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July 8, 2024

Via Electronic Mail to kbraun@warrentonva.gov
Kasey Braun, Director of Human Capital & Risk Management Division
Town of Warrenton
21 Main Street
Warrenton, VA 20186

RE: Revisions to the Town of Warrenton's Grievance Procedure

Dear Ms. Braun,

On behalf of Sands Anderson, we greatly appreciate the opportunity to assist the Town of Warrenton (the "Town") by conducting a review of the Town's Grievance procedure and providing recommendations for revisions. Below is a summary of the recommended changes made and the reasonings for each:

I. General Organization

Virginia Code § 15.2-1506 mandates that localities with over fifteen employees establish a grievance procedure that aligns with the provisions of Virginia Code § 15.2-1507. To ensure compliance and facilitate future reviews, we have restructured the original procedure to more closely mirror the organization of the statute. This reorganization will simplify the review process and ease the incorporation of any future amendments to the code.

II. Recommended Removals and Omissions from the Procedure

a. Probationary Rights

The original "Coverage of Personnel" section (now section D) granted grievance rights to probationary employees "for complaints or disputes other than dismissals that are determined to be grievable." This provision restricts the Town's ability to freely dismiss or discipline probationary employees without concerns over due process rights violations. Since this limitation is not mandated by § 15.2-1507, we recommend its removal.

b. Civilian Oversight Body

Virginia Code § 15.2-1507(A)(3)(a)(8) exempts "[l]aw-enforcement officers as defined in § 9.1-601 whose grievance is subject to the provisions of § 9.1-601 and relates to a binding disciplinary determination made by a law-enforcement civilian oversight body, except as permitted by subsection F of § 9.1-601[]" from eligibility to file grievances. Since the Town does not have a civilian oversight body, we did not include this exception in the "Coverage of Personnel" section. If the Town establishes a civilian oversight body in the future, this clause will need to be added.

c. "Standing to Pursue Grievances"

The original grievance procedure contained "Standing to Pursue a Grievance" as subsection E. This section reads as follows:

> A grievant must be personally and directly affected by an occurrence or condition before they shall be permitted to pursue a grievance. No employee may grieve another employee's job performance unless such job performance directly or adversely affects the grievant's own employment. Disputes as to an employee's standing to file a grievance shall be determined as shall any other disputes as to grievability as set forth in Section F.

This is not expressly contemplated in the code, although it is implicit within it. The "Definition of Grievance" subsection in the Town's grievance procedure and § 15.2-1507(A)(1) say "a grievance shall be a complaint or dispute by an employee *relating to his [or her] employment*[.]" This necessarily means that an employee cannot bring a grievance pertaining to something that does not personally and/or directly affect them. This interpretation is supported by *Drewery v. City of Roanoke*, 63 Va. Cir. 609 (2001), where the court held that the grievants did not have standing to file a grievance until a prior "potential [effect upon their employment] ripened into something about which they had standing to complain." *Id.* at *4. This case gives the Town the option of deleting, because the Town can simply rely on this case, or keeping the standing provision, to the extent there is value in deterring claims without standing.

d. "Consolidation of Grievances"

The original grievance procedure was contained "Consolidation of Grievances" as subsection D which read:

> In the event that an employee files more than one grievance, the Town Manager may, at any time prior to a panel hearing, consolidate those grievances for joint processing. If the grievances are consolidated, the processing of the first grievance shall be suspended until such time as the last filed grievance proceeds to the same point in this procedure. Once consolidated, the grievances shall be processed at the same time.

This is not a typical feature seen in grievance policies, and it is not specifically mentioned in § 15.2-1507. This raises questions about its permissibility. Retaining this section could obligate the Town to consolidate grievances even when it might not be desirable or might have other unintended negative effects. Removing this section provides the Town with the flexibility

to handle grievance consolidation informally, allowing for greater flexibility in negotiations with grievants.

e. Step Four Panel Hearing

We strongly recommend replacing the Step Four Panel Hearing procedure with the Hearing Officer process prescribed by § 15.2-1507(A)(10). The Code appears to recognize that local governments can unilaterally make an "election" to use a Hearing Officer instead of a panel.[1] The current procedure, however, involves appointing a three-member panel, with one member each selected by the grievant, one by the agency head, and a third member chosen by the first two appointees. If the first two appointees cannot agree on the third member, the chief judge of the circuit court must make the selection. This process can lead to delays and complications, especially if the initial members cannot reach an agreement.

