

COVER SHEET FOR FILING CIVIL ACTIONS  
COMMONWEALTH OF VIRGINIA

Case No. ....  
(CLERK'S OFFICE USE ONLY)

City of Virginia Beach

Circuit Court

David Scherrer, Richard Irving

v./In re:

City of Virginia Beach

PLAINTIFF(S)

DEFENDANT(S)

Alexander Wazlak, III and Mark Bayly

David Hansen, City Manager

I, the undersigned [ ] plaintiff [ ] defendant [X] attorney for [X] plaintiff [ ] defendant hereby notify the Clerk of Court that I am filing the following civil action. (Please indicate by checking box that most closely identifies the claim being asserted or relief sought.)

GENERAL CIVIL

- Subsequent Actions
[ ] Claim Impleading Third Party Defendant
[ ] Monetary Damages
[ ] No Monetary Damages
[ ] Counterclaim
[ ] Monetary Damages
[ ] No Monetary Damages
[ ] Cross Claim
[ ] Interpleader
[ ] Reinstatement (other than divorce or driving privileges)
[ ] Removal of Case to Federal Court

Business & Contract

- [ ] Attachment
[ ] Confessed Judgment
[ ] Contract Action
[ ] Contract Specific Performance
[ ] Detinue
[ ] Garnishment

Property

- [ ] Annexation
[ ] Condemnation
[ ] Ejectment
[ ] Encumber/Sell Real Estate
[ ] Enforce Vendor's Lien
[ ] Escheatment
[ ] Establish Boundaries
[ ] Landlord/Tenant
[ ] Unlawful Detainer
[ ] Mechanics Lien
[ ] Partition
[ ] Quiet Title
[ ] Termination of Mineral Rights

Tort

- [ ] Asbestos Litigation
[ ] Compromise Settlement
[ ] Intentional Tort
[ ] Medical Malpractice
[ ] Motor Vehicle Tort
[ ] Product Liability
[ ] Wrongful Death
[ ] Other General Tort Liability

ADMINISTRATIVE LAW

- [X] Appeal/Judicial Review of Decision of (select one)
[ ] ABC Board
[ ] Board of Zoning
[ ] Compensation Board
[ ] DMV License Suspension
[X] Employee Grievance Decision
[ ] Employment Commission
[ ] Local Government
[ ] Marine Resources Commission
[ ] School Board
[ ] Voter Registration
[ ] Other Administrative Appeal

DOMESTIC/FAMILY

- [ ] Adoption
[ ] Adoption - Foreign
[ ] Adult Protection
[ ] Annulment
[ ] Annulment - Counterclaim/Responsive Pleading
[ ] Child Abuse and Neglect - Unfounded Complaint
[ ] Civil Contempt
[ ] Divorce (select one)
[ ] Complaint - Contested\*
[ ] Complaint - Uncontested\*
[ ] Counterclaim/Responsive Pleading
[ ] Reinstatement - Custody/Visitation/Support/Equitable Distribution
[ ] Separate Maintenance
[ ] Separate Maintenance Counterclaim

WRITS

- [ ] Certiorari
[ ] Habeas Corpus
[ ] Mandamus
[ ] Prohibition
[ ] Quo Warranto

PROBATE/WILLS AND TRUSTS

- [ ] Accounting
[ ] Aid and Guidance
[ ] Appointment (select one)
[ ] Guardian/Conservator
[ ] Standby Guardian/Conservator
[ ] Custodian/Successor Custodian (UTMA)
[ ] Trust (select one)
[ ] Impress/Declare/Create
[ ] Reformation
[ ] Will (select one)
[ ] Construe
[ ] Contested

MISCELLANEOUS

- [ ] Amend Death Certificate
[ ] Appointment (select one)
[ ] Church Trustee
[ ] Conservator of Peace
[ ] Marriage Celebrant
[ ] Approval of Transfer of Structured Settlement
[ ] Bond Forfeiture Appeal
[ ] Declaratory Judgment
[ ] Declare Death
[ ] Driving Privileges (select one)
[ ] Reinstatement pursuant to § 46.2-427
[ ] Restoration - Habitual Offender or 3rd Offense
[ ] Expungement
[ ] Firearms Rights - Restoration
[ ] Forfeiture of Property or Money
[ ] Freedom of Information
[ ] Injunction
[ ] Interdiction
[ ] Interrogatory
[ ] Judgment Lien-Bill to Enforce
[ ] Law Enforcement/Public Official Petition
[ ] Name Change
[ ] Referendum Elections
[ ] Sever Order
[ ] Taxes (select one)
[ ] Correct Erroneous State/Local
[ ] Delinquent
[ ] Vehicle Confiscation
[ ] Voting Rights - Restoration
[ ] Other (please specify)

[ ] Damages in the amount of \$ ..... are claimed.

03/19/2018

DATE

[ ] PLAINTIFF

[ ] DEFENDANT

[X] ATTORNEY FOR

[X] PLAINTIFF

[ ] DEFENDANT

Andrea Ruege

PRINT NAME

Bertini Law, PC 5712 Cleveland Street, Suite 140

ADDRESS/TELEPHONE NUMBER OF SIGNATOR

Virginia Beach, Virginia 23462 (757-222-9165)

aruege@bertinilawfirm.com

EMAIL ADDRESS OF SIGNATOR (OPTIONAL)

\*\*"Contested" divorce means any of the following matters are in dispute: grounds of divorce, spousal support and maintenance, child custody and/or visitation, child support, property distribution or debt allocation. An "Uncontested" divorce is filed on no fault grounds and none of the above issues are in dispute.

**Civil Action Type Codes  
(Clerk's Office Use Only)**

Accounting .....	ACCT	Ejectment .....	EJET
Adoption .....	ADOP	Encumber/Sell Real Estate .....	RE
Adoption – Foreign .....	FORA	Enforce Vendor's Lien .....	VEND
Adult Protection .....	PROT	Escheatment .....	ESC
Aid and Guidance .....	AID	Establish Boundaries .....	ESTB
Amend Death Certificate .....	ADC	Expungement .....	XPUN
Annexation .....	ANEX	Forfeiture of Property or Money .....	FORF
Annulment .....	ANUL	Freedom of Information .....	FOI
Annulment – Counterclaim/Responsive Pleading ..	ACRP	Garnishment .....	GARN
Appeal/Judicial Review		Injunction .....	INJ
ABC Board .....	ABC	Intentional Tort .....	ITOR
Board of Zoning .....	ZONE	Interdiction .....	INTD
Compensation Board .....	ACOM	Interpleader .....	INTP
DMV License Suspension .....	JR	Interrogatory .....	INTR
Employment Commission .....	EMP	Judgment Lien – Bill to Enforce .....	LIEN
Employment Grievance Decision .....	GRV	Landlord/Tenant .....	LT
Local Government .....	GOVT	Law Enforcement/Public Official Petition .....	LEP
Marine Resources .....	MAR	Mechanics Lien .....	MECH
School Board .....	JR	Medical Malpractice .....	MED
Voter Registration .....	AVOT	Motor Vehicle Tort .....	MV
Other Administrative Appeal .....	AAPL	Name Change .....	NC
Appointment		Other General Tort Liability .....	GTOR
Conservator of Peace .....	COP	Partition .....	PART
Church Trustee .....	AOCT	Permit, Unconstitutional Grant/Denial by Locality	LUC
Custodian/Successor Custodian (UTMA) .....	UTMA	Petition – (Miscellaneous) .....	PET
Guardian/Conservator .....	APPT	Product Liability .....	PROD
Marriage Celebrant .....	ROMC	Quiet Title .....	QT
Standby Guardian/Conservator .....	STND	Referendum Elections .....	ELEC
Approval of Transfer of Structured Settlement .....	SS	Reinstatement (Other than divorce or driving	
Asbestos Litigation .....	AL	privileges) .....	REIN
Attachment .....	ATT	Removal of Case to Federal Court .....	REM
Bond Forfeiture Appeal .....	BFA	Restore Firearms Rights – Felony .....	RFRF
Child Abuse and Neglect – Unfounded Complaint ..	CAN	Restore Firearms Rights – Review .....	RFRR
Civil Contempt .....	CCON	Separate Maintenance .....	SEP
Claim Impleading Third Party Defendant –		Separate Maintenance – Counterclaim/Responsive	
Monetary Damages/No Monetary Damages .....	CTP	Pleading .....	SCRP
Complaint – (Miscellaneous) .....	COM	Sever Order .....	SEVR
Compromise Settlement .....	COMP	Sex Change .....	COS
Condemnation .....	COND	Taxes	
Confessed Judgment .....	CJ	Correct Erroneous State/Local .....	CTAX
Contract Action .....	CNTR	Delinquent .....	DTAX
Contract Specific Performance .....	PERF	Termination of Mineral Rights .....	MIN
Counterclaim – Monetary Damages/No Monetary		Trust – Impress/Declare/Create .....	TRST
Damages .....	CC	Trust – Reformation .....	REFT
Cross Claim .....	CROS	Uniform Foreign Country Money Judgments .....	RFCJ
Declaratory Judgment .....	DECL	Unlawful Detainer .....	UD
Declare Death .....	DDTH	Vehicle Confiscation .....	VEH
Detinue .....	DET	Voting Rights – Restoration .....	VOTE
Divorce		Will Construction .....	CNST
Complaint – Contested/Uncontested .....	DIV	Will Contested .....	WILL
Counterclaim/Responsive Pleading .....	DCRP	Writs	
Reinstatement – Custody/Visitation/Support/		Certiorari .....	WC
Equitable Distribution .....	CVS	Habeas Corpus .....	WHC
Driving Privileges		Mandamus .....	WM
Reinstatement pursuant to § 46.2-427 .....	DRIV	Prohibition .....	WP
Restoration – Habitual Offender or		Quo Warranto .....	WQW
3 <sup>rd</sup> Offense .....	REST	Wrongful Death .....	WD

**VIRGINIA:**

**IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH**

**DAVID SCHERRER, RICHARD  
IRVING, ALEXANER WAZLAK  
III, & MARK BAYLY**

**Plaintiffs**

v.

**CITY OF VIRGINIA BEACH**

**Serve:** City Attorney  
2401 Courthouse Drive  
City Office #10  
Virginia Beach, VA 23456

**Civil Action No.** \_\_\_\_\_

**And**

**DAVID HANSEN, City Manager  
for the City of Virginia Beach**

**Serve:** 1 Municipal Ctr. #234  
Virginia Beach, VA 23456

**Defendants**

**PETITION FOR ORDER TO REVISE FINAL GRIEVANCE PANEL DECISION  
ORDERING INVALIDATION OF 2017 CAPTAINS' GRIEVANCE PROCESS**

Petitioners David Scherrer, Richard Irving, Alexander Wazlak, and Mark Bayly, (or "Petitioners"), employees and long-term veterans of the Virginia Beach Fire Department, by counsel, petition the Court to order the City of Virginia Beach to find that the determination of the personnel board was inconsistent with existing law and current city policy and Order the Virginia Beach Fire Department to invalidate the 2017 Captains' promotional process in its entirety. In support thereof, Scherrer, Irving, Wazlak, and Bayly state as follows:

**I. Factual Background**

1. David Scherrer, Richard Irving, Alexander Wazlak, and Mark Bayly filed grievances disputing the tainted 2017 Captains' promotional process and their failure to be promoted or delayed promotion. A grievance hearing was held on January 9, 2018. At the time of the grievance hearing all four petitioners held the rank of Master Firefighter. As of March 19, 2018, David Scherrer, Richard Irving and Mark Bayly still hold the rank of Master Firefighter. On or about March 15, 2018, Alexander Wazlak was promoted to the rank of Fire Captain.

2. The annual Captains' promotional process was initiated in May 2017. The Captains' promotional process is comprised of two sections, a written exam worth thirty percent (30%) of the candidates' overall scores and an assessment center evaluation worth seventy percent (70%) of the candidates' overall scores. Prior to the administration of the 2017 Captains' test, former Battalion Chief William Reynolds disclosed confidential information regarding the tactical component of the promotional process to Nena Myers and Ronson Carr. The tactical component accounts for forty percent (40%) of the assessment center portion of the Captains' exam. Both Ms. Myers and Mr. Carr were Master Fire Fighters in May 2017. Mr. Reynolds was an assessor for the tactical component of the 2017 Captains' test and so had access to confidential information related to that component. Assessors evaluate and score test takers in each section of the of the assessment center portion of the exam.

3. As a result of having this information, Ms. Myers received a 95.17 and Mr. Carr received a 100, a perfect score, on the tactical component. Upon information

and belief, this was the first time that anyone within the Virginia Beach Fire Department has received a perfect score on the tactical component.

4. After the promotional process had been completed, it was revealed that Mr. Reynolds had disclosed information to Ms. Myers and Mr. Carr. Virginia Beach Fire Department subsequently conducted an investigation into this matter. Upon information and belief this investigation lasted approximately four days.

5. After the Virginia Beach Fire Department learned that Mr. Reynolds had disclosed confidential information, Ms. Myers and Mr. Reynolds were both demoted. Mr. Reynolds was demoted from Battalion Chief to Master Firefighter, a demotion equivalent to two ranks. Ms. Myers was demoted from Master Firefighter to Firefighter, a demotion equivalent to one rank.

6. Mr. Carr was promoted to Captain as a result of his performance during the promotional process. He still remains in this position. Upon information and belief, no one within the Department was aware that Mr. Carr had access to the tactical problem until the Virginia Beach Fire Department held a number of administrative hearings in July 2017. At no point in time did Mr. Carr notify the Virginia Beach Fire Department that he had information relating to the tactical component of the Captains' test even after learning that Mr. Reynolds was an assessor on the tactical component of the test.

7. As part of the City's investigation, Mr. Carr participated in an administrative hearing in which he admitted to having received confidential information regarding the tactical component of the 2017 Captains' promotional process. Mr. Carr has since claimed that he was not aware that the information was confidential or that Mr. Reynolds was an assessor of the tactical component of the Captains' test when he

received the information. Upon information and belief, Mr. Carr was never reprimanded or punished by the Fire Department.

