

GRIEVANCE
Revised December 2022

SECTION: 13

A. PURPOSE

Normal day-to-day discussions between an employee and a supervisor regarding working conditions and employment-related matters are the most constructive and expeditious means of developing and enhancing favorable and effective work relationships. Tooele City encourages employees and supervisors to attempt resolution of a situation by using informal problem-solving techniques before filing a grievance pursuant to this Section.

This Section outlines the policy and procedures to be used if an employee declines to use informal means to resolve certain eligible grievances, or has done so but the concern was not resolved to the employee's satisfaction.

B. GRIEVANCE

1. The following may be grieved pursuant to this Section:

- a. Issues of violation of law, committed by the City that adversely affects the grieving employee. This includes, but is not limited to, issues of illegal discrimination, illegal pay practices, illegal retaliation, etc.;
- b. Issues of differences of interpretation or violations of the policies and procedures set forth in this Manual, committed by the City, that adversely affect the grieving employee;
- c. Regular status employees, as defined in Section 4 herein this Manual, may also grieve an adverse employment action that affects him/her if the adverse action occurred after the employee successfully completed his/her orientation period. 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 overtime pay. Movement to a lower salary grade or red-circle pay status does not constitute less remuneration for purposes of this Section;
 - 5) Involuntary demotion to a position of less remuneration; or,
 - 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.
- d. Appointed employees may grieve their involuntary separation or dismissal pursuant to Section 2-10 of the Tooele City Charter, as amended.

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2. The grievance procedure is as follows:

a. STAGE 1 –

Filing Procedure. An employee may initiate a formal grievance by submitting Tooele City's Statement of Grievance Form, to the Stage 1 supervisor within 20 working days after the act or occurrence or the date the employee became aware of the act or occurrence that caused the employee to be aggrieved. In an extenuating circumstance, the Stage 1 supervisor may consider a grievance received after the deadline if extenuating circumstances exist except that, for purposes of this Section, an employee may not grieve matters that occurred more than one year prior.

The Stage 1 supervisor is the first supervisor within the Department who has authority over the matter at issue. This is usually the supervisor who made the decision or committed the act or omission about which the employee is grieving. Examples:

- Disciplinary action is initiated by the employee's immediate supervisor; the immediate supervisor is the Stage 1 supervisor.
- Disciplinary action is initiated by the employees' department head (not the supervisor); the department head is the Stage 1 supervisor.
- A department head is believed to have violated a policy set forth in the Manual that adversely affected the grieving employee; the department head is the Stage 1 supervisor.

Decision. As soon as possible, but no later than 15 working days after receipt of the grievance, the Stage 1 supervisor must inform the employee in writing of the decision and the reasons therefore. This time limit may be extended for good cause, provided the Stage 1 supervisor, or in the absence of the Stage 1 supervisor a higher stage supervisor, advises the employee that the decision will be delayed and the expected date of the decision.

Failure to Issue Timely Decision: If the Stage 1 supervisor fails to issue a decision within the applicable time limits and the employee has not been notified of a need for extension, the employee may, at his or her option, proceed directly to Stage 2 within 15 working days of the expiration of the time limit.

b. STAGE 2 –

Filing Procedure. If the Stage 1 supervisor does not resolve the matter to the grieving employee's satisfaction, the employee may request further consideration of the grievance by submitting Tooele City's Statement of Grievance Form, to his/her Stage 2 supervisor, if one so exists, within 15

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working days. The Stage 2 supervisor is the individual who has supervision over the Stage 1 supervisor. This may be a Lieutenant, Captain, Department Head, or the Mayor, for example.

Decision. As soon as possible, but no later than 15 working days after receipt of the grievance, the Stage 2 supervisor must inform the employee in writing of the decision and the reasons therefore. This time limit may be extended for good cause, provided the Stage 2 supervisor or, in the absence of the Stage 2 supervisor, a higher-level supervisor, advises the employee that the decision will be delayed and the expected date of the decision.

Failure to Issue Timely Decision. If the Stage 2 supervisor fails to issue a decision within the applicable time limits, the employee may, at his or her option, proceed directly to Stage 3 within 15 working days of the expiration of the time limit.

c. STAGE 3a, 3b, etc.

