

XX. GRIEVANCES AND DISCIPLINARY APPEALS

20.1 GENERAL POLICY. It shall be the general policy of the Municipality and the duty of each Supervisor and Administrative Officer in the Municipal service to afford its employees an opportunity to grieve matters of employment and appeal discipline. However, matters of policy and management prerogative are not grievable, and employees in temporary, probationary, exempt, and contracted status shall not have grievance rights or any right to appeal discipline, demotion, or termination except as described in Section 1.2.

20.2 STEPS FOR HANDLING OF GRIEVANCES AND DISCIPLINARY APPEALS. Except as provided otherwise in this Chapter, the grievance or disciplinary appeal of any employee who is not in temporary, probationary, exempt, or contracted status shall be handled in the following manner, each step to be taken within the time period specified below if no mutually satisfactory resolution has been reached. Any one or more steps may be waived by written agreement of both parties, except in disciplinary matters in which the initial step(s) shall be waived without mutual agreement if the initial disciplinary notice is issued directly by the Department Head or Administrator. Failure of the employee to meet any of the following deadlines without an agreement to waive such deadline may result in a rejection of the grievance or disciplinary appeal.

- a. Within ten (10) days of the act or event being grieved or appealed, the employee shall present a written grievance or disciplinary appeal to his or her immediate Supervisor, which specifies the act or event grieved or appealed, the date of occurrence, and all supporting facts. The Supervisor shall note the date of the receipt of the grievance or disciplinary appeal. The Supervisor shall then inform the Administrator and Department Head of the existence and nature of the grievance or disciplinary appeal.
- b. If no mutually satisfactory agreement is reached between the employee and the immediate Supervisor within ten (10) days after receipt of the grievance or disciplinary appeal, the employee shall present the written grievance or disciplinary appeal to the Department Head in order to continue to grieve or appeal.
- c. If no mutually satisfactory agreement is reached between the employee and the Department Head within five (5) days after receipt of the grievance or disciplinary appeal, the employee shall present the written grievance or disciplinary appeal to the Administrator in order to continue to grieve or appeal.
- d. If no mutually satisfactory agreement is reached between the employee and the Administrator within five (5) days after receipt of the grievance or disciplinary appeal, the employee shall request that the written grievance or disciplinary appeal be submitted to an impartial hearing officer by notifying the Administrator in writing of his or her intentions to continue to grieve or appeal.
- e. The hearing officer shall be a neutral third party. The Administrator shall provide a list of potential hearing officers from which the employee may make a selection. If no agreement can be made on a hearing officer, the Administrator will select one from the list of potential hearing officers provided to the grievant.

20.3 HEARING PROCEDURE. As soon as practicable after the hearing officer is selected, the Administrator shall notify the employee and the Department Head in writing of the date, time, and place of the hearing. Both sides may be represented by counsel or anyone of their choosing. Both may call and examine witnesses subject to cross-examination by the other party, present documentary evidence and exhibits, and impeach witnesses and rebut relevant evidence presented. The hearing need not be conducted according to technical rules of evidence. Relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons customarily rely in the conduct of their serious affairs. Irrelevant and unduly repetitious evidence shall be excluded. No finding of fact shall be based exclusively upon hearsay evidence unless it would be admissible over objection in a civil action. The proceedings shall be recorded in their entirety.

The City and Borough shall have the burden of proof concerning factual allegations against the employee, and whether or not such allegations constitute or establish good cause for the imposition of discipline, demotion, termination or change in employment. The employee shall have the burden of proof concerning claims against the City and Borough. The standard for burden of proof shall be preponderance of the evidence.

20.4 DECISION OF THE HEARING OFFICER. Within fifteen (15) days following the close of the case the hearing officer shall issue written findings of fact and the decision on the grievance and cause them to be served on the Department Head and the grievant involved. The findings and decision shall be based solely on the evidence presented at the hearing and shall address the allegations set out in the grievance and/or the statement, if any, memorializing or affecting the discipline, demotion, termination or change in employment.

20.5 PROCEDURE FOR SUSPENSION OR DEMOTION. An employee who has been given written notice of intent to suspend or be demoted by a Department Head shall have the right to appeal the matter to the Administrator before the suspension is effective. The appeal must be filed with the Administrator within five business days of the employee receiving written notice of the intent to suspend or demote. The employee may present evidence and challenge the evidence presented against the employee at a meeting scheduled by the Administrator as soon as possible after receipt of the written appeal. After the meeting, the Administrator shall issue a written decision upholding, modifying or disapproving the suspension or demotion, and any suspension or demotion shall then take effect in accordance with the Administrator's decision.

20.6 TERMINATION PROCEDURE. In situations where the Department Head intends to terminate the employee, and with concurrence of the Administrator, a Notice Of Intent To Terminate Employee shall contain a statement of cause for termination. The employee will be placed immediately on administrative leave with pay for ten (10) days after the notice is issued. The employee shall have ten (10) days immediately after being placed on administrative leave within which to file a written appeal, which explains the basis for appealing the termination. Should the employee fail to file an appeal, at the end of ten (10) days the termination shall stand and the employee shall no longer have employment status with the City and Borough of Sitka. Should the employee file an appeal, immediate steps shall be taken to retain a hearing officer under the procedure set out in Section 20.2 to determine whether or not good cause exists to terminate the employee. The procedure to be followed shall be that set forth in Sections 20.3 through 20.4. Unless good cause exists, the appeal hearing shall be held within twenty (20) days of the filing of the employee's appeal. A decision granting or denying the appeal shall be issued within seven (7) days after the hearing is concluded.

20.7 HEARING OFFICER DECISION FINAL AND BINDING. The decision of the hearing officer shall be final and binding unless the matter is appealed within thirty (30) days of the issuance of such decision to the Superior Court of the State of Alaska for the First Judicial District at Sitka, Alaska.

20.8 ADA VIOLATIONS. When violations of the Americans with Disabilities Act are alleged, the employee may grieve through the Justice Department ADA grievance procedure or the above procedure but the employee cannot use both processes to grieve the same alleged violation. See Section XXV and attached ADA procedure.