8. In September 2017, Petitioners attempted to file a grievance with the City of Virginia Beach to dispute the validity of the 2017 Captains' promotional process. Human Resources advised the petitioners that the matter was not grievable. Upon information and belief, the Virginia Beach Fire Department did not disclose or provide Human Resources with the entirety of the findings of the investigation at that time.

9. Petitioners then notified the City that they were planning to appeal the determination of grievability in Circuit Court. Once the City received this notification, Human Resources issued a redetermination of grievability and Petitioners were allowed to pursue a grievance hearing through the Personnel Board. The individual grievances were consolidated into one hearing.

10. A consolidated grievance hearing was held on January 9, 2018.

11. Petitioners Scherrer, Irving, Wazlak, and Bayly, through the undersigned counsel, argued that the City's promotional policy was not appropriately maintained during the 2017 Captains' process and as a result the 2017 process should be invalidated. Since the panel unanimously found that the 2017 Captains' promotional process was compromised that process should not be upheld.

12. The City argued that the grievance panel did not have the authority to throw out the 2017 Captains' promotional process; therefore, the panel's decision should instead be to uphold that process.

13. The Personnel Board issued a unanimous decision on January 12, 2018 ("Initial Decision"), in which it found that the 2017 Fire Department promotion process

was compromised by lack of confidentiality, but that the actions taken in response to the complaint, and subsequent planned actions to improve the Fire Captain Promotion Policy for future processes offers the best solution available to all candidates. (Initial Decision is attached as **Exhibit 1**).

14. The relief granted by the Personnel Board in its Initial Decision did not offer any actual relief to the named Plaintiffs. Nor did the decision offered by the Personnel Board cite any law or city policy.

15. Based on its rejection of the Personnel Board's Final Decision, the City has not provided relief to Scherrer, Irving, Wazlak, and Bayly; nor to other participants of the 2017 Captains' promotional process. The relief that was ordered by the Personnel Board does not resolve the issue raised by this Complaint, nor does it remedy the wrongs committed during the 2017 promotional process.

16. The Personnel Board's decision dated January 12, 2018 cites absolutely no written policy.

17. This Complaint seeks relief to overturn the Personnel Board's Final Decision as the decision is contrary to City Policy.

18. On or about January 22, 2018, the petitioners, through counsel, notified the City of Virginia Beach of their intent to appeal the determination of the personnel board into Circuit Court. See **Exhibit 2**. On or about January 26, 2018, Regina Hilliard, Director of Human Resources, sent a letter stating that this matter could not be appealed into Circuit Court as the City Manager had found the determination of the personnel board to be in compliance with city policy. See **Exhibit 3**.

19. The petitioners filed Type B Grievances with the City of Virginia Beach. See **Exhibit 4**. Pursuant to the City of Virginia Beach Grievance Policy and Procedure, the City Manager does not have final authority to approve or reject the determination of the personnel board for Type B Grievances. See **Exhibit 5** at §5.2.

**The panel's Initial Decision was contrary to "written policy."**

20. Pursuant to the City of Virginia Beach's Grievance Policy and Procedure, the decision of the Personnel Board must be consistent with law and written policy. See **Exhibit 5** at § 5.2(A)(4)(b).

21. Pursuant to the Virginia Beach Fire Department's General Rules of Conduct, personnel are to "maintain a level of moral conduct in their personal and business affairs in keeping with the highest standards of the fire profession." See SOP PPP 7.06 at 17 (attached as **Exhibit 6**). Further, personnel "shall not participate in any incident involving moral turpitude or conduct which...cause the department to be brought into disrepute." *Id.*

22. The behavior of Mr. Reynolds, Ms. Myers, and Mr. Carr rises to the level of immoral conduct and brings the reputation of the department into disrepute.

23. The decision of the Personnel Board did not remedy the actions taken by Mr. Reynolds, Ms. Myers, and Mr. Carr. As a result, the decision of the Personnel Board is not in compliance with existing law and policy and the 2017 Captains' promotional process should be invalidated.

**II. Jurisdiction and Venue**

24. Jurisdiction for this Court is authorized pursuant to Code of Virginia § 15.2-1507(A)(11) and City of Virginia Beach Grievance Policy and Procedure 4.04 §



5.2(A)(4)(f) (copies of which have been attached as **Exhibits 7 and 5**, respectively)

which state:

Implementation of final hearing decisions. Either party may petition the circuit court having jurisdiction in the locality in which the grievant is employed for an order requiring implementation of the hearing decision.

25. Jurisdiction for this Court is further authorized pursuant to Code of Virginia § 15.2(A)(10)(a)(6) and City of Virginia Grievance Policy and Procedure 4.04 § 5.2(A)(4)(B) (See **Exhibits 7 and 5**, respectively) which state:

The decision of the Personnel Board will be final and binding and must be consistent with law and written policy.

26. Venue is proper in this Court because the grievants are employed by the City of Virginia Beach.

### **III. Relief Requested**

The Petitioners respectfully request that the 2017 Captains' promotional process be invalidated in its entirety and the promotional process should be re-administered. The process was tainted by the actions of William Reynolds, Nena Myers, and Ronson Carr and appropriate action has not been taken to remedy this wrong.

### **JURY DEMAND**

Petitioners demand a trial by jury of all causes of action contained herein.

  
\_\_\_\_\_  
Andrea Ruege  
Counsel for Petitioners

Respectfully submitted,  
**David Scherrer, Richard Irving,  
Alexander Wazlak, Mark Bayly**  
Petitioners

By:   
Of Counsel

Andrea Ruege  
VSB No. 86493  
Lisa A. Bertini  
VSB No. 29660  
BERTINI LAW, P.C.  
5712 Cleveland St., Ste. 140  
Virginia Beach, Virginia 23462  
Telephone: (757) 222-9165  
Fax: (757) 222-6101  
[lbartini@bertinilawfirm.com](mailto:lbartini@bertinilawfirm.com)  
[aruege@bertinilawfirm.com](mailto:aruege@bertinilawfirm.com)  
*Counsel for Petitioners*



# City of Virginia Beach

DEPARTMENT OF HUMAN RESOURCES  
(757) 385-8949  
FAX: (757) 472-2731  
TTY: 771

VBgov.com  
MUNICIPAL CENTER  
BUILDING 18  
2424 COURTHOUSE DRIVE  
VIRGINIA BEACH, VA 23456-9056

January 11, 2018

## **CERTIFIED MAIL**

Mr. David Scherrer  
2413 Chubb Lake Ave  
Va. Beach, VA 23455

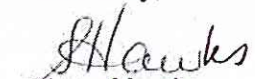
### **Subject: Personnel Board Hearing**

Dear Mr. Scherrer:

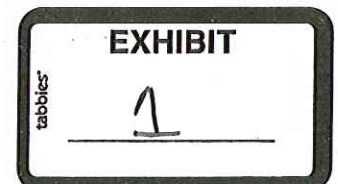
This letter is to notify you of the Personal Board's decision concerning your grievance of the 2017 Fire Department captain's promotional process.

The Board unanimously agreed with the grievants, that 2017 Fire Department promotion process was compromised by lack of confidentiality. However, the Board also found that the actions taken in response to the complaint, and subsequent planned actions to improve the Fire Captain Promotion Policy for future processes, offers the best solution available to all candidates.

Sincerely,

  
Stacy Hawks  
Human Resources

cc: Andrea Ruege, appellant attorney  
Kathleen Keffer, assistant city attorney





# City of Virginia Beach

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2424 COURTHOUSE DRIVE  
VIRGINIA BEACH, VA 23456-9056

January 11, 2018

## **CERTIFIED MAIL**

Mr. Richard Irving  
1908 North Muddy Creek Rd.  
VA. Beach, VA 23502


### **Subject: Personnel Board Hearing**

Dear Mr. Irving:

This letter is to notify you of the Personal Board's decision concerning your grievance of the 2017 Fire Department captain's promotional process.

The Board unanimously agreed with the grievants, that 2017 Fire Department promotion process was compromised by lack of confidentiality. However, the Board also found that the actions taken in response to the complaint, and subsequent planned actions to improve the Fire Captain Promotion Policy for future processes, offers the best solution available to all candidates.

Sincerely,

  
Stacy Hawks  
Human Resources

cc: Andrea Ruege, appellant attorney  
Kathleen Keffer, assistant city attorney



# City of Virginia Beach

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MUNICIPAL CENTER  
BUILDING 18  
2424 COURTHOUSE DRIVE  
VIRGINIA BEACH, VA 23458-9058

January 11, 2018

## **CERTIFIED MAIL**

Mr. Alexander Wazlak  
3005 Driftwood Cir  
Va. Beach, VA 23452

**Subject: Personnel Board Hearing**

Dear Mr. Wazlak:

This letter is to notify you of the Personal Board's decision concerning your grievance of the 2017 Fire Department captain's promotional process.

The Board unanimously agreed with the grievants, that 2017 Fire Department promotion process was compromised by lack of confidentiality. However, the Board also found that the actions taken in response to the complaint, and subsequent planned actions to improve the Fire Captain Promotion Policy for future processes, offers the best solution available to all candidates.

Sincerely,

  
Stacy Hawks  
Human Resources

cc: Andrea Ruege, appellant attorney  
Kathleen Keffer, assistant city attorney



# City of Virginia Beach

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2424 COURTHOUSE DRIVE  
VIRGINIA BEACH, VA 23456-9058

January 11, 2018

## **CERTIFIED MAIL**

Mr. Mark Bayly Jr.  
2524 Level Loop Rd.  
Va. Beach, VA 23456

**Subject: Personnel Board Hearing**

Dear Mr. Bayly:

This letter is to notify you of the Personal Board's decision concerning your grievance of the 2017 Fire Department captain's promotional process.

The Board unanimously agreed with the grievants, that 2017 Fire Department promotion process was compromised by lack of confidentiality. However, the Board also found that the actions taken in response to the complaint, and subsequent planned actions to improve the Fire Captain Promotion Policy for future processes, offers the best solution available to all candidates.

Sincerely,

Stacy Hawks  
Human Resources

cc: Andrea Ruege, appellant attorney  
Kathleen Keffer, assistant city attorney



**BERTINI**  
— LAW —

Lisa Ann Bertini\*

Andrea Ruege

\*Also admitted in DC and TX

www.bertinilawfirm.com

Email:

[aruege@bertinilawfirm.com](mailto:aruege@bertinilawfirm.com)

January 22, 2018

Via Email & Facsimile

Regina Hilliard  
Director of Human Resources  
City of Virginia Beach  
2424 Courthouse Dr.  
Virginia Beach, VA 23456  
Facsimile: (757) 427-2731

*Re: Grievance Hearing of David Scherrer, Richard Irving, Alexander Wazlak, & Mark Bayly; NOTICE OF APPEAL*

Dear Ms. Hilliard:

Please be advised that I represent David Scherrer, Richard Irving, Alexander Wazlak, & Mark Bayly regarding her appeal of the City of Virginia Beach's determination that the steps taken following the 2017 Captain's Promotional Process in response to the complaint and subsequent planned actions to improve the Fire Captain Promotion Policy for future processes was consistent with law and written policy. Specifically we contend that the Personnel Board's hearing is contradictory to the Virginia Beach Fire Department Standard Operating Policy PPP 7.06, General Rules of Conduct and the City of Virginia Beach Fire Captain Promotional Policy. I respectfully request that any future correspondence and documents related to my clients be forwarded to me.

Please submit a copy of this matter's record to the Virginia Beach Circuit Court Clerk within five (5) workdays of receipt of this letter so that this appeal may be heard on the record.

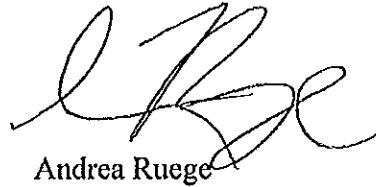
EXHIBIT

tabbles

2

Please feel free to contact our office should you have any questions regarding this matter.  
Thank you for your courtesy and cooperation in this regard.

Sincerely,

A handwritten signature in black ink, appearing to read 'ARuege', written in a cursive style.

Andrea Ruege

Cc: Kathleen Keffer (via email only)  
Stacy Hawks (via email only)  
Mark Bayly (via email only)  
David Scherrer (via email only)  
Richard Irving (via email only)  
Alexander Wazlak (via email only)





# City of Virginia Beach

DEPARTMENT OF HUMAN RESOURCES  
EMPLOYEE RELATIONS  
(767) 385-8949  
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MUNICIPAL CENTER  
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2424 COURTHOUSE DRIVE  
VIRGINIA BEACH, VA 23456-9056

Via U.S. Mail and email [aruege@bertinilawfirm.com](mailto:aruege@bertinilawfirm.com)

January 26, 2018

Ms. Andrea Ruege  
Bertini Law  
5712 Cleveland St.  
Suite 140  
Virginia Beach, Virginia 23462  
RE: Notice of Appeal

Dear Ms. Ruege:

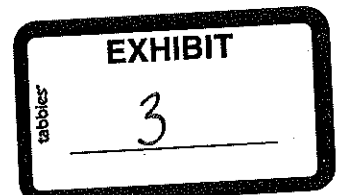
I am in receipt of your correspondence dated January 22, 2018 regarding the grievance hearing of David Scherer, Richard Irving, Alexander Wazlak, and Mark Bayly; Notice of Appeal. Per your correspondence you seek to appeal the "City of Virginia Beach's determination that the steps taken following the 2017 Captain's promotion process in response to the complaint and subsequent planned action to improve the Fire Captain Promotion Policy for future processes was consistent with law and written policy." You specifically allege the Personnel Board hearing, although I presume you mean decision, is contradictory to Fire Department SOP 7.06 and the Promotion Policy.

