ORDINANCE 23-1700-1118

CITY OF MANASSAS PARK

Motion: Councilmember Carrera Second: Councilmember Moore

Date: June 20, 2023

AN ORDINANCE
TO REPEAL THE CITY OF MANASSAS PARK'S UNCODIFIED GRIEVANCE PROCEDURE, ADOPT A NEW GRIEVANCE PROCEDURE IN ACCORDANCE WITH SECTIONS 15.2-1506 AND 15.2-1507 OF THE CODE OF VIRGINIA, AND CODIFY THE NEW GRIEVANCE PROCEDURE AS ARTICLE XVII, EMPLOYEE GRIEVANCES, OF CHAPTER 2, ADMINISTRATION, OF THE CODE OF THE CITY OF MANASSAS PARK, VIRGINIA

BE IT ORDAINED by the Governing Body of the City of Manassas Park, Virginia, that:

1. The City of Manassas Park's uncodified grievance procedure is hereby repealed.

2. Chapter 2, Administration, of the Code of the City of Manassas Park, Virginia, is hereby amended by adding a new Article XVII, to read as follows:

"**ARTICLE XVII. - EMPLOYEE GRIEVANCES**

State Law reference— Establishment of grievance procedure, required provisions, Code of Virginia, §§ 15.2-1506, 15.2-1507.

Sec. 2-225. - Policy.

It is the policy of the City of Manassas Park to provide fair, equitable and satisfactory working arrangements for its employees, and to encourage resolution of employee problems and complaints in an environment wherein employees may freely discuss their concerns with management. To the extent that such concerns cannot be resolved by other means, a grievance procedure is established to afford an immediate method for the resolution of disputes which may arise between the city and its employees. An employee filing a grievance or participating in the grievance of another employee may follow the grievance procedure with complete freedom from reprisal.

Sec. 2-226. - Definitions.

When used in this chapter, the following words, terms, and phrases shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City officer means the city manager, city clerk, city attorney, treasurer, or commissioner of the revenue, as the context requires.

Employee means any person employed by the City, including employees of the city clerk's office, the city attorney's office, and, by agreement between the governing body and the applicable constitutional officer, the treasurer's office and the commissioner of the revenue's office.

Grievance means a complaint or dispute by an employee regarding an alleged condition that affects the circumstances under which the employee works and that is included in the list of grievable complaints in Section 2-227 below. The term "grievance" shall not be interpreted to mean negotiations of wages, salaries, or fringe benefits.

Immediate family includes parents, grandparents, siblings children, grandchildren, spouses, domestic partners, aunts, uncles, first cousins, and any individuals residing in the same household as the subject individual. For purposes of this definition, there is no distinction between natural family members and adopted, step, or in-law family members.

Management means those individuals in an employee's direct line of supervision, from the employee's immediate supervisor to the applicable city officer, inclusive.

Northern Virginia means the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park, the counties of Arlington, Fairfax, Loudoun, and Prince William, and the towns contained within such counties.

Working day means each day that is not a Saturday, Sunday, or official city holiday.

Sec. 2-227. - Grievable complaints.

(a) Grievable complaints and disputes include, but are not necessarily limited to, those involving the following:

(1) Formal disciplinary actions, including dismissals, disciplinary demotions, and suspensions, provided that dismissals shall not be grievable when not resulting from formal discipline or unsatisfactory job performance;

(2) Application of personnel policies, procedures, rules, and regulations, including the application of policies involving matters referred to in paragraph (3) below;

(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 identity, or military status; and

(4) Acts of retaliation as the result of the use of or 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, or has reported an incidence of fraud, abuse, or gross mismanagement.

(b) The employee must state specific facts and circumstances in the grievance to support his or her complaints of grievability. Mere allegation of such actions or circumstances will not support grievability.

(c) For the purposes of paragraph (a)(4) above, 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.

Sec. 2-228. - Management rights and non-grievable issues.