While the pool of potential panel members excludes certain people from serving on the panel[2], is still overly broad, allowing individuals completely unfamiliar with the hearing process to serve. This does not always ensure the most accurate or correct outcomes. The lack of legal expertise and procedural familiarity can lead to inconsistent or uninformed decisions, further complicating the resolution of grievances.

Given these potential negatives, we believe it is in the best interest of all parties to utilize the alternative Administrative Hearing Officer method. This approach can avoid such gridlocks and ensure a more streamlined and impartial process.

Should the Town elect to keep the panel hearing process, we recommend removing subsection 2(c) and 2(d) from the "Rules for Grievance Panel Hearings" subsection limiting the authority of grievance panels. According to § 15.2-1507(A)(10)(b)(1), panels (and hearing officers) do not have "authority to formulate policies or procedures or to alter existing policies or procedures." In the original version of the Town's grievance procedure, this section was expanded to further restrict the panel's authority from "circumscribe[ing] or modify[ing] the rights afforded the parties in this procedure," and from "grant[ing] relief greater than that which the grievant has requested in the request form." Because these additions are not in the Code and are not an expansion of rights as contemplated by § 15.2-1507(A)(5)(c) (see III(a)), we recommend their removal. We also did not include them in the proposed hearing officer

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[1] § 15.2-1507(A)(5) arguably contains language suggesting that the use of a hearing officer must be agreed to by both parties, but this ambiguity has not been tested in the courts. We think that the grievance procedure, read as a whole, justifies the approach of a locality that chooses to have an administrative hearing officer only.

[2] § 15.2-1507(A)(10)((a)(1) excludes "any persons having direct involvement with the grievance being heard by the panel, or with the complaint or dispute giving rise to the grievance [from being on the panel]. Managers who are in a 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. 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."

procedure.

III. Recommended Additions to the Procedure

a. Protected classes to align with the VHRA

Virginia Code § 15.2-1507(A)(5)(c) says that "[n]othing contained in this section shall prohibit a local government from granting its employees rights greater than those contained herein, provided that such grant does not exceed or violate the general law or public policy of the Commonwealth." Because of this allowance, we recommend extending the protected classes contained in § 15.2-1507(A)(1)(iii) to encompass the protected classes covered by the Virginia Human Rights Act (§ 2.2-390 et seq.) ("VHRA"), Title VII of the Civil Rights Act of 1964, and the Genetic Information Nondiscrimination Act of 2008. The VHRA does not apply to public employers, so these additional protected statuses are optional.

b. Step Four Administrative Hearing Officer Process

As stated above, we recommend using a Hearing Officer for Step Four of the Grievance procedure. When a locality elects to use an administrative hearing officer, the officer is appointed by the Executive Secretary of the Supreme Court of Virginia from a list of qualified individuals. This ensures that the officer is a legal professional with experience and expertise in handling administrative hearings and provides for a more informed and consistent decision-making process. An administrative hearing officer also streamlines the process by eliminating the need for multiple appointments and the associated delays. Furthermore, the administrative hearing officer is selected "from the appropriate geographical region on a rotating basis," ensuring a fair distribution of cases and preventing potential biases.

While local governments are responsible for bearing the expense of the administrative hearing officer's services, this cost is often outweighed by the benefits of a more efficient and legally sound resolution process. This process ensures that grievances are heard by a knowledgeable and impartial professional, reducing the likelihood of procedural errors and enhancing the overall integrity of the grievance resolution process. Therefore, employing an administrative hearing officer is often a more advantageous option for localities seeking to resolve grievances effectively and fairly.

IV. Maintenance Items

a. List of Excluded Employees

Virginia Code § 15.2-1507(A)(3)(c) tasks the chief administrative officer of the Town, or their designee, with "determin[ing] the officers and employees excluded from the grievance procedure," and requires them to "maintain[] an up-to-date list of the affected positions." While this can be accomplished with a simple piece of paper with employee names and employment titles, it must be regularly updated to reflect any changes due to employee turnover or new position designations.

* * *

Thank you again for the opportunity to assist the Town with this review of its grievance procedure. We would also still be glad to review the Appendix referenced in this draft that we believe is related to the Law Enforcement Officers Procedural Guarantees Act. Of course, once the grievance procedure is finalized and approved by Town Council, it will need to be certified to the Circuit Court of Fauquier County, with which we can assist.