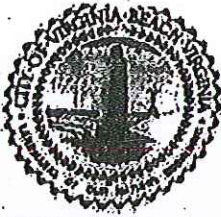
Please be advised that Virginia Code §15.2-1507(A)(10), Virginia Beach City Code §2-134(4)(i) and City Human Resources Policy, No. 4.04 provide that the decision of the Personnel Board will be final and binding and shall be consistent with law and policy. Furthermore, Virginia Code §15.2-1507(A)(10)(a)(7) sets forth that "the question of whether relief granted by a panel ... is consistent with written policy shall be determined by the chief administrative officer of the local government, or designee..."

Therefore, as the City Manager's designee I provide this letter as my determination that the personnel board's decision in above referenced grievance hearing is in compliance with written policy. Please be advised that there is no further "appeal" of this decision pursuant to Virginia Code, Virginia Beach City Code or City policy.

Thank you for your attention to this matter.

  
Regina Hilliard  
Director of Human Resources





# CITY OF VIRGINIA BEACH

## EMPLOYEE GRIEVANCE FORM FOR Type B GRIEVANCES

### Guidelines of Grievance Procedures

**Eligibility to Utilize Grievance Procedures.** All Full-time merit employees may utilize all steps of the grievance procedure process. Probationary Full-time and Part-time employees may utilize the grievance process up to and including Step Three and only to address a grievable issue other than a dismissal. However, a grievance may not be filed by an employee on any issue that is being heard or has been heard through the Open Door Policy, #4.05.

**Initiating a Grievance.** All grievances must be initiated within twenty (20) consecutive calendar days from the date of the occurrence of the grievable action or knowledge of its occurrence.

#### Types of Grievances.

**Type A Grievances** are only those that involve dismissal, demotion or suspension greater than 40 hours and may be appealed directly to the Personnel Board.

**Type B Grievances** are those that involve issues other than dismissal, demotion or suspension greater than 40 hours. The Grievant must complete Steps One through Three before an appeal to the Personnel Board can be made of a Type B grievance. Steps may not be waived or skipped.

**Written Response at Steps Two and Three.** Written response to the Grievant at Steps Two and Three should be made on City memorandum letter head and attached to the Employee Grievance Form. Contents of the response should contain the respondent's understanding of the grievance, the remedy or resolution sought by the Grievant and the response to the grievance.

**Request for Determination of Grievability** may be raised by either party once the grievance has been placed in writing at Step Two but before a Personnel Board hearing has been convened. The request must be in writing to the Director of Human Resources. The grievance will be held in abeyance until a decision is made regarding whether or not a matter is grievable. The City Manager or Director of Human Resources will make a determination of grievability within ten (10) consecutive calendar days of the receipt of the request in writing.

**Noncompliance.** The written notification of noncompliance by the other party must be made to the Director of Human Resources who will notify the noncompliant party. Human Resources shall notify the non-compliant party in writing of the noncompliance and allow five (5) working days to correct the noncompliance. Failure to correct the noncompliance after written notification without just cause may result in a decision in favor of the other party.

**Resolution Offer.** If, at any Step in the grievance procedure, a reduction in the level of discipline originally imposed is offered to, but not accepted by the Grievant, the grievance shall proceed to the next Step without a reduction in the original level of discipline. Any previous offer to reduce the discipline or otherwise reach a resolution shall not be considered at subsequent steps of the grievance.

**Additional Information.** Due to extenuating circumstance, the Director of Human Resources may alter the time limits. For additional information on the grievance procedure process, please refer to the Employee Grievance Policy and Procedure, #4.04, or contact Employee Relations at 385-8949.

### Data Information

Directions: Employee Grievance Form is for use in a Type B grievance. Complete the data information and proceed to Step One.

NOTE: Type A Grievances may be appealed directly to the Personnel Board. However if the Grievant feels a resolution can be made at a lower level, the Grievant may elect to proceed with Steps One through Three of this form.

Grievant's Full Name: David Schesser Employee ID Number: 3610  
 Home Address: 2413 Chubb Lake Ave City, State and Zip: Virginia Beach VA  
 Home Phone: 363-1968 Alternate Phone: 510-3386 Work Phone: 385-6318  
 Department/Division: Fire Department Job/Title: Master Firefighter  
 Employment Status: Full Time  
 Nature of Grievance: Other  
 Date of Occurrence Which Prompted Grievance: 8/7/17 # Other, briefly state nature of the grievance: Unfair Promotional Process  
 Name of Immediate supervisor at the time of the action/event that prompted the grievance: James Reagan  
 Resolution or remedy requested in response to the grievance: Redo the Promotional Process

### Step One - Oral Presentation of Grievance to Immediate Supervisor

#### Directions

1. Grievant meets with Immediate Supervisor to discuss grievance within twenty (20) consecutive calendar days from the date of occurrence or knowledge of occurrence which prompted the grievance.

Date Verbal Grievance Submitted to Immediate Supervisor: 8/22/17

2. Immediate Supervisor provides oral response to the requested relief the Grievant desires. The immediate supervisor may take up to 10 consecutive calendar days to reply to the grievance.

Date Immediate Supervisor Verbally Responded to Grievance: 8/31/17

3. Grievant completes the following section:

A. Did you receive the resolution or remedy you requested?

Yes  No

B. Are you satisfied with the response you received?

Yes  No

C. Do you wish to proceed to Step Two?

Yes; I understand that I have 10 consecutive calendar days from the date of the Immediate Supervisor's written response to initiate Step Two with my immediate supervisor.

Forward a copy of the Employee Grievance Form and any attached documents to Human Resources/Employee Relations for tracking purposes.

EXHIBIT

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No; my grievance is completed. By my signature, I understand I have decided to end my grievance at Step One.

Grievant's Signature: [Signature] Date: 9/4/17  
Forward the original Employee Grievance Form AND all original documents attached to the form to the Department of Human Resources/Employee Relations and retain a copy for your records.

**Step Two -- Written Grievance to Immediate Supervisor**

**Directions:**

- Grievant may proceed to Step Two within ten (10) consecutive calendar days from the date the Immediate Supervisor provided the oral response for Step One.
- Grievant attaches a written statement of the grievance to the Employee Grievance Form. Label the statement and any supporting evidence as "Step 2 Written Grievance".
- Grievant submits Employee Grievance Form and attached written grievance statement to the Immediate Supervisor.  
Date Written Grievance Submitted to Immediate Supervisor: 9/5/17
- Immediate Supervisor provides written response to the Grievant within ten (10) consecutive calendar days from the date in which the Grievant proceeded with Step Two. Response should be noted on official memorandum letterhead. Label the response and any supporting evidence as "Step 2 Grievance Response" and attach all documents to the Employee Grievance Form.  
Immediate Supervisor's Signature: [Signature] Date of Response to Grievant: 9/5/17

Please forward a copy of this Employee Grievance Form and your attached documents to Human Resources/Employee Relations for tracking purposes and retain a copy for your records. Return all original documents pertaining to the grievance, including your response, to the Grievant.

5. Grievant completes the following section:
- A. Did you receive the resolution or remedy you requested?  
 Yes  No
- B. Are you satisfied with the response you received?  
 Yes  No
- C. Do you wish to proceed to Step Three?  
 Yes; I understand that I have 10 consecutive calendar days from the date of the Immediate Supervisor's written response to initiate Step Three with my department director.

Forward a copy of the Employee Grievance Form and any attached documents to Human Resources/Employee Relations for tracking purposes.

No; my grievance is completed. By my signature, I understand I have decided to end my grievance at Step Two.

Grievant's Signature: [Signature] Date: 9/5/17  
Forward the original Employee Grievance Form AND all original documents attached to the form to the Department of Human Resources/Employee Relations and retain a copy for your records.

**Step Three -- Department Director**

**Directions:**

- Grievant may proceed to Step Three within ten (10) consecutive calendar days from the date the Immediate Supervisor provided the written response in Step Two. Submit Employee Grievance Form and ALL attached documents which support the grievance to the Department Director.  
Date Grievance Submitted to Department Director: 10/12/17
- Department Director shall meet with the Grievant to discuss the grievance and provide a written reply within ten (10) consecutive calendar days from the date in which the Grievant proceeded to Step Three. Response should be noted on official memorandum letterhead. Label the response and any supporting evidence as "Step 3 Grievance Response" and attach all documents to the Employee Grievance Form.  
Department Director's Signature: [Signature] Date: 10/11/17

Please forward a copy of this Employee Grievance Form and your attached documents to Human Resources/Employee Relations for tracking purposes and retain a copy for your records. Return all original documents pertaining, including your response, to the grievance to the Grievant.

3. Grievant completes the following section:
- A. Did you receive the resolution or remedy you requested?  
 Yes  No
- B. Are you satisfied with the response you received?  
 Yes  No
- C. Probationary Full-Time Employees and Part-Time Employees Only: (Full-Time Merit Employees proceed to part D below)  
 By my signature, I understand that I have completed my grievance at the conclusion of Step Three.

Grievant's Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Forward the original Employee Grievance Form AND all original documents attached to the form to the Department of Human Resources/Employee Relations and retain a copy for your records.

- D. Full-Time Merit Employees Only: Do you wish to proceed to Step Four and appeal your grievance to the Personnel Board?  
 Yes; I understand that I have 10 consecutive calendar days from the date of the Department Director's response to submit this request to the Department of Human Resources/Employee Relations in order to have my grievance heard by the Personnel Board.  
Furthermore, I understand that in addition to this written notification, I must report to the Department of Human Resources/Employee Relations to be briefed on the Rules and Regulations of the Personnel Board proceedings.

Grievant's Signature: [Signature] Date: 11/1/17  
Forward the original Employee Grievance Form AND all original documents attached to the form to the Department of Human Resources/Employee Relations and retain a copy for your records.

No; my grievance is completed. By my signature, I understand I have decided to end my grievance process at Step Three.  
Grievant's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Forward the original Employee Grievance Form AND all original documents attached to the form to the Department of Human Resources/Employee Relations and retain a copy for your records.



Irving

# CITY OF VIRGINIA BEACH EMPLOYEE GRIEVANCE FORM FOR Type B GRIEVANCES

## Guidelines of Grievance Procedures

**Eligibility to Utilize Grievance Procedures.** All Full-time merit employees may utilize all steps of the grievance procedure process. Probationary Full-time and Part-time employees may utilize the grievance process up to and including Step Three and only to address a grievable issue other than a dismissal. However, a grievance may not be filed by an employee on any issue that is being heard or has been heard through the Open Door Policy, #4.05.

**Initiating a Grievance.** All grievances must be initiated within twenty (20) consecutive calendar days from the date of the occurrence of the grievable action or knowledge of its occurrence.

### Types of Grievances.

Type A Grievances are only those that involve dismissal, demotion or suspension greater than 40 hours and may be appealed directly to the Personnel Board.

Type B Grievances are those that involve issues other than dismissal, demotion or suspension greater than 40 hours. The Grievant must complete Steps One through Three before an appeal to the Personnel Board can be made of a Type B grievance. Steps may not be waived or skipped.

**Written Response at Steps Two and Three.** Written response to the Grievant at Steps Two and Three should be made on City memorandum letter head and attached to the Employee Grievance Form. Contents of the response should contain the respondent's understanding of the grievance, the remedy or resolution sought by the Grievant and the response to the grievance.

**Request for Determination of Grievability** may be raised by either party once the grievance has been placed in writing at Step Two but before a Personnel Board hearing has been convened. The request must be in writing to the Director of Human Resources. The grievance will be held in abeyance until a decision is made regarding whether or not a matter is grievable. The City Manager or Director of Human Resources will make a determination of grievability within ten (10) consecutive calendar days of the receipt of the request in writing.

**Noncompliance.** The written notification of noncompliance by the other party must be made to the Director of Human Resources who will notify the noncompliant party. Human Resources shall notify the non-compliant party in writing of the noncompliance and allow five (5) working days to correct the noncompliance. Failure to correct the noncompliance after written notification without just cause may result in a decision in favor of the other party.

**Resolution Offer.** If, at any Step in the grievance procedure, a reduction in the level of discipline originally imposed is offered to, but not accepted by the Grievant, the grievance shall proceed to the next Step without a reduction in the original level of discipline. Any previous offer to reduce the discipline or otherwise reach a resolution shall not be considered at subsequent steps of the grievance.

**Additional Information.** Due to extenuating circumstance, the Director of Human Resources may alter the time limits. For additional information on the grievance procedure process, please refer to the Employee Grievance Policy and Procedure, #4.04, or contact Employee Relations at 385-8949.

### Data Information

cell = 757-478-0493

5

Directions: Employee Grievance Form is for use in a Type B grievance. Complete the data information and proceed to Step One.  
NOTE: Type A Grievances may be appealed directly to the Personnel Board. However if the Grievant feels a resolution can be made at a lower level, the Grievant may elect to proceed with Steps One through Three of this form.

Grievant's Full Name: Richard E Irving

Employee ID Number: 3127

Home Address: 11908 N Muddy Creek Rd.

City, State and Zip: Va. Beach, VA 23456

Home Phone: 757-426-8515

Alternate Phone: 757-478-0493

Work Phone: 767-385-8308

Department/Division: Fire

Job/Title: Master Firefighter

Employment Status: Full Time.

Nature of Grievance: Process was not fairly administered due to cheating If Other, briefly state nature of the grievance: \_\_\_\_\_  
Date of Occurrence Which Prompted Grievance: \_\_\_\_\_

Name of Immediate supervisor at the time of the action/event that prompted the grievance: Captain Frank Plasencia

Resolution or remedy requested in response to the grievance: Retake the second part of the process.

### Step One - Oral Presentation of Grievance to Immediate Supervisor

**Directions**

1. Grievant meets with Immediate Supervisor to discuss grievance within twenty (20) consecutive calendar days from the date of occurrence or knowledge of occurrence which prompted the grievance.

Date Verbal Grievance Submitted to Immediate Supervisor: 8-25-17

2. Immediate Supervisor provides oral response to the requested relief the Grievant desires. The Immediate supervisor may take up to 10 consecutive calendar days to reply to the grievance.

Date Immediate Supervisor Verbally Responded to Grievance: 8-25-17

3. Grievant completes the following section:

A. Did you receive the resolution or remedy you requested?

Yes  No

B. Are you satisfied with the response you received?

Yes  No

C. Do you wish to proceed to Step Two?

Yes; I understand that I have 10 consecutive calendar days from the date of the Immediate Supervisor's (verbal or written) response to initiate Step Two with my Immediate supervisor.

