GRIEVANCE POLICY & PROCEDURE

POLICY NUMBER: CEMS-024

POLICY:

It is the policy of the Common Council to provide fair, equitable, and satisfactory working arrangements for City employees. Every effort will be made to resolve employee grievances informally with the least amount of worry and delay. In some cases, however, it becomes necessary to proceed through a formal process and panel review to resolve a given grievance.

Accordingly, the following procedures and regulations are established. This policy shall apply to all permanent full-time and part-time personnel, except department heads, the City Attorney, and Assistant City Attorneys, unless otherwise required by controlling legal authority. Any complaint by a department head should be discussed directly with the City Manager. The City Manager shall make the final determination. Any complaint from an Assistant City Attorney should be discussed directly with the City Attorney, who shall make the final determination. Probationary, temporary, seasonal, and limited term employees are excluded from using this grievance procedure. Law enforcement officers whose grievance is subject to the provisions of Chapter 5 (§ 9.1-500 *et seq*.) of Title 9.1 of the Virginia Code may elect to proceed pursuant to those provisions in the resolution of their grievance rather than pursuant to this policy, but may not pursue both. Law Enforcement Officers must provide notice under which grievance procedure they are proceeding in their initial written notice of grievance.

DEFINITION:

In accordance with Sections 15.2-1506 and -1507 of the Code of Virginia, a grievance is a complaint or dispute by an employee relating to their employment, including but not necessarily limited to:

A) disciplinary actions, including certain disciplinary actions, discharges, disciplinary demotions, and suspensions, provided that discharges are grievable whenever resulting from formal discipline or unsatisfactory job performance

B) the application of personnel policies, procedures, rules**,** and regulations, including the application of the contents of ordinances, statutes, or established personnel policies, procedures, rules, and regulations

C) acts of retaliation as a result of utilization of the grievance procedure or participation in the grievance of another local government employee

D) complaints of discrimination based on race, color, creed, political affiliation, religion, age, disability, national origin, sex, marital status, pregnancy, childbirth or related medical conditions, sexual orientation, gender identity, or military status

E) acts of retaliation because the employee has complied with any law of the United States or of the Commonwealth of Virginia, has reported any violation of such law to a governmental authority, or has sought any change in law before the Congress of the United States or the General Assembly

PROCEDURE:

An employee wishing to file a grievance shall have the right to follow all the steps of this procedure as listed below with complete freedom from reprisal. This does not, however, confer the right upon anyone to make fraudulent, slanderous, or libelous statements. After submission

of the initial notice 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 noncompliance within five (5) business days of receipt of written notification by the other party of the compliance violation. Such written notification by the grievant shall be made to the City Manager or their designee. The City Manager, or their designee, shall determine compliance issues occurring before the hearing stage. The City Manager, or their designee, may require a clear written explanation of the basis for just cause extensions or exceptions. Compliance determinations made by the City Manager, or their designee, are subject to judicial review by filing a petition with the Winchester Circuit Court within 30 days of the compliance determination.

STEP I

In order to have a grievance, as defined herein, heard, an employee must contact their immediate supervisor for a discussion of the grievance within twenty (20) business days of the occurrence of the action or event causing the grievance or of the date when the employee could have reasonably been expected to have learned of the act or event. The supervisor shall immediately discuss the grievance with the employee and make a careful inquiry into the facts and circumstances of the complaint. The supervisor shall give the employee a written reply within ten (10) business days following receipt of the complaint. Business days do not include authorized leave time of the person required to take some action.

STEP II

If the grievance is not resolved as a result of Step I, the employee may, within ten (10) business days from the date of receipt of the Step I reply, file on GRIEVANCE FORM, STEP II, a written grievance with their department head. The employee must be sure that the written grievance is complete in all details at this stage of the procedure and must state the specific relief they expect to obtain through the grievance procedure. The department head shall immediately discuss the grievance with the employee and any appropriate witnesses for each side. Following the meeting, the department head shall inform the employee of their decision and the reasons on GRIEVANCE FORM, STEP II within ten (10) business days following receipt of the written grievance.