Please let me know if you have any further questions or can be of additional assistance.

Sincerely yours,

Faith A. Alejandro

Enclosure

TOWN OF WARRENTON

HUMAN CAPITAL DEPARTMENT

21 Main Street
Warrenton, VA 20186
(540) 347-1101

MEMORANDUM

To: Frank Cassidy, Town Manager

FROM: Kasey Braun, Director of Human Capital & Risk Management

DATE: September 23, 2024

RE: Revision Request of the Town's Grievance Procedures Policy

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In review of our current policies and procedures, it was identified that a revision to the Town's *Grievance Procedures, Chapter 14 in the Personnel Policies Manual*, is warranted in order to best align with Virginia Code § 15.2-1507. This is in an effort to closely mirror the organization of the statute, as well as simplify the review process. Therefore, in working closely with Sands Anderson attorney, Faith Alejando, we propose the attached revision to Chapter 14.

Additionally, once the Town Manager approves this revision, the following process will need to ensue in order to certify our Grievance Procedures.

- *Final draft to be approved by Town Council*
- *Human Capital will work with Sands Anderson whom would prepare a brief filing that would accompany just the grievance procedure, which needs to be signed by the Town Manager and our firm.*
- *Once the filing is signed by all parties, this would be filed with the Circuit Court.*

Sands Anderson can assist with preparing the filing and a copy of the grievance procedure as approved. They also do not believe there is a fee for that filing either.

Please let me know if you confirm this submittal to council for approval in the next available Town Council session. I am happy to present this to Town Council and then notify Sands Anderson to file as appropriate.

Attached Documents:

1. *Sands Anderson Memo*
2. *Proposed Revision to Personnel Policy Manual: Chapter 14: Grievance Procedures*

TM Approval: _____ **Date of Approval:** 10/8/24

14.1. GRIEVANCE PROCEDURE FOR EMPLOYEES

A. Purpose

The purpose of the Town of Warrenton Grievance Procedure is to afford an immediate and impartial method for the resolution of disputes which may arise between the Town government and Town employees.

B. Definition of Grievance

A grievance shall be a complaint or dispute by an employee relating to their employment, including:

1. Disciplinary actions, including dismissals, disciplinary demotions, and suspensions, provided that dismissals shall be grievable whenever resulting from formal discipline or unsatisfactory job performance.

2. The application of personnel policies, procedures, rules, and regulations, including the application of policies involving matters referred to in clause (3) of section C.

3. Discrimination on the basis of race, color, creed, religion, political affiliation, age, disability, national origin, sex, marital status, pregnancy, childbirth or related medical conditions, sexual orientation, gender, gender identity/expression, genetic information, veteran or military status, or other protected status.

4. Acts of retaliation as the result of the use of or the participation in the grievance procedure or 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, has sought any change in law before the Congress of the United States or the General Assembly of Virginia, or has reported an incident of fraud, abuse, or gross mismanagement. For the purposes of this clause, there shall be a rebuttable presumption that increasing the penalty that is the subject of the grievance at any level of the grievance shall be an act of retaliation.

C. Town Responsibilities

The Town retains the exclusive right to manage the affairs and operations of Town government. Accordingly, the following complaints are nongrievable:

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 that 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 carried on, including but not necessarily limited to:
    a. The provision of equipment, tools, and facilities necessary to accomplish tasks.
    b. The scheduling and distribution of manpower/personnel resources.
    c. Training and career development.
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, termination, 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 Town's service.
8. The relief of employees from duties of the Town in emergencies. In any grievance brought under the exception to clause (6), the action shall be upheld upon a showing by the Town that (a) there was a valid business reason or the action and (b) he employee was notified of the reason in writing prior to the effective date of the action.

D. Coverage of Personnel

Unless otherwise provided by law, all non-probationary permanent full-time and part-time employees are eligible to file grievances with the following exceptions:

1. Key officials of the Town. For purposes of this procedure, a key official is defined as the head of any separate Town department.
2. Appointees of elected groups or individuals.
3. Officials and employees who by charter or other law serve at the will or pleasure of an appointing authority.
4. Deputies and executive assistants to the Town Manager.
5. Agency heads or chief executive officers of Town operations.
6. Employees whose terms of employment are limited by law.
7. Temporary, limited term and seasonal employees.
8. Members of boards and commissions.

