the allotted time, the grievance procedure will be concluded.

- B. The Chief Administrative Officer will issue an Administrative Instruction establishing detailed grievance resolution procedures.
- C. The Human Resources Director shall develop written guidelines for the operation of the Grievance Resolution Committee, addressing such issues as confidentiality of information revealed to the Committee and bias or interest of Committee members, and operating procedures.

904. APPEAL FROM SUSPENSION, DEMOTION AND DISMISSAL

The appeal procedures offer a process by which an employee may appeal certain disciplinary actions. An appeal is an employee's challenge to a suspension without pay for more than five (5) days, demotion for disciplinary reasons or for dismissal.

Employees categorized as unclassified, probationary, seasonal and temporary are not entitled to the rights provided in this section

904.1 Appeal Procedure

- A. An employee may appeal a disciplinary action to the Personnel Board within ten (10) calendar days of the disciplinary decision. Such appeal shall be submitted, in writing, to the Chief Administrative Officer with a copy to the employee's department director.

The appeal shall identify:

1. Employee's name;
2. Department name;
3. Employee's title;
4. Employee's immediate supervisor;
5. Discipline imposed and a brief summary of the offense for which the discipline was imposed; and

6. The reason the employee disagrees with the discipline imposed.

Processing of the appeal may be delayed if all of the above information is not included.

- B. The Chief Administrative Officer shall promptly refer the appeal to the Personnel Board for a hearing on the matter.
- C. The Personnel Board shall refer the appeal to a Hearing Officer, who shall schedule a hearing on the merits within ten (10) calendar days after receiving the written request, unless both the City and the employee agree to an extension of time. The hearing shall generally take place during normal work hours.
- D. As soon as possible but in any event within thirty (30) calendar days after concluding a hearing, the Hearing Officer shall transmit a report containing a summary of the evidence, proposed findings of fact and recommendation to the Personnel Board, the Chief Administrative Officer or designee and the subject employee. The Chief Administrative Officer or designee may grant a time extension in the event it is not feasible for the Hearing Officer to meet this time limit. The City and employee may submit exceptions to the Hearing Officer's report and written argument within the time allowed by the Personnel Board's procedural rules.
- E. As soon as possible after the Personnel Board has received the recommendation, it shall act; such action shall normally be within thirty (30) days of transmittal of the Hearing Officer's report. When deliberating on an appeal the Personnel Board shall be limited to consideration of findings and recommendations of the Hearing Officer, written submissions by the parties, and/or, at the request of the Board, oral argument by the parties concerning the evidence admitted at the hearing. The Board shall not hear any testimony. The burden of proof is measured by a preponderance of the evidence. A tie vote on the decision upholds the recommendation of the Hearing Officer.

The Board may take one (1) of the following actions:

1. Accept the recommendation of the Hearing Officer and enter conclusions of law consistent with the findings; or

2. Reverse or modify the recommendation of the Hearing Officer by making its own findings of fact consistent with the evidence and entering conclusions of law consistent with the findings; or
 3. Remand the matter to a Hearing Officer for further hearing.
- F. The employee or the City may appeal the decision of the Personnel Board to District Court within thirty (30) days after the date of the decision. The decision shall be affirmed unless the decision is found to be:
1. Arbitrary or capricious and unsupported by substantial evidence; or
 2. In violation of applicable constitutional provisions or otherwise illegal; or
 3. In excess of the statutory authority or jurisdiction of the Board.
- G. The Personnel Board shall promulgate the rules of procedure for hearings before Personnel Board Hearing Officers and its own meetings.

904.2 Hearing Officer Authority

The Personnel Hearing Officer has the authority to administer oaths, subpoena witnesses and compel submissions of documents pertinent to an appeal.

904.3 Failure to Appear/Participate

Failure or refusal to appear or participate in the appeal hearing at any formal stage by an aggrieved employee shall result in forfeiture by that employee of any further right to utilization of the appeal procedures to resolve that grievance.

904.4 Administration of the Appeal Procedure

The entire appeal process shall operate without discrimination, restraint, coercion or reprisal on the part of any supervisor or employee.

904.5 Aggrieved Employee's Responsibility

The filing of an appeal, or the intention to file, does not relieve any employee in any way of his or her responsibility to perform any and all of his or her assigned duties promptly, efficiently and completely.