Forward a copy of the Employee Grievance Form and any attached documents to Human Resources/Employee Relations for tracking purposes.

No; my grievance is completed. By my signature, I understand I have decided to end my grievance at Step One.

Grievant's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Forward the original Employee Grievance Form AND all original documents attached to the form to the Department of Human Resources/Employee Relations and retain a copy for your records.

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### Step Two - Written Grievance to Immediate Supervisor

6

**Directions:**

1. Grievant may proceed to Step Two within ten (10) consecutive calendar days from the date the Immediate Supervisor provided the oral response for Step One.
2. Grievant attaches a written statement of the grievance to the Employee Grievance Form. Label the statement and any supporting evidence as "Step 2 Written Grievance".
3. Grievant submits Employee Grievance Form and attached written grievance statement to the Immediate Supervisor.

Date Written Grievance Submitted to Immediate Supervisor: 9-1-2017

4. Immediate Supervisor provides written response to the Grievant within ten (10) consecutive calendar days from the date in which the Grievant proceeded with Step Two. Response should be noted on official memorandum letterhead. Label the response and any supporting evidence as "Step 2 Grievance Response" and attach all documents to the Employee Grievance Form.

Immediate Supervisor's Signature: \_\_\_\_\_ Date of Response to Grievant: \_\_\_\_\_

Please forward a copy of this Employee Grievance Form and your attached documents to Human Resources/Employee Relations for tracking purposes and retain a copy for your records. Return all original documents pertaining to the grievance, including your response, to the Grievant.

5. Grievant completes the following section:

A. Did you receive the resolution or remedy you requested?

Yes  No

B. Are you satisfied with the response you received?

Yes  No

C. Do you wish to proceed to Step Three?

Yes; I understand that I have 10 consecutive calendar days from the date of the Immediate Supervisor's written response to initiate Step Three with my department director.

Forward a copy of the Employee Grievance Form and any attached documents to Human Resources/Employee Relations for tracking purposes.

No; my grievance is completed. By my signature, I understand I have decided to end my grievance at Step Two.

Grievant's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Forward the original Employee Grievance Form AND all original documents attached to the form to the Department of Human Resources/Employee Relations and retain a copy for your records.

**Step Three - Department Director**

Directions:

1. Grievant may proceed to Step Three within ten (10) consecutive calendar days from the date the Immediate Supervisor provided the written response in Step Two. Submit Employee Grievance Form and ALL attached documents which support the grievance to the Department Director.  
Date Grievance Submitted to Department Director: 10/12/17

2. Department Director shall meet with the Grievant to discuss the grievance and provide a written reply within ten (10) consecutive calendar days from the date in which the Grievant proceeded to Step Three. Response should be noted on official memorandum letterhead. Label the response and any supporting evidence as "Step 3 Grievance Response" and attach all documents to the Employee Grievance Form.

Department Director's Signature: [Signature] Date: 10/24/17  
Please forward a copy of this Employee Grievance Form and your attached documents to Human Resources/Employee Relations for tracking purposes and retain a copy for your records. Return all original documents pertaining, including your response, to the grievance to the Grievant.

3. Grievant completes the following section:

A. Did you receive the resolution or remedy you requested?

Yes  No

B. Are you satisfied with the response you received?

Yes  No

C. Probationary Full-Time Employees and Part-Time Employees Only: (Full-Time Merit Employees proceed to part D below)  By my

signature, I understand that I have completed my grievance at the conclusion of Step Three.

Grievant's Signature: [Signature] Date: \_\_\_\_\_  
Forward the original Employee Grievance Form AND all original documents attached to the form to the Department of Human Resources/Employee Relations and retain a copy for your records.

D. Full-Time Merit Employees Only: Do you wish to proceed to Step Four and appeal your grievance to the Personnel Board?

Yes; I understand that I have 10 consecutive calendar days from the date of the Department Director's response to submit this request to the Department of Human Resources/Employee Relations in order to have my grievance heard by the Personnel Board.

Furthermore, I understand that in addition to this written notification, I must report to the Department of Human Resources/Employee Relations to be briefed on the Rules and Regulations of the Personnel Board proceedings.

Grievant's Signature: [Signature] Date: 10-29-17

Forward the original Employee Grievance Form AND all original documents attached to the form to the Department of Human Resources/Employee Relations and retain a copy for your records.

No; my grievance is completed. By my signature, I understand I have decided to end my grievance process at Step Three.

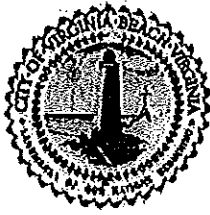
Grievant's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Forward the original Employee Grievance Form AND all original documents attached to the form to the Department of Human Resources/Employee Relations and retain a copy for your records.

For questions regarding Grievance Policy and Procedure, #4.04, contact Human Resources/Employee Relations Division at 385-8949.

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8



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# CITY OF VIRGINIA BEACH

## EMPLOYEE GRIEVANCE FORM FOR Type B GRIEVANCES

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### Guidelines of Grievance Procedures

**Eligibility to Utilize Grievance Procedures.** All Full-time merit employees may utilize all steps of the grievance procedure process. Probationary Full-time and Part-time employees may utilize the grievance process up to and including Step Three and only to address a grievable issue other than a dismissal. However, a grievance may not be filed by an employee on any issue that is being heard or has been heard through the Open Door Policy, #4.05.

**Initiating a Grievance.** All grievances must be initiated *within twenty (20) consecutive calendar days* from the date of the occurrence of the grievable action or knowledge of its occurrence.

**Types of Grievances.**

Type A Grievances are only those that involve dismissal, demotion or suspension greater than 40 hours and may be appealed directly to the Personnel Board.

Type B Grievances are those that involve issues other than dismissal, demotion or suspension greater than 40 hours. The Grievant must complete Steps One through Three before an appeal to the Personnel Board can be made of a Type B grievance. Steps may not be waived or skipped.

**Written Response at Steps Two and Three.** Written response to the Grievant at Steps Two and Three should be made on City memorandum letter head and attached to the Employee Grievance Form. Contents of the response should contain the respondent's understanding of the grievance, the remedy or resolution sought by the Grievant and the response to the grievance.

**Request for Determination of Grievability** may be raised by either party once the grievance has been placed in writing at Step Two but before a Personnel Board hearing has been convened. The request must be in writing to the Director of Human Resources. The grievance will be held in abeyance until a decision is made regarding whether or not a matter is grievable. The City Manager or Director of Human Resources will make a determination of grievability *within ten (10) consecutive calendar days* of the receipt of the request in writing.

**Noncompliance.** The written notification of noncompliance by the other party must be made to the Director of Human Resources who will notify the noncompliant party. Human Resources shall notify the non-compliant party in writing of the noncompliance and allow five (5) working days to correct the noncompliance. Failure to correct the noncompliance after written notification without just cause may result in a decision in favor of the other party.

**Resolution Offer.** If, at any Step in the grievance procedure, a reduction in the level of discipline originally imposed is offered to, but not accepted by the Grievant, the grievance shall proceed to the next Step without a reduction in the original level of discipline. Any previous offer to reduce the discipline or otherwise reach a resolution shall not be considered at subsequent steps of the grievance.

**Additional Information.** Due to extenuating circumstances, the Director of Human Resources may alter the time limits. For additional information on the grievance procedure process, please refer to the Employee Grievance Policy and Procedure, #4.04, or contact Employee Relations at 365-8949.

Data Information

8



Directions: Employee Grievance Form is for use in a Type B grievance. Complete the data information and proceed to Step One.  
NOTE: Type A Grievances may be appealed directly to the Personnel Board. However if the Grievant feels a resolution can be made at a lower level, the Grievant may elect to proceed with Steps One through Three of this form.

Grievant's Full Name: Alexander Wazlak III

Employee ID Number: 3279

Home Address: 3005 Driftwood Circle

City, State and Zip: Virginia, Beach, VA 23452

Home Phone: 767-617-4373 Alternate Phone: N/A Work Phone: 757-385-8306

Department/Division: VBFD

Job/Title: Acting Captain

Employment Status: Full Time

Nature of Grievance: Type B

If Other, briefly state nature of the grievance:

Date of Occurrence

Which Prompted Grievance: 8/7/2017

Name of Immediate supervisor at the time of the action/event that prompted the grievance: Jon Eikott

Resolution or remedy requested in response to the grievance: Expunge the 2017 Promotional Process

Step One - Oral Presentation of Grievance to Immediate Supervisor

Directions

1. Grievant meets with Immediate Supervisor to discuss grievance within twenty (20) consecutive calendar days from the date of occurrence or knowledge of occurrence which prompted the grievance.

Date Verbal Grievance Submitted to Immediate Supervisor: 8/23/2017

2. Immediate Supervisor provides oral response to the requested relief the Grievant desires. The immediate supervisor may take up to 10 consecutive calendar days to reply to the grievance.

Date Immediate Supervisor Verbally Responded to Grievance: 8/23/2017

3. Grievant completes the following section:

A. Did you receive the resolution or remedy you requested?

Yes  No

B. Are you satisfied with the response you received?

Yes  No

C. Do you wish to proceed to Step Two?

X Yes; I understand that I have 10 consecutive calendar days from the date of the Immediate Supervisor's (verbal or written) response to initiate Step Two with my Immediate supervisor.

Forward a copy of the Employee Grievance Form and any attached documents to Human Resources/Employee Relations for tracking purposes.

No; my grievance is completed. By my signature, I understand I have decided to end my grievance at Step One.

Grievant's Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Forward the original Employee Grievance Form AND all original documents attached to the form to the Department of Human Resources/Employee Relations and retain a copy for your records.

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Step Two - Written Grievance to Immediate Supervisor

9

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**Directions:**

1. Grievant may proceed to Step Two within ten (10) consecutive calendar days from the date the Immediate Supervisor provided the oral response for Step One.
2. Grievant attaches a written statement of the grievance to the Employee Grievance Form. Label the statement and any supporting evidence as "Step 2 Written Grievance".
3. Grievant submits Employee Grievance Form and attached written grievance statement to the Immediate Supervisor.

Date Written Grievance Submitted to Immediate Supervisor: 9/1/2017

4. Immediate Supervisor provides written response to the Grievant within ten (10) consecutive calendar days from the date in which the Grievant proceeded with Step Two. Response should be noted on official memorandum letterhead. Label the response and any supporting evidence as "Step 2 Grievance Response" and attach all documents to the Employee Grievance Form.

Immediate Supervisor's Signature: [Signature] Date of Response to Grievant: 9/20/17  
 Please forward a copy of this Employee Grievance Form and your attached documents to Human Resources/Employee Relations for tracking purposes and retain a copy for your records. Return all original documents pertaining to the grievance, including your response, to the Grievant.

6. Grievant completes the following section:

A. Did you receive the resolution or remedy you requested?

Yes  No

B. Are you satisfied with the response you received?

Yes  No

C. Do you wish to proceed to Step Three?

Yes; I understand that I have 10 consecutive calendar days from the date of the Immediate Supervisor's written response to initiate Step Three with my department director.

Forward a copy of the Employee Grievance Form and any attached documents to Human Resources/Employee Relations for tracking purposes.

No; my grievance is completed. By my signature, I understand I have decided to end my grievance at Step Two.

Grievant's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Forward the original Employee Grievance Form AND all original documents attached to the form to the Department of Human Resources/Employee Relations and retain a copy for your records.

**Step Three - Department Director**

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Directions:

1. Grievant may proceed to Step Three within ten (10) consecutive calendar days from the date the Immediate Supervisor provided the written response in Step Two. Submit Employee Grievance Form and ALL attached documents which support the grievance to the Department Director. Date Grievance Submitted to Department Director: 10/17/17

2. Department Director shall meet with the Grievant to discuss the grievance and provide a written reply within ten (10) consecutive calendar days from the date in which the Grievant proceeded to Step Three. Response should be noted on official memorandum letterhead. Label the response and any supporting evidence as "Step 3 Grievance Response" and attach all documents to the Employee Grievance Form.

Department Director's Signature: [Signature] Date: 10/24/17  
Please forward a copy of this Employee Grievance Form and your attached documents to Human Resources/Employee Relations for tracking purposes and retain a copy for your records. Return all original documents pertaining, including your response, to the grievance to the Grievant.

3. Grievant completes the following section:

A. Did you receive the resolution or remedy you requested?  
 Yes  No

B. Are you satisfied with the response you received?  
 Yes  No

C. Probationary Full-Time Employees and Part-Time Employees Only: (Full-Time Merit Employees proceed to part D below)  By my signature, I understand that I have completed my grievance at the conclusion of Step Three.

Grievant's Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Forward the original Employee Grievance Form AND all original documents attached to the form to the Department of Human Resources/Employee Relations and retain a copy for your records.

D. Full-Time Merit Employees Only: Do you wish to proceed to Step Four and appeal your grievance to the Personnel Board?  
 Yes; I understand that I have 10 consecutive calendar days from the date of the Department Director's response to submit this request to the Department of Human Resources/Employee Relations in order to have my grievance heard by the Personnel Board.

Furthermore, I understand that in addition to this written notification, I must report to the Department of Human Resources/Employee Relations to be briefed on the Rules and Regulations of the Personnel Board proceedings.

Grievant's Signature: Alexander Wajda III Date: 11/1/17

Forward the original Employee Grievance Form AND all original documents attached to the form to the Department of Human Resources/Employee Relations and retain a copy for your records.

No; my grievance is completed. By my signature, I understand I have decided to end my grievance process at Step Three.

Grievant's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Forward the original Employee Grievance Form AND all original documents attached to the form to the Department of Human Resources/Employee Relations and retain a copy for your records.

For questions regarding Grievance Policy and Procedure, #4.04, contact Human Resources/Employee Relations Division at 385-8949.