9. Law enforcement officers as defined in Chapter 5 (§ 9.1-500 et seq.) of Title 9.1 whose grievance is subject to the provisions of Chapter 5 (§ 9.1-500 et seq.) of Title 9.1 and who have elected to proceed pursuant to those provisions in the resolution of their grievance, or any other employee electing to proceed pursuant to any other existing procedure in the resolution of their grievance. Grievances by sworn law enforcement officers shall be handled in accordance with Chapter 5 and as set forth in Appendix B of this Personnel Policies Manual unless the officer opts to grieve under the Town's standard grievance procedure. The Town Manager, or their designee, shall determine the officers and employees excluded from this grievance procedure, and shall maintain an up-to-date list of the affected positions.

E. Standing to Pursue a Grievance

A grievant must be personally and directly affected by an occurrence or condition before they shall be permitted to pursue a grievance. No employee may grieve another employee's job performance unless such job performance directly or adversely affects the grievant's own employment. Disputes as to an employee's standing to file a grievance shall be determined as shall any other disputes as to grievability as set forth in Section F.

F. General Policy

Except as otherwise noted, the following rules apply to all levels of grievance hearings.

1. Time intervals specified in Steps 1 through 4 may be extended by mutual consent of the Town and the grievant.
2. When a deadline falls on a Saturday, Sunday, or Town holiday, the next calendar day that is not a Saturday, Sunday, or Town holiday shall be considered the last calendar day.
3. All grievance meetings and hearings shall be held during normal Town working hours unless both the grievant and the Town Manager should mutually agree otherwise.
4. Town employees who are necessary participants at grievance hearings shall not lose pay for time necessarily lost from their jobs and will not be charged leave because of their attendance at the grievance proceedings.
5. The use of recording devices or a court reporter is not permitted at Step 1, 2, and 3 meetings. Only Step 4 hearings may be recorded.
6. Witnesses shall be present only while actually providing testimony and shall otherwise be excluded from the room.
7. The grievant shall not be entitled to financially recover more than that which they have lost; the grievant's costs are not to be assessed against the Town.

8. Where a grievant has obtained partial relief at one level of this grievance procedure but decides to appeal to the next higher level, the filing of a request form to the next higher level shall constitute rejection of, and relinquishment of any claim to, any and all relief granted at the previous level.

9. Each party shall bear the costs and expenses, if any, of their legal counsel or representative.

G. Compliance

1. Except as noted in paragraph 2 below, after the initial submission of the grievance to the immediate supervisor, the failure of either party to comply with all substantial procedural requirements of this procedure without just cause shall 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 work days of receipt of written notification by the other party of the noncompliance. Such written notification by the grievant shall be made directly to the Town Manager.

2. If one of the management respondents in Steps 1, 2, or 3 does not respond to the grievance, the grievant at their option may move the grievance to the next level by submitting it without the response to the next Step or the grievant can provide the Town Manager notice of the non-compliance as set forth in paragraph 1 above.

3. The Town Manager shall determine compliance issues. Compliance determinations made by the Town Manager or their designee shall be subject to judicial review, which shall be initiated by the grievant filing a petition with the Circuit Court of the County within thirty calendar days of the compliance determination.

H. Grievability

1. Decisions regarding grievability and whether the grievant has access to the procedure are determined by the Town Manager or their designee. This determination can be requested by either the Town or the grievant at any point before the panel hearing. However, a grievance can only move on to a Step 4 panel hearing after a decision on grievability is made. The Town Manager will issue a decision within ten (10) calendar days of receiving the request or after Step 3 is completed, and will send the decision to both the grievant and the department head.

2. Decisions of the Town Manage, or their designee, on grievability and/or access may be appealed to the Circuit Court of the County for a hearing on the issue of whether the grievance qualifies or a panel hearing. Proceedings for review of the decision by the Town Manager or their designee shall be instituted by the grievant by filing a notice of appeal with the Town Manager within ten (10) calendar days from the date of receipt of the decision and giving a copy thereof to all other parties. Within ten (10) calendar

days after the filing of the notice of appeal, the Town Manager or their designee shall transmit to the Clerk of the Circuit Court a copy of the Town Manager's decision on grievability or access to the procedure, a copy of the notice of appeal, and copies of all exhibits. A list of the evidence furnished to the Court shall also be furnished to the grievant The failure of the Town Manager or their designee 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 Town Manager to transmit the record before a certain date.

