



ROCKY MOUNT, NC
THE CENTER OF IT ALL

ROCKY MOUNT CITY COUNCIL

COMMITTEE OF THE WHOLE MEETING

MONDAY, DECEMBER 9, 2019

CITY COUNCIL COMMITTEE OF THE WHOLE

**MONDAY, DECEMBER 9, 2019
6:30 PM**

AGENDA

1. Ordinance Amending Personnel Ordinance

**ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF ROCKY MOUNT AMENDING
THE PERSONNEL ORDINANCE (CHAPTER 16)
OF THE CITY CODE TO ELIMINATE PEER REVIEW
PANEL APPEALS FOR EMPLOYEES WHO HAVE
BEEN RECOMMENDED FOR DISMISSAL AND TO ADD
PEER REVIEW PANEL APPEALS FOR ALL EMPLOYEES
SUBJECT TO DISCIPLINARY ACTION OTHER THAN
DISMISSAL RECOMMENDATIONS**

WHEREAS, the City Council has determined that all employees should have the option as part of the grievance procedure (in addition to the right of appeal to the City Manager) to appeal any disciplinary action except a dismissal recommendation to a peer review panel; and

WHEREAS, the City Manager is a direct appointee of the City Council and the administrative head of the City of Rocky Mount with the sole authority to appoint, suspend, and remove all city employees and department heads as provided in the City Charter; and

WHEREAS, the City Council has determined that the City Manager, or his or her designee, by virtue of the authority vested in that office by the City Charter, and as the administrative head of the City, should have the sole authority to hear and determine the appeal of any employee who has been recommended for termination;

NOW, THEREFORE, be it ordained by the City Council of the City of Rocky Mount:

Section 1. Section 16-109, Dismissal, and Section 16-142, Grievance Procedure, of Chapter 16 of the City Code of the City of Rocky Mount are hereby rewritten to read as follows:

Sec. 16-109. - Dismissal.

- (a) The provisions of this section are applicable to all regular full-time employees who have completed their probationary periods as provided in section 16-106.
- (b) It is the policy of the city to correct the unsatisfactory work performance or conduct of its employees by providing each employee with the necessary information and training and by the fair and uniform use of disciplinary actions. When these efforts have failed, or when an employee's actions are of a serious or threatening nature, the city has the right and obligation, following a complete and fair hearing, to dismiss the employee from city service.

- (c) Each supervisor has the authority to recommend the dismissal of an employee under his/her supervision. The employee's department head has the authority, after consulting with the human resources director concerning the facts of the case, to notify the employee that he/she is being recommended to the city manager for dismissal. The department head must inform the employee that his/her dismissal will take effect unless the employee appeals the recommendation to the city manager in accordance with provisions of this section.

The human resources director has the authority to review the facts of each case in which dismissal is recommended for conformance to policy and procedure. The human resources director acts in an advisory capacity only and does not have the authority to uphold or overturn the recommendation of the department head.

The city manager has the authority, upon the appeal of an employee, to uphold, alter or overturn the recommendation of the department head. In all such cases the decision of the city manager is final.

- (d) A regular full-time employee may be dismissed for any one (1) or combination of the following reasons:
 - (1) Fraud in securing or maintaining appointment or promotion;
 - (2) Inexcusable neglect of duty;
 - (3) Inefficiency or incompetency in performance of duties;
 - (4) Physical or mental disability which impairs performance of the work involved;
 - (5) Refusal to perform work assigned or to comply with reasonable written or verbal instructions of a supervisor;
 - (6) Use of alcohol or other mind-altering drugs while on duty, or reporting to work under their influence;
 - (7) Continued unexcused absence;
 - (8) Chronic absenteeism or tardiness;
 - (9) Conviction of a crime which will render the employee unable to perform tasks or which involves moral turpitude;
 - (10) Improper political activity as defined in section 16-158;
 - (11) Misuse, misappropriation, theft of or willful damage to public property;
 - (12) Discourteous treatment of the public or other employees;
 - (13) Use of abusive or obscene language or engaging in immoral or obscene behavior while on duty;