The city retains the exclusive right to manage the affairs and operations of city government. Accordingly, the following complaints are non-grievable:

(a) Establishment and revision of wages or salaries, position classification, or general benefits;

(b) 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;

(c) The contents of ordinances, statutes, or established personnel policies, procedures, rules, and regulations;

(d) Failure to promote, except where the employee can show that established promotional policies or procedures were not followed or applied fairly;

(e) Corrective action, including training, coaching, mentoring, counseling, and verbal reprimands;

(f) The methods, means, and personnel by which work activities are to be carried on;

(g) Termination, layoff, demotion, or suspension from duties because of a lack of work, reduction in force, or job abolition, except where such action affects an employee who has been reinstated within the previous six (6) months as the result of the final determination of a grievance. In any grievance brought under the exception to this paragraph, the action shall be upheld upon a showing by the city that:

(1) There was a valid business reason for the action; and

(2) The employee was notified of the reason in writing prior to the effective date of the action;

(h) The hiring, promotion, transfer, assignment, and retention of employees within city government;

(i) The relief of employees from duties of the city in emergencies.

Sec. 2-229. - Coverage of personnel.

Unless otherwise provided by law, all permanent full-time and part-time city employees who work twenty-four (24) hours or more per week are eligible to file grievances, with the following exceptions:

(a) Employees in an introductory probationary period or in a formal extension of the introductory probationary period;

(b) Appointees of elected groups or individuals;

(c) Officials and employees who by charter or other law serve at the will or pleasure of an appointing authority;

(d) City officers and their deputies;

(e) Assistant city managers and department directors;

(f) Agency heads or chief executive officers of government operations;

(g) Employees whose terms of employment are limited by law;

(h) Temporary, limited term, and seasonal employees;

(i) Employees who have resigned, unless the grievance was initiated prior to the effective date of the resignation;

(j) Any law enforcement officer, as defined in the Law-Enforcement Officers Procedural Guarantee Act (Va. Code § 9.1-500 *et seq*.) (the "LEO Procedural Guarantee Act"), whose grievance is subject to the provisions of the LEO Procedural Guarantee Act and who has elected to proceed pursuant to those provisions in the resolution of the grievance. A law enforcement officer may proceed in accordance with either this Article XVII or the provisions of the LEO Procedural Guarantee Act, but not both.

(k) Employees of the treasurer's office and the commissioner of the revenue's office, unless the governing body and the applicable constitutional officer have agreed to allow such employees to be covered by this grievance procedure pursuant to Virginia Code § 2.2-3008.

Sec. 2-230. - Determination of access and grievability.

(a) Decisions regarding grievability and access to the procedure shall be made by the city manager, or designee, at any time prior to the panel hearing, at the request of the City or the grievant, within ten (10) calendar days following the request. A copy of the city manager's or designee's ruling on the issue of grievability shall be sent to the grievant. Issues of grievability and access not decided prior to the panel hearing shall be deemed to have been waived.

(b) Decisions of the city manager or designee may be appealed to the Prince William Circuit Court for a hearing on the issue of whether the grievance qualifies for a panel hearing.

(c) Proceedings for review of the decision of the city manager or designee shall be instituted by the grievant by filing a notice of appeal with the city manager within ten (10) calendar days from the date of receipt of the decision and giving a copy thereof to all other parties.

(d) Within ten (10) calendar days thereafter, the city manager or designee shall transmit the following to the clerk of the Prince William Circuit Court: a copy of the decision of the city manager or designee, a copy of the notice of appeal, and the exhibits. A list of the evidence furnished to the court shall also be furnished to the grievant. The failure of the chief administrative officer or his 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 chief administrative officer to transmit the record on or before a certain date.

(e) Within thirty (30) days following receipt of such record by the clerk, the court, sitting without a jury, shall hear the appeal on the record transmitted by the city manager 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 may require. The court may affirm the decision of the city manager or designee, or it may reverse or modify the decision. The decision of the court shall be rendered no later than fifteen (15) calendar days following the date of the conclusion of the hearing. The decision of the court is final and is not appealable.

(f) The determination of a complaint as "non-grievable" shall not be construed to restrict any employee's right to seek or management's right to provide customary administrative review of complaints outside the scope of the grievance procedure.

Sec. 2-231. - Time periods.

(a) It is intended that speedy attention to employee grievances be promoted, consistent with the ability of the parties to prepare for a fair consideration of the issues of concern.

(b) If the due date for any act falls on a Saturday, Sunday, or official city holiday, the next business day shall become the due date.

(c) The time periods outlined in this article constitute substantial procedural requirements. Such time periods may be extended, however, by mutual agreement between the grievant and the appropriate level of management to whom the time period is applicable.

(d) Date of receipt is the date of hand delivery or the date indicated by a commercial carrier that delivery was made to the grievant's address of record with the city.