3. Within 30 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 Town Manager or his designee 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 Town Manager or his designee, or may reverse or modify the decision. The decision of the court shall be rendered no later than the fifteenth (15) day from the date of the conclusion of the hearing. The decision of the court is final and is not appealable.

I. First Step – Immediate Supervisor Level

An employee who believes they have a grievance and wishes to utilize this procedure shall discuss the grievance informally with their immediate supervisor within twenty (20) calendar days of the occurrence of the incident giving rise to the grievance or within twenty (20) calendar days following the time when the employee reasonably should have gained knowledge of its occurrence. A response to the grievance shall be communicated, either orally or in writing, to the grievant within ten (10) calendar days.

Note: If the complaint is alleging discrimination or retaliation by the immediate supervisor, the grievance may be presented at Step 1 to the department head or, if there is no department head above the immediate supervisor to the Town Manager. If Step 1 is with the Town Manager, Step 2 is omitted and the written grievance is presented to the Town Manager. The grievance proceeds immediately to Step 3.

J. Second Step – Department Head Level

If the grievant is not satisfied with and does not accept the Step 1 response, or if a response is not provided within the required time frame, the grievant may proceed by putting the grievance in writing on the Grievance Form. The Grievance Form shall be delivered, by mail or in person, to the department head within ten (10) calendar days of receipt of the supervisor's response or the deadline for that response, whichever occurs first. If the immediate supervisor is the department head, the written grievance should be presented to the Town Manager and it will proceed as if it were at Step 3.

The grievant shall specify the relief that they expect to gain through the use of this procedure. The department head shall promptly meet with the grievant in a face-to-face meeting. The only persons who may normally be present at the meeting are the agency head, the grievant, and the appropriate witnesses for each side. The department head shall render a written response to the grievance within ten (10) calendar days following receipt of the completed request form with a copy of the response being sent to the manager. By mutual consent of the grievant and the department head, the grievant may skip Step 2 and proceed directly to Step 3.

K. Third Step – Town Manager Level

If the grievant does not accept the response at Step 2, or if the department head fails to respond within the required time frame, the grievant shall indicate their desire to advance the grievance to Step 3 on the Grievance Form. The Grievance Form shall be delivered by mail or in person, directly to the Town Manager within ten (10) calendar days following receipt of the Step 2 response or immediately after the deadline for that response, whichever occurs first. At the Step 3 meeting, the grievant, at their option, may have present a representative of their choice. If the grievant is represented by legal counsel, the Town likewise has the option of being represented by counsel. If the Town Manager determines (or has previously determined) that the complaint is grievable, a meeting with the grievant, the grievant's representative if there is one, a representative of the affected department and the Town Manager will be held within five (5) days. Appropriate witnesses for each side and such other persons as the Town Manager or the grievant may want to call, may be present to offer testimony only. The Town Manager shall render a written response to the grievance within ten (10) calendar days following receipt of the completed request form.

In the event that the Town Manager determines that the complaint, or a portion of the complaint, is not grievable, the grievant may appeal that decision to the Circuit Court as set out in Section H.2 of this procedure.

L. Fourth Step – Hearing before an Administrative Hearing Officer

If the grievant does not accept the Step 3 written response, or if the Town Manager fails to respond within the required time frame, and the grievant wishes to advance to a grievance hearing, the grievant shall complete step 4 of the Grievance Form. The grievance shall be heard by an impartial Administrative Hearing Officer as set out in Section M of this procedure.

The Grievance Form shall be delivered, by mail or in person, directly to the Town Manager within ten (10) calendar days following receipt of the Step 3 response or the deadline for that response, whichever occurs first.

M. Appointment of the Hearing Officer

The administrative hearing officer shall be appointed by the Executive Secretary of the Supreme Court of Virginia. The appointment shall be made from the list of administrative hearing officers maintained by the Executive Secretary pursuant to § 2.2-4024 and shall be made from the appropriate geographical region on a rotating basis. In the alternative, the Town may request the appointment of an administrative hearing officer from the Department of Human Resource Management. The Town shall bear the expense of hearing officer's services.