- (14) Falsifying work or official city records;
- (15) Unauthorized release of information which is designated by city policy as confidential;
- (16) Disregard for citywide or departmental work and safety rules;
- (17) Disregard for applicable residency restrictions;
- (18) Failure to obtain or maintain a current license or certificate required by law as a condition for performing the job;
- (19) Participation in any action that would in any way seriously disrupt or disturb the normal operation of the division, department or any other segment of municipal government;
- (20) Possession of firearms or other deadly weapons on the job or on property owned, leased as lessee, operated, occupied, managed, or controlled by the city unless the employee is required as a condition of his or her employment to carry such firearms or deadly weapons.
- (21) Acts during or outside of duty which are incompatible with the public service and which impair the ability of the employee to perform the tasks to which he/she has been assigned.

The decision to recommend dismissal for any one (1) or combination of the above reasons will be based on the sound and considered judgment of the supervisor and/or department head in accordance with the provisions of this section to assure that the good of the city service is served thereby and that the intent of the policy is followed.

- (e) Each employee who has been recommended by his/her department head for dismissal shall be presented with a written notice of such recommendation and shall have the right to appeal this recommendation to the city manager, within seven (7) calendar days of his/her receipt of the notice or within ten (10) calendar days from the date the notice was mailed to the employee.

Within seven (7) calendar days of the notice of appeal, the city manager or his/her designee shall schedule a hearing for the employee. At this hearing the employee shall have the right to be represented by counsel, to hear the evidence against him/her, to contest adverse evidence and to present favorable evidence.

Within seven (7) calendar days following the hearing, the city manager shall render a written decision to the employee. In all cases, the decision of the city manager is final.

- (f) An employee recommended for dismissal shall be immediately suspended without pay pending the exercise of his/her appeal rights. If the final decision is in favor of the employee, the city manager may award to the employee all or part of the pay and benefits lost as a result of the suspension. A dismissed employee is entitled to

receive pay for all hours worked prior to his/her suspension pending appeal but is not entitled to any other back pay or pay for any unused vacation or sick leave.

(Code 1967, § 2-50; Ord. No. 0-91-45, § 1, 7-8-91; Ord. No. 0-96-2, § 1, 1-8-96)

Sec. 16-142. - Grievance procedure.

- (a) *Purpose.* The city recognizes that the fair and prompt resolution of employee problems, complaints and questions is critical to good employee relations. For that purpose, a formal grievance handling process has been established. This process is intended to enhance, not replace, communications between an employee and his/her supervisors. It is not intended to preclude use of an "open door" policy, wherein an employee may discuss work-related matters directly with any level of management or with human resources staff. Both the grievance handling process and the traditional "open door" policy are designed to encourage an employee to voice concerns about how the application of city policies or procedures may have affected him/her. Retaliation, in any form, against an employee who makes use of this process will not be tolerated.
- (b) *Policy.* It is the policy of the city to provide a procedure to ensure that all employees have the opportunity for presentation and resolution of their grievances, complaints or problems in an atmosphere of mutual respect and understanding. All administrative and supervisory personnel are expected to act promptly and objectively within the framework of this policy. It shall be the responsibility of the Human Resources Director to review matters submitted by employees on the grievance and appeal forms to determine eligibility for investigation or resolution under the grievance handling process.
- (c) *Grievance defined.* A grievance is a complaint or problem experienced by an employee pertaining to the terms and conditions of his/her employment, the application of city policies, the working relationships between an employee and his/her supervisor, or the working relationships between an employee and his/her coworkers.
- (d) *Peer Review Panel.*
 - (1) Peer Review Panel Decisions

The panel, after examining the facts, shall have the option to:

 - a. Modify – the employee’s request for resolution of the problem;
 - b. Grant – the employee’s request for resolution;
 - c. Deny – the employee’s request for resolution.

