

GRIEVANCE
Revised - January 2005

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A. POLICY

1. It is the policy of Tooele City to prevent the occurrence of grievances insofar as possible and to deal expeditiously and fairly with those grievances that do occur. When grievances do occur, the grieving employee may file a formal grievance pursuant to this Section. An employee's right to initiate the grievance process expires twenty (20) working days following the occurrence being grieved, or twenty (20) working days after the employee knows or should have known of the occurrence giving rise to the grievance, but in no event may an employee initiate a grievance more than one (1) year after the occurrence giving rise to the grievance.
2. Alternate Procedures - Some Sections of this Manual may provide for alternate grievance procedures, such as, sexual or other forms of harassment or discrimination based on a protected class. To resolve occurrences giving rise to grievances, grieving employees are encouraged to utilize all grievance avenues available under this Manual.

B. GENERAL GRIEVANCE

1. Eligibility. Only "Regular" and "Appointed" employees, as defined in Section 4, herein, who have successfully completed their orientation period, may grieve under this Section.
2. Occurrences that may be grieved by Regular employees are as follows:
 - a. Violations of law, committed by any City employee, that adversely affect the grieving employee;
 - b. Violations of the policies set forth in this Manual, committed by any City employee, that adversely affect the grieving employee; and/or,
 - c. Adverse employment actions that affect the grieving employee. Adverse employment actions are defined as:
 - 1) Involuntary separation/dismissal;
 - 2) Written reprimand;
 - 3) Suspension without pay;
 - 4) Involuntary transfer to a position of less remuneration. "Less remuneration" is defined as a reduction in the employee's current hourly equivalent rate of pay and does not include any premium pay, differential pay, or over time pay. Movement to a lower salary grade

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- or red-circle pay status does not constitute less remuneration for purposes of this Section; and,
- 5) Involuntary demotion to a position of less remuneration.
 - 6) For purposes of this Manual, a Significant Incident Record (SIR), verbal warning, or a written corrective action plan, in and of itself, is not considered an adverse employment action.
3. Appointed employees may grieve their involuntary separation or dismissal pursuant to Section 2-13 of the Tooele City Charter, as amended.
 4. Grievance Procedure
 - a. Supervisor - The employee may initiate a grievance in writing, by letter, memorandum, e-mail, or by completing and submitting a written grievance (Form #9), to his/her immediate supervisor within the time period specified above. The immediate supervisor will discuss the occurrence with the employee, promptly investigate the facts and circumstances of the occurrence giving rise to the grievance, and take prompt, reasonable action to remove the cause of the grievance to the extent the supervisor deems advisable and possesses the necessary authority. After receipt of a grievance, the supervisor will provide a written decision and findings to the grieving employee within ten (10) working days of receipt of the grievance, unless the supervisor needs a reasonable additional time period to investigate the grievance.
 - b. Department Head - If the supervisor does not resolve the matter to the grieving employee's satisfaction, the employee may file a written grievance (Form #9) with his/her department head within five (5) working days following receipt of the supervisor's decision. The department head will promptly investigate the facts and circumstances of the occurrence that has given rise to the grievance, and will provide a written decision and findings to the grieving employee within ten (10) working days of receipt of the grievance, unless the department head needs a reasonable additional time period to investigate the grievance.
 - c. Mayor - If the department head does not resolve the grievance to the grieving employee's satisfaction, the employee may file a written grievance (Form #9) with the Mayor within five (5) working days following receipt of the department head's written decision. The Mayor will schedule an informal hearing with the grieving employee within fifteen (15) working

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days after the receipt of the grievance. The employee may choose up to two other City employees to attend the hearing. Within five (5) working days after the conclusion of the hearing, the Mayor will provide a written decision and findings to the grieving employee, unless the Mayor needs a reasonable additional time period to investigate the grievance. A copy of both the grievance to the Mayor and the Mayor's decision are to be included in the employee's personnel file. The Mayor's decision is final and binding, except where the occurrence may be appealed to the City Council Review Committee.