Sec. 2-232. - Compliance.

(a) Grievants have the responsibility to report as directed for all steps in the grievance procedure and shall make themselves available for all meetings involving disciplinary matters, even when on administrative leave.

(b) Employees who are called as witnesses in a grievance shall report as directed for all steps in the procedure, even when on administrative leave.

(c) The human resources manager or designated representative will provide procedural information and guidance to employees and management on issues of access, grievability, and compliance.

(d) 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 or administrative 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 five (5) working days following receipt of written notification by the other party of the compliance violation. Such written notification by the grievant shall be made to the city manager or designee.

(e) The city manager or designee, at his/her option, may require a clear written explanation of the basis for just cause extensions or exceptions. The city manager or designee shall determine compliance issues. Compliance determinations made by the city manager or

designee shall be subject to judicial review by filing petition with the Prince William Circuit Court within thirty (30) days following the compliance determination.

Sec. 2-233. - Grievance procedure.

(a) *Management steps*. Steps I through IV of the grievance procedure provide an intermediate process for the resolution of complaints and disciplinary matters.

(1) General provisions.

a. The first two (2) management steps involve the employee's immediate supervisor. In departments or offices with several levels of supervision, the department director/officer may specify the management level designated as the immediate supervisor for grievance purposes.

b. In disciplinary matters, Steps I, II and III may be waived by written agreement of both the employee and the appropriate levels of management.

c. In grievances in which the action grieved (whether disciplinary or otherwise) was taken by the grievant's department director, or the department director is the grievant's immediate supervisor, Steps II and III of the procedure shall be combined.

d. In grievances in which the action grieved (whether disciplinary or otherwise) was taken by the city officer in the employee's direct line of supervision, or the city officer is the grievant's immediate supervisor, Steps II, III, and IV shall be combined.

e. Personal face-to-face meetings between the appropriate level of management and the employee are required at all steps of the procedure.

f. With the exception of Step IV, the only persons who may normally be present in the management step meetings are the grievant, the appropriate manager at the level at which the grievance is being heard, and appropriate witnesses for each side. Witnesses shall be present in the management step meetings only while actually providing testimony.

g. At Step IV, the grievant and management may each have a representative of his or her choice present. If the grievant is represented by legal counsel, management likewise has the option of being represented by counsel. When an employee is represented, any cost of representation is at the employee's expense.

h. All grievances processed through management Steps II, III, and IV shall be processed on forms provided by the city. The human resources manager will provide procedural assistance to both parties in the completion of grievance forms.

i. Once a grievance has been reduced to writing, it may not be changed or amended unless agreed to by the grievant and the level of management at that step. Any different or additional grievance issues must be pursued through a separate grievance proceeding.

j. Date of receipt is determined by the date of hand delivery or by the date indicated by a commercial carrier or the U.S. Postal Service that delivery was made to the grievant's address on record with the city.

k. For Steps I through IV, the supervisor, department director, or city officer, as applicable, may designate a representative to serve in his/her stead, in which case such representative shall perform all the functions of the supervisor, department director, or city officer required by this article. For all steps of the grievance procedure, including the grievance panel step, the human resources manager may designate a representative to serve in his/her stead.

(2) Step I.

a. Any employee who feels aggrieved may bring the situation to the attention of the employee's immediate supervisor, or other supervisor when the event or action was taken by that other supervisor, explaining the nature of the problem and the suggested solution. This step is intended to be an informal, initial processing of the employee's complaint(s) by the supervisor through a nonwritten, discussion format.

b. While the complaint need not be reduced to writing at this step, the supervisor should routinely document this action with the assumption that it could be the first step of a formal grievance. Any such complaint or grievance shall be made no later than twenty (20) calendar days after the event or action which is the basis for the grievance. The supervisor shall promptly discuss the grievance with the employee and make a careful inquiry into the facts and circumstances of the complaint.

c. Within ten (10) working days following the supervisor's discussion of the grievance with the employee, the supervisor will respond, either verbally or in writing, to the employee, either approving or denying the employee's requested relief. If no response is provided within the (10) working day period, the employee's requested relief shall be deemed denied.