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11



# CITY OF VIRGINIA BEACH

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## EMPLOYEE GRIEVANCE FORM FOR Type B GRIEVANCES

RECEIVED NOV 03 2017

### Guidelines of Grievance Procedures

**Eligibility to Utilize Grievance Procedures.** All Full-time merit employees may utilize all steps of the grievance procedure process. Probationary Full-time and Part-time employees may utilize the grievance process up to and including Step Three and only to address a grievable issue other than a dismissal. However, a grievance may not be filed by an employee on any issue that is being heard or has been heard through the Open Door Policy, #4.05.

**Initiating a Grievance.** All grievances must be initiated within twenty (20) consecutive calendar days from the date of the occurrence of the grievable action or knowledge of its occurrence.

#### Types of Grievances

**Type A Grievances** are only those that involve dismissal, demotion or suspension greater than 40 hours and may be appealed directly to the Personnel Board.

**Type B Grievances** are those that involve issues other than dismissal, demotion or suspension greater than 40 hours. The Grievant must complete Steps One through Three before an appeal to the Personnel Board can be made of a Type B grievance. Steps may not be waived or skipped.

**Written Response at Steps Two and Three.** Written response to the Grievant at Steps Two and Three should be made on City memorandum letter head and attached to the Employee Grievance Form. Contents of the response should contain the respondent's understanding of the grievance, the remedy or resolution sought by the Grievant and the response to the grievance.

**Request for Determination of Grievability** may be raised by either party once the grievance has been placed in writing at Step Two but before a Personnel Board hearing has been convened. The request must be in writing to the Director of Human Resources. The grievance will be held in abeyance until a decision is made regarding whether or not a matter is grievable. The City Manager or Director of Human Resources will make a determination of grievability within ten (10) consecutive calendar days of the receipt of the request in writing.

**Noncompliance.** The written notification of noncompliance by the other party must be made to the Director of Human Resources who will notify the noncompliant party. Human Resources shall notify the non-compliant party in writing of the noncompliance and allow five (5) working days to correct the noncompliance. Failure to correct the noncompliance after written notification without just cause may result in a decision in favor of the other party.

**Resolution Offer.** If, at any Step in the grievance procedure, a reduction in the level of discipline originally imposed is offered to, but not accepted by the Grievant, the grievance shall proceed to the next Step without a reduction in the original level of discipline. Any previous offer to reduce the discipline or otherwise reach a resolution shall not be considered at subsequent steps of the grievance.

**Additional Information.** Due to extenuating circumstance, the Director of Human Resources may alter the time limits. For additional information on the grievance procedure process, please refer to the Employee Grievance Policy and Procedure, #4.04, or contact Employee Relations at 385-8949.

### Data Information

Directions: Employee Grievance Form is for use in a Type B grievance. Complete the data information and proceed to Step One.  
NOTE: Type A Grievances may be appealed directly to the Personnel Board. However if the Grievant feels a resolution can be made at a lower level, the Grievant may elect to proceed with Steps One through Three of this form.

Grievant's Full Name: Mark Francis Bayly Jr. Employee ID Number: 5909

Home Address: 2524 Level Loop Rd City, State and Zip: Va Beach, VA 23456

Home Phone: 949-606-3335 Alternate Phone: \_\_\_\_\_ Work Phone: 767-385-6321

Department/Division: FIRE/ Operations Job/Title: Master Fire Fighter

Employment Status: Full-Time

Nature of Grievance: Other If Other, briefly state nature of the grievance: 2017 Captain's promotion process

Date of Occurrence Which Prompted Grievance: 8/7/2017

Name of Immediate supervisor at the time of the action/event that prompted the grievance: Captain Donna Glover

Resolution or remedy requested in response to the grievance: Re-administer the Promotional Process

### Step One - Oral Presentation of Grievance to Immediate Supervisor

#### Directions

- Grievant meets with Immediate Supervisor to discuss grievance within twenty (20) consecutive calendar days from the date of occurrence or knowledge of occurrence which prompted the grievance.  
Date Verbal Grievance Submitted to Immediate Supervisor: 8-25-2017
- Immediate Supervisor provides oral response to the requested relief the Grievant desires. The immediate supervisor may take up to 10 consecutive calendar days to reply to the grievance.  
Date Immediate Supervisor Verbally Responded to Grievance: 8-29-2017
- Grievant completes the following section:
  - Did you receive the resolution or remedy you requested?  
 Yes  No
  - Are you satisfied with the response you received?  
 Yes  No
  - Do you wish to proceed to Step Two?  
 Yes; I understand that I have 10 consecutive calendar days from the date of the Immediate Supervisor's written response to initiate Step Two with my Immediate supervisor.

Forward a copy of the Employee Grievance Form and any attached documents to Human Resources/Employee Relations for tracking purposes.

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No; my grievance is completed. By my signature, I understand I have decided to end my grievance at Step One.  
Grievant's Signature: MRB Date: \_\_\_\_\_  
Forward the original Employee Grievance Form AND all original documents attached to the form to the Department of Human Resources/Employee Relations and retain a copy for your records.

**Step Two - Written Grievance to Immediate Supervisor**

- Directions:
- Grievant may proceed to Step Two within ten (10) consecutive calendar days from the date the Immediate Supervisor provided the oral response for Step One.
  - Grievant attaches a written statement of the grievance to the Employee Grievance Form. Label the statement and any supporting evidence as "Step 2 Written Grievance".
  - Grievant submits Employee Grievance Form and attached written grievance statement to the Immediate Supervisor.  
Date Written Grievance Submitted to Immediate Supervisor: 09/06/2017
  - Immediate Supervisor provides written response to the Grievant within ten (10) consecutive calendar days from the date in which the Grievant proceeded with Step Two. Response should be noted on official memorandum letterhead. Label the response and any supporting evidence as "Step 2 Grievance Response" and attach all documents to the Employee Grievance Form.  
Immediate Supervisor's Signature: Anna L... Date of Response to Grievant: 10-16-2017
- Please forward a copy of this Employee Grievance Form and your attached documents to Human Resources/Employee Relations for tracking purposes and retain a copy for your records. Return all original documents pertaining to the grievance, including your response, to the Grievant.

5. Grievant completes the following section:
- A. Did you receive the resolution or remedy you requested?  Yes  No
- B. Are you satisfied with the response you received?  Yes  No
- C. Do you wish to proceed to Step Three?  
 Yes; I understand that I have 10 consecutive calendar days from the date of the Immediate Supervisor's written response to initiate Step Three with my department director.  
Forward a copy of the Employee Grievance Form and any attached documents to Human Resources/Employee Relations for tracking purposes.

No; my grievance is completed. By my signature, I understand I have decided to end my grievance at Step Two.  
Grievant's Signature: MRB Date: 10/16/17  
Forward the original Employee Grievance Form AND all original documents attached to the form to the Department of Human Resources/Employee Relations and retain a copy for your records.

**Step Three - Department Director**

- Directions:
- Grievant may proceed to Step Three within ten (10) consecutive calendar days from the date the Immediate Supervisor provided the written response in Step Two. Submit Employee Grievance Form and ALL attached documents which support the grievance to the Department Director.  
Date Grievance Submitted to Department Director: 10/17/2017
  - Department Director shall meet with the Grievant to discuss the grievance and provide a written reply within ten (10) consecutive calendar days from the date in which the Grievant proceeded to Step Three. Response should be noted on official memorandum letterhead. Label the response and any supporting evidence as "Step 3 Grievance Response" and attach all documents to the Employee Grievance Form.  
Department Director's Signature: [Signature] Date: 10/24/17  
Please forward a copy of this Employee Grievance Form and your attached documents to Human Resources/Employee Relations for tracking purposes and retain a copy for your records. Return all original documents pertaining, including your response, to the grievance to the Grievant.

3. Grievant completes the following section:
- A. Did you receive the resolution or remedy you requested?  Yes  No
- B. Are you satisfied with the response you received?  Yes  No
- C. Probationary Full-Time Employees and Part-Time Employees Only: (Full-Time Merit Employees proceed to part D below)  
 By my signature, I understand that I have completed my grievance at the conclusion of Step Three.

Grievant's Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Forward the original Employee Grievance Form AND all original documents attached to the form to the Department of Human Resources/Employee Relations and retain a copy for your records.

- D. Full-Time Merit Employees Only: Do you wish to proceed to Step Four and appeal your grievance to the Personnel Board?  
 Yes; I understand that I have 10 consecutive calendar days from the date of the Department Director's response to submit this request to the Department of Human Resources/Employee Relations in order to have my grievance heard by the Personnel Board.  
Furthermore, I understand that in addition to this written notification, I must report to the Department of Human Resources/Employee Relations to be briefed on the Rules and Regulations of the Personnel Board proceedings.  
Grievant's Signature: MRB Date: 11/3/17  
Forward the original Employee Grievance Form AND all original documents attached to the form to the Department of Human Resources/Employee Relations and retain a copy for your records.

No; my grievance is completed. By my signature, I understand I have decided to end my grievance process at Step Three.

Grievant's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Forward the original Employee Grievance Form AND all original documents attached to the form to the Department of Human Resources/Employee Relations and retain a copy for your records.

For questions regarding Grievance Policy and Procedure, #4.04, contact Human Resources/Employee Relations Division at 385-8949.

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<b>CITY OF VIRGINIA BEACH GRIEVANCE POLICY AND PROCEDURE</b>	Policy Number:	4.04
	Date of Adoption:	1965
	Date of Prior Revision:	October 10, 2011
	Date of Current Revision:	December 28, 2016
		Page 1 of 12

**1.0 PURPOSE:**

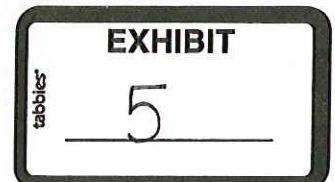
To establish open communications between a supervisor and an employee for the resolution of grievances arising from employee concerns with his or her working environment. It is the objective the grievance procedure to obtain a complete understanding of employee concerns and to have them settled as soon as possible at the lowest possible supervisory level commensurate with a fair and equitable settlement.

**2.0 DEFINITIONS:**

For purposes of this Policy and Procedure, the terms set forth herein shall be defined as follows:

**2.1 GRIEVANCE:** a complaint or dispute by an employee relating to his or her employment., including but not necessary limited to the following:

- A. A grievance may include but is not necessarily limited to the following:
  - (1) Disciplinary actions, including dismissals, disciplinary demotions and suspensions;
  - (2) The application of personnel policies, procedures, rules and regulations, including the application of policies, procedures, rules or regulations involving matters referred to in Section 4.1A(3) below, if it can be shown that a particular policy, procedure, rule or regulation was misinterpreted or applied inconsistently and that the misinterpretation or inconsistent application affected the employee filing the grievance;
  - (3) **Discrimination on the basis of race, color, creed, religion, political affiliation, age, disability, national origin or sex; and,**
  - (4) Acts of retaliation because the employee has (i) used or participated in the grievance procedure; (ii) complied with any law of the United States or the Commonwealth, (iii) reported any violation of law to a governmental authority; (iv) sought any change in law before the Congress of the United States or the General Assembly, or (v) reported an incidence of fraud, abuse or gross mismanagement.



B. Even if an issue falls within one of the four categories listed above, an employee cannot address the issue through the grievance procedure unless the employee is or has been *personally* affected by the management decision or action that forms the basis for the grievance. This means the employee has to have a personal stake in the matter because the employee has been adversely affected by it.

2.2 TYPE A GRIEVANCE: Grievances pertaining to dismissal, demotion, or suspension for more than forty (40) consecutive working hours

2.3 TYPE B GRIEVANCE: All other grievances that involve issues other than dismissal, demotion, or suspension for more than forty (40) consecutive working hours.

### 3.0 ELIGIBILITY TO UTILIZE GRIEVANCE PROCEDURE:

3.1 All city employees who are members of the merit service, as defined in the City Code, and all employees of constitutional offices (excluding elected officials) by written consent of the elected official, are eligible to use all phases of the grievance procedure. Employees who are employed on a *temporary, probational, or seasonal basis, including part time employees*, are eligible to use the grievance procedure only up to and including step 3, and only to address a grievable issue other than dismissal. For the purposes of the grievance procedure, whether someone is employed on a temporary or seasonal basis will be decided on a case-by-case basis, at the time a grievance is filed, based on all of the relevant circumstances.

3.2 All permanent police officers will be given written notice of the right to proceed under either this grievance procedure or the Law Enforcement Officer's Procedural Guarantees as cited in the Code of Virginia, but not both.

3.3 All permanent firefighters and emergency medical technicians subjected to an interrogation which could lead to dismissal, demotion or suspension for punitive reasons will be governed by the Firefighter's and Emergency Medical Technician's Procedural Guarantees, set forth in the Code of Virginia.

### 4.0 POLICY:



4.1 Grievability

- A. Management retains the exclusive right to manage the affairs and operations of city government. Accordingly, the follow complaints are not grievable:
- (1) The establishment and revision of wages or salaries, position classifications or general benefits;
  - (2) Work activity that (i) is accepted by an employee as a condition of employment; (ii) is part of the job description; or (iii) may be reasonably expected to be a part of job content;
  - (3) The contents of ordinances, statutes or established personnel policies, procedures, rules and regulations;
  - (4) Failure to promote, except where an employee can show that established promotional policies or procedures were not followed or applied fairly;
  - (5) The methods, means and personnel by which work activities are to be performed;
  - (6) Termination, layoff, demotion, or suspension from duty because of lack of work, reduction in work force or job abolition, except where such action affects an employee who has been reinstated within the previous six (6) months as a result of the final determination of a grievance. Such action will be upheld upon a showing that (i) there was a valid business reason for the action, and (ii) the employee was notified of the reason in writing prior to the effective date of the action.
  - (7) Administrative termination as defined in the city's Separation from Employment Policy, No. 6.01(A).
  - (8) A non-disciplinary oral counseling; provided the oral counseling has not been reduced to writing and included in

the employee's official personnel file which is maintained by the department of human resources;

- (9) The measurement and assessment of work activity through a performance feedback/evaluation; except where the employee can show that the feedback/evaluation was arbitrary or capricious;
  - (10) The hiring, promotion, transfer, assignment and retention of employees within the City;
  - (11) The relief of employees from their duties in the case of an emergency; and
  - (12) Management's rights as outlined in Section 4.9 of this policy.
- B. If there is a question of grievability, either the grievant or management must contact the director of human resources immediately, in writing, to request a determination of grievability. The question of grievability may only be raised once the grievance has been placed in writing (*step 2*) but before a Personnel Board hearing has been convened.
- C. A decision regarding whether or not a matter is grievable will be made only by the city manager or director of human resources within *ten (10) consecutive calendar days* of the receipt of the request in writing.
- D. The decision of the city manager or the director of human resources as to grievability may be appealed to the Virginia Beach Circuit Court by filing a notice of appeal with the director of human resources within *ten (10) consecutive calendar days* of receipt of the decision.
- (1) Within *ten (10) consecutive calendar days* of the filing of the notice of appeal, the city will send to the clerk of the Court and the grievant a copy of the decision, a copy of the notice of appeal and the exhibits.
  - (2) A list of any evidence furnished to the Court will also

be furnished to the grievant.