N. Rules for Administrative Hearings

The following rules apply to Step 4 administrative hearings and the conduct of Step 4 hearing officers:

1. The hearing officer shall promptly set the date, time, and location for hearing the grievance and shall notify the parties.
2. The hearing officer shall not have authority to do any of the following:
    a. Formulate policies or procedures.
    b. Alter existing policies or procedures.
3. The hearing officer shall have the discretion to determine the propriety of attendance at the hearing of persons not having direct interest in the hearing, and, at the request of either party, the hearing shall be private.
4. The Town shall provide the hearing officer with copies of the grievance record prior to the hearing, and shall provide the grievant with a list of the documents furnished to the hearing officer. The grievant and their attorney, at least ten (10) days prior to the scheduled hearing, shall be allowed access to and copies of all relevant files intended to be used in the grievance proceeding.
5. Each party shall furnish to the other copies of all documents, exhibits, and a list of witnesses it intends to use at the hearing officer hearing seven (7) calendar days in advance of the hearing.
6. Both the grievant and the Town may call upon appropriate witnesses and be represented by legal counsel or other representative at the administrative hearing. Such representatives may examine, cross- examine, question, and present evidence on behalf of the grievant or the Town before the hearing officer without being in violation of the provisions of Virginia Code §54.1- 3904. All witnesses, including the grievant, shall be subject to examination and cross-examination.
7. The hearing officer shall have the authority to determine the admissibility of evidence

without regard to the burden of proof so long as a full and equal opportunity is afforded to all parties for the presentation of their evidence. The Town shall present its evidence first in grievances challenging a disciplinary action and shall have the burden of persuasion on such issue.

8. Except in grievances involving discipline or in cases where the hearing officer determines otherwise, the grievant shall present their evidence first.

9. All evidence shall be presented in the presence of the hearing officer and the parties except by mutual consent of the parties.

10. The hearing officer shall have the authority, if they find (based on the greater weight of the evidence) that the grievant has been denied a benefit or wrongly disciplined without just cause (where such cause is required), to reverse, reduce, or otherwise modify such action and, where appropriate, to order the reinstatement of such employee to their former position with back pay.

    a. Back pay shall not exceed pay for time actually lost or paid leave required to be taken due to such suspension or discharge, in an amount the hearing officer believes equitable up to the amount of actual loss.

    b. Any award of back pay shall be offset by interim earnings the grievant earned during the period of separation.

    c. The hearing officer also has the power to sustain, modify or reverse the Town's action.

11. The decision of the hearing officer should be rendered as soon as possible, but, in any case, not later than five (5) calendar days following the conclusion of the hearing.

12. The decision of the hearing officer, acting within the scope of their authority, shall be final, subject to existing policies, procedures, and law.

13. The question of whether the relief granted by a hearing officer is consistent with written policy shall be determined by the Town Manager, or their designee, unless the Town Manager or their designee 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 Attorney for the Commonwealth for the County.

14. Hearings are not intended to be conducted like proceedings in court and the rules of evidence do not necessarily apply.

15. Either party may petition the Circuit Court for an order requiring implementation of the panel decision.

14.2. GRIEVANCE PROCEDURE FOR SWORN OFFICERS

A. Definitions

1. *"Agency"* means the Town of Warrenton, a political subdivision within the Commonwealth of Virginia employing the law-enforcement officer.

2. *"Law-Enforcement Officer"* means any person, other than a Chief of Police who, in their official capacity, is (i) authorized by law to make arrests and (ii) a non-probationary officer of the Town of Warrenton police department, bureau or force.

B. Conduct of Investigation

The LEOPGA specifies that whenever a law-enforcement officer is the subject of an investigation by an agency, and the focus of the investigation concerns matters, which could lead to the dismissal, demotion, suspension or transfer for punitive reasons:

1. The officer shall be questioned at a reasonable time and place as designated by the investigating officer, preferably when the officer under investigation is on duty and at one of the following locations: office of the command of the investigating officer; or the office of the local precinct or unit of the officer being investigated, unless the matters being investigated are of such a nature that requires immediate action.

2. Prior to the officer being questioned, they shall be informed of (i) the name and rank of the investigating officer and of any individual to be present during the questioning and (ii) the nature of the investigation.