(3) Step II.

a. If the supervisor does not provide a timely response or the supervisor's response does not resolve the grievance at Step I, the employee may continue to Step II by reducing the grievance to writing on a form provided by the human resources manager.

b. The employee must present the written grievance to the supervisor within ten (10) working days following the date on which the supervisor responded at Step I. If the supervisor failed to respond at Step I, the employee has ten (10) working days from the date the supervisor's response was due to present the written grievance. The employee's written grievance must include the specific relief the employee expects to obtain.

c. Upon receipt of the written grievance, the supervisor shall sign and date the form acknowledging its receipt.

d. Within ten (10) working days following receipt of the written grievance, the supervisor shall meet and discuss the grievance with the employee. Within ten (10) working days following such meeting, the supervisor shall respond in writing on the grievance form and include both the date of the meeting and the date of the supervisor's decision. The supervisor shall return the grievance form to the grievant, who shall sign and date it. The supervisor shall provide a copy of the signed grievance form to the human resources manager.

(4) Step III.

a. If the response of the supervisor at Step II does not resolve the grievance, the employee may appeal to the employee's department director within ten (10) working days following receipt of the written response of the supervisor at Step II. The employee must submit the appeal to the department director in writing on the grievance form.

b. Upon receipt of the written grievance, the department director shall sign and date the form acknowledging its receipt.

c. Within ten (10) working days following receipt of the written grievance, the department director shall meet and discuss the grievance with the employee. Within ten (10) working days following such meeting, the department director shall respond in writing on the grievance form and include both the date of the meeting and the date of the department director's decision. The department director shall return the grievance form to the grievant, who shall sign and date it. The department director shall provide a copy of the signed grievance form to the human resources manager.

(5) Step IV.

a. If the response of the department director at Step III does not resolve the grievance, the grievant may appeal to the city officer in the employee's chain of command within ten (10) working days following receipt of the written response of the department director. The employee must submit the appeal to the city officer in writing on the grievance form.

b. Upon receipt of the written grievance, the city officer shall sign and date the form acknowledging its receipt.

c. Within ten (10) working days following receipt of the written grievance, the city officer shall meet and discuss the grievance with the employee. Within twenty (20) working days following such meeting, the city officer shall respond in writing on the grievance form and include both the date of the meeting and the date of the city officer's decision. The city officer shall send a copy of the grievance form to the grievant (i) by hand delivery, (ii) by commercial carrier or the U.S. Postal Service, which shall provide delivery confirmation to the grievant's address on record with the city, or (iii) via email addressed to the grievant's personal email address on record with the city.

(b) *Panel hearing*.

(1) Request for a panel hearing.

a. A panel hearing may be requested when the city officer's response at Step IV of the grievance procedure does not resolve the grievance.

b. Within ten (10) working days following receipt of the city officer's decision, the employee must make a request for a panel hearing to the human resources manager, in writing on the grievance form, and must include a panel hearing request form provided by the human resources manager. The panel hearing request form shall include the name of the panel member selected by the grievant and the name of the grievant's legal counsel, if any.

(2) Panel selection.

a. Each panel member must have at least ten (10) years' experience as a local government employee in Northern Virginia and be either (i) an active, regular full-time employee of a local government in Northern Virginia, or (ii) an active, regular full-time employee of the United States government or Commonwealth of Virginia government with a principal place of work in Northern Virginia; provided, however, that if the third panel member is appointed by the Chief Judge of the Prince William Circuit Court as proved in paragraph b below, the selection need only comply with paragraph c below.

b. Panel members shall be selected in the following manner: one selected by the grievant, one selected by the appropriate city officer, and the third member selected by the other two (2) members. Selection of the city officer's panel member shall be made within ten (10) working days following receipt of the request for panel hearing. After the city officer has selected a panel member, the human resources manager shall notify the two (2) members of their selection to serve on the panel. The two (2) panel members shall then select a third member within ten (10) working days following receipt of the notification of their selection as panel members; provided, however, this period may be extended an additional ten (10) working days by the two panel members, if necessary. In the event that agreement cannot be reached between the two appointed panel members as to the third panel member, the Chief Judge of the Prince William Circuit Court shall select such third panel member. The third member shall serve as the chairperson.

c. The panel is an impartial body selected to hear and decide the grievance on its merits. Therefore, in order to provide an impartial panel and to ensure the protection of city employees, the following persons may not serve as panel members:

1. Immediate family of any participant in the grievance procedure and immediate family of the spouse or domestic partner of any such participant.

