

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF DUCK, NORTH
CAROLINA, AMENDING ARTICLE IX. GRIEVANCE PROCEDURE OF THE
TOWN OF DUCK PERSONNEL POLICIES

Resolution No. 13-14

WHEREAS, the policies and procedures of the Town of Duck are periodically reviewed to ensure that they meet the operational, administrative, and policy goals of the Town Council and Town management; and

WHEREAS, the Town's Personnel Policies were recently reviewed and changes were recommended to Article IX. Grievance Procedure; and

WHEREAS, by adopting this resolution, the Town Council will enact these changes.

NOW, THEREFORE, BE IT RESOLVED, THIS 17th DAY OF July, 2013, that the Town Council of the Town of Duck, North Carolina, hereby amends Article IX. Grievance Procedure of the Town of Duck Personnel Policies as follows:

Article IX. Grievance Procedure

Section 1. Policy and Purpose

In establishing or enacting the following procedure, it is the intent of the Town to establish an informal process by which the desires and wishes of each and every employee of the Town may be accommodated, in so far as possible. It is not the intent of the Town in enacting this provision neither to establish any legal procedure for the determination of rights, nor to create any legal rights or procedural rights which do not otherwise exist simply by reason of the fact of employment.

The grievance procedure is designed to ensure an employee or group of employees of fair, impartial and prompt consideration of a problem or dissatisfaction without fear of reprisal. The procedure also encourages employees at all levels to express themselves regarding conditions of work. The grievance procedure is intended to promote better understanding of policies, practices and procedures; to instill confidence in employees that fair and impartial treatment will be received; and develop in supervisors a continuing sense of responsibility for maintaining effecting working relationships with subordinate employees.

All employees, including supervisors, are expected to discuss their problems and misunderstandings with their supervisors. Open, two-way communication is a proven factor in reducing and resolving grievances.

When an employee feels the need to resolve a work related problem, dissatisfaction or complaint as defined below, the following procedure is available.

Section 2. Definition

A grievance is any dispute concerning the interpretation or application of this personnel policy, or any other policy, practice or procedure affecting working conditions for the Town. A grievance might involve alleged safety or health hazards, unfair or discriminatory practices, misapplication of department work rules, unsatisfactory physical facilities or equipment or other complaints related to the conditions of work or disciplinary action, other than matters of management discretion. The areas of management discretion and therefore non-grievable subjects are as follows: Any condition of employment accepted at the time of employment and/or subsequent change(s) thereto; determining the employee benefit package; determining the proper classification and pay; determining types of training; scheduling and distribution of personnel; determining methods, means, and personnel to carry out operations; relieving employees from work because of lack of work, funds or other valid reasons; hiring, promotion, transfer, non-disciplinary demotion and assignment decisions and maintaining the efficiency of governmental operations. While the foregoing is considered non-grievable, employees are encouraged to express any concerns that they have concerning actions taken in these areas. Complaint processes involving issues covered by other parts of this policy are excluded from this procedure. Nothing herein shall be interpreted to change the status of any employee from that of an employee at will.

Section 3. Eligibility

Unless otherwise provided by law, all non-probationary full-time Town employees are eligible to initiate a grievance under this policy. An employee or person who falls within one or more of the following groups is not eligible to initiate a grievance under this procedure:

- A. Probationary employees – all newly hired employees will be considered probationary for the first (six) 6 months of employment, and during any period of extended initial probation.
- B. Employees under disciplinary probation are not eligible to grieve actions taken against them with the exception of a termination action for an offense other than that which resulted in the disciplinary probation.
- C. Promotional/transfer probationary employee – Employee does not have access to the appeal/grievance procedure with respect to demotion to previously held position (or substantially similar position if original position is unavailable).
- D. Officials appointed by the Town Council of the Town of Duck.
- E. Department Heads.
- F. Temporary, limited terms, and seasonal employees.

G. Employees who voluntarily resign their employment are not eligible to pursue a grievance regarding disciplinary actions that precede their resignation.