3. If a blood or urine specimen is taken from a law-enforcement officer for the purpose of determining whether the officer has used drugs or alcohol, the specimen shall be divided and placed into two separate containers. One container shall be tested while the other is held in a proper manner, to preserve the specimen, by the facility collecting or testing the specimen. Should the first specimen test positive, the law-enforcement officer shall have the right to have the second specimen tested by an independent laboratory of their choice (pursuant to §§18.2-268.1 through 18.2-268.1); the laboratory chosen by the officer must be accredited or certified by one or more of the following bodies: the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB), the College of American Pathologists (CAP), the United States Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA), or the American Board of Forensic Toxicology (ABFT). The officer shall notify the chief of their agency in writing of their request within 10 days of being notified of positive specimen results.

C. Notice of charges; response; election to proceed under grievance procedure of local governing body –

1. Prior to dismissing, demoting, suspending without pay, or transferring for punitive reasons, the following rights shall be afforded the law-enforcement officer:

    a. The law-enforcement officer shall be notified in writing of all charges, the basis therefore, and the action which may be taken;

    b. The law-enforcement officer shall be given an opportunity, within a reasonable time limit after the date of the written notice provided above, to respond orally and in writing to the charges. The time limit shall be determined by the agency, but in no event shall it be less than five calendar days unless agreed to by the law-enforcement officer;

    c. The law-enforcement officer may be assisted by counsel at their own expense; and

    d. The law enforcement officer shall be given written notification of their right to initiate a grievance under the grievance procedure established by the local governing body pursuant to §§15.2-1506 and 15.2-1507. A copy of this grievance procedure must be provided upon their request.

    e. A law-enforcement officer may proceed under either the local governing body's grievance procedure or the LEOPGA, but not both.

D. Personal assets of officers

No law-enforcement officer shall be required or requested to disclose any item of their property, income, assets, source of income, debts, or personal or domestic expenditures, including those of any member of their family or household, unless (i) such information is necessary in investigating a possible conflict of interest with respect to the performance of their official duties (ii) such disclosure is required by law, or (iii) such information is related to an investigation. Nothing in this section shall preclude an agency from requiring the law-enforcement officer to disclose any place of off-duty employment where they may be contacted.

E. Hearing; hearing panel recommendations

Whenever a law-enforcement officer is dismissed, demoted, suspended or transferred for punitive reasons, they may, within a reasonable amount of time (as set by the agency) following such action, request a hearing. If the law-enforcement officer makes a timely request, a hearing shall be held within a reasonable amount of time (as set by the agency). This hearing shall not be set later than fourteen calendar days following the date of the request unless agreed upon by the law-enforcement officer. The law-enforcement officer and the agency will have the opportunity to present evidence, examine, and cross-examine witnesses. The law-

enforcement officer can be represented by counsel unless the officer and agency are afforded, by regulation, the right to counsel in a subsequent de novo (new) hearing.

Selection of Panel Members

The Grievant and the Agency head are both allowed to pick one panel member.

Grievant:	Agency Head:
One member from *within* the agency.	One member of equal rank to, but no more than two ranks above grievant

*These two panel members then pick one member from within the agency**

*If the two appointed members cannot agree upon a third member, then the Chief Judge of the judicial circuit wherein the grievant's duty station lies, will choose the third party.

F. Conduct of Hearing

The hearing panel may, and on the request of either the law-enforcement officer or their agency shall, issue subpoenas requiring the testimony of witnesses who have refused or failed to appear at the hearing. The hearing panel shall rule on the admissibility of the evidence. A record shall be made of the hearing.

G. Option to provide a hearing by agency

At the discretion of the agency, it may, in lieu of complying with §9.1-502 give the law-enforcement officer a statement, in writing, of the charges, the basis therefore, the action which may be taken, and provide a hearing as provided for in this section prior to dismissing, demoting, suspending or transferring for punitive reasons the law-enforcement officer.

H. Hearing Panel's Recommendations

Any recommendations of the hearing panel and the reasons therefore, shall be in writing and transmitted promptly to the law-enforcement officer or their attorney and the agency head. Such recommendations shall be advisory only, but shall be given significant weight.

I. Immediate suspension

Nothing in this chapter shall prevent the immediate suspension without pay of any law-enforcement officer whose continued presence on the job is deemed to be a substantial and immediate threat to the welfare of their agency or the public, nor shall anything in this chapter prevent the suspension of a law-enforcement officer for refusing to obey a direct order issued in conformance with the agency's written and disseminated regulations. In such a case, the law-enforcement officer shall, upon request, be afforded the rights provided for under this chapter within a reasonable amount of time set by the agency.