In no case will the panel modify the decision of an employee's supervisor to make it more severe than the original action taken.

Panel decisions are made by majority vote and all decisions are final and binding. A written response, signed by all panelists, will be issued to the grievant with a copy being placed in a confidential grievance file which is maintained by the Human Resources Department for tracking of the grievance system. The facilitator will be responsible for notifying the grievant's supervisor(s) of the panel's decision in the case.

- (2) Peer Review Panel Investigations - The panel, in attempting to obtain all facts relevant to a case, may question the appealing employee, call witnesses (but does not have subpoena power), examine past practices to determine precedent, and examine other documents relevant to the case with the exception of individual personnel files. The appealing employee may authorize the panel to review portions of his/her own personnel file which may be relevant to the case at hand.
- (3) Peer Review Panel Selection - Selections of employees to serve as peer review panel members are made by the grievant within the following guidelines:
 - a. The panel will consist of five certified panelists – 2 managers and 3 peers;
 - b. Two of the five panel members must be managers; at least one of those coming from the senior manager pool;
 - c. The three remaining peer positions on the panel may be selected from any of the panelist pools, giving the grievant the flexibility of determining who he/she views as an appropriate "peer" group; and
 - d. City Council appointees are ineligible to serve on the peer review panel.

In selecting each of the manager positions on the panel, the grievant will randomly draw two names and keep one. In selecting the three "peer" positions on the panel, the appealing employee will randomly draw six names from any combination of the panelist pools and keep three.

Ensuring panelist impartiality to the extent possible, relatives of the appealing employee and supervisors and co-workers within the department are disqualified from participation. Panelists who feel that their own relationships with the grievant or their knowledge of the circumstances surrounding the case prevent their remaining impartial, have the responsibility of disqualifying themselves from the process.

- (4) Participation Voluntary
 - a. Panelist and witness participation in the Peer Review process is voluntary. Any panelist asked to serve may decline to participate in that particular case for whatever reason he/she deems valid.

- b. No individual panelist will be asked to serve as a panelist more frequently than twice in any 12 month period to prevent the process from interfering with that panelist's overall work performance or to prevent other volunteer panelists from getting the opportunity to serve on a panel. The participation rate of panelists will be monitored and reviewed periodically by the Human Resources Director.
 - c. Although participation in the Peer Review process is voluntary, the peer review hearing procedure is official City business. Hours spent in conducting peer review panel proceedings are considered hours worked and will be compensated according to City policy.
- (5) Confidentiality - All documentation, investigative information, and proceedings of the peer review panel are to be held in strictest confidence. Any panel member who violates the confidentiality of the proceedings shall be disqualified from future participation as a panelist and may be subject to disciplinary action depending on the type of information which was disclosed.
- (e) *Procedure.* When an employee experiences a grievance, he/she shall follow the procedure outlined below:
- (1) *Step 1.* The employee should discuss the problem with his/her immediate supervisor to seek a mutually satisfactory solution. Within two (2) working days, that supervisor will meet with the employee to give a verbal response to the grievance. If not satisfied, the employee may proceed to the next step in the process within two (2) working days of the immediate supervisor's response in step 1.
 - (2) *Step 2.* The employee shall document his/her grievance on the standard grievance and appeal form with a written statement of the situation and what action is requested to rectify the matter. The form shall be submitted to the Human Resources Director for forwarding to the next level of management, which in most cases, will be the division head. Within five (5) working days, the manager at that level will schedule a meeting with the employee to discuss his/her response to the grievance. Within two (2) working days of this meeting, the employee will indicate acceptance or rejection of the division head's response on the grievance and appeal form. If the response is rejected, the employee may proceed to step 3.
 - (3) *Step 3.* The employee takes his/her grievance form to the Human Resources Director for delivery to the next level of management, typically the department head. Within ten (10) working days, the department head shall meet with the employee to discuss the results of his/her investigation into the matter and his/her response. The department head's response shall be documented on the grievance and appeal form. Within two (2) working days, the employee shall indicate acceptance or rejection of the department head's response by marking the appeal form appropriately. If the employee rejects the response, he/she may proceed to step 4.