2. Supervisors and managers who are in a direct line of supervision of the grievant.

3. Deputies and assistants in the city manager's office and the city attorney's office and employees of the human resources department.
4. Employees in the same department as the grievant.
5. Any person having direct involvement with the grievance being heard by the panel, including any representative of the grievant or witness who has been involved at Steps I through IV.
6. Any attorney having direct involvement with the subject matter or a partner, associate, employee, co-employee, or client of such attorney.
7. Persons who are or have been residents of the same household as the grievant.

d. Any person selected as a panel member may decline appointment, in which case the appropriate party must (i) promptly notify the human resource manager that the selected person has declined appointment, and (ii) select another person to serve as a panel member within ten (10) working days following notice to the human resources manager.

(3) Panel procedure.

a. The human resources manager and the full panel will coordinate a date and time for the panel hearing.

b. All panel hearings shall commence within six (6) months following the date of the Step IV decision unless the grievant, the human resources manager, and the city attorney's office, if involved, mutually agree to extend the six (6) month period.

c. Parties to the grievance shall not discuss the substance of any grievance or the problem giving rise to the grievance with any panel members prior to the hearing.

d. The human resources manager will coordinate the panel hearing and may correspond with panel members, the grievant, the grievant's legal counsel, witnesses, and others directly on behalf of the panel.

e. The human resources manager will 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 the grievant's attorney, at least ten (10) days prior to the scheduled panel hearing. Documents, exhibits, and a list of witnesses shall be exchanged between the grievant's legal counsel and management's legal counsel at least seven (7) days prior to the scheduled panel hearing, unless otherwise agreed. If the grievant is not represented by legal counsel, the parties shall provide such material to the human resources department at least seven (7) days prior to the scheduled panel hearing, and human resources will coordinate the exchange of the material. Upon the request of the grievant or his/her representative, the human resources manager will also allow the grievant access to and copies of all relevant files intended to be used in the grievance proceeding.

f. The human resources manager, with the mutual agreement between the City's representative and the grievant, may extend the time periods applicable to the panel procedures.

(4) Conduct of the panel hearing.

a. At the request of either the grievant or the city, the hearing shall be private. If private, only the panel members, the grievant, the grievant's legal counsel or other representative, the management representative, management's legal counsel, the witness who is testifying, and the court reporter, if any, shall be present at the hearing. If open, the panel shall nevertheless have full power and authority to close portions of the hearing and to determine what persons not having a direct involvement in the proceedings may remain in the hearing room. Witnesses, other than the grievant and the management representative, shall remain in the hearing room only while giving their testimony. Employees of the human resources department will be present throughout any hearing except when the panel is deliberating. The panel may seek the advice of the human resources manager on grievance procedure questions.

b. The grievant may be represented by legal counsel at the grievant's own expense. If the grievant is represented by legal counsel, the city may likewise be represented by counsel.

c. The taking of photographs in the hearing room during the progress of the grievance proceedings and the broadcasting of grievance proceedings by radio or television are prohibited. Recordings of the grievance proceedings by anyone other than a court reporter are prohibited.

d. The panel shall conduct its hearing with all members present.

e. The panel has the authority to determine the admissibility of evidence without regard to the burden of proof, or the order of presentation of the evidence, so long as a full and equal opportunity is afforded to all parties for the presentation of their evidence.

f. At the option of each party, opening statements may be made at the beginning of the hearing setting forth the issue(s) and the panel may ask for such statements in order to clarify the issue(s) involved in the grievance. If opening statements are made, the grievant or the grievant's legal counsel shall begin, followed by the city's legal counsel or the city's designated representative.

g. The panel has no subpoena power to compel the attendance of witnesses in the grievance procedure. The panel may, however, at the request of either party or in its own discretion, request the voluntary appearance of witnesses. Witnesses who are employees of the city shall appear as witnesses if so directed by management. Witnesses shall be permitted in the hearing room only when giving their testimony. The sworn statement of an absent or unavailable witness shall be received as evidence by the panel.

h. The panel hearing is an administrative process and is not meant to be conducted like proceedings in court. Panels are not bound by technical rules of evidence and shall take into account all reliable and substantial evidence produced at the hearing. It is within the province of the panel to determine relevancy and materiality. The panel may require either party to demonstrate relevancy and materiality of any evidence and the need for any requested extensions of the hearing panel.

i. All evidence shall be presented in the presence of the panel and the parties unless by mutual consent of the parties. The grievant shall present his or her evidence first.

