

PERSONNEL RULES FOR THE CLASSIFIED SERVICE



Effective – May 28, 2013
Seventh Edition



Department of Human Resources Acknowledgements

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TABLE OF CONTENTS

Section/Rule/Title	Section	Page	Date
Acknowledgement	n/a	2	5/28/13
Table of Contents	n/a	3	5/28/13
Introduction	n/a	6	5/28/13

GENERAL PROVISIONS

1.1	Definitions	I	7	5/28/13
1.2	Application	I	13	5/28/13
1.3	Director of Human Resources	I	13	5/28/13
1.4	Appointing Authority/Agency Director	I	13	5/28/13
1.5	Agency Rules/Policies/Directives	I	13	5/28/13
1.6	Federal Fund Regulations	I	13	5/28/13
1.7	Publication of Rules	I	13	5/28/13
1.8	Amendment of Rules	I	13	5/28/13

CLASSIFICATION AND GENERAL SALARY ADMINISTRATION

2.1	General Purpose of the Classification Plan	II	14	5/28/13
2.2	Position Types	II	14	5/28/13
2.3	Composition of the Classification Plan	II	14	5/28/13
2.4	Maintenance of the Classification Plan	II	14	5/28/13
2.5	General Purpose of the Pay Plan	II	15	5/28/13
2.6	Pay Plan Administration	II	15	5/28/13
2.7	Payment at a Listed Rate	II	15	5/28/13
2.8	Employment Within the Pay Range	I	15	5/28/13
2.9	Use of Pay Ranges	II	15	5/28/13
2.10	Pay Performance System	II	15	5/28/13
2.11	Pay Differentials	II	15	5/28/13
2.12	Pay for Part-time Employment	II	15	5/28/13
2.13	Pay of Reallocated Employees	II	15	5/28/13
2.14	Effective Date of Pay Adjustments	II	16	5/28/13
2.15	Overtime and Compensatory Time Guidelines	II	16	5/28/13
2.16	Payroll Deductions	II	16	5/28/13
2.17	Final Paychecks	II	16	5/28/13

RECRUITMENT, CERTIFICATION AND EMPLOYMENT

3.1	Recruitment and Certification Administration	III	17	5/28/13
3.2	Types of Recruitment	III	17	5/28/13
3.3	Position Announcement	III	17	5/28/13
3.4	Applications	III	17	5/28/13
3.5	Basic Requirements	III	17	5/28/13
3.6	Background Investigations	III	18	5/28/13

**Personnel Rules for
The Classified
Service**



**City of Richmond,
Virginia
May 28, 2013**

Section/Rule/Title	Section	Page	Date
3.7 Applicant Screening and Review (Examinations)	III	18	5/28/13
3.8 Applicant Screening Eligibility of Examinations	III	18	5/28/13
3.9 Examination Results	III	18	5/28/13
3.10 Veteran's Preference	III	18	5/28/13
3.11 Establishment of Eligible Lists	III	18	5/28/13
3.12 Seasonal Reemployment List	III	18	5/28/13
3.13 Removal of Names from Eligible Lists	III	19	5/28/13
3.14 Duration of Eligible Lists	III	19	5/28/13
3.15 Minimum Number of Names to Be Certified	III	19	5/28/13
3.16 Use of Related Series Eligible Lists	III	19	5/28/13
3.17 Interview and Record of Action	III	19	5/28/13
3.18 Appointment Status	III	20	5/28/13
3.19 Probationary Period	III	20	5/28/13
3.20 Adjustment Period	III	21	5/28/13
3.21 Effect on Reinstatement	III	21	5/28/13

GENERAL EMPLOYMENT PRACTICES

4.1 Agency Initiated Reassignment	IV	22	5/28/13
4.2 Transfers	IV	22	5/28/13
4.3 Transfers Between Legislative Agencies	IV	22	5/28/13
4.4 Promotions	IV	22	5/28/13
4.5 Performance Demotion	IV	23	5/28/13

DISCIPLINARY ACTIONS, DEMOTIONS, DISMISSALS AND SEPARATIONS

5.1 Policy	V	24	5/28/13
5.2 Grounds	V	24	5/28/13
5.3 Types of Discipline	V	24	5/28/13
5.4 Documentation	V	24	5/28/13
5.5 Written Reprimand	V	26	5/28/13
5.6 Suspension	V	26	5/28/13
5.7 Reduction in Pay	V	27	5/28/13
5.8 Disciplinary Demotion	V	27	5/28/13
5.9 Dismissal	V	27	5/28/13
5.10 Forfeiture	V	27	5/28/13
5.11 Separation from City Service	V	28	5/28/13
5.12 Reduction-In-Force	V	29	5/28/13
5.13 Reinstatement	V	30	5/28/13

WORKING CONDITIONS AND BENEFITS

6.1 Hours of Work	VI	31	5/28/13
6.2 Holidays	VI	31	5/28/13
6.3 Vacation Leave	VI	32	5/28/13
6.4 Sick Leave	VI	34	5/28/13
6.5 Shared Leave Provision	VI	35	5/28/13
6.6 Military Leave	VI	36	5/28/13

**Personnel Rules for
The Classified
Service**



**City of Richmond,
Virginia
May 28, 2013**

Section/Rule/Title	Section	Page	Date
6.7 Civil Leave	VI	36	5/28/13
6.8 Bereavement Leave	VI	37	5/28/13
6.9 Educational Leave	VI	37	5/28/13
6.10 Leave Without Pay	VI	38	5/28/13
6.11 Leave for Victims of a Crime	VI	38	5/28/13
6.12 Administrative Leave	VI	38	5/28/13
6.13 Unauthorized Absence	VI	38	5/28/13
6.14 Absence Due to Arrest or Incarceration	VI	39	5/28/13
6.15 Holding Two City Positions	VI	39	5/28/13
6.16 Nepotism	VI	39	5/28/13
6.17 Outside Employment	VI	39	5/28/13
6.18 Pay and Performance System	VI	39	5/28/13

GRIEVANCE AND APPEAL PROCEDURES

7.1 Grievance Procedures	VII	40	5/28/13
7.2 Cost of Representation	VII	40	5/28/13
7.3 Coverage	VII	40	5/28/13
7.4 Definition of Grievance	VII	40	5/28/13
7.5 Rights Reserved	VII	41	5/28/13
7.6 Determination of Grievability	VII	41	5/28/13
7.7 Appeals of Grievability Decisions	VII	41	5/28/13
7.8 Procedural Compliance	VII	42	5/28/13
7.9 Time Limitations	VII	42	5/28/13
7.10 Standard/Burden of Proof	VII	42	5/28/13
7.11 Representation During Management Steps	VII	42	5/28/13
7.12 Steps of the Grievance Process	VII	43	5/28/13
7.13 Direct Appeals to Personnel Board	VII	44	5/28/13

PERSONNEL BOARD

8.1 Personnel Board	VIII	45	5/28/13
8.2 General Meetings of the Board	VIII	45	5/28/13
8.3 Hearings by the Board	VIII	45	5/28/13
8.4 Subpoenas and Grievance Materials	VIII	46	5/28/13
8.5 Conduct of Hearings	VIII	46	5/28/13
8.6 Remedies	VIII	47	5/28/13
8.7 Implementation of Board Decisions	VIII	47	5/28/13

PROCEDURES REGARDING EMPLOYMENT INVESTIGATIONS

9.1 Purpose	IX	48	5/28/13
9.2 Definitions	IX	48	5/28/13
9.3 Complaints by Persons Claiming to be Aggrieved	IX	48	5/28/13
9.4 Where to Make a Complaint	IX	49	5/28/13
9.5 Contents of a Complaint	IX	49	5/28/13
9.6 Notice of Complaint	IX	49	5/28/13
9.7 Investigation of the Complaint	IX	49	5/28/13
9.8 Dismissal Procedure and Authority	IX	51	5/28/13
9.9 Settlement	IX	51	5/28/13
9.10 General	IX	51	5/28/13



INTRODUCTION

PURPOSE. The purpose of these Rules is to promote the development and maintenance of quality public services for the City through a coordinated system of human resource administration embracing high performance principles. It is the further purpose of these Rules, generally, to (1) set forth policies, methods and standards for the proper and efficient administration of a human resources system based upon merit for employees of the City; (2) to provide guidance and assistance to management in the administration of personnel matters, and (3) to provide equal employment opportunity to City employees and applicants for employment on the basis of merit and fitness without regard to race, age, sex, national origin, religion, sexual orientation (to the extent now or hereafter permitted or required by law), marital status, disability or membership in other protected groups or any other condition which might constitute illegal discrimination

RULES. This manual contains Rules adopted by the City Council of the City of Richmond pursuant to the City Charter and City Code. All Personnel Rules are administered by the Director of Human Resources, under the guidance of the Chief Administrative Officer or designee. The Director of Human Resources or designee may issue opinions that may supplement these rules. These Rules express the City's Human Resource management policies for members of the classified service.

BASIC LAW. The Charter of the City of Richmond is derived from Chapter 116 of the 1948 Acts of the General Assembly of Virginia and, as amended, is the basic law of the City. Although the Charter and its amendments apply only to the City, other Virginia statutes, general in nature, if not inconsistent, also may apply.

FORCE AND EFFECT. Each of the Rules set out in this manual was duly adopted or amended pursuant to Chapter 2, Article VI, Division 4 of the City Code as amended after due notice and hearing as required. **These revised Rules shall take effect May 28, 2013.**

POLICY. It shall be the policy of the City to recruit, select, compensate and develop employees on the basis of their relative ability, knowledge and skills. The City considers the training and organizational development of its employees to be a vital part of its mission. To this end, the City shall promote, direct, coordinate, implement and evaluate comprehensive organizational development programs that will enable the City work force to achieve the highest quality of professional life.

EQUAL EMPLOYMENT OPPORTUNITY. It is the policy of the City of Richmond to provide equal opportunity to all employees and potential employees. No officer or employee shall discriminate against any employee or applicant for employment with regard to recruitment, application, testing, certification, appointment, assignment, performance evaluation, training, working conditions, promotion, demotion, discipline, lay-off, discharge, retirement, or any other aspect of employment on the basis of race, age, sex, national origin, religion, sexual orientation (to the extent now or hereafter permitted or required by law), marital status, disability or membership in other protected groups.

No officer or employee shall retaliate against any employee with regard to recruitment, application, testing, certification, appointment, assignment, performance evaluation, training, working conditions, promotion, demotion, discipline, lay-off, discharge, retirement, or any other aspect of employment because the employee has used or participated in the City's grievance procedure, has complied with any law of the United States, or of the Commonwealth, or has reported any violation of such law to a governmental authority, or has reported an incidence of fraud, abuse, or any other violation to a governmental authority.



SECTION I – GENERAL PROVISIONS

- 1.1 Definitions** – Throughout these Rules, except where the context clearly indicates otherwise, (1) the use of the masculine pronoun of “he” shall be construed to include both genders, (2) the use of the singular shall be construed to include the plural, and (3) the following words and phrases shall have the meaning indicated:
- (1) **Adjustment Period** – A trial evaluation period for a tenured employee, who is transferred, demoted or promoted. This evaluation period shall be no more than one hundred eighty (180) days.
 - (2) **Administrative Leave** – Leave with pay, granted by the Appointing Authority or designee for special situations or circumstances. Leave greater than ten (10) working days (56 hour Shift Fire Personnel shall be eligible for up to five (5) working days) must be approved by the Director of Human Resources.
 - (3) **Administrative Regulation** – Any policy, procedure or rule issued in writing by the Mayor. Administrative Regulations can affect more than one agency and apply to all employees (classified and unclassified).
 - (4) **Administrative Hearing** – An oral proceeding where evidence and arguments are presented before a federal, state or local agency, authority, board, commission or any other body empowered by law to subpoena witnesses and render conclusions authorized by law.
 - (5) **Agency** – Any department or other administrative unit of the City under the control and supervision of an Appointing Authority or designee.
 - (6) **Allocation** – The assignment of a newly created position to an appropriate class, or of a class to an appropriate series.
 - (7) **Appeal** – A request for a hearing at the next applicable “step” under the grievance and appeal procedure set forth in these Rules.
 - (8) **Applicant** – A person who has filed a formal application for employment with the City.
 - (9) **Appointing Authority or designee** – Any person or group of persons having power by law, or by lawfully delegated authority, to appoint a person to a position in the City’s service.
 - (10) **Appointment** – The naming of a person to a position by an Appointing Authority or designee consistent with these Rules.
 - (11) **Base Salary** – The actual salary amount in a given pay range exclusive of all pay differentials and allowances.
 - (12) **Board** – The Personnel Board of the City of Richmond.
 - (13) **Certification** – The act of establishing an appropriate number of eligible applicants for the purpose of interviewing.
 - (14) **Chairperson** – The person chosen by the Personnel Board to be the Presiding Officer.
 - (15) **Charter** – The Charter of the City of Richmond, as amended.
 - (16) **City** – The City of Richmond, Virginia.

**Personnel Rules for
The Classified
Service**



**City of Richmond,
Virginia
May 28, 2013**

- (17) City Council – The governing body of the City of Richmond
- (18) City Service – Employment with the City.
- (19) Class – A group of positions conforming to common specifications as outlined in the City's Classification Plan.
- (20) Class Specification – A written statement including the general duties, responsibilities, and other qualifications distinguishing one class from another.
- (21) Class Title – The designation given to a class.
- (22) Classification Plan – The plan required by the Charter and approved by the Director of Human Resources, providing for the allocation of positions into classes, and for the grouping of classes into series.
- (23) Classified Service – All classes of positions that have certain rights and privileges as defined by the Personnel Rules.
- (24) Closing Date – The last date established for which applications can be received for a particular position.
- (25) Counseling – A verbal statement made to an employee intended to improve job performance or job related behavior. Counseling is not a disciplinary action and is not grievable.
- (26) Days – For purposes of these Rules, day shall refer to any given 24-hour period beginning at midnight or any calendar day, unless otherwise noted.
- (27) Demotion – The placement of an employee in a position in a lower class for which a lower midpoint of the pay range is authorized.
- (28) Differentials – Additional compensation for specific duties, which have specifically been provided for by the City's Pay Ordinance.
- (29) Department – The Department of Human Resources.
- (30) Direct Hire – Designated positions for which agencies are authorized to recruit, rank and make selections in lieu of the certification procedures.
- (31) Directives – Any written policies, procedures, or order issued under the authority of a particular Appointing Authority or designee which dictates certain expectations, actions, rules or regulations. All agency policies, procedures and orders shall be consistent with these Rules.
- (32) Director – The Director of Human Resources or designee for the City.
- (33) Disability – A physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having substantial impairment.
- (34) Dismissal – The involuntary separation from employment.
- (35) Eligible – A person who has met the requirements to have his or her name placed on an eligible list.

