City of Winder Personnel Policy Manual
Title: Appeals and Grievance
Date Issued: 03/2013
Policy: 135

Mayor

City Administrator

135.10 **Purpose**

The purpose of this Administrative Regulation is to establish a process for addressing and resolving problems within departments. Employees are free to seek resolution of problems without fear of discrimination, coercion, restraint, or reprisal.

135.11 **Definitions**

A. ADVERSE ACTION - An action taken by a supervisor or designee, for cause, that results in a disciplinary suspension without pay, disciplinary salary reduction, disciplinary demotion, or disciplinary dismissal.

B. GRIEVANCE - A grievance is a claim initiated by an employee alleging that his employment or productivity has been adversely affected by unfair treatment, unsafe or unhealthy working conditions, erroneous or capricious application of Agency policies and procedures, or illegal discrimination.

C. APPEAL – The ability to submit a request to the Board of Appeals regarding a termination for cause in which established policies or procedures were improperly followed. By being provided the ability to file an appeal, employees should not assume they have a protected property interest in continued employment, since all employees serve at the pleasure of the City Administrator and Mayor/Council.

135.12 **Non-Grievable Actions**

A. Matters which concern the establishment or alteration of City policy or procedure, performance appraisals, or other management rights are not grievable.

B. Issue or actions occurring beyond working hours or while the employees are clearly off the clock and not on City property.

C. Work activity accepted by the employee as a condition of employment or which may be reasonably expected to be a part of the job content. The measurement and assessment of work activity through a performance evaluation. However, an employee may submit written documentation within fifteen (15) days of the evaluation to the City Administrator if they believe there are false statements noted in the evaluation. The City Administrator or designee will review all written documentation within

thirty (30) days and notify the employee and the employee's Department Head of his findings.

D. Failure to promote except where the employee can show established promotional policies or procedures were not followed.

E. Oral or written reprimands, layoff for lack of work, removal of duties, reorganization, transfers, reduction in work force, or job abolition.

F. Employees and/or non-employees may not submit a grievance on behalf of another employee or based on third party accounts.

135.13 **Time Limits For Presenting a Grievance**

No grievance will be considered unless presented within fifteen (15) calendar days of the date on which the employee reasonably could have been expected to know of the events or conditions which provide the basis for the grievance.

135.14 **Recording of Grievance**

Notes setting forth the grievance and the action taken shall be written at each step of the procedure by the persons or by the group hearing the grievance. Whenever the grievance is appealed to the next higher step, the aggrieved employee shall be given a signed copy of such records and the original shall become a part of the official Personnel record.

135.15 **Grievance Procedures**

A. Employees cannot use this procedure to complain about any proper order, directive, regulation, policy or administrative decision issued by any supervisor or management official who is acting within his delegated authority. If there is reasonable evidence that proper authority has been exceeded; this procedure may be used to challenge this issue.

B. The employee must submit the initial complaint to the Human Resources Department or to the City Administrator.

C. Written grievances must explain the complaint and what remedy is sought.

D. The grievance will be forwarded to the employee's Department Head to review the complaint with the employee and a member of the Human Resources Department or designee appointed by the City Administrator. The employee shall be notified of the meeting date and time in writing within five (5) business days from the time the grievance is received.

E. In the event that the Department Head is the one complained of, the reports should be presented immediately to the next highest level of management.

F. The Human Resources Department will contact the employee for his review of the decision rendered within ten (10) days of the meeting.

G. An employee desiring to continue a grievance to a higher step must submit a request in writing to Human Resources Department within five (5) business days after receiving the decision or within five (5) business days after any management official fails to observe the time limits established by this procedure.

H. The City Administrator will review the grievance and recommendation made at the Department Head level and establish a meeting with the employee and employee's supervisor within fifteen (15) calendar days. The employee and the employee's supervisor will be notified of the decision within ten (10) business days after the meeting has occurred.

I. For each grievance, a file will be maintained of all written material submitted by the employee or management for use at every step in the Human Resources Department.

J. The City Administrator's decision shall be the final administrative level for hearing all grievances except those involving disciplinary dismissal. In grievances involving disciplinary dismissal actions, employees may appeal such actions to the Personnel Appeals Board.

K. Grievances brought forth by a Department Head will be reviewed by the Mayor and Mayor Pro-tem, in which their decision shall be final. The Mayor and Mayor Pro-tem reserve the right to refer the review to an outside third party source to verify statements presented and to collect facts.