STEP III

If the department head's response does not resolve the grievance, the employee may submit a written request for a hearing with the employee’s explanation of what occurred within ten (10) business days from the date of receipt of the Step II reply to the City Manager, or their designee, on the GRIEVANCE FORM, STEP III. A copy shall also be sent to the employee's department head. Upon receipt of the written request for a hearing, and verification that Steps I and II have been exhausted, the City Manager shall schedule a hearing within ten (10) business days. The City Manager may request the presence of the department head or any other City official and witnesses at the hearing, and the employee may also have a representative and witnesses of their choice present. The City Manager shall give the employee a written reply on the GRIEVANCE FORM, STEP III, within ten (10) business days after conclusion of the hearing. A copy of the reply shall be sent to the employee's department head.

STEP IV

If the City Manager's reply does not resolve the grievance, the employee may submit a request that their grievance be heard by a panel to the City Manager, or their designee, within ten (10) business days from the date of receipt of the Step III reply, using the REQUEST FOR PANEL HEARING FORM. This shall be the final step of the grievance procedure.

In this step, it is not necessary that the employee provide a written explanation of what occurred, as this was included in their written request submitted at Step II. The written request is a part of the official record and will be made available to the grievance panel.

Within ten (10) business days after the date of the written request for a panel hearing, the Panel shall be chosen. One member shall be chosen by the grievant, one member shall be chosen by the City Manager, and one member shall be chosen by the first two appointees, who shall serve as Chairperson. If no agreement on a third member can be made, the selection shall be made by a Judge of the Winchester Circuit Court. To ensure an impartial panel, the Panel shall not be composed of any persons having direct involvement with the grievance being heard by the Panel or with the complaint or dispute giving rise to the grievance. Employees who are in 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 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, or employee of the attorney, shall serve as a panel member. The Panel shall schedule the date, time and place for the hearing, which shall be within ten (10) business days following selection of the Panel, unless otherwise agreed by the parties and Panel Members.

The parties shall not discuss the substance of any grievance or the problem giving rise to the grievance with any Panel Members prior to the hearing. Any matters requiring the attention of the Panel shall be communicated in writing with copies to all parties.

Both the grievant and the City 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 the City before the Panel without being in violation of Virginia law. Copies of the written record of the case from Step II shall be provided to the Panel Members by the City. The grievant may provide any documentation in support of the grievance to the Panel Members, with a copy to the City. The grievant and their attorney shall be allowed access to and copies of all relevant files intended to be used in the grievance proceeding at least ten (10) business days prior to the scheduled hearing. Documents, exhibits and lists of witnesses shall be exchanged between the parties at least five (5) business days in advance of the hearing.

The conduct of the hearing shall be as follows:

1. The Panel has the discretion to determine the propriety of attendance at the hearing of persons not having a direct interest in the hearing, and, at the request of either party, the hearing shall be private.
2. At the beginning of the hearing, the panel may ask for statements clarifying the issues involved.
3. The Panel has the authority to determine the admissibility of evidence without regard to the burden of proof, or the order of presentation of evidence, as long as a full and equal opportunity is afforded to all parties for the presentation of their evidence. Exhibits, when offered and when so received, shall be marked and made part of the record.
4. The employee and supervisor, or their representative, shall then present their claim and materials of proof and witnesses who shall submit to questions or other examination. The Panel may, at its discretion, vary this procedure, but shall afford full and equal opportunity

to all parties and witnesses for presentation of any relevant materials of proof. Witnesses shall normally be present in the panel hearing only while giving their testimony.