- (3) The failure of the city to transmit the record to the Virginia Beach Circuit Court will not prejudice the grievant's right of appeal.
- (4) Within thirty (30) calendar days of receipt of the record, the Circuit Court will hear the appeal.
- (5) The Court may affirm, reverse, or modify the decision of the city.
- (6) The decision of the Court, which is final and not appealable, will be issued no later than fifteen (15) calendar days from the date of the hearing.

#### 4.2 Time Limits

The time limits set forth herein refer to consecutive calendar days. This means that the various consecutive calendar day periods referred to throughout this policy will include all leave days, holidays, and unauthorized absence time, as well as normal work days and weekend days for all employees.

#### 4.3 Failure to Meet Time Limits

- A. If there are extenuating circumstances, the director of human resources may alter the time limits.
  - (1) 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 the party not in compliance fails to correct the non-compliance within five (5) consecutive working days of receipt of written notification from the director of human resources of the compliance violation.
  - (2) The initial written notification of non-compliance by the grievant or the department must be made to the director of human resources, who will notify the other party.

- B. Failure of either party, without just cause, to comply with all substantial procedural requirements at the Personnel Board hearing will result in a decision in favor of the other party on any grievable issue.
- C. Compliance determinations will be subject to judicial review by filing a petition with the Virginia Beach Circuit Court within thirty (30) days of the date of such a determination.

**4.4 Provision Applicable to Both Type A and Type B Grievances**

- A. The "immediate supervisor" refers to the person who was responsible for providing immediate supervision to the employee at the time the discipline or other action being grieved was imposed.
- B. If, at any step of the grievance procedure, a reduction in the level of discipline originally imposed is offered to, but rejected by, the grievant, the grievance will proceed to the next step of the procedure with the original level of discipline in place. Any offer to reduce the discipline or otherwise reach a resolution will not be considered at the next step of appeal.

**4.5 Waiving Steps in the Grievance Procedure**

The waiving of steps within the grievance procedure is prohibited. If a case of grievability is appealed to the Virginia Beach Circuit Court for review, a determination of grievability by the Court does not allow the waiving of the remaining steps in the grievance procedure.

**4.6 Use of Open Door Policy and Grievance Procedure for the Same Issue is not Permissible**

An employee may not use the open door policy and the grievance policy on the same issue; he or she must elect which procedure to use.

**4.7 Mediation**

- A. A grievance may be referred to mediation:

- (1) If a grievance referred to mediation is resolved to the satisfaction of the involved parties, the resolution will be binding, and the grievant must sign a statement agreeing to waive his or her right to further pursue the grievance procedure.
  - (2) If a grievance referred to mediation is not resolved to the satisfaction of the involved parties, the grievance will be returned to this procedure at whatever step it had reached at the time it was referred to mediation.
- B. With authorization from the director of human resources, the grievance procedure may be held in abeyance for up to ninety (90) days from the date a grievance is referred to mediation.

#### 4.8 Freedom from Reprisal

It is inappropriate for an employee filing a grievance or participating in another employee's grievance to be subject to reprisal solely for taking part in the grievance procedure.

#### 4.9 Management Rights

Nothing in this policy is intended to circumscribe or modify the existing rights of management to do the following:

- A. Direct the work of its employees;
- B. Hire, promote, transfer, assign, and retain employees' positions within the agency provided such action is not taken for disciplinary purposes;
- C. Maintain the efficiency of governmental operations;
- D. Relieve employees from duties because of lack of work;
- E. Take actions as may be necessary to carry out the duties of the agency in emergencies; and,
- F. Determine the methods, means and personnel by which operations are to be performed.

5.0 PROCEDURE:

5.1 Grievance Procedure for Type A Grievance

Type A grievances are grievances that involve dismissal, demotion, or suspension for more than forty (40) working hours.

- A. Type A grievances may be appealed directly to the Personnel Board at the discretion of the grievant.
  - (1) Written notice of the intent to appeal to the Personnel Board must be received by the department of human resources within *twenty (20) consecutive calendar days*.
  - (2) If an employee does not appeal a Type A grievance directly to the Personnel Board, the procedure for Type B grievances must be followed.
- B. Upon notice of the grievant's intent to appeal directly to the Personnel Board, the director of human resources, or a designee, will arrange the time and place of the Personnel Board hearing and notify all affected parties within fourteen (14) consecutive calendar days.
- C. Unless otherwise agreed, the Personnel Board hearing will be scheduled no later than thirty (30) consecutive calendar days from the end of the aforementioned fourteen (14) consecutive day period.
  - (1) If the director of human resources determines that the grievant is continually uncooperative or is not appropriately following the Personnel Board procedures, the director of human resources will, prior to the convening of the Personnel Board, send written notification to the employee specifying the grievant's non-compliance and allowing the grievant five (5) consecutive working days to comply with the procedures of the Personnel Board.
  - (2) If the grievant does not comply with the Personnel Board procedures within five (5) consecutive working days after receipt of the written notification, the director of human resources will have full authority to cancel the Personnel Board hearing and the grievant will forfeit all rights to such a hearing.

- D. The Personnel Board's decision regarding Type A grievances are final and binding and must be consistent with law and written policy.
- E. The city manager, or his/her designee, will ensure that the Personnel Board's decision is consistent with written policy.
- F. Further, the grievant or management may petition the Virginia Beach Circuit Court for an order requiring implementation of the decision of the Personnel Board.

## 5.2 Grievance Procedure for Type B Grievances

Type B grievances are those grievances that involve issues other than dismissal, demotion, or suspension for more than forty (40) consecutive working hours.

A. Steps for completing a Type B grievance are:

### (1) Step 1

- a. The grievant must discuss the grievance with the immediate supervisor in person within **twenty (20) consecutive calendar days** from the date of its occurrence or knowledge of its occurrence.
- b. The immediate supervisor must verbally reply to the grievant within **ten (10) consecutive calendar days** of the date of this discussion.

### (2) Step 2

- a. If the grievance is not settled in step 1, the grievant may, within **ten (10) consecutive calendar days** of the immediate supervisor's verbal reply, submit the grievance in writing to the same supervisor attached to the "Employee Grievance Form for Type B Grievances" that is available from the department of human resources or any city- owned or leased information bulletin board and on the city Intranet.
- b. The immediate supervisor must reply in writing to the grievant and attach the response to the

"Employee Grievance Form for Type B Grievances" within *ten (10) consecutive calendar days* of receipt of the written grievance.

(3) Step 3

- a. If the grievance is not settled in step 2, the grievant may appeal the immediate supervisor's decision by forwarding the "Employee Grievance Form for Type B Grievances" to the department director within *ten (10) consecutive calendar days* of the immediate supervisor's response.
- b. The department director, or his/her designee, must meet with the grievant to discuss the grievance and the department director, or a designee, must reply in writing to the grievant and attach the response to the "Employee Grievance Form for Type B Grievances" within *ten (10) consecutive calendar days* of the receipt of the written grievance.
- c. If the immediate supervisor is the department director, steps 2 and 3 are consolidated into a single step.

(4) Step 4

- a. If the grievance is not settled in step 3, the grievant may appeal the decision to the Personnel Board.
- b. The decision of the Personnel Board will be final and binding and must be consistent with law and written policy.
- c. The "Employee Grievance Form for Type B Grievances" and all attached documents must be sent to the director of human resources within *ten (10) consecutive calendar days* of the department director's response.



- d. Upon notification of the grievant's intent to appeal, the director of human resources, or his/her designee, must arrange the time and place of the hearing and notify all affected parties of the time and place within fourteen (14) consecutive calendar days.
  - e. The Personnel Board hearing will be scheduled, if possible, within thirty (30) consecutive calendar days from the end of the aforementioned fourteen (14) consecutive day period.
  - f. Either the grievant or management may petition the Virginia Beach Circuit Court for an order requiring implementation of the decision of the Personnel Board.
- B. A member of the Personnel Board will be disqualified from hearing a grievance if (i) he/she has direct involvement with the grievance being heard or with the complaint or dispute giving rise to the grievance; (ii) he/she is in a direct line of supervision of the grievant or is one of the following relatives of a participant in the grievance process or a participant's spouse: spouse, parent, child, descendants of a child, sibling, niece, nephew or first cousin; or, (iii) he/she is an attorney having direct involvement with the subject matter of the grievance or is a partner, associate employee or co-employee of such an attorney.
- C. With the exception of step 3, the only persons who may normally be present in the management steps are the grievant, the appropriate management representative at the level at which the grievance is being heard, and appropriate witnesses for each side. A witness may only be present while actually providing testimony.
- D. The time frames set forth in the grievance procedure may be extended by mutual agreement of the city and the grievant.

**6.0 ASSISTANCE FOR EMPLOYEES WHO CANNOT READ OR WRITE AND ACCOMMODATIONS FOR DISABLED EMPLOYEES:**

An employee who is not able to read or write, or who has a disability and needs a reasonable accommodation in order to use the grievance procedure, shall be

referred by his or her immediate supervisor to the department of human resources for assistance.

**7.0 REPRESENTATION:**

At steps 3 and 4, the grievant may be accompanied or represented by an individual of his/her choice, who may be legal counsel. Representation of the grievant will be at the expense of the grievant. Management may likewise be represented by legal counsel (who may be a city attorney or a designated alternate attorney) at steps 3 and 4; however, management may not be represented by legal counsel at step 3 unless the grievant also has legal representation, or at step 4 of this procedure unless the grievant is represented by a third party. A city attorney or a designated alternate attorney may not simultaneously provide counsel to the Personnel Board while serving management on the same grievance".

**8.0 REVISIONS:**

City Manager, or designee, may revise this policy at any time.

# GENERAL RULES OF CONDUCT

## PURPOSE

To provide general rules of conduct for all department employees, the intent of which is to protect the integrity of the department.

## SCOPE

These guidelines are applicable to all Fire Department personnel.

## CFAI REFERENCE

This policy applies to the following categories, criterion, and performance indicators of the Commission on Fire Accreditation International (CFAI): 7C.1

## CONTENT

Fire Department personnel are required to read, understand and comply with all city and department directives, policies, procedures, rules, and regulations. It shall be the responsibility of the employee to seek clarification from a supervisor as to the meaning or application of any law, directive, rule or regulation, policy or procedure, written or verbal order.

If any section, sentence, clause, phrase or portion of these General Rules of Conduct is, for any reason, held to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

## RULES AND REGULATIONS

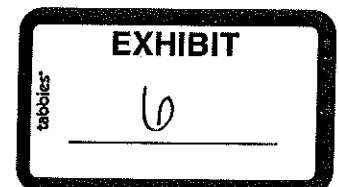
### 1. ABSENT WITHOUT LEAVE

Personnel shall not be absent from duty without proper authorization. Personnel shall report promptly to a supervisor any anticipated absence from duty. City HR Policy Annual and Personal Leave Policy 3.01

### 2. ABUSE OF POSITION

Personnel shall not use their official position, official identification or badge: (1) for personal or financial gain; (2) to obtain privileges not otherwise available to them except in the performance of duty; or (3) to avoid consequences of illegal acts. They shall not lend to another person their identification card or badge or permit them to be photographed or reproduced without the approval of the Fire Chief. City AD Fraud, Waste and Abuse Prevention and Reporting 1.16

Personnel shall not authorize the use of their name, photograph or official title which identifies them as employees, in connection with testimonials or advertisements of any commodity or commercial enterprise, without the approval of the Fire Chief.



### **3. ASSOCIATIONS**

Personnel shall avoid regular or continuous associations or dealings with persons under criminal indictment, or who have a reputation in the community or the department for involvement, past or present, in felonies or criminal behavior, except as necessary in the performance of official duties, or where unavoidable because of personal relationships of the employees.

### **4. CONFLICTS OR ILLEGAL ORDERS**

Personnel, who are given an otherwise proper order, but which conflicts with a previous policy, guideline, rule, regulation or directive, shall inform the supervisor issuing the order of the conflict. If the supervisor issuing the order does not alter or retract the conflicting order, the order shall stand. Under these circumstances, the responsibility for the conflict shall be upon the supervisor. Personnel shall obey the conflicting order and shall not be held responsible for disobedience of the policy, guideline, rule, regulation or standard operating procedure previously issued. Should the issue come under scrutiny, the conflicting order, as issued, will be placed in writing explaining the circumstances and purpose and forwarded through the chain to the Deputy Chief for final resolution as appropriate. (This correspondence will be completed by placing it in writing as soon as practical by the person receiving the conflicting order. Outlined in the correspondence will be all the facts involving the issue under review.)

### **5. COURTESY**

Personnel shall be courteous to the public and other employees of the department. Personnel shall be considerate in the performance of their duties, must control their temper and exercise the utmost patience and discretion and shall not engage in argumentative discussions in the face of provocation. In the performance of their duties, personnel shall not use abusive language or gestures and shall not express any prejudice concerning race, religion, politics, national origin, gender, lifestyle or any similar personal characteristics.