Section 4. Procedure

At each step, the appropriate manager will meet face-to-face with the employee and render a decision and comments, in writing, with copies to the Department Head (if required) and the Town Manager and Town Clerk, within 15 calendar days after receiving the written grievance. The only persons who may be present at these meetings are the employee, the supervisor, and the appropriate witnesses for each side. The grievant has the right to call any witnesses they desire. Witnesses shall be prepared to testify and shall be present only while actually providing testimony. If during the course of the hearing there is a request for supplementary testimony, additional witnesses may be called. The hearing may be adjourned and reconvened when the witnesses become available. A list of witnesses to be called to testify at the hearing shall be given to each party seven (7) days prior to the hearing.

First Step – Supervisory Level

PART A. Verbal – The grievant must present the grievance verbally to the immediate supervisor within 10 calendar days of the date of its occurrence or knowledge of its occurrence. The supervisor will meet with the employee face-to-face and will give an answer, verbally in a discussion format, within seven (7) calendar days of the date of the oral presentation of the grievance. In the event that no settlement or verbal response is made by the supervisor within seven (7) calendar days of the oral presentation, the grievant may proceed to Part B immediately. Failure on the part of the employee to initiate the action required within the time stated herein shall terminate the employee's right to initiate a grievance on that issue.

If the immediate supervisor of an employee is the Town Manager and the employee is eligible to file a grievance, the grievance will be heard in Section J of this policy.

PART B. Written – If there is no resolution or verbal response within the time limit provided in Part A, the grievant may file a written grievance to the immediate supervisor, with copies to the Department Head and the Town Clerk, within seven (7) calendar days of the immediate supervisor's verbal response or within 14 days from when the grievance was submitted if the supervisor failed to respond.

This statement will be the employee's explanation of what occurred, and must state specifically what relief is requested as a remedy. Such relief must be tangible, rational, and within the power of the Town to grant.

The employee's supervisor must meet face-to-face with the employee and render a decision and comments, in writing, with copies to the Department Head and Town Clerk,

within seven (7) calendar days after receiving the written grievance. The only persons who may be present at this meeting are the employee, the immediate supervisor, and the appropriate witnesses for each side.

The Town Clerk will review the grievance for compliance with the procedure and grievability. He/she will advise all interested and proper parties in a timely manner of any administrative, grievability, other actions or rulings affecting the grievance.

Second Step – Department Head Level

The Department Head, upon receiving the grievance, will meet face-to-face with the employee and discuss the grievance. The Department Head will render a written decision and comments and return it to the employee, with a copy to the Town Clerk, within 10 calendar days after receiving the appeal. If the Department Head is the immediate supervisor, Step One Part B, Step Two, and Step Three are consolidated into a single step.

If the grievance is not settled, the employee may present their grievance in writing to the Town Clerk. This written request must state whether the employee requests their grievance be heard by the Grievance Panel or by the Town Manager. The notice by the employee of grievance to the Town Manager or the Grievance Panel must be received by the Town Clerk within 10 calendar days after receipt of the written decision of the Department Head.

Third Step – Town Manager Hearing Alternative

If the grievance is referred to the Town Manager, he/she shall arrange a time to hear the employee and their representative (if any) within 20 calendar days. At this meeting the employee is allowed to present their case, including any evidence, and to review the evidence in the Town's possession. Within 15 calendar days, the Town Manager shall provide his response in writing which shall be final. Once the grievance has been heard by the Town Manager, the grievance cannot be referred to the Grievance Panel.

The grievant and the Department Head or Town representative may be represented by legal counsel at this hearing. The grievant must notify the Town Clerk of the name of their attorney, if applicable, within five (5) calendar days of filing Step 3 of the grievance.

Third Step – Grievance Panel Hearing Alternative

After receiving the employee's intent to grieve to the Grievance Panel, the Town Clerk shall begin processing the grievance hearing.

The Grievance Panel provides an additional venue for the fair hearing and resolution of employee grievances and appeals in a procedure free of recrimination. The Grievance Panel reviews the record of the appeal or grievance and may hear testimony from all parties involved in the grievance or appeal. The Grievance Panel then recommends a course of action to the Town Manager. By state statute, the authority over all Town employees is vested in the Town Manager, and the Town Manager determines the final action. The Grievance Panel may also suggest improvements in procedure or policy to the Town Manager; if deemed appropriate.

The grievant must notify the Town Clerk of the name of their attorney, if applicable, within five (5) calendar days of filing Step 3 of the grievance.