**Personnel Rules for
The Classified
Service**



**City of Richmond,
Virginia
May 28, 2013**

- (36) Eligibility List – An official list, by class, consisting of the names of those persons who have successfully met the minimum qualifications for employment.
- (37) Emergency – Any occasion when unforeseen circumstances or conditions beyond the reasonable control of departments or agencies require employees to work outside their regular work schedules to protect and preserve the interest of the City or its citizens.
- (38) Employment Date – An employee’s most recent hiring date of employment with the City.
- (39) Employee – A person occupying a position who is paid a salary or wage.
- (40) Evaluation Date - The date designated administratively for any performance related evaluation.
- (41) Examination – The process of evaluating either internal or external applicants by the use of measurements which indicate their knowledge, skills, abilities and general suitability for the class for which they are being evaluated for employment, transfer, promotion or demotion.
- (42) Exempt Classification – A classification for which overtime compensation is not required under the Fair Labor Standards Act.
- (43) Flex Time – Any deviation from the standard work schedule with the approval of the Appointing Authority or designee.
- (44) Forfeiture - Any officer, appointee of the Council or employee of the City who shall be convicted by a final judgment of any court from which no appeal has been taken or which has been affirmed by a court of last resort on a charge involving moral turpitude, or any felony, or any misdemeanor involving possession of marijuana or any controlled substances shall forfeit his or her office or employment. The employee shall lose all rights of employment and future employment with the City service, and the employee shall have no right of appeal. All determinations for forfeiture (as defined in section 4.14 of the City Charter) of position require a review by the City Attorney’s Office.
- (45) Full-Time Employment – Employment, which averages forty hours per week for at least nine months in any twelve-month period.
- (46) FMLA – Family Medical Leave Act of 1993, as amended.
- (47) Grant-funded – Positions established by federal, state, local or private grants.
- (48) Grievance – A grievance shall be a complaint or dispute by an employee relating to his or her employment, including but not necessarily limited to (i) disciplinary actions, including dismissals, disciplinary demotions, written reprimands and suspensions, provided that dismissals shall be grievable whenever resulting from formal discipline or unsatisfactory job performance; (ii) the application of personnel policies, procedures, rules and regulations, including the application of policies involving ordinances, statutes or established personnel policies, procedures, rules and regulations; (iii) acts of retaliation as a result of utilization of the grievance procedure or participation in the grievance of another employee; (iv) complaints of discrimination on the basis of race, color, creed, religion, political affiliation, age, disability, national origin or sex; (v) performance demotion; and (vi) acts of retaliation because the employee has complied with any law of the United States, the Commonwealth of Virginia or the City of Richmond, has reported any violation of such law to a governmental authority, or has sought any change in law before the Congress of the United States, the General Assembly of the Commonwealth or the City Council or has reported an incidence of fraud, abuse or gross mismanagement.

**Personnel Rules for
The Classified
Service**



**City of Richmond,
Virginia
May 28, 2013**

- (49) Immediate Family – The mother, father, wife, husband, child, brother, sister, legal ward, grandparents and grandchildren of the employee or the employee's spouse; or any other relative of the employee or spouse who lives in the employee's household.
- (50) Independent Contractor – A party contracted by the City to perform a service. This party is not an employee of the City.
- (51) Interim – The temporary placement of an employee acting in an authorized City position.
- (52) Job Abolishment – The elimination of a classification due primarily to considerations of efficiency and effectiveness. Affected employees shall be governed by the reduction-in-force provisions.
- (53) Leave without pay – Leave without pay, granted by the Appointing Authority or designee pending disciplinary review, for special situations or circumstances. Leave greater than ten consecutive (10) working days (56 hour Shift Fire Personnel shall be eligible for up to five (5) working days) must be approved by the Director of Human Resources. An employee in leave without pay status will not accrue vacation or sick time during that period.
- (54) Moral turpitude – Including but not limited to charges that encompass a base or vile act (i.e. acts that involve dishonesty, fraud, intentional or reckless infliction of harm to persons or property, or acts in which malice is an element).
- (55) Non-compensable – Not eligible for or subject to compensation.
- (56) Nonexempt classification – A classification for which overtime compensation (payment or compensatory time) is required by the Fair Labor Standards Act.
- (57) Normal Work Schedule – Those hours of each workday and those days of the week during which an employee is regularly assigned to work.
- (58) Outside Employment – Any employment, activity or enterprise which is outside the normal scope of duties for which an individual is employed by the City; and in which the nature of the work, activity or enterprise engaged in produces a wage, salary, bonus or net gain.
- (59) Part-Time Employment – Employment, which averages less than forty hours per week for at least nine months in any twelve-month period.
- (60) Pay – Any salary or wage paid to an employee by the City for services rendered.
- (61) Pay Bonus – A one-time specific payment amount.
- (62) Pay for Performance System Salary Increase – An increase in salary based on an employee's performance in accordance with the City's Pay Ordinance.
- (63) Pay Plan – The current Ordinance adopted by City Council consisting of pay rules and pay ranges for each class.
- (64) Pay Range – All salary rates between the minimum and maximum prescribed for a specific class in the Pay Plan.
- (65) Pay Status – An employee's active or inactive status on the City's payroll.

**Personnel Rules for
The Classified
Service**



**City of Richmond,
Virginia
May 28, 2013**

- (66) Performance Rating – The objective rating of the work performance of an employee.
- (67) Permanent Position – A position established in accordance with the annual budget for a continuous, indefinite period of time.
- (68) Personnel Action Date – The date of an administrative transaction that affects an employee's position, salary or status.
- (69) Policy – General guidelines that regulate organizational actions.
- (70) Pool Employee – Positions established for a limited use to perform work activities on an ad hoc (as needed) basis.
- (71) Position – The specific duties of employment requiring the services of one full or part-time employee.
- (72) Pre-Disciplinary Conference – An informal meeting granted to an employee in which an explanation is given for the recommendations of discipline and the employee is allowed to informally present his or her side of the issue.
- (73) Probationary Period – A period of twelve (12) consecutive months served as part of the initial selection process by all new employees before attaining tenured status. During the probationary period, either the employer or employee may terminate employment with the City for any reason.
- (74) Probationary Status – An employee's appointment status during a trial period served by all new employees before attaining tenured status. An employee must serve at least twelve (12) consecutive months before the probationary period requirement is met.
- (75) Procedures – Customary methods of handling policies.
- (76) Promotion – A change in the status of an employee from a lower position in one class to a position in another class having a higher midpoint of the pay range as a result of a competitive recruitment process.
- (77) Provisional Status –.The appointment status of a qualified individual when there is (1) no eligible list and/or (2) during an approved leave of absence for the incumbent and it is essential that the vacancy be filled. Such an appointment shall be approved by the Human Resources Director and shall be for no longer than ninety (90) calendar days. Such appointments shall only be extended or renewed with the approval of the Chief Administrative Officer or designee or City Council's designee depending on the reporting relationship. Provisional employees have limited rights and benefits.
- (78) Qualifications – The requirements of education, experience and other skills prescribed for a given class.
- (79) Reallocation – The determination by the Director of Human Resources or designee that a position should be allocated to a different class.
- (80) Reasonable Accommodations – Accommodations required pursuant to State and Federal Law.
- (81) Reassignments – The movement of an employee from one position to another position in the same class, within a specific agency by the Appointing Authority or designee.

**Personnel Rules for
The Classified
Service**



**City of Richmond,
Virginia
May 28, 2013**

- (82) Reduction-in-Force – The involuntary separation of an employee from a position if it has been determined that positions will no longer be required or that funds will not support certain positions.
- (83) Regulations – A policy or order issued by an executive authority or regulatory agency.
- (84) Resignation – The voluntary separation from City service by an employee.
- (85) Reinstatement – Reinstatement status applies only to those tenured status employees who have (1) resigned in good standing, (2) apply for reinstatement within ten (10) calendar days of the date of their separation (last day in pay status), (3) their position having remained unfilled, and (4) now meet the minimum qualifications for the position, and then only if such reinstatement is approved by both the Appointing Authority or designee and the Director of Human Resources or designee. Seniority for employees reinstated shall be computed from the original date of employment.
- (86) Reprimand – A written disciplinary statement made to an employee concerning job performance or inappropriate conduct or behavior.
- (87) Rule – Specific guidelines that regulate and restrict behavior of employees.
- (88) Separation – The termination of employment from the City for any reason.
- (89) Seasonal – A type of temporary position established for special or recurring seasonal work assignments of no more than twelve (12) months.
- (90) Seniority – The total time an employee has been employed (1) in the City Service, (2) in a series, or (3) in a class, according to the context in which the term is used.
- (91) Series – Two or more classes that are similar as to type of work but differ as to level of responsibility and difficulty. Classes are arranged in a series of steps in a normal line of promotion. A single class shall be deemed a series if there is no other class having similar specifications.
- (92) Shift Fire Personnel – Those persons who work on one hundred twelve (112) hour bi-weekly system.
- (93) Suspension – The temporary removal of an employee from duty and pay status for cause. All suspensions are without pay and are for a specific period of time.
- (94) Temporary Position – A position established for a specific period of time and falling into the category of either short term, seasonal, pool, provisional, grant-funded or emergency.
- (95) Tenured Status – The type of status which is neither probationary nor provisional, which gives the employee all rights and benefits of the classified service. Employees who are on tenured status have successfully completed the prescribed probationary period. Tenured status expires at the date of separation.
- (96) Transfer – A change from one position to another having the same or a lower midpoint of the pay range.
- (97) Unauthorized leave – An unapproved absence from duty.
- (98) Unclassified Service – Employees in the unclassified service serve at the will of the City.
- (99) Vacancy – An established position which is not filled.

**Personnel Rules for
The Classified
Service**



**City of Richmond,
Virginia
May 28, 2013**

(100) Vested – A tenured, full-time employee who has attained at least five (5) years of creditable service.

(101) Work Day – Defined as an eight (8) hour day. Employees, who work shifts other than an eight (8) hour day, shall have their shift converted to an hourly equivalent.

- 1.2 Application** - These Rules shall apply to all positions and employees in the classified service as defined and to such other employees as required by law or by administrative agreement. .These rules are available to all employees electronically through the Internet and the Intranet and are also available for review through the Department of Human Resources.
- 1.3 Director of Human Resources or designee** - The Director shall be a person trained and skilled in human resources and employee relations. The Director shall have general management and control of the department, and shall appoint and remove, subject to the City's Personnel policies, rules, and procedures, all officers and employees of the Department. The Director may designate assistants in the Department to carry out any of his or her powers and duties and may delegate, as the Director deems appropriate, human resources functions to other Agencies by agreement. The Department of Human Resources shall be responsible for the administration of the City's personnel system as adopted and amended by ordinance. The Director of Human Resources or designee is authorized to interpret and apply these Rules and issue procedural directives to implement the Rules.
- 1.4 Appointing Authority or designee/Agency Director or designee** - Every Appointing Authority or designee shall, within his or her agency, administer the human resource system established by these Rules. Although the Appointing Authority may delegate his or her responsibilities under the Charter and these Rules, he or she still retains management responsibility for actions taken or not taken and remains accountable for the administration of the human resource system within his or her agency. The Director of Human Resources or designee shall approve the Appointing Authority's designee, who shall be in a pay range twenty-one (21) or above.
- 1.5 Agency Rules/Policies/Directives** - These Rules shall not be construed as limiting the power and authority of any agency head to make agency rules and regulations governing the conduct and performance of employees, provided that such agency rules and regulation shall not conflict with provisions of these Rules or be contrary to law.
- 1.6 Federal Fund Regulations** - Whenever there are provisions in the regulations of a program, which involve the use of federal funds that are at variance with these rules, federal regulations shall prevail.
- 1.7 Publication of Rules** - The Director of Human Resources or designee shall prepare and publish, subject to approval of the City Council, revisions to the Personnel Rules Manual. A copy of these Rules and all amendments shall be available electronically through the Internet and the Intranet and are also available for review through the Department of Human Resources.
- 1.8 Amendment of Rules** - Rules that may be amended pursuant to procedures established by City Ordinance.



SECTION II - CLASSIFICATION AND GENERAL SALARY ADMINISTRATION

- 2.1 General Purpose of the Classification Plan** - The Classification Plan shall serve as a tool for staffing, selecting, compensating, evaluating, training and budgeting within City government. The Director of Human Resources or designee shall be responsible for the administration of the Classification Plan.
- 2.2 Position Types - Positions may be categorized as:**
- (1) Permanent - positions established in accordance with the annual budget for a continuous, indefinite period.
 - (2) Temporary - positions established for a specific type of work or period of time. Temporary positions may be short-term, seasonal, emergency, grant-funded, or pool.
 - a. Short-term - Any temporary position established for a specific duration other than seasonal or emergency, lasting for no more than twelve (12) months.
 - b. Seasonal - Positions are for recurring, special or seasonal work activities of no more than twelve (12) months.
 - c. Emergency - Positions that meet emergency requirements of the City and exist for no more than thirty (30) calendar days.
 - d. Grant-funded - positions established by federal, state, local or private grants. All positions funded by grants are temporary. The Chief Administrative Officer or designee, at the establishment of the position, may designate a grant-funded position as permanent if such funding and contract conditions warrant. Should such designation occur, such permanent grant funded position shall be in the unclassified service.
 - e. Pool - Positions established for a limited use to perform work activities on an ad hoc (as needed) basis. Positions are part-time and do not dictate a regular work schedule. Positions may last beyond a twelve (12) month period. Individuals who serve in this class of positions are not entitled to any benefits, including vacation, sick or other leave accruals. Positions established for this purpose must be approved by the Department of Human Resources and shall be monitored by the Department of Human Resources to ensure compliance.
- 2.3 Composition of the Classification Plan** - The Classification Plan shall contain the following:
- (1) A grouping of positions into classes in accordance with the nature, difficulty and responsibility of its assigned duties with the same range of compensation which can equitably be applied;
 - (2) Class titles descriptive of the work and which identify the class;
 - (3) Written specifications for each class of position outlining general duties, responsibilities, skills, knowledge, training and educational requirements; and
 - (4) An assignment of classes to appropriate series. A single class may be deemed a series if there are no other classes performing related work.
- 2.4 Maintenance of the Classification Plan** - The Director of Human Resources or designee shall be responsible as necessary for the review of the Classification Plan. Such review shall include but is not limited to the review of duties, responsibilities, and qualification requirements of all classified positions and ensure proper classification. When the Director of Human Resources or designee finds that a substantial change has occurred in the nature or level of duties and responsibilities of an existing position resulting from a classification review, the Director of Human Resources or designee shall authorize revision of the existing class specification and reallocate the position as may be appropriate.

**Personnel Rules for
The Classified
Service**



**City of Richmond,
Virginia
May 28, 2013**

The Appointing Authority or designee shall be responsible for notifying the Director of Human Resources or designee as necessary, the need for new positions and material changes to the nature of duties, working conditions, responsibilities, or other factors affecting the classification of any existing position.