135.16 **Protected Status Discrimination or Sexual Harassment Grievance**

A. It is the policy of the City to maintain a working environment free from any form of sexual harassment or sexual misconduct, by any of its employees. Any individual who feels that he has been discriminated against or harassed by any City Employee, or a City policy or procedure because of race, color, religion, gender, national origin, age, disability, sexual orientation or any other legally protected status should immediately notify the Personnel Officer.

B. All cases involving a grievance in which the sole claim relates to a legally protected status or sexual harassment will be referred to an outside investigator.

C. Based on the initial review one or both parties named in the grievance may be placed on administrative leave or separated while the grievance is under investigation.

D. The Mayor and Council shall have the sole discretion to accept or reject the findings of the outside investigation.

135.17 **Filing A False Grievance**

Any employee determined to have filed a false or misleading grievance will be suspended or terminated.

135.18 **Appeals**

A. Employees Eligible for Appeal. Any regular employees actively employed for more than one year who have been the subject of a disciplinary dismissal action, may avail themselves of the grievance procedure as set forth above. If employee(s) are not satisfied with the action taken by the City Administrator in the last step of the grievance procedure.

B. Appeals Documentation. The employee shall file such an appeal in writing, with the Human Resources Department within fifteen (15) calendar days of the effective date of such action and shall file a copy of such an appeal at the same time with his immediate supervisor. Additionally, the employee shall provide with the notice to appeal a general written statement for the reason(s) for the appeal.

C. Time and Place of Hearing. The City Administrator shall set a time and place for a hearing to be held not less than five (5) or more than thirty (30) business days after receipt of the request and shall notify the employee thereof in writing. If the City is notified that the employee has obtained legal representation, an additional thirty (30) days may be added to consult with legal counsel.

D. Hearing and Procedures. Hearing shall be conducted informally and technical rules of evidence shall not apply. The affected employee must be present and willing to testify under oath and be recorded if requested. A majority vote of the members of the Personnel Appeals Hearing Board shall be final. The Personnel Appeals Hearing Board may discuss the terms of the case with legal counsel, witnesses, and/or the City Administrator before rendering a decision. All disciplinary actions are in full-force until the Appeals Hearing Board has rendered a decision.

E. Notification of Results of Hearing. Within fifteen (15) calendar days following the requested hearing, the Personnel Appeals Board shall render a written decision with respect to the action taken. The Board shall have the power to uphold, rescind, or modify the dismissal action in the form of a demotion or suspension without pay, and shall file the decision with the Human Resources Department.

    1) In the event the Appeals Hearing Board finds that the disciplinary action was not well founded, the affected employee shall be paid in full for such portion of time as he was unjustly terminated.

2) In the event that the disciplinary action was overturned the employee affected shall be restored to his former position and pay status, or to a position in the same pay status.

F. Rules for Conduct of Appeals.

1) The time limits specified above may be extended to a definite date by mutual agreement.

2) The employee may request the assistance of another person of his own choosing in preparing and presenting his appeal of a termination. The City will not compensate the employee for any assistance.

3) The employee and any selected representative may not use work time to prepare or confer about presenting the appeal.

4) The notice of appeal shall contain particulars as to the nature of the grievance and the remedy requested, and will not raise any issue not previously raised before the City Administrator during the grievance process.

5) The Personnel Appeals Board will only evaluate, review, or discuss information directly related to the stated reasons noted for the termination. (I.e. if the employee was terminated for attendance violations, the Appeals Board will only take into consideration issues of the employee's attendance).

6) All documentations (to include witness statements) to be considered, shall be submitted through the Human Resources Department a minimum of five (5) business days before the scheduled hearing date.

7) The Personnel Appeals Board will not accept anonymous witness statements or statements regarding hearsay or third party accounts. All witness statements shall include a signature, a printed name, and contact information and be able to discuss their statement(s) with the Personnel Appeals Board or designee if requested.

8) It shall be at the sole discretion of the Personnel Appeals Board whether to allow verbal testimony of witnesses.

9) Reprisal for using the appeals procedures will not be tolerated and will be monitored by the Mayor and Council.

135.19 **Make Up of the Personnel Appeals Hearing Board**

A. The Hearing Board shall be made of two (2) council members to be selected by the Mayor, and one (1) employee or Department Head, selected by the City Administrator. Employees selected will not be employed in the same department as the employee submitting the appeal. Only employees with two (2) or more years of continuous service with the City shall be eligible to be selected to serve on the Personnel Appeals Hearing Board. The board shall determine among the selected members, who will serve as the Personnel Appeals Hearing Board Chair.

B. The Mayor at his sole discretion, in cases involving a Department Head may elect to have the entire Council to hear the appeal. In cases where the entire Council will act as the Personnel Appeals Hearing Board, the Mayor will serve as the Chair.