- (4) *Step 4.* The employee may, within five (5) days, elect to appeal the department head's response to:
- a. The city manager - The city manager, or his/her designee, shall meet with and respond to the employee's grievance with ten (10) working days following the employees' rejection of the response in step 3. Within five (5) working days following the meeting with the employee, the city manager shall document his/her response to the grievance on the appropriate appeal form with a copy being furnished to the employee; or
 - b. The peer review panel - If the grievance is of a nature that the matter may be heard by a peer review panel, the employee may elect this route by so notifying the Human Resources Department.
- (5) *Step 5.* In the event the subject matter of the grievance involves a loss, or reduction, of pay, or job, the employee may bypass steps 1-4 and proceed directly to step 5.

In step 5 the employee may request a hearing before the city manager, or his or her designee, or the peer review panel, for any disciplinary action other than dismissal recommendation. The employee shall make the selection by completing the necessary forms in the Human Resources Department.

- a. The city manager - If the employee elects this route, he/she will receive an administrative hearing at which he/she may be represented by an attorney and may call witnesses on his/her behalf. The city manager, or designee, in making a decision in the case, will make a finding of fact to support the decision in resolution of the grievance and may sustain or modify the supervisor's recommendation. In case of disciplinary action, the city manager has the right to lessen or increase any action recommended by the employee's supervisor(s) based on the facts in the case.
 - b. The peer review panel – The peer review panel is available for any disciplinary action other than a dismissal recommendation. If the employee elects this route, he/she has elected to participate in an employee process. The employee may be assisted in preparing or presenting his/her grievance by a trained peer panelist, but lawyers, not being city employees are not eligible to participate in the peer review process. In cases of disciplinary action, the peer panel may decide to modify the action taken, but in no case can the panel make the discipline more severe than originally recommended by the employee's supervisor.
- (f) *Rights of employee.* The employee or employees shall have the right to seek the assistance of anyone in the written presentation of their grievance. The employee or employees shall be allowed reasonable time with pay during working hours if needed to prepare for the presentation of a grievance, provided such time has been cleared with the employees' immediate supervisor so that the employees' absence will not interfere with the efficient operations of the department/division. The right of all

employees to use the grievance procedure for the purposes set forth in this policy shall be protected by each supervisor involved.

- (g) *Extension of time limits.* Due to the complexity of the grievance, availability of pertinent information, or other factors beyond the supervisor's control, he/she may not be able to meet the time limits for response outlined in the procedure. In that event, the supervisor must inform the employee of how much more time will be needed. No extension longer than twice the amount of time established in the procedure will be allowed. In cases where the supervisor takes more than the established time to render a decision, the employee will be granted an equivalent extension of the period allotted for him/her to consider acceptance or rejection of the response. If the aggrieved employee fails to appeal the decision of a supervisor to the next step in the grievance procedure during the time allotted, it will be considered that the employee has accepted the decision rendered. If the supervisor fails to respond to an employee's grievance within the time period specified, without having requested an extension, the grievance will automatically advance to the next level of management for review and resolution.

- (h) *Distribution of report form.* Upon the final resolution of the grievance, either by the City Manager's or peer panel's rendering a decision, or by the employee's accepting the decision of a superior, the Human Resources Director will be responsible for filing a copy of the decision in a confidential grievance file. In cases involving appeals of disciplinary action, the decision shall be documented in the employee's permanent personnel record.

(Ord. No. 0-91-45, § 1, 7-8-91; Ord. No. 0-92-23, § 1(c), 4-13-92)

Section 2. The City Manager is directed to amend the Personnel Policy Manual to make it consistent with the forgoing amendments to the Personnel Ordinance.

Section 3. All ordinance and clauses of ordinance in conflict herewith are hereby repealed.

Section 4. This ordinance is effective upon adoption.

Introduced: _____

Adopted: _____