5. Employees may submit a written grievance (Form #9) directly to the Appeal Board when it is alleged that the occurrence being grieved was caused or committed directly by the Mayor.

C. APPEAL BOARD

1. After exhausting the procedural steps identified in part B, above, employees may appeal the Mayor's decision to the Appeal Board if the decision resulted in:
 - a. Involuntary separation (termination or dismissal);
 - b. Suspension without pay for more than two days;
 - c. Involuntary transfer from one position to another with less remuneration; or
 - d. Involuntary demotion to a position of less remuneration.
2. Any employee may appeal to the Appeal Board if the Mayor fails to render a decision in accordance with this Section.
3. The Appeal Board will conduct its hearings in accordance with the procedures set forth in the Tooele City Code.
4. Appeals to the Appeal Board must be submitted on Form #9 to the City Recorder's Office within ten (10) working days after receiving the Mayor's decision. The City Recorder will promptly refer a copy of the appeal to the Appeal Board members. Upon receipt of the appeal, the Appeal Board will have up to twenty (20) working days to schedule a hearing.
5. Appealing employees have the right to appear before the Appeal Board in person, to be represented by legal counsel, to present their own witnesses and evidence, to have a public hearing, to confront the witnesses whose testimony is to be considered, and to examine the evidence to be considered by the Appeal Board.

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Appealing employees do not have the right to require the City to compel the attendance of witnesses not under the City's direct control.

6. The defending City representative has the right to appear before the Appeal Board in person, to be represented by counsel, to present their own witnesses and evidence, to confront the witnesses whose testimony is to be considered, and to examine the evidence to be considered by the Appeal Board.
7. The Appeal Board is entitled to determine the following:
 - a. Whether the appealing employee was afforded adequate due process;
 - b. Whether the adverse employment action was lawful;
 - c. Whether the adverse employment action was supported by substantial evidence; and,
 - d. Whether applicable, established Tooele City Policies and Procedures were substantially followed.
8. The Appeal Board may not decide an appeal based upon an interpretation of law or policy different from that of managers, override or modify policy previously approved by the City Council by ordinance, override or modify duly enacted laws or regulations, or render findings based on superceded laws, policies, procedures, or practices.
9. Each decision of the Appeal Board is by secret ballot. The Appeal Board will communicate to the City Recorder the results of the vote within five (5) working days from the date the appeal hearing. For good cause, the Appeal Board may extend the 5-day period to a maximum of fifteen (15) working days. The City Recorder, in turn, will communicate the decision to the appealing employee and to the Mayor.
10. If the Appeal Board finds in favor, in full or in part, of the appealing employee, the Appeal Board must provide that the employee receive:
 - a. the employee's salary for the period of time during which the employee is discharged or suspended without pay; or
 - b. any deficiency in salary for the period during which the employee was transferred or demoted to a position of less remuneration.

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11. Any reinstatement of salary will be offset by any compensation the employee received from other employment during the pendency of the appeal. Insurance reinstatement is under the control of the respective insurer and reinstatement may still result in the employee being subject to re-hire status, pre-existing condition clauses, etc.
12. The Appeal Board will deliver to the City Recorder written findings supporting the majority vote.
13. The City Recorder will keep a record of the appeal. This record will include, among other things,
 - a. The marked ballots;
 - b. The findings;
 - c. Any recording of the appeal proceedings; and,
 - d. All evidence and materials submitted to the Board by the City and by the appealing employee.

D. COURT OF APPEALS

The result of the Appeal Board's secret ballot vote may be appealed by either the City or the appealing employee to the Utah Court of Appeals by filing with that Court a Notice of Appeal pursuant to U.C.A. §10-3-1106 (1953), as amended. In the event an appeal is filed with the Court of Appeals, the decision of the Appeal Board, including payment of back wages, will be automatically stayed from the date of the Appeal Board's vote until a ruling has been rendered by the Court of Appeals.

E. COSTS

Each party pays its own costs and attorneys fees associated with any grievance or appeal.