Filing Procedure. An employee may request that the grievance be reviewed by a higher-level supervisor, if one so exists, by following the Stage 2 procedure for each consecutive supervisor, up to the Mayor, and replacing the terms “Stage 2 supervisor” with “Stage 3a supervisor, Stage 3b supervisor, etc.”

Examples:

	Police Sergeant has authority over the matter at issue	Police Lieutenant made the decision and Sergeant does not have authority over the matter at issue	Police Sergeant has authority over the matter at issue. No Captain exists at the time.	Supervisor has authority over the matter at issue	Department Head made the decision and Supervisor does not have authority over the matter at issue	Mayor made the decision and Department Head does not have authority over the matter at issue
Stage 1	Police Sergeant	Police Lieutenant	Police Sergeant	Supervisor	Department Head	Mayor
Stage 2	Police Lieutenant	Police Captain	Police Lieutenant	Department Head	Mayor	
Stage 3a	Police Captain	Chief of Police	Chief of Police	Mayor		
Stage 3b	Chief of Police	Mayor	Mayor			
Stage 3c	Mayor					
Appeal Board	Some matters at issue may be appealed to the Appeal Board as described herein this Section.					

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- d. **Alternative Procedure for Discrimination Complaints.** Employees may file a discrimination complaint through this Grievance procedure; or, if it is alleged that the discrimination is being conducted by an individual to whom the complaint would be filed, the employee may choose to file a complaint directly with the Director of Human Resources, City Attorney, or the Mayor by submitting Tooele City's Statement of Grievance Form or by other written or verbal notification. In such cases, the complaint will be reviewed to determine if further investigation is either warranted or needed. Tooele City's desire is to review such complaints expeditiously but the time periods will vary based on the nature and complexity of the complaint.
- e. **Alternative Procedure for Harassment or Retaliation Complaints.** Employees may file a complaint of harassment or retaliation pursuant to this Section or pursuant to Section 16: No-Harassment & No-Retaliation. In such cases, the complaint will be reviewed to determine if further investigation is either warranted or needed. Tooele City's desire is to review such complaints expeditiously but the time periods will vary based on the nature and complexity of the complaint and the procedure will be as specified in that Section.

C. APPEAL BOARD

1. Regular status employees who have completed their orientation period may appeal the following to the Appeal Board:
 - a. After exhausting the formal grievance procedural steps identified in part B above:
 - 1) Involuntary separation (i.e. termination or dismissal);
 - 2) Suspension without pay for more than two days;
 - 3) Involuntary transfer from one position to another with less remuneration;
 - 4) Involuntary demotion to a position of less remuneration; or
 - b. Any adverse employment action if the Mayor failed to render a decision in accordance with part B above.
2. The Appeal Board will conduct its hearings in accordance with the procedures set forth in the Tooele City Code.
3. Appeals to the Appeal Board must be submitted on Tooele City's Statement of Grievance Form, and received by the City Recorder's Office within ten (10) working days after receiving the Mayor's decision or after the Mayor's decision should've been received. The City Recorder will promptly refer a copy of the

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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.

4. 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. Appealing employees do not have the right to require the City to compel the attendance of witnesses not under the City's direct control.
5. 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.
6. The Appeal Board may 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.
7. 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.
8. 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 fifteen (15) working days. The City Recorder, in turn, will communicate the decision to the appealing employee and to the Mayor.
9. If the Appeal Board finds in favor, in full or in part, of the appealing employee, the Appeal Board must provide that the employee receives:
 - a. The employee's salary for the period of time during which the employee is discharged or suspended without pay;
 - b. Any deficiency in salary for the period during which the employee was transferred or demoted to a position of less remuneration; and,
 - c. May provide that any reinstatement of salary be offset by any compensation

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the employee received from other sources such as unemployment, disability, or 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.

10. The Appeal Board will deliver to the City Recorder written findings supporting the majority vote.
11. The City Recorder will keep a record of the appeal and the appeal proceedings. 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 legal fees associated with any grievance or appeal.

F. NOTIFICATION WHEN EMPLOYEE IS NOT AVAILABE FOR HAND DELIVERY

For purposes of this Section, if an individual is not available for hand delivery of a notice or other communications, Tooele City may deem that respective communications were received on the date that the notice was sent to the e-mail address or three days after the notice was mailed by US Postal Service. Notice to any agent acting on behalf of or representing the employee, as listed on the submitted Tooele City Statement of Grievance Form or through other legal notice, will be deemed to be notice to the employee.