




**WINCHESTER POLICE DEPARTMENT OPERATION ORDER**

**NOTE:** This policy is for internal use only, and does not enlarge an employee’s civil liability in any way. It should not be construed as the creation of a higher standard of safety or case in an evidentiary sense, with respect to third party claims. Violation of this policy, if proven, can only form the basis of a complaint by this Department, and then only in a non-judicial administrative setting.

<b>Number</b> 1-18		<b>Effective Date</b> March 20, 2023	<b>Review Date</b> March 1, 2020	<b>Reviewing Division</b> Administration
<b>Subject</b> <b>GRIEVANCES</b>		<input type="checkbox"/> New Policy  <input checked="" type="checkbox"/> Amends  <input type="checkbox"/> Replaces		This policy shall apply to personnel assigned to the following divisions:  <input checked="" type="checkbox"/> All Personnel  <input type="checkbox"/> Patrol Division  <input type="checkbox"/> Administration Division  <input type="checkbox"/> Investigation Division
<b>References:</b> CEMS: 024  VLEPSC: PER.08.01 - .04  CALEA				
 <hr/> Chief of Police or Designee		March 20, 2023 <hr/> Date		

**I. PURPOSE**

The purpose of this policy is to establish the grievance and appeal procedures for all employees and to define for sworn personnel the choice available in certain cases.

**II. POLICY**

It shall be the policy of the Winchester Police Department to provide fair, equitable, and clearly defined means for the resolution of grievances and appeals of disciplinary action, and to ensure employees and their supervisors a reasonable opportunity to exercise the rights set forth in this policy. Every effort will be made to resolve employee grievances informally with the least amount of worry and delay. Law enforcement officers may choose alternative policies as set forth in Virginia Code 9.1, Chapter 5.

**III. APPLICABILITY**

**A. General**

1. Except as expressly stated otherwise herein, the provisions of this policy shall apply to all full-time and classified part-time employees of the Department, except the Chief of Police.
2. The procedures of this policy are not available to any employee, sworn or non-sworn, who is a temporary employee or is serving a probationary period for an original appointment, except in matters concerning complaints of discrimination on the basis of race, color, religion, national origin, political affiliation, gender, age, or disability.

3. Sworn employees of the Department may elect to use the procedures of this policy or the procedures provided in Virginia Code in cases where disciplinary action is recommended.
4. Sworn employees who wish to appeal disciplinary action shall declare in writing their choice of the procedures of this policy or those provided in Virginia Code. This notice shall be provided at the time the employee first makes known his or her intention to appeal.
5. A sworn employee's decision to use the provisions of this policy or to proceed under Virginia Code is final and binding. In no case shall an employee be permitted to use both procedures for disciplinary cases.
6. Nothing contained in this policy shall prohibit the informal counseling of an employee by a supervisor regarding a minor infraction of Department policy, procedure, or regulation, or of personnel policies of the City where they are applicable, provided such counseling does not result in disciplinary action being taken.
7. Nothing in this policy shall prevent the immediate suspension without pay of any employee whose continued presence on the job is deemed to be a substantial and immediate threat to the welfare of the Department or the public, nor shall anything in this policy prevent the immediate suspension of an employee for refusing to obey a direct order issued in conformance with Department regulations or policies.

#### **IV. DEFINITIONS**

##### **A. Grievance**

As defined in Virginia Code, 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, (iii) acts of retaliation as a result of utilization of the grievance procedure or participation in the grievance of another local government employee, (iv) complaints of discrimination on the basis of race, color, creed, political affiliation, age, disability, national origin or gender; and (v) acts of retaliation because the employee has complied with any law of the United States or of the Commonwealth, has reported any violation of such law to a governmental authority, or has sought any change in law before the congress of the United States or the General Assembly."

#### **V. GRIEVANCE PROCEDURES**

##### **A. General**

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

B. Compliance

After the initial filing of a written grievance, failure by 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. 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.

C. Grievance Coordination and Control

The City of Winchester Human Resources Department shall be responsible for coordination of the grievance procedures once it reaches the written stage. The grievance file shall be analyzed annually by the Chief of Police to determine any trends that might indicate a need for administrative action. Grievance records will be maintained in the City of Winchester Human Resources Department separate from the employee personnel file.

D. Costs and Expenses

1. 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.
2. A grievant who is still employed by the City is compensated at his or her regular rate of pay for the time spent during normal working hours for hearings provided in this policy. This compensation is not charged against any leave.
3. Employees who are grieving termination are not compensated except in cases where a panel decision results in reinstatement with back pay.
4. 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 his or her choice, if desired, there is no provision for any compensation or expense reimbursement for a representative.

E. Matters Not Grievable:

The following matters are not grievable:

1. Conditions of employment and law and policy established by the City Council; and
2. By Virginia law, wages, salaries and fringe benefits.

3. Verbal and written reprimands which do not include performance requirements such as an Employee Improvement Plan, or a reduction in salary, pay grade, pay classification, rank or mandatory transfer unless the basis for the reprimand is alleged to be retaliation or discrimination.