New positions shall be established with the approval of the Chief Administrative Officer or designee and all new classifications must be approved by City Council within sixty (60) calendar days pursuant to the Pay Ordinance No. 93-117-159 dated May 24, 1993 as amended

- 2.5 General Purpose of the Pay Plan** - The Pay Plan, as adopted by City Council, is a complementary document to the Classification Plan. The Pay Plan includes a basic pay schedule, salary administration rules, and a schedule of pay ranges consisting of minimum and maximum rates of pay for all classes of positions included in the Classification Plan. The Pay Plan adopted by City Council shall be controlling if there is a conflict between the Pay Plan and any provision of these Rules.
- 2.6 Pay Plan Administration** - The Director of Human Resources or designee shall be responsible for the administration of the Pay Plan, including the processing of salary increases, the adjustment of pay on promotions, demotions, reinstatements, transfers and the initiation of necessary revisions in pay ranges.
- 2.7 Payment at a Listed Rate** - All employees covered by the Pay Plan shall be paid within the pay range established for their respective position classification, except those positions which are specifically exempted by City Council in the Pay Ordinance and those employees whose present salaries are above the established maximum rate following transition to a new Pay Plan.
- 2.8 Employment Within the Pay Range** - Appointing Authorities may enter into salary negotiations with certified applicants of classified positions within guidelines established by the Administrative Regulations for employment at any level within the pay range.
- 2.9 Use of Pay Ranges** - The use of pay ranges is governed by the Pay Ordinance adopted by City Council. Unless otherwise specifically provided, no increase shall be awarded which shall result in an employee's salary exceeding the maximum of the pay range applicable to his or her class. All salary increases are calculated on base salary, and differentials shall not be included in these calculations.
- 2.10 Pay for Performance System** - All salary provisions for a pay for performance system shall be governed by an Ordinance adopted by City Council.
- 2.11 Pay Differentials** - An employee who is requested to perform duties or assignments for which a salary differential has been specifically provided in the City's Pay Ordinance, shall be entitled to receive a salary differential. The amount of such salary differential shall be set forth by City Council in the City's Pay Ordinance and may exceed the maximum of the pay range.
- 2.12 Pay for Part-Time Employment** - A non-exempt employee employed part-time shall be compensated for the actual number of hours worked in accordance with the City's Pay Ordinance. . An exempt employee employed part-time shall be paid for their scheduled hours; however, if an exempt employee is paid less than the weekly amount stated under the FLSA guidelines, the employee becomes non-exempt for the remainder of their tenure in that position. Employees working part-time will be paid on the same schedule as all other employees.
- 2.13 Pay of Reallocated Employees**
- (1) An employee whose position is reallocated to a class having a higher midpoint of the pay range will receive at least the minimum of the new pay range, or that level in such pay range, which affords the



employee an increase of five (5) percent. If the position is reallocated to a class in the same pay range, the employee's salary will remain unchanged. If the position is reallocated to a class having a lower midpoint of the pay range, the employee's salary will be reduced five (5) (percent) or to a level within the new range not to exceed the maximum.

- (2) Reallocation of positions in different pay systems (broad bands and pay ranges), if the band encompasses the entire range, is considered a same range reallocation and the employee's salary will remain unchanged. In all other cases, if the midpoint of the new classification is higher than the midpoint of the old classification, it is considered an upward reallocation and if the midpoint of the new classification is lower than the midpoint of the old classification, it is considered a downward reallocation.

2.14 Effective Date of Pay Adjustments - All pay changes or adjustments shall become effective on the first day of the respective pay period that follows the approval of the Director of Human Resources or designee of the increase or adjustment, unless otherwise specified. If the approval date and the first day of the respective pay period coincide, the adjustment shall become effective on that date.

2.15 Overtime and Compensatory Time Guidelines - It shall be the policy of the City to administer its overtime policy with applicable law, including the Fair Labor Standards Act (FLSA) and the Code of Virginia. Specific overtime and compensatory time guidelines are outlined in the applicable Administrative Regulations. Unless there is a written agreement between the Appointing Authority or designee and the employee, the employee will be paid for all overtime work. This written agreement can be revoked by either party at their discretion. If the agreement is revoked the employee will be paid for all overtime worked.

2.16 Payroll Deductions - Federal and State income taxes, social security taxes, deductions for United States Savings Bonds, group health, dental and life insurance premiums, employee credit union deductions, United Way deductions, deferred and flexible compensation and other deductions required by law or authorized by City Council are authorized payroll deductions. All other written requests for payroll deductions shall be evaluated by the Directors of Finance and Human Resources and approved by the Chief Administrative Officer or designee. In order for approval; (a) at least one half of the full-time tenured employees must request the deduction; or (b) the deduction shall be of such a nature as to benefit, in the opinion of the Chief Administrative Officer or designee, the City workforce; or (c) the deduction must be authorized by City Council.

An employee who believes that his or her wages have been subject to improper deductions or that his or her pay does not accurately reflect all hours worked should immediately contact their department HR Liaison.

2.17 Final Paychecks - All non-exempt employees, whether tenured or not, shall receive payment for all accrued compensatory time as required under FLSA. A tenured employee who separates from the City service shall receive payment for time worked plus a lump-sum payment for earned and unused vacation leave pursuant to these Rules. Vacation leave payment shall be computed on base salary. The final check may not be payable through direct deposit and will be subject to any deductions. If an employee dies while at work, his or her pay shall be for his or her normal work shift.



SECTION III - RECRUITMENT, CERTIFICATION AND EMPLOYMENT

- 3.1 Recruitment and Certification Administration** - The Director of Human Resources or designee is responsible for the oversight of all aspects of the recruitment and the certification process, except those aspects delegated by him or her to the Appointing Authority or designee as allowed by Rule 1.3. When recruitment and certification duties are delegated by agreement to an agency, the Director of Human Resources or designee shall be allowed to investigate and audit the practices of the agency to ensure compliance with the Rules. The Director of Human Resources or designee will offer training as necessary on laws, regulations and best practices for the recruitment process.
- 3.2 Types of Recruitment** - The City primarily uses four (4) types of recruitment:
- (1) Closed - Restricted to City employees. Closed recruitment permits only City employees (including classified, unclassified, permanent, temporary, provisional, or grant-funded) to apply for the vacancy. Individuals serving under personal service contracts or temporary agencies are not eligible to apply unless approved by the Director of Human Resources or designee.
 - (2) Closed to Department - Restricted to employees in one agency, bureau or division. This is appropriate when the Appointing Authority or designee reasonably believes that only employees in one agency, bureau or division possess the particular knowledge or skills needed to fill the position. Individuals serving under personal service contracts or temporary agencies are not eligible to apply unless approved by the Director of Human Resources or designee.
- Prior to utilizing this recruitment method the restricted agency, bureau, or division is required to identify a minimum of six employees who meet the minimum qualification for the position within the respective area.
- (3) Open - Recruitment that is advertised publicly and for which any person, whether or not currently employed by the City, is eligible to apply. Recruitment may be either restricted to a definite period of time or continue indefinitely.
 - (4) Direct - Recruitment which is handled directly by agencies and for which certification is not required by Human Resources. Usually applies to entry level positions.
- 3.3 Position Announcement** - Notice of recruitment for vacancies in all positions in the classified service shall be given by posting announcements in the Department of Human Resources and in such other appropriate places. Each advertisement and posting shall include the minimum qualifications required and the time, place, and manner for making application; and include the City's Equal Opportunity Policy.
- 3.4 Applications** - All applications for employment to a position in the classified service shall be made in a manner prescribed by the Director of Human Resources or designee and received by the closing date provided in the position announcement.
- 3.5 Basic Requirements (Note: this list is not all-inclusive)** - To be considered for employment, reinstatement, demotion, transfer, interim status or promotion, an applicant shall:
- (1) Be able to provide proof that he or she meets the minimum qualifications and any additional requirements specific to the position;
 - (2) Be a citizen of the United States or have obtained a permanent visa for residence in the United States;

**Personnel Rules for
The Classified
Service**



**City of Richmond,
Virginia
May 28, 2013**

- (3) Be physically and mentally able to perform the duties of the class, with reasonable accommodations if necessary.
- (4) Meet the requirements stated in the Substance Abuse policy;
- (5) Not have made a false statement of any material fact or have attempted to practice deception or fraud in his or her application;
- (6) Not have used or attempted to have used political pressure or bribery to secure an advantage in the selection process;
- (7) Not have been found cheating in any way in the selection process;
- (8) Not have established an unsatisfactory employment or personnel record of such a nature as to demonstrate unsuitability for the position.

- 3.6 Background Investigations** - Background investigations may be conducted to include criminal records, driving records, and any other such data as allowed by law. Criminal conviction records shall be considered only as one aspect of the total assessment process except when the position, because of the nature of the work to be performed, or as required by law, must be limited to persons who have no past criminal records or have not been convicted of any related crime.
- 3.7 Applicant Screening and Review (Examinations)** - Applicants for certain positions in the classified service may be subject to examination unless otherwise provided in these Rules. Other applicants may be subject to examination at the discretion of the Appointing Authority or designee unless otherwise provided in these Rules. Examinations may include, but are not limited to, written, oral, physical, performance tests or any combination of tests, and shall take into consideration education, experience (to include acting in a position experience) and such other factors as may be reasonably inferred as appropriate under these Rules. Any and all examinations must comply with Federal and State law.
- 3.8 Applicant Screening Eligibility for Examinations** - The Department of Human Resources or its designee, shall conduct an applicant review process for any person providing an application and meeting the basic requirements for the position sought. In the event a sufficient number of qualified applicants have not applied for a particular position, or for other reasons deemed proper, the Department of Human Resources or its designee may postpone or extend the last day on which applicants may apply or may discontinue recruitment.
- 3.9 Examination Results** - The results of all examinations shall be used in determining (1) which of the applicants are qualified for the position and (2) the order in which the applicants shall be placed on the appropriate eligible list. Names on the eligible list will be certified pursuant to these Rules.
- 3.10 Veteran's Preference** - Any person who has served in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States for more than 180 consecutive active duty days and has been honorably discharged there from, shall be entitled to have added to his or her evaluation for original appointment in the classified service, ten points on a scale of one hundred if he is eligible for disability compensation or pension from the United States through the Veterans' Administration; or five points on a scale of one hundred if he is not so eligible, provided that he is otherwise qualified and attains the minimum score required to pass such evaluation without added points. Preference is awarded only at the time of initial employment with the City and is not available for reinstatement, transfer or promotional opportunities.
- 3.11 Establishment of Eligibility Lists** - The Department of Human Resources shall establish and maintain eligible lists for each specific position except as otherwise provided by these Rules. Candidates who are ranked highest on the eligible list will be certified for interviews. Selections will be based on the most

**Personnel Rules for
The Classified
Service**



**City of Richmond,
Virginia
May 28, 2013**

qualified candidates. Documentation supporting the selection criteria shall be maintained by the Department of Human Resources

3.12 Seasonal Reemployment Lists - Past seasonal employees will be eligible for reemployment to their past seasonal positions and their names shall appear upon specialist lists. The names upon each such list shall appear in the order of their original applicant score with the highest score being at the top of the list.

The seasonal employee Appointing Authority or designee must have been employed in that position within the preceding 12 months and left employment in good standing. Persons in this category shall be certified for appointment to fill vacancies in seasonal positions without being required to submit to further examinations.

3.13 Removal of Names from Eligibility Lists - With proper cause,, the Director of Human Resources or designee may determine a need for the removal of the name of an applicant from the eligible lists, including but not limited to the following:

- (1) The applicant has waived certification and/or an interview; or
- (2) The Appointing Authority or designee, has interviewed the applicant for the current recruitment and provides appropriate and sufficient written justification for such removal; or
- (3) The applicant requests removal in writing.

3.14 Duration of Eligibility Lists - Eligible lists are effective for 180 calendar days after they are created, unless otherwise stated in these Rules. The Director of Human Resources or designee may extend, not to exceed two (2) years, or abolish such list at any time based within his or her discretion

3.15 Minimum Number of Names to be Certified - The Department of Human Resources shall certify to the Appointing Authority or designee names from the eligible list in the following manner;

Number of Vacancies	Minimum Number of Names on Eligibility List
One (1) Vacancy	Six (6) Names
Two (2) Vacancies	Seven (7) Names
Three (3) Vacancies	Eight (8) Names
Four (4) Vacancies	Nine (9) Names
Five (5) Vacancies	Ten (10) Names
Six or more Vacancies	Twice the number of names as the number of vacancies

- (1) Certified lists will be in alphabetical order and contain the names of the persons highest on the eligibility list.
- (2) The Department of Human Resources shall send to the Appointing Authority or designee, with the certification list, a copy of the employment application and all other available and pertinent information about each person certified.
- (3) If there are fewer than the required number of names on an eligibility list to be used, the Director of Human Resources or designee has the discretion after consultation with the Appointing Authority or designee, either certify the names on the existing list or continue recruitment.
- (4) The Director of Human Resources or designee may determine proper cause for the removal of the name of an applicant from the certified list if the Appointing Authority or designee provides sufficient justification for such removal.

**Personnel Rules for
The Classified
Service**



**City of Richmond,
Virginia
May 28, 2013**

- (5) After interviews are conducted and there is no selection made, the certification list shall be returned to the Department of Human Resources to have additional names added to ensure compliance with the guidelines of section 3.15.

3.16 Use of Related Series Eligible Lists - If there is no eligible list for a vacant position, the Department of Human Resources may certify names from other eligible lists such as:

- (1) Eligible lists from the same class, or
- (2) Eligible lists from a related class which has a rate of pay the same or greater than the rate for the class requisitioned, in the same series.

Interview and Record of Action - Each Appointing Authority or designee shall interview all certified applicants who have expressed interest in an interview unless the Director of Human Resources or designee has determined proper cause for removal from the certified list. Upon completion of interviews and necessary background investigations, the Appointing Authority or designee shall explain in writing the action taken and his or her reason for selection or non-selection of each certified applicant. Such information shall be placed on the certification list and maintained by the Appointing Authority or designee's agency with a copy to the Department of Human Resources. The Appointing Authority or designee shall also notify each applicant interviewed of his or her selection or non-selection in writing.

3.17 Appointment Status - Each person's appointment shall fall into one of the following categories:

- (1) Probationary - The appointment status that all persons employed in a permanent position shall serve before being eligible for movement to tenured status. Probationary employees have limited rights and benefits.
- (2) Provisional - The appointment status of a qualified individual when there is (1) no eligible list and/or (2) during an approved leave of absence for the incumbent and it is essential that the vacancy be filled. Such an appointment shall be approved by the Director of Human Resources or designee and shall be no longer than ninety (90) calendar days. Such appointments shall only be extended or renewed with the approval of the Chief Administrative Officer or designee or City Council's designee depending on the reporting relationship. Provisional employees have limited rights and benefits and are limited to temporary positions.
- (3) Tenured - The appointment status that is neither probationary nor provisional. This status gives the employee full rights and benefits of the classified service and is awarded upon successful completion of an employee's probationary status.

3.18 Probationary Period - Employees are required to serve a probationary period of twelve (12) consecutive months as a part of the initial selection process by all new employees before attaining tenured status. The employee shall attain tenured status at the conclusion of the probationary period. Probationary employees serve at the will of the City.

- (1) Persons employed in a permanent position, except uniformed fire and sworn police personnel, shall serve a twelve (12) month probationary period. Following original appointment, the probationary period for full-time uniformed fire personnel and sworn police personnel shall be twelve (12) months following graduation from the respective training academy. The probationary period may not be extended, except as provided for in Rule 3.22 (Broken Service Extension).
- (2) The Appointing Authority or designee may recommend dismissal, through the Director of Human Resources, of a probationary employee without cause for any lawful reason during the probationary period. Upon review of the recommendation, the Director of Human Resources or designee shall



approve or disapprove the dismissal. If the employee is separated during the probationary period, he or she shall have no right of appeal to the Personnel Board.