### **6. DEPARTMENTAL REPORTS**

Personnel shall submit all necessary reports on time and in accordance with established departmental procedures. Reports submitted by personnel shall be truthful and complete, and no personnel shall knowingly enter or cause to be entered any inaccurate, false or improper information.

### **7. DISOBEDIENCE OF ORDERS**

Personnel of the department shall promptly obey and fully execute any lawful order, written or verbal, of a supervisor. Personnel shall obey all city and departmental rules, regulations and standard operating procedures. All Fire Department personnel shall conform to the City of Virginia Beach Code, Administrative Directives, Human Resource Policies and Procedures and the VBFD Standard Operating Procedures, State Statutes, Federal Laws and orders of the Court. (The term "lawful order" shall be construed as any order in keeping with the performance of any duty prescribed by law or by these rules and regulations or for the preservation of good order, efficiency and proper discipline which is not in conflict with these rules and regulations.)

### **8. DISRESPECT**

Personnel shall not be disrespectful to any employee or citizen.

## **9. DISSEMINATION OF INFORMATION**

Personnel shall treat the official business of the department as confidential. Information regarding official business shall be disseminated only to those for whom it is intended and in accordance with established departmental procedures. Personnel shall not divulge the identity of persons giving confidential information.

## **10. EMPLOYMENT OUTSIDE DEPARTMENT**

All personnel may engage in off-duty employment subject to the requirements/restrictions as outlined in City HR Policy Employment in Second Jobs 1.03.

## **11. FAILURE TO ADEQUATELY SECURE AND CARE FOR DEPARTMENTAL PROPERTY**

Personnel will not alter or repair department equipment, including vehicles, uniforms, appliances, tools or weapons, unless specifically authorized or in accordance with departmental procedures.

Personnel shall utilize department equipment only for its intended purpose in accordance with established departmental procedures and shall not abuse, damage or lose department equipment. All department equipment issued to personnel shall be maintained in proper condition. Personnel shall report damage to any department equipment according to departmental or city policy.

## **12. FICTITIOUS ILLNESS AND INJURY REPORTS**

Personnel shall not feign illness or injury, falsely report themselves or others ill or injured or otherwise deceive or attempt to deceive any official of the department concerning the condition of their health. City AD Fraud, Waste and Abuse Prevention and Reporting 1.16

## **13. FIREARMS**

Personal possession of firearms while on duty, in city or volunteer owned stations and/or equipment, unless a sworn peace officer or acting in the capacity of a sworn peace officer, is prohibited unless authorized by the Fire Chief or designee. City HR Policy Weapons 6.18

## **14. FIRE EQUIPMENT USE**

Personnel are required to immediately report all damage to vehicles and equipment and to file the required reports which shall contain all known facts surrounding the cause and nature of the damage. In the event that municipal property bears evidence of damage which has not been reported, it shall be recognized that the last person using the property or vehicle was responsible. Additionally, personnel shall return all equipment owned by the department when they retire, resign, transfer or otherwise leave the department and they shall return any equipment when ordered to do so because of suspension or other absence from work. SOP OHS Reporting Accidents, Injuries, and Lost/Stolen Items 7.19

Allowing unauthorized persons to ride in fire vehicles is prohibited. Unauthorized persons are those who are not engaged in official, authorized fire related business.

## **15. GIFTS, GRATUITIES, BRIBES, CONTRIBUTIONS OR REWARDS**

Personnel shall not solicit or accept from any person, business or organization any gift (including money, tangible or intangible personal property, food, beverage, loan, promise, service or entertainment) for the benefit of the personnel or the department, if it may reasonably be inferred that the person, business or organization: (1) seeks to influence action of an official nature or seeks to affect the performance of an official duty; (2) has an interest which may be substantially affected directly or indirectly by the performance or non-performance of an official duty.

## **16. IDENTIFICATION**

Uniform personnel shall carry an identification card on their person at all times while on duty, except when impractical or dangerous to their safety or to an investigation. They shall furnish their name to any person requesting that information when they are on duty or while representing themselves as having an official capacity, except when the withholding of such information is authorized by proper authority.

## **17. IMMORAL CONDUCT**

Personnel shall maintain a level of moral conduct in their personal and business affairs in keeping with the highest standards of the fire profession. They shall not participate in any incident involving moral turpitude or conduct which impairs their ability to perform as firefighters or cause the department to be brought into disrepute. City HR Policy Criminal and Administrative Charge and Conviction 6.02A

## **18. INSUBORDINATION**

Insubordination shall be prohibited and shall include, but not be necessarily limited to: any disrespectful or abusive language or action toward an employee, lying or giving misleading statements; or refusal to answer a direct question asked by a supervisor.

Destroying or defacing any official written notice relating to departmental business is prohibited. The posting or circulation of any notices of non-official, derogatory character relating to any person, group or public safety activity is prohibited.

## **19. NEGLECT OF DUTY**

Neglect of duty is prohibited. Examples include, but are not limited to: Failure to take appropriate action on the incident scene; absent without leave; failure to report to duty at the time and place designated; unnecessary absence from one's assignment during a shift of duty; sleeping on duty at unauthorized times; failure to perform duties.

## **20. OPERATING VEHICLES**

Personnel shall operate official vehicles in a careful and prudent manner and obey all laws and all department procedures pertaining to such operation. Loss or suspension of any driving license including any driving restrictions imposed by a state criminal and/or traffic court shall be reported to the department immediately. City HR Policy Criminal and Administrative Charge and Conviction 6.02A; SOP OHS Operation of Fire Department Vehicles 7.14

## **21. PERSONAL APPEARANCE**

The wearing of an improper uniform, failure to carry all necessary equipment or failure to maintain one's uniform and/or equipment in good order and as outlined in department policy is prohibited. SOP PPP Personal Appearance Standards 7.07

## **22. PHYSICAL STABILITY - FITNESS FOR DUTY**

Personnel are required to remain fit for duty. Employees are required to advise their supervisor or Occupational Health of any prescription medication being taken while on duty. It is the responsibility of the employee to advise the supervisor or Occupational Health of any off duty injury/incapacity which could affect operational ability/stability.

Personnel shall, as soon as practical, report to their supervisor any accident, sickness or injury occurring to them while on-duty. SOP OHS Reporting Accidents, Injuries, and Lost Stolen Items 7.19, SOP WFP Health and Fitness 7.20)

### **23. POLITICAL ACTIVITY**

Refer to City of Virginia Beach, Code of Ordinance, Chapter 2, Article III, Division 1, Section 2-90.

### **24. PROCESSING PROPERTY AND EVIDENCE**

Department personnel are required to turn over to the designated Incident or Station Commander all recovered, abandoned or evidentiary material which comes into the possession of a department employee as a result of the performance of department duties. All such material shall be turned over prior to the completion of the assignment during which the material came into the possession of the personnel of the department.

### **25. PROFESSIONAL CONDUCT**

Fire Department personnel are required to work diligently and with a bearing consistent with the image of a professional employee. Stealing, altering, forging or tampering with any kind of official record, report or citation is prohibited. The removal of any record, card, report, letter, document or other official files from the department, except by process of law or as directed by a superior is prohibited. Additionally, the obtaining/duplicating, or the attempted obtaining/duplicating of any information from department files, sources or reports other than that to which one is properly entitled in accordance with one's duties/assignments is prohibited.

Personnel are required to answer questions, respond to lawful orders, and render material and relevant statements in an internal department investigation when such orders, questions and statements are directly related to job responsibilities. Nothing in this section is intended to be a violation of one's Federal and/or State constitutional rights.

Employees shall not utilize excessive time to conduct personal business while on-duty.

### **26. PUBLIC STATEMENTS AND APPEARANCE**

Personnel shall not publicly criticize or ridicule the department, its policies or other personnel by speech, writing or other expression, where such speech, writing or other expression is defamatory, obscene, and unlawful, interferes with maintenance of discipline or is made with reckless disregard for truth or is false.

Personnel shall not address public gatherings, appear on radio or television, prepare any articles for publications, act as correspondent to a newspaper or a periodical, and release or divulge investigative information or any other matters of the department while implying that they represent the department in such matters without proper authority.

### **27. REPORTING FOR DUTY OR COURT**

Giving a deposition, affidavit or appearing as a witness in a criminal or civil matter stemming from official duties as a department employee without prior knowledge of the chain of command and City Attorney is prohibited. Personnel shall follow the procedures outlined in City HR Policy Absence for Court Attendance 3.02.

### **28. REQUESTS FOR ASSISTANCE**

Department personnel are required to render aid or furnish information consistent with their assignment.

## 29. TELEPHONE AND ADDRESS INFORMATION

Personnel are required to notify their supervisor and Fire Administration of any change of address, telephone number or emergency notification. Maintaining residence at a fire station when not on-duty is prohibited.

## 30. TOBACCO USE

Firefighters who have been hired under the no smoking agreement shall not use tobacco products on or off duty once they have been hired. For those persons hired prior to the smoking agreement, smoking is prohibited in city owned buildings and department vehicles. Smoking regulations as outlined in guidelines set forth for remaining employees and citizens must be followed as established. City AD No Smoking in City Buildings 3.15

## 31. TRUTHFULNESS

Upon the order of the Fire Chief, the Fire Chief's designee or a supervisor, employees shall truthfully answer all questions specifically directed and narrowly related to the scope of employment and operations of the department which may be asked of them.

## 32. UNSATISFACTORY PERFORMANCE

Personnel shall maintain sufficient competency to properly perform their duties and assume the responsibility of their positions. Personnel shall perform their duties in a manner which will maintain the highest standards of efficiency in carrying out the functions and objectives of the department.

Unsatisfactory performance may be demonstrated by a lack of knowledge of the application of laws required to be enforced; an unwillingness or inability to perform assigned tasks; failure to take appropriate action on the occasion of an emergency incident or other conditions deserving Fire Department attention. In addition to other indications of unsatisfactory performance, repeated poor evaluations or a written record of repeated infractions of rules, regulations, directives or orders of the department could constitute unsatisfactory performance.

## 33. USE OF POLYGRAPH, MEDICAL EXAMINATION, PHOTOGRAPHS, LINEUPS, ALCOHOL AND DRUG TESTS

### a. Polygraph Examinations

Upon the written directive of the Fire Chief, personnel shall submit to polygraph examinations when the examinations are specifically directed and narrowly related to a particular internal investigation being conducted by the department. When a citizen's complaint forms the basis for a non-criminal investigation, it will be the normal practice of the investigator to request that the citizen complainant submit to a polygraph examination prior to the final determination of the necessity for an employee to submit to a polygraph examination. In the case of the citizen's inability, unsuitability or refusal to submit to a polygraph examination due to unusual circumstances of the case, the Fire Chief may, to aid the investigation and/or protect the integrity of the department and/or the employee, order employees to submit to a polygraph examination at any point in the investigation.

### b. Medical Examinations, Photographs and Lineups

Upon the order of the Fire Chief or the Chief's designee, employees shall submit to any medical, ballistics, chemical or other tests, photographs or lineups. All procedures carried out under this subsection shall be specifically directed and narrowly related to a particular investigation being conducted by the department.



c. Alcohol and/or Drug Tests

An employee who is suspected of being impaired from consuming intoxicating beverages or is suspected of using illegal controlled substances or the improper use of controlled substances, in violation of the section of Use or Possession of Alcohol, Drugs or Steroids, will submit to the appropriate tests to determine the employee's fitness for duty. City HR Policy Substance Abuse 6.15

**34. USE OR POSSESSION OF ALCOHOL, DRUGS OR STEROIDS**

Personnel, while off-duty, shall refrain from consuming intoxicating beverages to the extent that it results in impairment, intoxication, obnoxious or offensive behavior which discredits the department or renders them unfit to report for their regular tour of duty.

Personnel shall not possess or use any controlled substances, except when prescribed by a physician or dentist in the treatment of the employee. When such drugs or medications are prescribed, employees shall follow the specifications contained in SOP OHS 7.19 referencing return to work evaluations from sick leave. If the personal physician believes the employee should be allowed to function at work while taking the medications, and the employee returns to work, the employee assumes the responsibilities for any effects of reduced capacity due to the medicinal influences. The responsibility continues to include the need to meet the requirements of the above-mentioned policy.

Personnel shall not possess or use, while on or off duty, anabolic steroids, androgenic steroids, human growth hormones or any controlled substance used or designed to enhance physical development and/or athletic performance or having the effect of enhancing physical development and/or athletic performance, unless the possession/use has been prescribed by a physician for treatment of a medical condition and has been approved by the City Physician.

**35. CONFORMANCE TO LAWS AND REPORTING VIOLATIONS OF LAW**

Department employees are required to follow the notification requirements as outlined in City Human Resources Policy Criminal and Administrative Charge and Conviction Policy 6.02(A).

Any police or court actions which affect and/or restrict the employee's vehicle operator's license and or driving privileges shall be immediately reported to the employee's supervisor including but not limited to speeding, improper driving, reckless driving, driving while intoxicated, driving under the influence, etc. Fire Department personnel are required to report an employee's or their own violation of a law, rule or regulation, policy or procedure while on-duty. All such violations shall be reported, in writing, to a supervisor in the department.

**36. USE AND RELATED ELECTRONIC EQUIPMENT OR COMPUTERS**

City and department issued computer and electronic equipment are for the exclusive use for department and city business. The department and the city reserve the right to access this equipment at any time and determine proper utilization. At the same time, the department and city can issue regulations on proper use and maintenance of this equipment. Department employees are expected to follow these regulations. Unauthorized installation of software programs or use of unlicensed (non-city owned) software is prohibited. City AD Information and Communications Technology Acceptable Use 2.04

**37. HARASSMENT**

All department employees are guaranteed a workplace free from harassment in any form. City Equal Employment Opportunities/Affirmative Action policy requirements will be followed at all times. City HR Policy Workplace Harassment 6.13 and Equal Employment Opportunity Policy and Complaint Procedure 6.06

### 38. INSPECTION OF EQUIPMENT IN DEPARTMENT FACILITIES

Fire Department personnel are advised that they should have an expectation that city owned equipment can be inspected at any time, and privacy and exclusivity in the utilization of this equipment while on-duty does not exist. To this end, all Fire Department employees are on notice that all city owned and furnished equipment will be subject to inspection for administrative purposes. These items include, but are not limited to: lockers, storage units and desks, computers, etc. Privately owned lockers are subject to search pursuant to existing laws and regulations.