The Panel will set the date, time, and place for the hearing, which shall be held within 20 calendar days following receipt of the intent to grieve by the Town Clerk. Each member of the Panel shall review and sign a Confidentiality Agreement prior to each hearing.

A. Selection of Panel

The Town Council shall appoint a Grievance Panel consisting of three (3) members and two (2) alternates. Members of the Grievance Panel shall serve two (2) year terms. Members shall be appointed by the Town Council at their first regular meeting in January of each year following an election. A member of the Grievance Panel may be removed by the Council for failure to fill the duties of their appointment or any other reason in the discretion of Council. Vacancies in an unexpired term shall be filled by the Town Council by appointment for the remainder of the term.

Each member of the Grievance Panel shall be a qualified voter of the Town. No person who has actively participated in the immediately preceding municipal election by seeking office, soliciting funds or votes, either by letter, telephone, personal contact or speeches, on behalf of any candidate for municipal office, and no Town employee or officer shall be eligible to serve on the Grievance Panel. Any member of the Grievance Panel who becomes a candidate for political office or actively participates in Town elections, in the manner hereinbefore set forth, shall be deemed to have vacated his/her position as a member of the Grievance Panel.

Three (3) members will constitute a quorum. In the event there exists a business or personal relationship of any kind between any member of the Grievance Panel and an employee, group of employees or a witness appearing before the Grievance Panel, the remainder of the members of the Grievance Panel not affected, by majority vote, shall determine whether or not the affected Grievance Panel member has a conflict of interest and whether he/she be allowed to sit in at the hearing and determination.

As necessary, the Grievance Panel shall elect one of its members as chairperson, who shall preside at all meetings and shall be responsible for calling all such meetings. Meetings shall be held from time to time as necessary, and two members shall constitute a quorum. Members of the Grievance Panel shall serve without compensation. The Town Clerk shall serve as official secretary to the Grievance Panel and shall perform such duties as the Grievance Panel may direct.

B. Case Presentation

The grievant and the Department Head or Town representative shall be present at all panel hearings and may be represented by legal counsel.

Should the Panel hear a grievance as a result of a termination, the Panel will have legal representation, at Town expense, to assist the Panel in legal matters concerning the grievance.

C. Panel Decision

The Panel shall render its decision and distribute copies to the grievant, Town Manager, Department Head, and Town Clerk within 15 calendar days of the conclusion of the hearing. The reason for the Panel decision will be noted. The majority decision of the Panel, acting within the scope of its authority, shall be the final recommendation to the Town Manager and shall be consistent with the provisions of existing written policies, standard practices, procedures, and laws. The question of whether the relief recommended by the Panel is consistent with existing written policies, standard practices, procedures, and laws shall be determined by the Town Manager.

D. Rules

1. The Grievance Panel does not have the authority to formulate policies or procedures or to alter existing policies and procedures.
2. The Panel shall determine the propriety of attendance at the hearing of persons not having a direct interest in the hearing and the hearing shall be closed to the public.
3. The Town Manager or designee shall provide the Panel with copies of the grievance record prior to the hearing, and provide the grievant with a list of the documents furnished to the Panel, and the grievant and his attorney, at least five (5) calendar days prior to the scheduled panel hearing. All parties shall have access to and copies of all relevant files intended to be used in the grievance proceeding.