- (3) Whenever an employee who has not attained tenured status receives a promotion, demotion or transfer into another position in the City service, the length of time served in the original position shall count toward the completion of his or her total probationary period. For persons appointed from a temporary position to a permanent position, the initial probationary period commences with the date of appointment to the permanent position.
- (4) Persons employed in temporary positions shall remain on probation for the duration of their temporary employment.
- (5) Notwithstanding the aforementioned categories, nothing herein shall limit City Council's authority to create and to approve classifications in which employees remain in a probationary status for their tenure in that classification.

3.20 Adjustment Period

- (1) Persons employed in a permanent position shall serve no more than a one hundred eighty (180) day adjustment period whenever they are promoted, demoted or transferred. The adjustment period serves as a trial period for the employee in the new classification and is similar to an employee's probationary period.
- (2) The supervisor is responsible for monitoring and providing feedback on the progress of the employee serving an adjustment period. Adjustment periods may not be extended.
- (3) An employee serving an adjustment period will be deemed to have successfully completed such period unless the Appointing Authority or designee notifies the Director of Human Resources or designee and the employee in writing. Documentation of performance issues including evaluations is required. The evaluation, accompanied by written notification to the employee of the unsuccessful completion of the adjustment period, must be provided to the Director of Human Resources or designee and the employee prior to the expiration of the adjustment period. Notice is presumed given on the date of notification.
- (4) An employee who does not successfully complete the adjustment period following a promotion or transfer shall be returned to a vacant position in the same classification in the same agency he or she held immediately prior to the promotion or transfer. The salary of an employee who is returned to the position he or she held prior to the promotion or transfer shall be adjusted to the previous salary plus any other appropriate adjustments. An action that returns the employee to the position held prior to the promotion or transfer is not grievable because the adjustment period is treated as a probationary period for purposes of grievance rights. If such position is not vacant, the Appointing Authority or designee shall first pursue a performance demotion in accordance with Rule 4.5 before separation from City service.

3.21 Effect on Reinstatement - Any employee reinstated to a previously held position shall not be required to repeat any probationary or adjustment period or portion thereof which was previously completed in a position that he previously held.



SECTION IV - GENERAL EMPLOYMENT PRACTICES

- 4.1 **Agency Initiated Reassignment** - An Appointing Authority or designee may, within his or her own agency reassign an employee from one position to another in the same class for non-disciplinary reasons. Certification procedures do not apply for this reassignment. An employee reassigned to another position shall receive the same salary received in the former position, excluding salary differentials.

Employee Initiated Reassignment - If an employee wishes to be assigned to another position in a same or lower class within his or her own agency where a vacancy exists, he shall submit his or her request in writing to his Appointing Authority or designee, stating the reason for his or her request. The Appointing Authority or designee must be sure that the employee who requests a reassignment understands the effect to his or her rate of pay. The Appointing Authority or designee may recommend approval of the lateral transfer or demotion in writing to the Director of Human Resources or designee who may, either approve or disapprove the request. If the reassignment is to a lower classification, the salary shall be reduced by at least 5%. The new salary shall be within the pay range of the reassigned classification.

- 4.2 **Transfers** - Transfers may be initiated by the Appointing Authority or designee when a position is open. An employee is eligible to be transferred if the employee meets the requirements for the position to which he is transferred. The employment status of an employee shall not be affected by a transfer. No change in evaluation date, seniority or leave credits shall be made upon transfer.

- (1) Administrative Transfers Between Agencies - In instances in which two Appointing Authorities have determined that the best interest of their agencies would be served, the Appointing Authorities may administratively transfer an employee to a position in the same pay range with no reduction in pay. Recruitment procedures do not apply for administrative transfers.
- (2) Temporary Transfers - The Chief Administrative Officer or designee may reassign or transfer employees between agencies where the Appointing Authorities are appointed by the Chief Administrative Officer.
- (3) Pay of Transferred Employees - An employee transferred, in which recruitment procedures apply, may negotiate within the guidelines established by the Administrative Regulations for salary purposes not to exceed the maximum of the new pay range.

- 4.3 **Transfers between Legislative Agencies** - City Council or designee may reassign or transfer employees between agencies where the Appointing Authorities are appointed by City Council.

- 4.4 **Promotions** - It is the policy of the City to obtain the best qualified applicants available for each position without regard to race, age, sex, national origin, religion, sexual orientation (to the extent now or hereafter permitted or required by law), marital status, disability or membership in other protected groups. As far as practicable and in accordance with these Personnel Rules, the policy for filling vacant positions shall be to encourage career development and upward mobility through promotional opportunities for eligible City employees.

- (1) Chain of Promotions - In some instances when an agency wishes to fill a position from a limited examination process, a chain of promotions in a series may reasonably be expected. Whenever an Appointing Authority or designee anticipates such a chain of promotions, he or she shall notify the Department of Human Resources of all vacancies expected.
- (2) Pay of Promoted Employees - An employee shall receive at least the minimum amount in the pay range of the new class or that amount in such pay range which affords the employee approximately a 5% pay increase, whichever is the higher rate. The salary must be within the pay range of the classification.

**Personnel Rules for
The Classified
Service**



**City of Richmond,
Virginia
May 28, 2013**

- 4.5 Performance Demotion** - As a non-disciplinary measure, the Appointing Authority or designee may recommend to the Director of Human Resources or designee that an employee be demoted to a lower classification within the Agency due to performance.
- (1) All such demotions shall be based upon an employee's performance level as evaluated through the City's performance evaluation system.
 - (2) Prior to a performance demotion, the Appointing Authority or designee shall notify the employee in writing of the reasons for such action, including giving the employee a copy of the employee's most recent performance evaluation report, which clearly demonstrates the unsatisfactory performance, and shall give the employee seven (7) calendar days to respond.
 - (3) The Director of Human Resources or designee shall review and decide the approval or denial of the Appointing Authority or designee's recommendation.
 - (4) Performance demotions are considered not as a disciplinary matter, but rather a performance issue. However, such demotions are grievable, notwithstanding any provision in Rule 7.5 to the contrary.
 - (5) Upon approval, the salary of an employee demoted for performance reasons shall be reduced by the Appointing Authority or designee and the Director of Human Resources or designee, to the maximum of the new pay range, or approximately 5% the level below the current salary, whichever is lower. In no case shall the salary of such employee exceed the maximum salary of the new pay range.



SECTION V - DISCIPLINARY ACTIONS, DEMOTIONS, DISMISSALS AND SEPARATIONS

- 5.1 **Policy** - Whenever the performance, work habits or personal conduct of an employee becomes unsatisfactory his or her supervisor shall inform him or her promptly of such deficiency and give him or her counsel and assistance. Discipline should be appropriate to the seriousness of the incident. A specific incident may justify severe disciplinary action without delay upon the first offense.

Each employee is expected to comply with instructions, established policies, procedures, rules and regulations, and accepted standards of personal conduct. If an employee's performance of duty or personal conduct is unsatisfactory because of neglect or failure to comply with these requirements, appropriate disciplinary action shall be taken pursuant to these Rules.

- 5.2 **Grounds** - No disciplinary action shall be taken without reasonable grounds, or cause for such action. By way of illustration, but not limitation, the following shall constitute reasonable grounds for discipline:

- (1) Neglect of duty;
- (2) Absence without authorized leave or failure to give proper notice of absence; or failure to return to work after the exhaustion of authorized leave;
- (3) Failure to report to work due to arrest or incarceration;
- (4) Violation of safety rules, policies or regulations;
- (5) Incompetence, unwillingness or failure to render satisfactory service to the Appointing Authority or designee under the performance standards established;
- (6) Insubordination or breach of discipline;
- (7) Violation of the City's Substance Abuse Policy, including unauthorized possession or use of alcohol or illegal drugs in or on City property, including City vehicles;
- (8) Conduct unbecoming an employee of the City tending to bring the City service into disrepute;
- (9) Violation of any Personnel Rules, City Administrative Regulations, or any Agency rules consistent with these Personnel Rules;
- (10) Conviction of a criminal act;
- (11) Negligent or willful damage to City property or waste of City supplies or equipment;
- (12) Use of bribery or political pressure to receive appointment or advantage;
- (13) Material falsification of any City document or employment application;
- (14) Unauthorized possession of, or use of, a weapon on City property;
- (15) Theft, fraud, or embezzlement of City services or property leased to or otherwise in the possession of the City;
- (16) Misuse of sick leave (as described by Section 6.4);
- (17) Commit or threat to commit violence in the workplace.

**Personnel Rules for
The Classified
Service**



**City of Richmond,
Virginia
May 28, 2013**

- 5.3 Types of Discipline** - The disciplinary measures normally available to agency heads and their delegated subordinates shall be: (1) written reprimand, (2) suspension, (3) reduction-in-pay, (4) disciplinary demotion and (5) dismissal. The Appointing Authority or designee is required to consult with the Department of Human Resources for approval before initiating any demotion, reduction-in-pay, and suspension (more than 10 working days) or dismissal. The Appointing Authority or designee is advised that justification for any action taken is their sole responsibility. Unless otherwise noted in these Rules, all discipline becomes effective on the date designated by the Appointing Authority or designee.
- 5.4 Documentation** - All disciplinary actions shall be reduced to writing, with copies placed in the employee's official personnel file in the Department of Human Resources.
- (1) **Notice to Employee** - Prior to suspension, reduction-in-pay, disciplinary demotion or dismissal of an employee, he or she shall be notified in writing of the reasons for the specific charges, violations, or infractions and of the impending pre-disciplinary conference with the Appointing Authority or designee. The employee shall be provided a minimum of seven (7) calendar days to prepare for the pre-disciplinary conference.
- (2) **Pre-disciplinary Conference** - Prior to suspension, disciplinary demotion, reduction-in-pay or dismissal the Appointing Authority or designee shall provide the employee with an opportunity for a pre-disciplinary conference.
- a. During the conference, the employee shall be given an opportunity to respond to the specific charges, violations, or infractions that form the grounds for the proposed disciplinary action as stated in the written notice previously provided to the employee.
 - b. The Appointing Authority or designee may interview other persons who may have direct knowledge of the situation based on information provided by the employee. Interviews shall take place separate from the pre-disciplinary conference.
 - c. The Appointing Authority or designee may review documents as part of the pre-disciplinary conference process to include but not limited to video and audio tapes and printouts from electronic medias (GPS, cell phones, etc).
 - d. The pre-disciplinary conference shall only include the Appointing Authority or designee, other city officials deemed necessary by the Appointing Authority or designee and the employee.
 - e. At the request of either party, Human Resources may attend for policy interpretation, but shall not be considered representative of either party.
 - f. Neither party is allowed to record the proceedings or bring any recording devices to the conference.
- (3) **Employee status during an investigation and or disciplinary review** - Pending the resolution of an investigation or disciplinary review, the Appointing Authority or designee shall place the employee on leave without pay if any of the following occur:
- a. The employee's presence is determined to be a threat to the City, his or her supervisor or fellow employees or city property or equipment.
 - b. The employee is alleged to be in violation of the City's Substance Abuse Policy.
 - c. There are allegations of workplace violence, unlawful harassment, unlawful discrimination or retaliation.
 - d. The employee is part of an external investigation and his or her presence is determined to be a threat to the City, his or her supervisor or fellow employees.

Notwithstanding the aforementioned categories, nothing herein shall limit the Director of Human Resources or designee's discretion to place any employee on leave without pay or administrative leave or allow the employee to remain in his or her position or a modified position pending disciplinary actions or the completion of an investigation.



- (4) **Employee Status for Alleged Criminal Conduct** - Pending the resolution of any alleged criminal conduct the Appointing Authority or designee shall place the employee on leave without pay if any of the following occur:
- a. The employee is formally charged with a criminal offense and is incarcerated (The employee may also be subject to unauthorized absence [AWOL] and thus be in violation of Personnel Rule 6.13 and 6.14.).
 - b. The employee's ability to perform his or her job is impacted;
 - c. The investigation is hampered by employee's presence at work.
 - d. There is a risk to the city or interference with the city's ability to conduct business.
 - e. There are allegations of theft, fraud, or embezzlement of City property or services (this shall include property leased to the City or otherwise in the possession of the City);
 - f. The employee is charged with a misdemeanor crime involving marijuana, drug paraphernalia or any controlled substance.
 - g. The employee is charged with any felony crime.

Notwithstanding the aforementioned categories, nothing herein shall limit the Chief Administrative Officer or designee's discretion to allow the employee the use of vacation leave or to authorize administrative leave pending disciplinary action or pending the legal adjudication process upon written request by the employee.

The approval of the Director of Human Resources or designee is required for administrative leave or leave without pay exceeding ten (10) working days (Personnel Rule 6.10 and 6.12) unless authorized by the Chief Administrative Officer or designee for the time exceeding the ten (10) working days (56 hour Shift Fire Personnel shall be eligible for up to five (5) working days)..

Leave without pay due to alleged criminal conduct may not exceed 60 days. Regardless of the status of any criminal investigation or process the Appointing Authority or designee may initiate disciplinary charges against the employee under these Rules at any time, up to and including termination based upon the facts of evidence of conduct that prompted the criminal investigation or process.

As required by the Fair Labor Standards Act, exempt employees shall be placed in leave without pay in increments of a full work day if the behavior of the employee constitutes serious workplace misconduct as indicated above or as determined by the Director of Human Resources. If the conduct of the exempt employee does not fall in one of the aforementioned categories, that exempt employee shall be placed in leave without pay in increments of full work weeks.

- (5) **Employee Record of Action** - Following any pre-disciplinary conference the employee shall receive in writing, within seven (7) calendar days, the findings of the pre-disciplinary conference. Upon receipt of any findings, the employee may, within seven (7) calendar days, attach a written correspondence for inclusion in the record.
- (6) **Agency Disciplinary Recommendation** - Each disciplinary action that requires the approval of the Director of Human Resources or designee shall be supported in writing by a memorandum endorsed by the Appointing Authority or designee and forwarded to the Director of Human Resources or designee within seven (7) calendar days of the pre-disciplinary conference. All supporting documents shall accompany the agency disciplinary recommendation.

5.5 **Written Reprimand** - An employee may be reprimanded by any one of his or her supervisors. Each such reprimand shall be confirmed in writing from the person imposing the reprimand on the employee, with a copy being placed in the employee's personnel file in the Department of Human Resources, delivered to the employee and sent to the Appointing Authority or designee. This writing shall provide reasons for the reprimand and specific examples of violations, infractions, performance issues or personal conduct. The

**Personnel Rules for
The Classified
Service**



**City of Richmond,
Virginia
May 28, 2013**

employee may attach written correspondence for inclusion in the record within seven (7) calendar days of receipt of a written reprimand.

- 5.6 Suspension** - As a disciplinary measure, the Appointing Authority or designee may suspend an employee for such period of time as may be reasonable and appropriate under the circumstances. All suspensions shall be deemed disciplinary actions and shall be without pay. The Appointing Authority or designee is required to consult with the Department of Human Resources before initiating any suspension of more than ten (10) working days (56 hour Shift Fire Personnel shall be eligible for up to five (5) working days)..