### 39. Use of Privately Owned Photographic or Video Equipment

The use of privately owned still photography equipment and video cameras, including but not limited to helmet mounted or drone operated video cameras, or other audio/video recording devices, is prohibited during emergencies by on-duty personnel unless specifically authorized by the Incident Commander. Images from City owned still photography equipment and video equipment shall only be captured, reproduced, stored, shared, viewed or used for department approved purposes.

Incident Commanders authorizing the use of still photography and video equipment shall always consider the sensitive nature of our jobs in the context of legal, privacy, and HIPPA related issues. All images captured during such emergencies by on-duty personnel, whether by privately owned or city owned equipment, are the property of the Virginia Beach Fire Department and subject to FOIA and discovery. These images may not be permanently stored or maintained on personal storage devices or other modalities that are not the sole property of the Virginia Beach Fire Department.

Prev. SOP No.	Current SOP No.	Date of Change	Description of Change
SOP SS/A 1.02	SOP PPP 7.06	March 24, 2011	No changes to the body of the document, added CFAI Reference, and new SOP number
	SOP PPP 7.06	December 15, 2015	Updated references to city policy. Updated language for reporting violations in section 35. Addresses drone operated equipment under photography.

## § 15.2-1507. Provision of grievance procedure; training programs.

A. If a local governing body fails to adopt a grievance procedure required by § 15.2-1506 or fails to certify it as provided in this section, the local governing body shall be deemed to have adopted a grievance procedure which is consistent with the provisions of Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 and any regulations adopted pursuant thereto for so long as the locality remains in noncompliance. The locality shall provide its employees with copies of the applicable grievance procedure upon request. The term "grievance" as used herein shall not be interpreted to mean negotiations of wages, salaries, or fringe benefits.

Each grievance procedure, and each amendment thereto, in order to comply with this section, shall be certified in writing to be in compliance by the city, town or county attorney, and the chief administrative officer of the locality, and such certification filed with the clerk of the circuit court having jurisdiction in the locality in which the procedure is to apply. Local government grievance procedures in effect as of July 1, 1991, shall remain in full force and effect for 90 days thereafter, unless certified and filed as provided above within a shorter time period.

Each grievance procedure shall include the following components and features:

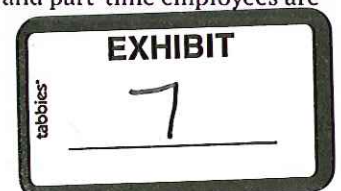
1. Definition of grievance. A grievance shall be a complaint or dispute by an employee relating to his employment, including but not necessarily limited to (i) disciplinary actions, including dismissals, disciplinary demotions, and suspensions, provided that dismissals shall be grievable whenever resulting from formal discipline or unsatisfactory job performance; (ii) the application of personnel policies, procedures, rules and regulations, including the application of policies involving matters referred to in subdivision 2 (iii) below; (iii) discrimination on the basis of race, color, creed, religion, political affiliation, age, disability, national origin or sex; and (iv) 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 clause (iv) 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.

2. Local government responsibilities. Local governments shall retain the exclusive right to manage the affairs and operations of government. Accordingly, the following complaints are nongrievable: (i) establishment and revision of wages or salaries, position classification or general benefits; (ii) 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; (iii) the contents of ordinances, statutes or established personnel policies, procedures, rules and regulations; (iv) failure to promote except where the employee can show that established promotional policies or procedures were not followed or applied fairly; (v) the methods, means and personnel by which work activities are to be carried on; (vi) 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; (vii) the hiring, promotion, transfer, assignment and retention of employees within the local government; and (viii) the relief of employees from duties of the local government in emergencies. In any grievance brought under the exception to clause (vi) of this subdivision, the action shall be upheld upon a showing by the local government that: (i) there was a valid business reason for the action and (ii) the employee was notified of the reason in writing prior to the effective date of the action.

3. Coverage of personnel.

a. Unless otherwise provided by law, all nonprobationary local government permanent full-time and part-time employees are eligible to file grievances with the following exceptions:

(1) Appointees of elected groups or individuals;



- (2) Officials and employees who by charter or other law serve at the will or pleasure of an appointing authority;
- (3) Deputies and executive assistants to the chief administrative officer of a locality;
- (4) Agency heads or chief executive officers of government operations;
- (5) Employees whose terms of employment are limited by law;
- (6) Temporary, limited term and seasonal employees;
- (7) Law-enforcement officers as defined in Chapter 5 (§ 9.1-500 et seq.) of Title 9.1 whose grievance is subject to the provisions of Chapter 5 (§ 9.1-500 et seq.) of Title 9.1 and who have elected to proceed pursuant to those provisions in the resolution of their grievance, or any other employee electing to proceed pursuant to any other existing procedure in the resolution of his grievance.

b. Notwithstanding the exceptions set forth in subdivision 3 a above, local governments, at their sole discretion, may voluntarily include employees in any of the excepted categories within the coverage of their grievance procedures.

c. The chief administrative officer of each local government, or his designee, shall determine the officers and employees excluded from the grievance procedure, and shall be responsible for maintaining an up-to-date list of the affected positions.

4. Grievance procedure availability and coverage for employees of community services boards, redevelopment and housing authorities, and regional housing authorities. Employees of community services boards, redevelopment and housing authorities created pursuant to § 36-4, and regional housing authorities created pursuant to § 36-40 shall be included in (i) a local governing body's grievance procedure or personnel system, if agreed to by the department, board, or authority and the locality or (ii) a grievance procedure established and administered by the department, board or authority which is consistent with the provisions of Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 and any regulations promulgated pursuant thereto. If a department, board or authority fails to establish a grievance procedure pursuant to clause (i) or (ii), it shall be deemed to have adopted a grievance procedure which is consistent with the provisions of Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 and any regulations adopted pursuant thereto for so long as it remains in noncompliance.

#### 5. General requirements for procedures.

a. Each grievance procedure shall include not more than four steps for airing complaints at successively higher levels of local government management, and a final step providing for a panel hearing or a hearing before an administrative hearing officer upon the agreement of both parties.

b. Grievance procedures shall prescribe reasonable and specific time limitations for the grievant to submit an initial complaint and to appeal each decision through the steps of the grievance procedure.

c. Nothing contained in this section shall prohibit a local government from granting its employees rights greater than those contained herein, provided such grant does not exceed or violate the general law or public policy of the Commonwealth.

#### 6. Time periods.

a. It is intended that speedy attention to employee grievances be promoted, consistent with the ability of the parties to prepare for a fair consideration of the issues of concern.

b. The time for submitting an initial complaint shall not be less than 20 calendar days after the event giving rise to the grievance, but local governments may, at their option, allow a longer time period.

c. Limits for steps after initial presentation of grievance shall be the same or greater for the grievant than the time which is allowed for local government response in each comparable situation.

d. Time frames may be extended by mutual agreement of the local government and the grievant.

#### 7. Compliance.

a. 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 or administrative 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 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 chief administrative officer, or his designee.

b. The chief administrative officer, or his designee, at his option, may require a clear written explanation of the basis for just cause extensions or exceptions. The chief administrative officer, or his designee, shall determine compliance issues. Compliance determinations made by the chief administrative officer shall be subject to judicial review by filing petition with the circuit court within 30 days of the compliance determination.

#### 8. Management steps.

a. The first step shall provide for an informal, initial processing of employee complaints by the immediate supervisor through a nonwritten, discussion format.

b. Management steps shall provide for a review with higher levels of local government authority following the employee's reduction to writing of the grievance and the relief requested on forms supplied by the local government. Personal face-to-face meetings are required at all of these steps.

c. With the exception of the final management step, the only persons who may normally be present in the management step meetings are the grievant, the appropriate local government official at the level at which the grievance is being heard, and appropriate witnesses for each side. Witnesses shall be present only while actually providing testimony. At the final management step, the grievant, at his option, may have present a representative of his choice. If the grievant is represented by legal counsel, local government likewise has the option of being represented by counsel.

#### 9. Qualification for panel or administrative hearing.

a. Decisions regarding grievability and access to the procedure shall be made by the chief administrative officer of the local government, or his designee, at any time prior to the panel hearing, at the request of the local government or grievant, within 10 calendar days of the request. No city, town, or county attorney, or attorney for the Commonwealth, shall be authorized to decide the question of grievability. A copy of the ruling shall be sent to the grievant. Decisions of the chief administrative officer of the local government, or his designee, may be appealed to the circuit court having jurisdiction in the locality in which the grievant is employed for a hearing on the issue of whether the grievance qualifies for a panel hearing. Proceedings for review of the decision of the chief administrative officer or his designee shall be instituted by the grievant by filing a notice of appeal with the chief administrative officer within 10 calendar days from the date of receipt of the decision and giving a copy thereof to all other parties. Within 10 calendar days thereafter, the chief administrative officer or his designee shall transmit to the clerk of the court to which the appeal is taken: a copy of the decision of the chief administrative officer, 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 chief administrative officer or his designee 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 chief administrative officer to transmit the record on or before a certain date.

b. Within 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 chief administrative officer or his designee 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 chief administrative officer or his designee, 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 is not appealable.

#### 10. Final hearings.

a. Qualifying grievances shall advance to either a panel hearing or a hearing before an administrative hearing officer, as set forth in the locality's grievance procedure, as described below:

(1) If the grievance procedure adopted by the local governing body provides that the final step shall be an impartial panel hearing, the panel may, with the exception of those local governments covered by subdivision a (2) of this subsection, consist of one member appointed by the grievant, one member appointed by the agency head and a third member selected by the first two. 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. 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.

(2) If the grievance procedure adopted by the local governing body provides for the final step to be an impartial panel hearing, local governments may retain the panel composition method previously approved by the Department of Human Resource Management and in effect as of the enactment of this statute. Modifications to the panel composition method shall be permitted with regard to the size of the panel and the terms of office for panel members, so long as the basic integrity and independence of panels are maintained. As used in this section, the term "panel" shall include all bodies designated and authorized to make final and binding decisions.

(3) When a local government elects to use an administrative hearing officer rather than a three-person panel for the final step in the grievance procedure, the administrative hearing officer shall be appointed by the Executive Secretary of the Supreme Court of Virginia. The appointment shall be made from the list of administrative hearing officers maintained by the Executive Secretary pursuant to § 2.2-4024 and shall be made from the appropriate geographical region on a rotating basis. In the alternative, the local government may request the appointment of an administrative hearing officer from the Department of Human Resource Management. If a local government elects to use an administrative hearing officer, it shall bear the expense of such officer's services.

(4) When the local government uses a panel in the final step of the procedure, there shall be a chairperson of the panel and, when panels are composed of three persons (one each selected by the respective parties and the third from an impartial source), the third member shall be the chairperson.

(5) Both the grievant and the respondent may call upon appropriate witnesses and be represented by legal counsel or other representatives at the hearing. Such representatives may examine, cross-examine, question and present evidence on behalf of the grievant or respondent before the panel or hearing officer without being in violation of the provisions of § 54.1-3904.

(6) The decision of the panel or hearing officer shall be final and binding and shall be consistent with provisions of law and written policy.

(7) The question of whether the relief granted by a panel or hearing officer is consistent with written policy shall be determined by the chief administrative officer of the local government, or his designee, unless such person has a direct personal involvement with the event or events giving rise to the grievance, in which case the decision shall be made by the attorney for the Commonwealth of the jurisdiction in which the grievance is pending.

b. Rules for panel and administrative hearings.

Unless otherwise provided by law, local governments shall adopt rules for the conduct of panel or administrative hearings as a part of their grievance procedures, or shall adopt separate rules for such hearings. Rules which are promulgated shall include, but need not be limited to the following provisions:

(1) That neither the panels nor the hearing officer have authority to formulate policies or procedures or to alter existing policies or procedures;

(2) That panels and the hearing officer have 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;

(3) That the local government provide the panel or hearing officer with copies of the grievance record prior to the hearing, and provide the grievant with a list of the documents furnished to the panel or hearing officer, and the grievant and his attorney, at least 10 days prior to the scheduled hearing, shall be allowed access to and copies of all relevant files intended to be used in the grievance proceeding;

(4) That panels and hearing officers have the authority to determine the admissibility of evidence without regard to the burden of proof, 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;

(5) That all evidence be presented in the presence of the panel or hearing officer and the parties, except by mutual consent of the parties;

(6) That documents, exhibits and lists of witnesses be exchanged between the parties or hearing officer in advance of the hearing;

(7) That the majority decision of the panel or the decision of the hearing officer, acting within the scope of its or his authority, be final, subject to existing policies, procedures and law;

(8) That the panel or hearing officer's decision be provided within a specified time to all parties; and

(9) Such other provisions as may facilitate fair and expeditious hearings, with the understanding that the hearings are not intended to be conducted like proceedings in courts, and that rules of evidence do not necessarily apply.

#### 11. Implementation of final hearing decisions.

Either party may petition the circuit court having jurisdiction in the locality in which the grievant is employed for an order requiring implementation of the hearing decision.


B. Notwithstanding the contrary provisions of this section, a final hearing decision rendered under the provisions of this section which would result in the reinstatement of any employee of a sheriff's office, who has been terminated for cause may be reviewed by the circuit court for the locality upon the petition of the locality. The review of the circuit court shall be limited to the question of whether the decision of the panel or hearing officer was consistent with provisions of law and written policy.

1978, c. 845, § 15.1-7.2; 1985, c. 515; 1988, c. 290; 1989, c. 254; 1991, c. 661; 1995, cc. 770, 818; 1996, cc. 164, 440, 579, 869; 1997, c. 587; 2000, cc. 947, 1006; 2001, c. 589; 2005, c. 714; 2009, c. 736; 2012, cc. 803, 835.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

3/14/2018


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