5. The parties may offer evidence and shall provide such additional evidence as the Panel may deem necessary to an understanding and determination of the dispute. The Panel shall be the judge of relevancy and materiality of the evidence offered. All evidence shall be taken in the presence of the Panel and of the parties.
6. All evidence taken by the Panel shall be under oath.
7. Failure of either party without just cause to comply with all substantial procedural requirements at the panel hearing shall result in a decision in favor of the other party, provided the party not in compliance fails to correct the noncompliance within five (5) business days of receipt of written notification by the Panel or other party of the compliance violation.
8. The Panel has the responsibility to interpret the application of appropriate City policies and procedures in the case. It does not have the authority to formulate or to change policies or procedures.
9. The majority decision of the Panel, acting within the scope of its authority, shall be final, subject to existing policies, procedures, and law.
10. The Panel shall render its decision within ten (10) business days of the conclusion of the hearing.

The question of whether the relief granted by a Panel is consistent with written policy shall be determined by the City Manager, unless he 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 Commonwealth Attorney. Either party may petition the Circuit Court for an order requiring implementation of the decision of the Panel.

Notwithstanding any contrary provisions, a final hearing decision rendered under the provisions of this policy that would result in the reinstatement of any sheriff's employee who has been terminated for cause may be reviewed by the Winchester Circuit Court upon the filing of a petition by the City. The review of the Circuit Court shall be limited to the question of whether the decision of the Panel was consistent with provisions of law and written policy.

Decisions Regarding Grievability: Decisions regarding grievability and access to the procedure shall be made by the City Manager at any time prior to the panel hearing, at the request of the City or grievant, within ten (10) calendar days of the request. A copy of the ruling shall be sent to the grievant. Decisions of the City Manager may be appealed to the Winchester Circuit Court on the issue of whether the grievance qualifies for a panel hearing. Proceedings for review of the decision of the City Manager shall be instituted by the grievant by filing a notice of appeal with the City Manager within ten (10) business days from the date of receipt of the decision and giving a copy thereof to all other parties. Within ten (10) business days thereafter, the City Manager shall transmit to the Clerk of the Circuit Court: a copy of the decision of the City Manager, a copy of the notice of appeal, and the exhibits. A list of the evidence furnished to the Circuit Court shall also be furnished to the grievant. The failure of the City Manager 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 City Manager to transmit the record on or before a certain date.

Within thirty (30) business 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 City Manager 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 City Manager or may reverse or modify the decision. The

decision of the Court shall be rendered no later than fifteen (15) business days from the date of the conclusion of the hearing. The decision of the Court is final and is not appealable.

Matters Deemed Not Grievable: The City retains the exclusive right to manage its affairs and operations. Accordingly, the following complaints are not grievable:

1. Establishment and revision of wages or salaries, position classification or general benefits
2. 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
3. The contents of ordinances, statutes or established personnel policies, procedures, rules and regulations
4. Failure to promote except where the 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. 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, a discharge, layoff, demotion, or suspension from duties because of lack of work, reduction in work force, or job abolition
7. The hiring, promotion, transfer, assignment and retention of employees within the local government
8. The relief of employees from duties of the local government in emergencies
9. Verbal and written reprimands that do not include performance requirements, such as an Employee Improvement Plan, a reduction in salary, pay grade, pay classification, rank, or a mandatory transfer, unless the basis for the reprimand is alleged to be retaliation or discrimination

In any grievance brought under the exception to number 6, the action shall be upheld upon a showing by the City that there was a valid business reason for the action and the employee was notified of the reason in writing prior to the effective date of the action.

Costs and Expenses: Non-City employees serving as panel members are not compensated or reimbursed for any expenses. City employees who serve as witnesses or panel members during normal working hours are compensated at their regular rate of pay and this compensation is not charged against any leave.

Grievants still employed by the City are compensated at their regular rate of pay for the time spent during normal working hours for hearings provided in this procedure. This compensation is not charged against any leave.

Employees who are grieving termination are not compensated except in cases where a panel decision results in reinstatement with back pay.

The grievance procedure is designed for an employee to go through the process without the necessity for representation. While the employee has the freedom to select a representative of their choice, if desired, there is no provision for any compensation or expense reimbursement for a representative or attorney.