The Appointing Authority or designee shall provide written notice of a pre-disciplinary conference to the employee. The suspension becomes effective on the date approved by the Appointing Authority or designee after completion of the pre-disciplinary conference and associated timeframes. The Director of Human Resources or designee shall be responsible for approving, revising or denying any suspension that exceeds ten (10) working days.

As required by the Fair Labor Standards Act, non-exempt employees shall be suspended in hourly increments. Exempt employees shall be suspended in weekly increments; however, if the behavior of an exempt employee constitutes serious workplace misconduct as noted above in Personnel Rule 5.4, (3) and (4) or as determined by the Director of Human Resources or designee,, the exempt employee shall be suspended in increments of a full work day:

- 5.7 Reduction-In-Pay** - As a disciplinary measure, the Appointing Authority or designee may recommend that the pay of an employee be reduced within the assigned pay range. Before any such action is effective, the Appointing Authority or designee shall investigate the circumstances, conduct a pre-disciplinary conference and provide notice of the pre-disciplinary findings recommendation to the employee. The Appointing Authority or designee is required to consult with the Department of Human Resources before initiating any reduction-in-pay. The Director of Human Resources or designee shall review and either approve, revise or deny the Appointing Authority or designee's recommendation. The Appointing Authority or designee shall provide notice to the employee pursuant to these Rules.
- 5.8 Disciplinary Demotion** - As a disciplinary measure, the Appointing Authority or designee may recommend that an employee be demoted to a lower classification. Before such action is effective, the Appointing Authority or designee shall investigate the circumstances, shall provide the employee with a pre-disciplinary conference and written notice of his or her recommendation. The Appointing Authority or designee is required to consult with the Department of Human Resources before initiating any demotion. The Chief Administrative Officer or designee shall review, approve, revise or deny the Appointing Authority or designee's recommendation.

The salary of an employee demoted for cause shall be reduced by the Appointing Authority or designee at least 5% within the new pay range, not to exceed the maximum salary of the new pay range.

An employee who cannot successfully complete the adjustment period following a disciplinary demotion, shall be dismissed from the City's service.

- 5.9 Dismissal** - Before an employee may be dismissed he or she shall be informed in writing of the reasons for his or her proposed dismissal and be given an opportunity for a pre-disciplinary conference. It shall be noted that the opportunity for a pre-disciplinary conference is mandatory and shall be conducted by the Appointing Authority or designee. The Appointing Authority or designee is required to consult with the Department of Human Resources before initiating any dismissal. The Appointing Authority or designee may recommend the dismissal of an employee. The Chief Administrative Officer or designee shall review, approve, revise or deny the Appointing Authority or designee's recommendation. Any approved actions shall become effective upon the Chief Administrative Officer or designee's approval or as soon as possible thereafter.

**Personnel Rules for
The Classified
Service**



**City of Richmond,
Virginia
May 28, 2013**

Tenured employees may be involuntarily separated for performance or disciplinary reasons in accordance with these Rules. Probationary employees, who serve at the will of the City, shall be dismissed in accordance with Rule 3.19.

- 5.10 Forfeiture** - Any officer, appointee of the council or employee of the City who shall be convicted by a final judgment of any court from which no appeal has been taken or which has been affirmed by a court of last resort on a charge involving moral turpitude or any felony or any misdemeanor involving possession of marijuana or any controlled substances shall forfeit his or her office or employment. The employee shall lose all rights of employment and future employment with the City service, and the employee shall have no right of appeal. Prior to the Appointing Authority or designee initiating a determination of forfeiture (as defined in section 4.14 of the City Charter) a review by the City Attorney's Office is required.
- 5.11 Separation from City Service** - For the purpose of these Rules, the separation of one's status as an employee of the City shall be referred to as a separation. The types of separation shall include *but is not limited to* the following: (1) resignation, (2) disability separation, (3) disability retirement, (4) retirement, (5) reduction-in-force, (6) job abolishment (7) disciplinary dismissal, (8) forfeiture (9) failure to return to work after the exhaustion of authorized leave and (10) death.

Date and Notice of Separation - An employee's official date of separation is typically his or her last day in active pay status. If an employee is on approved sick leave, worker's compensation, or leave without pay when separated, the effective date of separation will be the actual date of separation designated by the employee and approved by the Appointing Authority or designee and not necessarily the last day in active pay status. Notice of the effective date and the reasons for every separation shall be reported in writing by the Appointing Authority or designee to the Department of Human Resources.

- (1) **Resignation** - An employee may leave the City service voluntarily. When such action takes the form of a written resignation, a copy shall be forwarded to the Department of Human Resources. If it is determined that a reported resignation was not voluntary, the Appointing Authority or designee shall treat the separation as a dismissal under these Rules and notify the employee of his or her rights. An employee may withdraw his or her resignation before the effective date with the approval of the Appointing Authority or designee. Where written resignation is not obtained, the Appointing Authority or designee shall notify the employee in writing that his or her verbal resignation is accepted and forward a copy to the Department of Human Resources.
- (2) **Disability Placement/Separation** - Upon supported and certified medical evidence, an employee may be separated for service or non-service related disability when he or she cannot perform the required duties because of physical or mental impairment without reasonable accommodation as defined by the American Disabilities Act as amended. Employees shall be given a twenty-one day notice prior to the separation date.
- (3) **Disability Retirement** - If an employee qualifies under the rules of the Retirement System, he or she may apply for disability retirement.
- (4) **Retirement** - Whenever an employee meets the conditions set forth in the Retirement System Regulations, he or she may elect to retire and receive all benefits earned under the Retirement Plan. Persons retiring under this Rule shall be considered as voluntarily separating from the City service.
- (5) **Reduction in force** - The involuntary separation of an employee from a position if it has been determined that positions will no longer be required or that funds will not support certain positions.
- (6) **Job Abolishment** - The elimination of a classification due primarily to considerations of efficiency and effectiveness. Affected employees shall be governed by the reduction-in-force provisions.



- (7) Disciplinary Dismissal - Each employee is expected to comply with instructions, established policies, procedures, rules and regulations, and accepted standards of conduct. If an employee's performance of duty or inappropriate conduct is unsatisfactory because of neglect or failure to comply with these requirements, appropriate disciplinary action shall be taken pursuant to these Rules leading up to and including dismissal.
- (8) Forfeiture - Any officer, appointee of the council or employee of the City who shall be convicted by a final judgment of any court from which no appeal has been taken or which has been affirmed by a court of last resort on a charge involving moral turpitude, or any felony, or any misdemeanor involving possession of marijuana or any controlled substances shall forfeit his or her office or employment.
- (9) Death - Separation shall be effective as of the date of death. Each Appointing Authority or designee shall establish and maintain within his or her agency appropriate procedures to be followed in the event of any employee's death while on duty. Notwithstanding a person who deceases while at work will be paid for the full-day,

5.12 Reduction-In-Force - A Reduction in Force (RIF) occurs when changing priorities, budgetary constraints, or other business conditions require abolishment of positions as determined by the Chief Administrative Officer or designee. A RIF can also occur when a position changes so significantly that the employee is no longer able to perform the required duties.

- (1) Selection for RIF - If a reduction in force is necessary, such employees shall be released in accordance with these Rules in the following order:
 - a. Provisional status employees performing the same work must be terminated before any employee with a probationary or tenured appointment, provided that a probationary or tenured employee can perform the temporary employee's tasks.
 - b. Probationary status employees performing the same work must be terminated before any employee with a tenured appointment, provided that a tenured employee can perform the temporary employee's tasks.
 - c. Tenured status employee is based on the following factors (factors are not in priority order):
 - (i) Which positions are most vital to the department in the delivery of service.
 - (ii) Relative skills, knowledge and productivity of employees.
 - (iii) Performance evaluation rating.
 - (iv) Length of continuous city service
- (2) Placement Options - The Department of Human Resources will review all vacant positions to identify valid vacancies that can be used as placement options during the RIF. All final placements are at the discretion of the Chief Administrator Officer, with due consideration to the factors within this policy. In order to be considered for placement, the employee must be performing at the "satisfactory" performance level in accordance with the evaluation system. The options considered for placement will be based on the following order:
 - a. Same Classifications Specification vacancies -
 - (i) Transfer to a vacant position in the same classification specification in the employee's current agency.
 - (ii) Transfer to a vacant position in the same classification specification in another city agency.
 - (iii) If based upon the above-defined-criteria for placement, the status of two or more tenured employee's is identical, the order of transfer, demotion or layoff, shall be determined by the Director of Human Resources or designee through a computerized random selection process.

**Personnel Rules for
The Classified
Service**



**City of Richmond,
Virginia
May 28, 2013**

- b. Lower level vacancies (alternative placements to a lower classification)
 - (i) Demoted to a vacant position in a lower classification specification in the employee's current agency.
 - (ii) Demoted to a vacant position in a lower classification specification in another city agency. If based upon the above-defined-criteria for placement, the status of two or more tenured status employees is identical, the order of transfer, demotion or layoff, shall be determined by the Director of Human Resources or designee through a computerized random selection process.
 - (iii) An employee demoted due to reduction-in-force shall have his or her salary governed by the City's Pay Ordinance.

If a placement option is identified, the Department of Human Resources shall notify the employee in writing that a placement is being offered with a reasonable deadline by which the employee must respond. Employees who do not accept an offered placement by the date specified in the written offer shall be deemed separated on the date they declined the offer or if no response, on the date of the deadline in which to respond.

- (3) Exceptions - When an Appointing Authority or designee determines that a certain employee who holds tenured status is essential to the efficient operation of the agency in which he or she is employed because of special skills, knowledge or abilities and wishes to retain such employee, the Appointing Authority or designee shall file with the Director of Human Resources or designee a request in writing setting forth, in detail, the specific skills, knowledge and abilities possessed by the employee and the reasons why such employee is essential to the effective operation of the agency. If the Director of Human Resources or designee approves the request, such employee may be retained.
- (4) Lay-off/Termination - If after all the above steps have been exhausted and tenured status employees are to be laid off/terminated, such employees shall receive fifteen (15) calendar days written notice prior to the effective termination date.

An employee who may be in the process of another administrative procedure (i.e. grievance, EEO complaint, disciplinary action, etc.) is still covered under the reduction in force procedure. If such employee is laid off, he or she will be entitled to continue to pursue the other administrative procedure if he or she so chooses. However, it will be done in the status resulting from the effect of the reduction in force policy and it will not change the impact of the layoff.

5.13 Reinstatement - Reinstatement status applies only to those tenured status employees who have (1) resigned in good standing, (2) apply for reinstatement within ten (10) calendar days of the date of their separation, (3) their position having remained unfilled, and (4) now meet the minimum qualifications for the position, and then only if such reinstatement is approved by both the Appointing Authority or designee and the Director of Human Resources or designee. Seniority for employees reinstated shall be computed from the original date of employment.

- (1) Pay of Reinstated Employees - Upon reinstatement, an employee's pay, employment date and all benefits shall remain unchanged and be restored.



SECTION VI - WORKING CONDITIONS AND BENEFITS

- 6.1 **Hours of Work** - The Director of Human Resources or designee with the approval of the Chief Administrative Officer or designee shall establish the number of hours in a standard work period for all employees. Also, see Administrative Regulation 4.5 for work periods and overtime for law enforcement and fire personnel. An Appointing Authority or designee may allow for flex-time, shift work, telecommuting or any other appropriate scheduling requirements, provided the total number of hours required in the approved work period is not changed.
- 6.2 **Holidays** - Holidays shall be set by an Administrative Regulation. Employees shall receive a minimum of eleven (11) holidays plus one floating holiday. The Department of Human Resources shall notify the workforce of holidays at least 30 days prior to the beginning of the New Year.

The floating holiday shall be earned by any individual employed prior to May 1st of a given calendar year and may be observed on any regular scheduled work day mutually convenient to the employee and Appointing Authority or designee during that calendar year. If the floating holiday is not used by the end of the calendar year, it shall be forfeited.

Employees must be in pay status before and after a holiday in order to receive pay for that holiday. For the purpose of computing total hours of work, holiday hours shall not be counted as work hours except for sworn police and fire personnel. If non-exempt employees are required to work on a holiday or if a holiday falls on a normal day off, such employees shall be treated as follows:

- (1) Non-exempt employees who would normally be off (not included in the Special Provisions for Shift Personnel) but are required to work on a holiday, shall receive regular pay for the holiday plus receive the number of normally scheduled hours as either holiday hours or compensation at the Appointing Authority or designee's choice. (Ex. An employee works 8 hours on the holiday Wednesday, July 4. The employee receives 8 hours pay at the regular rate plus 8 hours of holiday leave credit or 8 hours additional pay at the regular rate).
- (2) A non-exempt employee (not included in the Special Provisions for Shift Personnel) whose normal day off falls on a holiday and who is not required to work on that day, shall receive the number of normally scheduled hours as either holiday hours or compensation at the Appointing Authority or designee's choice (Ex. An employee's regular work schedule is Tuesday through Saturday, normal days off are Sunday and Monday, and the holiday is Monday, January 1. The employee receives the day off and receives 8 hours of holiday leave credit for Monday).
- (3) A non-exempt employee, who is scheduled to work on the holiday and does so, shall receive the normal pay for that day plus receive the number of normally scheduled hours as either holiday hours or compensation at the Appointing Authority or designee's choice.

The Appointing Authority or designee shall determine the type of compensation under the provisions of subsection 6.2 (1), (2) or (3). Holiday leave shall be taken off after the holiday, at a time convenient to both the non-exempt employee and the Appointing Authority or designee.

Employees who wish to observe other holidays (religious or otherwise) shall make arrangements with their Appointing Authority or designee prior to the holiday. The Appointing Authority or designee may approve the employees' request unless such request is determined to be unreasonable, interferes with the performance of essential job functions or imposes undue hardship. If such arrangements are approved, the employee must charge this time to the employee's vacation leave or floating holiday.

**Personnel Rules for
The Classified
Service**



**City of Richmond,
Virginia
May 28, 2013**

Special Provisions for Shift Fire Personnel - Fire personnel who work a schedule authorized by 29 U.S.C. § 207(k) shall receive twelve (12) hours of holiday leave credit for each designated holiday including the floating holiday or the equivalent of one point five (1.5) times for any portion of a holiday. Unless authorized by the Appointing Authority or designee these Fire personnel shall only be entitled to leave credit and shall not receive pay in addition to their regular pay. At the time of separation from city service, such employees shall be reimbursed for unused holiday leave credits up to a maximum of 144 hours. Holiday hours shall be credited and can be used at the beginning of a Fiscal Year quarter but shall not be compensable until after the actual holiday. For example, employees earn 24 hours on July 1, for the July 4th and Labor Day holidays, and may use these hours immediately. However, if compensation is authorized by the Appointing Authority or designee, the employee shall not be paid until the pay period when these holidays occur. In addition, the holiday must be observed before it can be included in reimbursement for unused holiday hours.