j. Evidence may be presented by the grievant along with any exhibits, which shall be marked and made a part of the record. The panel may question any witness, including the grievant, and the grievant or his counsel may question any witness. The city's designated representative or legal counsel representing the city may also question witnesses and present evidence in the same manner afforded the grievant.

k. The panel shall deal only with the grievance before it. Evidence and testimony as to how other employees or situations have been handled in the past are not relevant. No personnel file or record may be examined by the panel or introduced into evidence, except that of the grievant.

l. The grievant shall not be permitted to introduce any evidence before the panel that has not been previously presented or submitted during the management steps for management consideration.

m. The panel by majority vote may decide procedural questions and rule upon objections raised during the course of the hearing.

n. The parties shall produce such additional evidence as required by the panel.

o. After both parties have had the opportunity to present their evidence, the panel chairperson shall inquire of both parties whether they have further evidence. Upon receiving negative replies, the hearing shall be closed. Both parties shall be given the opportunity to make closing statements, following which the panel shall retire to begin its deliberation. If closing statements are made, the grievant or the grievant's legal counsel shall make his or her closing argument, followed by the city's legal counsel or the city's designated representative.

p. At the request of either party, a court reporter shall record the grievance hearing, with the party making the request bearing the cost of the court reporter's appearance fee. Any party ordering a copy of the transcript of the hearing shall bear the cost thereof.

(5) Panel decision.

a. The panel shall render its decision in writing within five (5) working days following the conclusion of the hearing unless the panel by majority vote extends the time period.

b. The panel shall state in writing the reasons for its decision on the panel hearing response form. Copies of the decision shall be transmitted to the city officer in the grievant's direct line of supervision, the human resources manager, the department director (if applicable), the grievant, the grievant's immediate supervisor, and the attorneys for the parties. The human resources manager shall assist in transmitting copies of the decision to the grievant, the grievant's attorney, and the city's legal counsel if other than the city attorney.

c. The panel shall decide the case on the merits, not on whether there has been compliance with the procedural requirements of this article.

d. The panel does not have the authority to formulate policies or procedures nor to alter existing policies and procedures. The panel is not empowered to establish or modify job standards, job requirements, or performance standards nor may the panel determine or change an employee's evaluation rating. The panel shall make its decision within the following standards of review:

    1. The panel shall uphold the city's action if the evidence shows that the charges brought pursuant to the policies and procedures of the city were reasonable. If the panel finds that the charges were not reasonable, the panel has the same authority and limitations as management to determine the appropriate charges and disciplinary action in accordance with applicable city policy.

    2. In grievances involving termination for unsatisfactory work performance, failure to meet job standards, unacceptable attendance, and job abandonment, the panel shall uphold the city's action if it determines that the action was reasonable under the circumstances.

    3. In grievances involving complaints regarding application of policy, discrimination, and other non-disciplinary issues, the panel will determine if policies and procedures have been appropriately applied.

    4. The panel does not have the authority (i) to promote, assign, or transfer employees, to establish salaries, or to take any other action which is in the purview of management rights, or (ii) to award back pay or benefits, damages, or attorneys' fees.

    5. The panel does not have the authority to consider determinations of access or grievability made in accordance with section 2-230 above, or of compliance made in accordance with section 2-232 above.

    6. The majority decision of the panel, acting within the scope of its authority, shall be final, provided it is consistent with provisions of law and the city's policies and procedures.

7. The human resources manager may remand to the panel for further consideration a decision which appears to be inconsistent with provisions of law or the city's policies and procedures. All parties will be notified when a decision is remanded. All three (3) panel members must participate in the decision-making process following remand.

e. The question of whether the relief granted by the panel is consistent with the city's written policies and procedures shall be determined by the city manager or designee, unless such person 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 Prince William Commonwealth's Attorney.

f. The city manager, after consultation with the human resources manager, has discretion to order all or some back pay and/or benefits to the grievant if the panel finds that the charges or action taken by the city were not reasonable.

g. If either party refuses to implement a panel decision, the other party may petition the Prince William Circuit Court to enforce the decision.

Secs. 2-234—2-245. - Reserved."

3. All sections of the Code of the City of Manassas Park, Virginia that are inconsistent with and/or in conflict with this Ordinance are hereby repealed.

4. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

5. This Ordinance shall be effective upon its adoption.