4. The Panel has the authority to determine the admissibility of evidence without regard to the burden of proof, or the order of presentation of evidence, so long as a full and equal opportunity is afforded to all parties for the presentation of their evidence.
5. All evidence shall be presented in the presence of the Panel and all parties, except by mutual consent of the parties.
6. Documents, exhibits, and lists of witnesses shall be exchanged between the parties seven (7) calendar days in advance of the hearing. The exchange will be made by 2:00 p.m. of the seventh day.
7. At the option of each party, opening statements may be made at the beginning of the hearing, and the Panel may ask for such statements in order to clarify the issues involved in the grievance.
8. The Town and thereafter the grievant, or their representatives, shall then present their claims, proofs, and witnesses who shall submit to questions or other examination. The Panel may, at its discretion, vary this procedure, but shall afford full and equal opportunity to all parties for presentation of any material or relevant evidence and shall afford the parties the right of cross-examination. It is recommended that in cases of alleged discrimination and sexual harassment, the grievant present the case first.
9. The Panel by majority vote may decide procedural questions and rule upon objections raised during the course of the hearing. Witnesses other than the parties should remain in the hearing room only while giving their testimony.
10. The Panel, by a majority vote, may recommend upholding or reversing the action of the Town or in appropriate circumstances may recommend a modified remedy. Panel decision, however, must be consistent with the provisions of law and existing written policies and standard practices. In appropriate cases, a panel might determine that a grievant should be reinstated, either with or without full, partial or no back pay and/or full, partial, or no benefits. In no case does the Panel have the authority to award damages or attorney's fees. No claims, including claims for back wages by the employee, shall be valid for a period of more than 15 calendar days prior to the date the grievance was filed. An exception to that time period shall be where the circumstances of the case were unknown to the grievant and they had grounds for such a claim. In such a case, the claim shall be limited retroactively to a period not to exceed 30 calendar days prior to the date the employee first filed the grievance.

11. After each side has had the opportunity to present its evidence, the Panel Chair shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, both parties shall be given the opportunity to make closing statements summarizing their positions, following which the hearing should be declared closed.
 12. The majority decision of the Panel, acting within the scope of its authority, shall be the final recommendation to the Town Manager, subject to existing written policies, standard practices, procedures, and laws.
- E. The Town shall have the authority to adopt such other provisions as may facilitate fair and expeditious, informal hearings. Technical rules of evidence will not apply.
- F. Conduct and Responsibilities – The decision and recommendations of the Panel may not expand the issue or the relief requested in the original grievance. The Panel has the authority to recommend to uphold the action taken, or to reverse, reduce, or otherwise modify the actions of the Town. The Panel does not have the authority to exonerate an employee from all discipline when the guilt of the employee is admitted or guilt is determined by the Panel based on the evidence presented.
- G. Time Periods – The Town Clerk, with mutual agreement of the Town Manager and the grievant, may extend the time limits within the four steps.

No permanent changes shall be made in this procedure without the approval of the Town Council.

H. Compliance

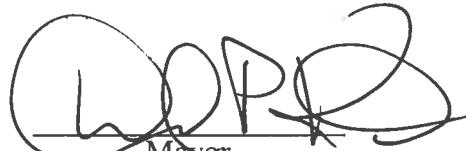
- A. After the initial filing of a written grievance, failure of either party to comply with all substantial procedural requirements of the grievance procedure, including the Panel hearing, without just cause shall result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the noncompliance within three (3) work days of the receipt of written notification by the other party of the compliance violation. Such written notification by the grievant shall be made to the Town Clerk.
 - B. Compliance and/or exception determinations shall be made by the Town Manager.
- I. Confidentiality – All participants of the grievance procedure, including members of the Personnel Grievance Panel, are subject to North Carolina General Statutes dictating confidentiality and non-release of certain personnel-related information. All participants must sign a Confidentiality Agreement prior to participating in a grievance hearing.

J. If an employee has a grievance against the Town Manager, the employee may submit the grievance initially to the Town Clerk who will notify the Mayor who will consult with the Town Council and the Town Attorney. After this consultation, the Town Council may organize a hearing before the Grievance Panel or some other process designed to allow fair presentation of the grievance that also protects the employee from any reprisal. Following the hearing or other process, the Town Council may direct the Town Manager to take such action as may be necessary to resolve the grievance.

Section 4.5. Discrimination Appeal Procedure

Any applicant for Town employment, Town employee, or former Town employee who has reason to believe that employment, promotion, training, or transfer was denied them, or that demotion, layoff, or termination of employment was forced upon them because of age, sex, race, color, national origin, religion, creed, political affiliation, sexual orientation or disability, except where specific requirements constitute a bona fide occupational qualification necessary to proper and efficient administration, shall have the right to appeal directly to the Grievance Panel using the grievance procedure outlined in Section 3 of this Article, if so desired. An employee or applicant must appeal or file a grievance regarding an alleged act of discrimination within thirty (30) calendar days of the alleged discriminatory action.

Adopted this 17th day of July, 2013.



Mayor

ATTEST:



Town Clerk