Special Provisions for Other Shift Personnel - All other employees who work a shift in a 24 hour/7 day a week operation shall receive eight (8) hours of holiday leave credit for each designated holiday including the floating holiday. Unless authorized by the Appointing Authority or designee, these employees shall only be entitled to leave credit and shall not receive pay in addition to their regular pay. At the time they leave City service, such employees shall be reimbursed for unused holiday hours up to a maximum of 120 hours. Holiday hours shall be credited and can be used at the beginning of a Fiscal Year quarter but shall not be compensable until after the actual holiday. For example, employees earn 16 hours on July 1, for the July 4th and Labor Day holidays, and may use these hours immediately. However, if compensation is authorized by the Appointing Authority or designee, the employee shall not be paid until the pay period when these holidays occur. In addition, the holiday must be observed before it can be included in reimbursement for unused holiday hours.

Special Provisions for Employees Working Alternative Work Schedules - Full time employees, not identified as shift employees, who work an alternative work schedule (i.e., 4 day/10 hours) shall earn 8 hours of holiday. Whenever possible, employees should revert back to a 5 day/8 hour schedule during holiday weeks. If this is not practical, then the employee and supervisor shall arrange the employee's schedule so the employee works the required hours of the workweek (ex. A full time employee is expected to work 24 hours during the week of Thanksgiving and have 16 hours of holiday leave. If the employee typically works 10 hours on Tuesday, Wednesday, Thursday, and Friday then the employee may have to work 8 hours on Monday, Tuesday, and Wednesday or 12 hours on Tuesday and Wednesday).

6.3 Vacation Leave

- (1) Except as otherwise provided in these Rules, employees who occupy permanent positions in the City service shall earn vacation leave credits (hours) at the following rates:

GENERAL EMPLOYEES

<u>Years of Service</u>	<u>Bi-weekly Earning Rate (Hours)</u>	<u>Maximum Accumulation (Hours)</u>
Less Than Five	3.7	192.0
Five up to Ten	4.6	240.0
Ten up to Fifteen	5.5	288.0
Fifteen up to Twenty	6.6	336.0
Twenty and Over	7.4	384.0

**Personnel Rules for
The Classified
Service**



**City of Richmond,
Virginia
May 28, 2013**

Shift Fire Personnel *Employed Prior to October 5, 1991

<u>Years of Service</u>	<u>Bi-weekly Earning Rate (Hours)</u>	<u>Maximum Accumulation (Hours)</u>
Less than Five	7.4	384.0
Five up to Ten	9.2	480.0
Ten up to Fifteen	11.1	576.0
Fifteen up to Twenty	11.1	576.0
Twenty and Over	11.1	576.0

Shift Fire Personnel *Employed on or After October 5, 1991

<u>Years of Service</u>	<u>Bi-weekly Earning Rate (Hours)</u>	<u>Maximum Accumulation (Hours)</u>
Less than Five	5.2	268.8
Five up to Ten	6.5	336.0
Ten up to Fifteen	7.8	403.2
Fifteen up to Twenty	9.0	470.4
Twenty and Over	10.3	537.6

*Shift Fire Personnel are those persons who work on one hundred twelve (112) hour bi-weekly system.

Vacation leave credits shall be audited annually as of the last day of each calendar year or as of the date of separation. Vacation leave shall not be charged in less than fifteen (15) minute units.

- (2) Vacation leave credits are earned, and their length is determined by continuous service. Their primary purpose is to provide an opportunity for rest and relaxation and for returning to work refreshed. Employees should be encouraged and may be required to take several consecutive days of vacation leave for relaxation. However, vacation may also be used when it is necessary to be absent from work for other personal reasons such as extended illness (after expiration of sick leave) or for personal reasons. Use of vacation leave requires approval of the employee's Appointing Authority or designee.
- (3) Vacation leave credits may be accrued, not to exceed, at the date of separation, or at the end of any calendar year, the maximum accumulation amount specified. Employees may continue to accrue and take vacation leave beyond the stated maximum amounts during any calendar year, but may not exceed the maximum allowable accumulations at the end of the calendar year unless authorized by the Chief Administrative Officer or designee to exceed the maximum accumulations. Vacation leave may not be granted before it is earned. Vacation leave is accrued in accordance with the City's established bi-weekly pay period.
- (4) If a paid holiday occurs during a vacation period, it is not counted as a day of vacation. Tenured employees who leave the City service will be paid for hours of unused vacation leave up to the maximum accumulation amount as specified unless authorized by the Chief Administrative Officer or designee to pay in excess of the maximum accumulation.
- (5) The maximum credits specified are for employees working full time. Non-exempt employees employed on a tenured part time basis in a permanent position shall receive vacation leave in proportion to their actual hours worked. Exempt employees shall receive vacation leave in proportion to their scheduled work hours.



An employee who is absent without leave or suspended, or is on an approved leave of absence without pay, shall not accrue any vacation leave for that pay period. However, the employee may accrue vacation hours in proportion to their scheduled hours paid up to a maximum of eighty (80) hours worked, when his or her leave has been medically approved.

- (6) Pay Out Provisions - Upon separation from the City service, tenured employees shall receive a lump sum payment for the accumulation amount of their respective category; up to the maximum pay out amount allowed by these Rules. The City shall deduct from any lump sum payment amount appropriate federal and state taxes, any deductions for amounts owed to the City as an employee and any other amounts required by law.

6.4 Sick Leave

Leave under this section may need to be coordinated with the Family and Medical Leave Act (FMLA).

- (1) Sick leave may be used for authorized absences necessitated by reason of:
- a. personal illness;
 - b. non-compensable bodily injury or disease;
 - c. infection with or exposure to a contagious disease such that his or her presence on the job might jeopardize the health of others;
 - d. to keep a medical appointment; or
 - e. immediate family illness.

If a paid holiday occurs when an employee is absent on approved sick leave, the day is not counted as a day of sick leave.

Use of sick leave requires approval of the employee's Appointing Authority or designee in accordance with the procedures established by the Appointing Authority or designee. Such procedures may be suited to the agency's needs, as long as they are consistent with the guidance provided in these Rules.

An employee who is unable to work due to illness should contact his or her immediate supervisor as soon as possible, but no later than 30 minutes after the beginning of the scheduled work day; unless because of the nature of work, such procedures are otherwise dictated by the Appointing Authority or designee.

If an employee requests more than three consecutive workdays of sick leave, that employee will be required to provide the City a certification from a health care provider that verifies that the absence was due to a medical condition and states when the employee is expected to return to work. If an employee does not provide this certification within ten (10) working days of his or her return to work, the employee may be charged with leave without pay and/or be subject to disciplinary action. All medical information will be considered confidential and will be made a part of the employee's medical records.

Sick leave is granted at the discretion of the Appointing Authority or designee and may be disapproved if it appears to not be justified or is being wrongfully used. An employee should not assume sick leave will be approved simply because he or she has an accumulated sick leave balance. Sick leave is a benefit and not an entitlement.

- (2) Except as otherwise provided in these Rules, every employee is credited with sick leave at the rate of three point seven (3.7) hours for each bi-weekly cycle of service. Sick leave is accrued in accordance with the City's established bi-weekly pay period.

**Personnel Rules for
The Classified
Service**



**City of Richmond,
Virginia
May 28, 2013**

Shift employees of the Fire service (112 bi-weekly) who were employed prior to October 5, 1991 shall earn sick leave at the rate of seven point four (7.4) hours for each bi-weekly cycle of service. Shift employees of the Fire service (112 bi-weekly) who were employed on or after October 5, 1991 shall earn sick leave at the rate of five point two (5.2) hours for each bi-weekly cycle of service.

- (3) Sick leave will not be charged in less than fifteen (15) minute units.
- (4) Computation of Credits - The provisions applicable to vacation leave credits also shall apply to the computation of all sick leave credits, including the accrual of sick hours in proportion to his or her scheduled hours paid up to a maximum of eighty (80) hours worked when their leave has been medically approved.

6.5 Shared Leave Provision

- (1) All employees, after twelve (12) consecutive months of employment with the City (employee does not have to be tenured), shall be eligible to receive or to donate leave as provided by this Rule.
- (2) Shared leave may be granted to an eligible employee if the employee experiences a ***catastrophic*** illness (as defined by the City's Employee Medical Service provider), including but not limited to; cancer, major surgery, serious accident or heart attack, that:
 - a. Poses a threat to life or requires in-patient care, hospice care, or home health care; and
 - b. Keeps the employee from performing any portion of his or her regular work duties in accordance with a serious health condition as defined under the FMLA.
- (3) An employee shall be eligible to receive shared leave if the employee has exhausted all accumulated vacation, sick and compensatory time credits.
- (4) If the Appointing Authority or designee determines that the employee meets the initial eligibility requirements of this Rule, he or she shall provide a written recommendation to the Director of Human Resources or designee. The decision by the Director of Human Resources or designee to approve or deny the request shall be final and not subject to appeal to the Personnel Board.

When requesting shared leave, or at any time during the use of shared leave, an employee shall be required by the Director of Human Resources or designee to undergo a medical review and/or examination by the City's Employee Medical Service provider to establish that the illness or injury is of a serious nature and keeps the employee from performing any portion of his or her regular work duties. If the employee fails to comply with the medical review and/or examination or if the City's Employee Medical Service provider fails to establish that a serious illness or injury exists, the use of shared leave shall be automatically denied or terminated by the Director of Human Resources or designee.

- (5) Common illness or minor injury that is not serious or life threatening and incidents covered by worker's compensation shall be excluded from eligibility for shared leave.
- (6) Once a request for shared leave has been approved by the Director of Human Resources or designee, all City employees will be notified that a recipient is in need of donations for shared leave. The shared leave program is voluntary and no employee shall be coerced, threatened, intimidated or financially induced into donating leave for purposes of this program.
- (7) Shared leave shall be applied retroactively to the date the employee depletes all forms of paid leave because of the current illness or injury.

**Personnel Rules for
The Classified
Service**



**City of Richmond,
Virginia
May 28, 2013**

- (8) While receiving shared leave the recipient shall not earn holidays, vacation, sick or employment service credits.
- (9) Shared leave may be used only for the duration of the current serious illness or injury for which it was collected, up to a maximum of one year from the date the employee began using the shared leave.
- (10) If the serious illness or injury improves so that the employee is no longer prevented from performing his or her regular work duties or the recipient separates from City service or retires, all unused portions of the shared leave shall be forfeited to a general pool. Leave time in this pool shall be administered by the Department of Human Resources. Such leave time in this pool shall only be used to:
 - a. Make up solicitation shortfalls, or
 - b. Be applied to the original recipient in the case of a relapse within a one-hundred sixty (160) work hour time period. When the employee has returned to work for one-hundred sixty (160) consecutive, normal work hours, it shall be determined that he is no longer prevented from performing his or her regular work duties.
- (11) An employee shall be eligible to donate only vacation credits to another employee if the donation of vacation does not cause the accumulated vacation leave balance of the donating employee to be less than eighty (80) hours.

Shared leave shall be paid according to the receiving employee's regular rate of pay. The rate of pay of the donating employee shall not be used in computing the amount of shared leave the requesting employee receives.

- (12) Shared leave shall be donated and taken in full-hour increments.
- (13) Employees terminating service from the City may be allowed to donate any vacation leave balances under this program.

6.6 Military Leave - The City administers its military leave policy in accordance with applicable law, including the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and the Code of Virginia. All applicable procedures and processes are provided in the Administrative Regulation governing USERRA. The Chief Administrative Officer or designee may authorize benefits that are more generous than those afforded by law.

6.7 Civil Leave - Civil leave (time off without loss of pay) may be granted for the following:

- a. service on a jury;
 - b. attending court when subpoenaed or requested to appear before a court, public body or commission except when the employee is a party to the suit;
 - c. when performing emergency civilian duty in connection with national defense;
 - d. for the purpose of voting;
 - e. for attending worker's compensation hearing.
- (1) For leave pursuant to this section, the employee will not be charged compensatory, vacation or sick leave. Such employees are entitled to keep any jury or witness fee awarded by the Court in addition to regular salary. The employee is not required to report to work on that day.
 - (2) Leave for the purposes of voting shall only be granted when the employee's work schedule prohibits voting before or after duty hours.

**Personnel Rules for
The Classified
Service**



**City of Richmond,
Virginia
May 28, 2013**

- (3) Any person who serves as an officer of election as defined in § 24.2-101 of the Code of Virginia as amended shall neither be discharged from employment, nor have any adverse personnel action taken against him or her, nor shall he or she be required to use sick or vacation time, as a result of his or her absence from employment due to such service, provided he or she gave reasonable notice to the Appointing Authority or designee of such service pursuant to §24.2-118.1 of the Code of Virginia as amended.
- (4) Work related hearing - If an employee must appear in court or at an administrative hearing either as a witness or a party, due to his employment with the City, such time shall be considered as hours of work.

6.8 Bereavement Leave - Any employee who has had a death in his or her immediate family shall be granted, upon request, bereavement leave for a maximum of three consecutive working days taken immediately prior and/or subsequent to the day of burial service (or equivalent). Bereavement leave is with pay and is granted by the Appointing Authority or designee. Any additional leave required may be charged to vacation or compensatory time.

Immediate family is defined as mother, father, wife, husband, child, brother, sister, legal ward, grandparents and grandchildren of the employee or the employee's spouse; or any other relative of the employee or spouse who lives in the employee's household.

6.9 Educational Leave - In order to assist tenured status employees working full time in obtaining and/or completing high school, undergraduate, or graduate courses; and to promote the highest quality of professional life; the City may grant educational leave, subject to the following provisions:

- (1) With Full Pay - Educational leave with full pay may be granted upon the recommendation of the Appointing Authority or designee and Director of Human Resources or designee and the approval of the Chief Administrative Officer or designee for a course of study that is directly and clearly related to the employee's present occupational field. Whenever educational leave with full pay is granted, the employee shall be contractually bound to return to the City service for a period equal to three (3) times the length of time for which the leave is granted. Whenever an employee's position is abolished or reallocated during his or her absence and there is no job available in the same or higher class, the employee shall not be required to accept a position in a lower class or to refund the City's investment. Whenever an agreement cannot be fulfilled because of major injury, illness or other reasons clearly beyond the control of the employee and substantiated by appropriate documentation, the contract may be nullified by the Director of Human Resources. Whenever, for any reason other than those mentioned, such an agreement cannot be fulfilled, the employee shall be bound by the provisions of the contract.
- (2) With Partial Pay - Educational leave with partial pay may be granted upon the recommendation of the Appointing Authority or designee and Director of Human Resources or designee and the approval of the Chief Administrative Officer or designee for a course of study that is determined to be beneficial to both the City and the employee. Whenever such leave is granted, the employee shall be contractually bound to return to the City service for a period equal to two (2) times the length of time for which the leave is granted. The remaining provisions of this Rule apply.
- (3) Without Pay - Educational leave without pay may be granted upon the recommendation of the Appointing Authority or designee and the approval of the Director of Human Resources or designee for any approved educational plan that will benefit the employee.
- (4) Educational leave with or without pay may not exceed one-hundred (120) calendar days.