G. Reserved Rights of the City

The establishment of this procedure shall in no way remove the right of the City to do the following, provided that none of these rights may be exercised in an arbitrary or capricious manner:

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. The methods, means, and personnel by which work activities are to be carried on, except where such action affects an employee who has been reinstated within the previous six (6) 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;
5. Failure to promote except where the employee can show that established promotional policies or procedures were not followed or applied fairly;
6. The hiring, promotion, transfer, assignment, and retention of employees within the local government; and
7. The relief of employees from duties of the local government in emergencies.

**VI. GRIEVANCE APPEAL STEPS**

A. Step I – Immediate Supervisor

1. An employee who has a grievance as defined herein, shall 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, contact his or her immediate supervisor for a discussion of the grievance.

2. The supervisor shall immediately discuss the grievance with the employee and make a careful inquiry into the facts and circumstances of the complaint.
3. 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.

B. Step II – Chief of Police

1. If the grievance is not resolved as a result of Step I, the employee may within five (5) business days thereafter, file on Grievance Form Step II, a written grievance with the Chief of Police.
2. The employee must be sure that the written grievance is complete in all details at this stage of the process and must state the specific relief he or she expects to obtain through the use of the grievance procedure.
3. The Chief of Police shall immediately discuss the grievance with the employee and any appropriate witnesses for each side.
4. Following the meeting, the Chief of Police shall inform the employee of his or her decision and the reasons therefore on Grievance Form Step II, within ten (10) business days following receipt of the written grievance.

C. Step III – City Manager

1. If the Chief of Police's response does not resolve the grievance, the employee may within five (5) business days thereafter, file with the City Manager on Grievance Form Step III, a written request for a hearing, containing the employee's explanation of what has occurred. A copy shall also be sent to the Chief of Police.
2. Upon receipt of the written request for a hearing, and verification that Step I and Step II have been exhausted, the City Manager shall within ten (10) business days schedule the hearing requested.
3. The City Manager may request the presence of the Chief of Police or any other City official and witnesses at the hearing, and the employee may also have a representative and witnesses of his or her choice present.
4. The City Manager shall give the employee a written reply on Grievance Form Step III, within ten (10) business days after conclusion of the hearing. A copy of the reply shall be sent to the Chief of Police.

D. Step IV – Panel Hearing

1. If the City Manager's reply does not resolve the grievance, the employee may, within ten (10) business days thereafter file with the City Manager on a Request For Panel Hearing form, a request that his or her grievance be

submitted to a panel hearing, which shall be the final step of the grievance procedure.

2. In this step it is not necessary that the employee again provide a written explanation of what has occurred, as this was contained in the written request submitted at Step II and as part of the record will be made available to the grievance panel.
3. Within ten (10) business days after the date of the written request for a panel hearing, a 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 chairman.
4. If no agreement on a third member can be made, the Judge of the Circuit Court shall make the selection.
5. To insure 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.
6. 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, 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.
7. 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.
8. 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.
9. 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.
10. The employee may have present at the hearing a representative or legal counsel at his or her own expense. Likewise, the City may have present at the hearing a representative or legal counsel. Copies of the written record of the case from Step II shall be provided to the panel members by the City. Documents, exhibits, and lists of witnesses shall be exchanged between the parties in advance of the hearing. The conduct of the hearing shall be as follows:
  - a. The panel shall limit attendance at the hearing to persons having a direct interest in the case.

- b. The panel may, at the beginning of the hearing, ask for statements clarifying the issues involved.
  - c. 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, so 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.
  - d. The employee and supervisor, or their representative shall then present their claim and proofs and witnesses who shall submit to questions or other examination. The panel may, at its discretion, vary this procedure, but shall afford full and equal opportunity to all parties and witnesses for presentation of any relevant materials of proof. Witnesses shall normally be present in the panel hearing only while giving their testimony.
  - e. 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.
  - f. All evidence taken by the panel shall be under oath.
- 11. The panel has the responsibility to interpret the application of appropriate City policies and procedures in the case. It does not have the prerogative to formulate or change policies or procedures.
  - 12. The panel shall render its decision within ten (10) business days of the conclusion of the hearing.
  - 13. The majority decision of the panel shall be final and binding and shall be consistent with provisions of law and written policies. 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's Attorney. Either party may petition the circuit court for an order requiring implementation of the decision of the panel.

E. Decisions Regarding Grievability

- 1. 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 local government or grievant, within ten (10) calendar days of the request. A copy of the ruling shall be sent to the grievant.
- 2. Decisions of the City Manager may be appealed to the circuit court on the issue of whether the grievance qualifies for a panel hearing.

3. 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.
4. Within ten (10) business days thereafter, the City Manager shall transmit to the Clerk of the Circuit Court to which the appeal is taken:
  - a. A copy of the decision of the City Manager;
  - b. A copy of the notice of appeal; and
  - c. The exhibits; and
5. A list of the evidence furnished to the circuit court shall also be furnished to the grievant.
6. 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.
7. Within thirty (30) business days of receipt of such records by the Clerk of the Circuit Court, 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.
8. The court, in its discretion, may receive such other evidence, as the ends of justice require.
9. The court may affirm the decision of the City Manager, or may reverse or modify the decision.
10. 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.