**Personnel Rules for
The Classified
Service**



**City of Richmond,
Virginia
May 28, 2013**

- 6.10 Leave Without Pay** - The Appointing Authority or designee may impose leave without pay pending disciplinary review or investigation for up to ten (10) working days. Leave without pay pending disciplinary review or investigation greater than ten (10) working days (56 hour Fire shift personnel equivalent shall be five (5) working days) must be approved by the Director of Human Resources or designee.

Leave without pay may also be granted by the Appointing Authority or designee for personal reasons, for a period beyond those allowable with pay, provided the Appointing Authority or designee is willing either to allow the position from which leave is taken to remain vacant or to fill on a short term temporary basis until the expiration of such leave. Leave without pay for personal reasons shall not be granted for more than thirty (30) calendar days except for educational leave military leave,, Family Medical Leave (FMLA) or any Americans with Disability Act (ADA) accommodations. Additional leave without pay beyond thirty (30) calendar days must be approved by the Director of Human Resources or designee. If any employee's position is abolished while on leave without pay except as otherwise noted in these Rules, reduction-in-force procedures shall apply.

An employee shall not earn vacation or sick time while on leave without pay. Failure on the part of the employee to report to work promptly at the expiration of a leave without pay may be grounds for dismissal.

- 6.11 Leave for Victims of a Crime** - In accordance with Virginia Code 40.1-28.7:2, the Appointing Authority or designee is not required to compensate the employee but is required to grant leave when the employee requests leave to attend criminal proceedings provided the employee is a victim to the crime. The employee may elect to use vacation leave or any compensatory time accumulated.

In this instance victim is defined as the following:

- (1) a person who has suffered physical, psychological or economic harm as a direct result of the commission of a felony or of assault and battery in violation of § [18.2-57](#) or § [18.2-57.2](#), stalking in violation of § [18.2-60.3](#), sexual battery in violation of § [18.2-67.4](#), attempted sexual battery in violation of § [18.2-67.5](#), maiming or driving while intoxicated in violation of § [18.2-51.4](#) or § [18.2-266](#),
- (2) a spouse or child of such a person,
- (3) a parent or legal guardian of such a person who is a minor,
- (4) for the purposes of subdivision A 4 of this section only, a current or former foster parent or other person who has or has had physical custody of such a person who is a minor, for six months or more or for the majority of the minor's life, or
- (5) a spouse, parent, sibling or legal guardian of such a person who is physically or mentally incapacitated or was the victim of a homicide; however, "victim" does not mean a parent, child, spouse, sibling or legal guardian who commits a felony or other enumerated criminal offense against a victim as defined in clause (i).

- 6.12 Administrative Leave** - The Appointing Authority or designee may approve administrative leave with pay for up to ten (10) working days [80 work hours] (56 hour Fire shift personnel equivalent shall be five (5) working days or 120 hours). The approval of the Director of Human Resources or designee is required for administrative leave exceeding ten (10) working days (56 hour Fire shift personnel equivalent shall be five (5) working days).

- 6.13 Unauthorized Absence** - An unauthorized absence from duty during required hours of attendance shall be treated as a leave without pay. Such absence may be the grounds for disciplinary action including dismissal. Where there are extenuating circumstances for the unauthorized absence, the Appointing Authority or designee, has the discretion to authorize the absence with a later grant of leave.

**Personnel Rules for
The Classified
Service**



**City of Richmond,
Virginia
May 28, 2013**

Failure of an employee to return to work at the expiration of an authorized leave or to request an extension of such leave shall be considered an unauthorized absence. An employee who is considered on an unauthorized absence for three (3) consecutive work days, or, in the Fire Department (for members who work 24 hour duty tours) two (2) consecutive twenty-four (24) hour work tours, shall be dismissed.

- 6.14 Absence Due to Arrest or Incarceration** - Employees who are unable to report to work due to arrest or incarceration may not be paid for the days they are absent from work and may be subject to dismissal unless authorized by the Chief Administrative Officer or designee, upon written request by the employee, to use vacation leave or administrative leave.
- 6.15 Holding Two City Positions** - The employment of a person in more than one position with the City is generally prohibited. Such appointments may be made only for compelling reasons, which are in accordance with federal, state and local statutes and regulations, and upon approval of the Director of Human Resources.
- 6.16 Nepotism** - It is the policy of the City not to place immediate family members in a supervisor-subordinate relationship or in the same line of supervision in the same agency, regardless of the working relationship. However, the Director of Human Resources or designee may grant special exceptions on a case-by-case basis.
- 6.17 Outside Employment** - City employees shall not engage in any employment, activity or enterprise which may expose the City to legal liability for acts of negligence growing out of such outside employment, or to be inconsistent, incompatible, or in conflict with the duties, functions, or responsibilities of their City employment.

In addition, in the event that such outside employment activity or enterprise interferes with the employee's performance, attendance, promptness, ability to work overtime or emergency hours, the employee may be required to discontinue it.

Outside employment is defined as that employment which is outside the normal job for which an individual is employed by the City. This includes self-employment. Outside employment is not intended to be defined in the narrow sense of one-time work engagements or arrangements, which are clearly of an extremely short-term nature.

Employees are required to seek written approval of the Chief Administrative Officer or designee prior to engaging in any outside employment, activity or enterprise. A copy of such approval will be actively maintained in the employees City personnel file. The absence of said approval from the employee's City personnel file shall create a presumption that the employee failed to obtain the written approval required in this section.

- 6.18 Pay for Performance System** - The Director of Human Resources or designee shall establish and administer a performance appraisal system, which provides for at least an annual formal performance appraisal for all employees.



SECTION VII -- GRIEVANCE AND APPEAL PROCEDURES

- 7.1 Grievance Procedures** - The purpose of this procedure is to provide a timely and fair process for the resolution of employee grievances initiated by eligible employees of the City of Richmond. Each Appointing Authority or designee shall take appropriate steps within his or her agency to implement these procedures within his or her agency. A copy of the City's grievance procedure shall be made available to all City employees and each employee shall be assured that the filing of a grievance will have no adverse affect on his or her status within the City service.
- 7.2 Cost of Representation** - The grievant shall bear any and all cost involved in employing representation or in preparing or presenting his or her case. The Personnel Board has no authority to award legal fees or punitive damages.
- 7.3 Coverage** - All City employees who are in permanent positions (either full-time or part-time) and who are on tenured status (completed the applicable probationary period) are covered by and eligible to file grievances, with the following exceptions:
- (1) Appointees of elected groups or individuals;
 - (2) Officials and employees who by charter or other law serve at the will or pleasure of the Appointing Authority or designee;
 - (3) Deputies and executive assistants to the Chief Administrative Officer or designee;
 - (4) Agency heads or chief executive officers;
 - (5) Members of the unclassified service. Any employee who moves from a position in the classified service to a position in the unclassified service will automatically lose all rights to the grievance and appeal process;
 - (6) Employees whose terms of employment are seasonal or limited by law;
 - (7) Employees occupying temporary or limited term positions;
 - (8) 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 10.1 of the Code of Virginia and who have elected to proceed pursuant to those provisions in the resolution of their grievances; and
 - (9) Any employee who elects to pursue his or her grievance or complaint by any other existing procedure in the resolution of their grievance.
- 7.4 Definition of Grievance** - A grievance shall be a complaint or dispute by an employee relating to his or her employment, including but not necessarily limited to:
- (i) disciplinary actions, including dismissals, disciplinary demotions, written reprimands and suspensions, provided that dismissals shall be grievable whenever resulting from formal discipline or unsatisfactory job performance;
 - (ii) the application of personnel policies, procedures, rules and regulations, including the application of policies involving ordinances, statutes or established personnel policies, procedures, rules and regulations;
 - (iii) acts of retaliation as a result of utilization of the grievance procedure or participation in the grievance of another employee;
 - (iv) complaints of discrimination on the basis of race, color, creed, religion, political affiliation, age, disability, national origin or sex;
 - (v) performance demotion; and
 - (vi) acts of retaliation because the employee has complied with any law of the United States, the Commonwealth of Virginia or the City of Richmond, has reported any violation of such law to a governmental authority, or has sought any change in law before the Congress of the United States, the

**Personnel Rules for
The Classified
Service**



**City of Richmond,
Virginia
May 28, 2013**

General Assembly of the Commonwealth, the City Council, or has reported an incidence of fraud, abuse, or gross mismanagement. For the purposes of clause (vi) 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.

- 7.5 Rights Reserved** - Nothing in these grievance and appeal procedures is intended to circumscribe or modify the exclusive right of the City to manage the affairs and operation of the City government.

Accordingly, the following complaints are non-grievable; (i) establishment and revision of wages or salaries, position classifications or general benefits; (ii) work activity accepted by the employee as a condition of employment or work activity which may reasonably be expected to be a part of the job content; (iii) the contents of ordinances, statutes or established personnel policies, procedures, rules and regulations; (iv) failure to promote except where the employee can show that established promotional policies or procedures were not followed or applied fairly; (v) the methods, means and personnel by which work activities are carried on; (vi) 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 force, or job abolition; (vii) the hiring, promotion, transfer, assignment and retention of employees within the City government; and (viii) the relief of employees from duties of the City government in emergencies.

In any grievance brought under the exception to (vi) of this section, the action shall be upheld upon a showing by the City that: (i) there was a valid business reason for the action, and (ii) the employee was notified of such reason in writing prior to the effective date of the action.

- 7.6 Determination of Grievability** - At any time after a complaint has been filed under these Rules but prior to a hearing before the Appointing Authority or designee (step two) Chief Administrative Officer or designee or the Personnel Board, (direct appeals) a determination as to whether such complaint is grievable shall be made by the Department of Human Resources.. Such a request shall be in writing and signed by the party seeking a ruling. If not previously determined, the Department of Human Resources shall make a grievability determination in writing on all complaints prior to such complaint being heard at the second step, except for direct appeals, which shall be made prior to the fourth step. The Department of Human Resources may initiate a determination of grievability at any step. For the purpose of these Rules, "grievability" shall mean whether or not the grievance qualifies for a Personnel Board hearing.

Grievability determinations shall be made by the Department of Human Resources within ten (10) calendar days of receipt of the request.

The determination shall be in writing and a copy shall be sent via electronic mail and certified mail to the complainant and the Appointing Authority or designee. If the grievance is determined to be non-grievable by the Department of Human Resources, the grievance process is concluded unless a timely appeal is filed.

In no case shall the City Attorney be authorized to decide the issue of grievability.

- 7.7 Appeals of Grievability Decisions** - Decisions regarding grievability may be appealed to the City of Richmond Circuit Court for a hearing on the issue of whether the employee's complaint qualifies as a grievance. Such appeal shall be made by filing a notice of appeal with the Department of Human Resources within ten (10) calendar days from the date of receipt of the decision. Within ten (10) calendar days thereafter, the Department of Human Resources shall transmit to the Clerk of the Court a copy of the decision of the Department of Human Resources, the notice of appeal and the exhibits constituting the record of the grievance. A list of evidence furnished to the court shall also be furnished to the grievant. The court, on motion of the grievant, may issue a writ of certiorari requiring the city to transmit the record on or before a certain date.



Within thirty (30) calendar days of receipt by the Clerk of such records, the court, sitting without a jury, shall hear the appeal on the record transmitted by the Department of Human Resources, 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, reverse or modify the decision of the Department of Human Resources.

The decision of the court shall be rendered no later than the fifteenth day from the date of the conclusion of the hearing. The decision of the court is final and is not appealable.

- 7.8 Procedural Compliance** - After the initial filing of the written grievance, the failure of either party to comply with all substantial procedural requirements of the grievance procedure, including the Personnel Board 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 non-compliance within five (5) work days of receipt of written notification by the other party of the compliance violation. Such written notification shall be made to the Department of Human Resources, who shall determine all compliance issues.

Written notification of non-compliance shall be on forms approved and provided by the Department of Human Resources. The Department of Human Resources, at its option, may require a clear written explanation of the basis for any just cause extensions or exceptions.

Compliance determinations shall be made by the Department of Human Resources and shall be subject to judicial review by filing a petition with the City of Richmond Circuit Court, and a copy thereof with the Department of Human Resources, within thirty (30) calendar days of the compliance determination.

- 7.9 Time Limitations** - The parties to the grievance, by mutual consent, may permit the Department of Human Resources to extend any or all of the time periods established in this procedure. When a time period deadline falls on a Saturday, Sunday or City holiday, the next calendar day that is not a Saturday, Sunday or City holiday shall be considered the time period deadline day.

- 7.10 Standard/Burden of Proof** - The grievant must prove by the greater weight of the evidence that the discipline imposed including termination or the complaining action was excessive or unwarranted. All parties are to be afforded a full and equal opportunity for presentation of their evidence.

- 7.11 Representation During the Management Steps** - With the exception of the final management step (step three) , the only persons who may be present in the management step meetings are the grievant, the appropriate City official at the level at which the grievance is being heard, a representative from the Department of Human Resources and appropriate witnesses for each side. Witnesses shall be present only while actually providing testimony.

Employees who are necessary participants at a grievance hearing shall not lose pay for the time necessarily lost from their jobs and will not be charged leave because of their attendance at such hearings. During the management steps the grievance hearings shall not be recorded and recording devices are not permitted in the room in which a grievance hearing is being heard.

At the final management step (step three) the grievant may, at his or her option and expense, have present a representative of his or her choice. If the grievant is represented by legal counsel, the City has the option of being represented by legal counsel. The grievant shall provide the name, mailing address, email address and telephone number of the grievant's representative or legal counsel on the City grievance form at least five (5) days prior to the grievance hearing.



7.12 Steps of the Grievance Process - A covered employee may file a grievance by following the herein listed procedures.

- (1) Step One - Informal Meeting - An employee who has a complaint shall discuss the complaint informally with his or her immediate supervisor within twenty (20) calendar days of the occurrence of the incident giving rise to the grievance.

The employee is not required to reduce his or her complaint to writing although it is recommended that such complaint be in writing so all issues are clear. The purpose of this meeting is to have an informal discussion in an attempt to resolve the complaint in as expeditious manner as possible.

The supervisor shall within fifteen (15) calendar days provide in writing whether resolution or no resolution can be reached regarding the complaint.

- (2) Step Two - Formal Presentation to the Appointing Authority or designee - If the complaint is not resolved at the Step One informal meeting, the grievant may, within fifteen (15) calendar days thereafter; appeal the decision of the supervisor by reducing his or her complaint to writing on a City grievance form (obtainable from the Department of Human Resources) and forwarding the complaint to the Appointing Authority or designee and the Department of Human Resources accompanied with all supporting documentation and the written decision from the prior management step. Failure to provide the supporting documentation may delay the grievance hearing and the time period limitations set thereof.

At any time prior to the hearing with the Appointing Authority or designee a determination of grievability shall be made by the Department of Human Resources within ten (10) calendar days of receipt of such complaint from the grievant or the Appointing Authority or designee. The determination shall be in writing and a copy sent via certified mail and email to the grievant and the Appointing Authority or designee.

Within fifteen (15) calendar days of receipt of such determination of grievability and provided the complaint is determined as grievable, the Appointing Authority or designee shall meet in person with the grievant, unless the grievant waives this right, and issue a written decision regarding the grievance. A copy of the decision shall be provided to the Department of Human Resources. If the decision of the Appointing Authority or designee at Step two amends any previous actions (i.e. partial relief may have been granted) only the remaining issue (if any) may be appealed.

- (3) Step Three - Appeal to Chief Administrative Officer or designee - If the decision of the Appointing Authority or designee does not resolve the grievance, the grievant may appeal the decision to the Chief Administrative Officer or designee within fifteen (15) calendar days after receipt by submitting his or her appeal in writing on a form (obtainable in the Department of Human Resources) accompanied with all supporting documentation and the written decisions from the prior management steps. Failure to provide the supporting documentation may delay the grievance hearing and the time period limitations set thereof.

The Chief Administrative Officer or designee, within fifteen (15) calendar days of his or her receipt of the appeal shall meet with the employee and issue a written decision. The Chief Administrative Officer or designee shall only consider the actions, which result from the Step two hearing. The Chief Administrative Officer or designee is required by this Rule to meet with the grievant in person unless the grievant waives this right. The Chief Administrative Officer or designee shall give due consideration to the facts presented and forward his or her decision to the grievant, to the grievant's Appointing Authority or designee and the Department of Human Resources. If the decision of the Chief Administrative Officer or designee at Step three amends the previous actions (i.e. partial relief may have been granted) only the remaining issue (if any) may be appealed.



- (4) Step Four - Appeal to Personnel Board - If the decision of the Chief Administrative Officer or designee does not resolve the grievance and the complaint is still grievable, the grievant may appeal such decision to the Personnel Board. Every appeal to the Personnel Board shall be directed to the Department of Human Resources on a grievance form (obtainable from the Department of Human Resources) and shall be filed within fifteen (15) calendar days after receipt of the Chief Administrative Officer or designee's decision. The grievance appeal shall be accompanied with all supporting documentation and written decisions from the prior management steps. Failure to provide the supporting documentation may delay the grievance hearing and the time period limitations set thereof.

Upon receipt of an appeal to the Personnel Board, the Department of Human Resources shall schedule a hearing before the Personnel Board. A hearing date shall be established by the Secretary of the Personnel Board within a reasonable timeframe from the date of filing the appeal. Upon the conclusion of the Personnel Board hearing, they shall render a written decision within ten (10) calendar days of the conclusion of the hearing.

Procedures for the Personnel Board hearing are provided in Section VIII. The decision of the Personnel Board shall be final and binding, and shall be consistent with the provisions of law and written policy. The question of whether the relief granted by the Personnel Board is consistent with written policy shall be determined by the Chief Administrative Officer or designee, unless such person has a direct personal involvement with the grievance, in which case the decision shall be made by the City's Commonwealth Attorney.

- 7. 13 Direct Appeals To The Personnel Board** - An eligible employee who is dismissed shall have the right of appeal directly to the Personnel Board without otherwise exhausting his or her rights under Rule 7.12; Direct appeals must be executed by the employee within twenty (20) calendar days of the event or notification of the event, whichever occurs first. Failure to file will result in a waiver. Direct appeals must be filed with the Department of Human Resources in writing on a grievance form (obtainable from the Department of Human Resources). The grievance direct appeal shall be accompanied with all supporting documentation. Failure to provide the supporting documentation may delay the grievance hearing and the time period limitations set thereof.

A hearing date shall be established by the Secretary of the Personnel Board within a reasonable timeframe from the date of filing the direct appeal. The Secretary of the Personnel Board shall notify the grievant and Appointing Authority or designee in writing of the time and place of the Personnel Board Hearing.



SECTION VIII -- PERSONNEL BOARD

- 8.1 Personnel Board** - Pursuant to the Code of Richmond, Section 2-936, there shall be a Personnel Board consisting of ten persons appointed by City Council who reside within the city, except that the two Board members who are members of the classified system of the city shall not be subject to this subsection's residency requirement. The term of office shall be for three years, excepting members of the classified service, who shall serve for five years. No person shall serve more than two consecutive terms, except that a person appointed to fill a vacancy shall be eligible for appointment to two complete terms. Vacancies shall be filled by City Council by appointment for the unexpired portion of the term. Two members of the Personnel Board shall be members of the classified service nominated by the members thereof in a manner prescribed by City Council.

The Personnel Board shall choose one of its members to be the chairperson for a term of two years and one of its members to Vice-Chairperson for a like period, beginning with the first Tuesday in September of each even-numbered year.

Members of the Personnel Board, other than the two persons who are members of the classified system of the city, shall be entitled to receive compensation for attendance at such meetings in accordance with the Code of Richmond.

The Director of Human Resources or designee shall designate an employee of the Department of Human Resources to act as Secretary of the Board who shall advise both employees and supervisors in matters concerning this grievance procedure. The Secretary of the Board shall keep a full and accurate record of the grievance which shall consist of all forms, decisions and exhibits regarding the grievance.

- 8.2 General Meetings of the Board** - The Chairperson of the Personnel Board shall cause meetings of the Personnel Board to occur either upon request of a sufficient number of board members or at the request of the Director of Human Resources or designee for the purpose of discussing any matter relating to the human resources of the City's classified service. Such meetings shall normally be open to the public and shall be recorded. All general meetings shall comply with the Commonwealth's laws regarding open meetings and a notice of intent to have such a meeting shall be posted accordingly. During general meetings, six (6) members of the Board shall constitute a quorum.
- 8.3 Hearings by the Board** - Except for direct appeals, any grievance that is appealable shall be heard by the Personnel Board after all other steps contained in Rule 7.12 (1-3) have been properly exhausted. Five members of the Board, to include one member of the classified service, shall constitute a quorum; all determinations shall be determined by majority vote.

While sitting to hear a grievance, the Personnel Board shall not be composed of any persons having direct involvement with such grievance, or with the complaint or dispute, giving rise to the grievance. 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 Board 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 such an attorney shall serve as a Board member.

Each party shall be entitled to one continuance. Additional continuances may be granted by the Chairperson of the Board, provided good cause is shown.

The Secretary of the Personnel Board shall coordinate the scheduling of all hearings before the Personnel Board in accordance with Rule 7.13.



8.4 Subpoenas and Grievance Materials - All requests for documents and subpoenas shall be filed with the Secretary to the Board no later than forty-five (45) calendar days prior to the hearing date. A list of all witnesses who are to testify, the summary statement and documents shall be submitted to the Department of Human Resources and exchanged between the parties thirty (30) calendar days prior to the hearing date. The Chairperson shall be the judge of the relevancy of books and papers sought to be produced, however, he may refer any such matters to the Board for its consideration and determination.

Supplemental documents, exhibits and list of additional witnesses shall be exchanged between the parties within five (5) calendar days before the hearing with a copy provided to the Secretary of the Board.

The Secretary of the Board shall provide a copy of the grievance record to the Personnel Board and the parties prior to the hearing.

8.5 Conduct of Hearings - The conduct of the Board grievance hearings shall be as follows:

- (1) The Board does not have authority to formulate City policies, procedures, regulations or rules, or to alter existing City policies, procedures, regulations or rules.
- (2) The Chairperson shall be responsible for the orderly conduct of the hearing and shall have the authority to limit the introduction of redundant and repetitive evidence.
- (3) The Chairperson shall determine the propriety of attendance at the hearing of persons not having a direct interest in the hearing, and, at the request of either party, the hearing shall be private.
- (4) The Board shall have 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) The Board may require statements clarifying the issues.
- (6) The rules of evidence shall not necessarily apply and hearings are not intended to be conducted like proceedings in court
- (7) The Chairperson shall be the judge of the admissibility and relevance of all evidence. The individual members of the Board shall determine for themselves the weight and credibility of the evidence.
- (8) Both the grievant and the City may call upon appropriate witnesses and be represented by legal counsel or other representative at the hearing. Such representative may examine, cross-examine, question and present evidence on behalf of the grievant or the City before the Board without being in violation of the provisions of § 54.1-3904 of the Code of Virginia.
- (9) Opening statements shall be permitted, with the grievant going first.
- (10) The grievant shall present his or her evidence and call witnesses first.
- (11) All witnesses may be examined and cross-examined.
- (12) The Board may question any witness at the conclusion of questioning by the grievant and the City.
- (13) All evidence shall be taken in the presence of the Board and of the parties, except by mutual consent of the parties.



- (14) The Board may require any party or witness to produce such additional evidence, as it deems necessary for an understanding and determination of the issues.
- (15) A reasonable time shall be allowed for closing arguments, with the employee going first.
- (16) The Board may, at its discretion, vary this procedure, but shall afford full and equal opportunity to all parties for the presentation of any material and relevant evidence.

8.6 Remedies

- (1) The Board shall have the authority to uphold, reverse, or modify the action being grieved by imposing a lesser disciplinary action and, in appropriate circumstance, award back pay in an amount the Board believes equitable.
- (2) Back pay shall not exceed pay for time actually lost due to a suspension or dismissal.
- (3) The Board does not have the authority to formulate or alter policies or procedures.
- (4) The Board does not have authority to grant relief greater than that which the grievant has requested in the grievance form.
- (5) The Board does not have the authority to award the payment of damages or attorney's fees or costs.

8.7 Board Decisions

- (1) Upon conclusion of deliberations, the Board may orally inform the parties of its decision. However, the Board shall inform the Director of Human Resources or designee of its decision in writing to the Director of Human Resources or designee no later than ten (10) calendar days from the conclusion of the hearing. The decision, including findings of fact as to the material issues and the basis for the Board's findings, shall be sent, in writing, to the Appointing Authority or designee, the grievant, the grievant's attorney or representative, and to the City's legal representative by the Secretary to the Board within ten (10) calendar days of receipt of such decision.
- (2) The majority decision of the Board, acting within the scope of its authority, shall be final and binding, and shall be consistent with the provisions of law and written policy.
- (3) The question of whether the relief granted by the Board is consistent with written policy shall be determined by the Chief Administrative Officer or designee unless the Chief Administrative Officer or 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 Commonwealth Attorney for the City of Richmond.
- (4) Either party may petition the City of Richmond Circuit Court, for an order requiring implementation of the official Personnel Board decision.



SECTION IX - PROCEDURES REGARDING EMPLOYMENT INVESTIGATIONS

- 9.1. **Purpose** - Code § 2-937(3) grants to the Personnel Board for the City of Richmond the authority "to investigate any or all matters relating to conditions of employment in the service of the City." Code § 2-937(4) further provides that all employees, whether in the classified or unclassified service, may file discrimination complaints, and that the Personnel Board is authorized to investigate such complaints in accordance with procedures established by the Board. Accordingly, this document provides the procedures under which employees of the City may file complaints relating to their conditions of employment, including complaints of discrimination based on race, color, religion, national origin, sex, age and disability and sexual orientation (to the extent now or hereafter permitted or required by law).
- 9.2. **Definitions** - The following words and terms, when used in these procedures shall have the following meaning, unless the context clearly indicates otherwise:
- (1) "Board" means the Personnel Board for the City of Richmond.
 - (2) "Commission" means the Human Relations Commission for the City of Richmond.
 - (3) "Complaint" means a written statement by an employee alleging a complaint relating to his or her conditions of employment, including a charge of discrimination based on race, color, religion, national origin, sex, age and disability and sexual orientation (to the extent now or hereafter permitted or required by law).
 - (4) "Complainant" means a person who claims to have been injured by a discriminatory employment practice.
 - (5) "Director" means the Director of the City of Richmond's Department of Human Resources.
 - (6) "Fact Finder" means the individual(s) designated by the Board to investigate the complaint. The Fact Finder shall be a private attorney if approved and appointed by the City Attorney. However, in appropriate cases as determined by the Board, the Board may designate, in order of priority, the Director of Human Resources or designee and staff or the Human Relations Commission to serve as Fact Finder.
 - (7) "Respondent" means a person against whom a complaint of discriminatory employment practices is filed.
 - (8) "Staff" means an employee of the Department of Human Resources.
- 9.3. **Complaints by Persons Claiming to be Aggrieved** - Any City of Richmond employee (classified or unclassified) may file a complaint on his or her own behalf asserting a complaint relating to his or her conditions of employment or a claim of discrimination based on race, color, religion, national origin, sex, age or disability or sexual orientation (to the extent now or hereafter permitted or required by law) relating to such individual's employment with the City. No employee or other individual shall be allowed to file a complaint on behalf of another employee. However, if complaints come from multiple employees relating to the same or similar issues, the complaints will be combined into one investigation.

The complaint shall be filed with the Secretary to the Board not later than thirty (30) calendar days from the day upon which the last incident of the alleged discriminatory practice occurred.

Classified employees are required to choose either these procedures or the City's grievance procedures to assert their claims and will not be allowed to assert a claim under both. Should an employee assert a claim under both procedures, the Secretary to the Board shall notify the employee that he/she must elect which procedure under which he/she wishes to proceed. The employee shall have five (5) calendar days from receipt

**Personnel Rules for
The Classified
Service**



**City of Richmond,
Virginia
May 28, 2013**

of the notice to inform the Secretary, in writing, of his or her election. If the employee fails to respond timely, the complaint under these procedures shall be dismissed, and the complaint shall be processed in accordance with the grievance procedures.

9.4 Where to Make a Complaint - A complaint may be made in person, by fax or by mail at the Department of Human Resources, 900 East Broad Street, Room 902, Richmond, Virginia 23219 between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. Telephone calls may be made to the Department of Human Resources in order to receive information on how and where to file complaints. No complaint will be taken over the phone.

9.5 Contents of a Complaint - A complaint by an employee claiming to be aggrieved must be made in writing. Each complaint shall contain the following:

- (1) The full name, address, and telephone number of the employee making the complaint and the name of the agency in which the employee works;
- (2) The full name, address and telephone number of the employee(s) against whom the complaint is made and the agency(ies) in which the employee(s) works;
- (3) A clear concise statement of the facts, including pertinent dates, constituting the alleged improper or unlawful employment practices; and
- (4) Any documentation the complainant believes will support the claims.
- (5) The complainant has the responsibility of providing the Board with notice of any change in address and with notice of any prolonged absence from his or her current address or employment.

9.6 Notice of Complaint - Within five (5) calendar days after the filing of a complaint, the Secretary to the Personnel Board shall notify the respondent of the receipt of the complaint. The director of the respondent's agency shall also be notified of the complaint within five (5) calendar days.

9.7 Investigation of the Complaint

- (1) A Fact Finder may be designated by the Board to conduct an initial investigation into any complaint made pursuant to these procedures. The role of the Fact Finder is to gather information to present to the Board so that the Board can evaluate the merits of the complaint. When the Board designates a Fact Finder, the Board shall state specifically in writing how the Board wishes the Fact Finder to proceed. The Fact Finder shall be bound to investigate the complaint within the requirements and limitations set out in the referral from the Board. No fact finder shall be allowed to use procedures for investigating a complaint different from those established by the Board in these procedures.
- (2) All Board members and fact finders shall receive training prior to investigating any complaint. If an attorney is designated as a fact finder, the attorney shall have experience in the field that is the subject of the complaint.
- (3) During the investigation of a complaint, the Board or the Fact Finder may request a statement of position or evidence to be submitted by the complainant and the respondent. The Board or designated Fact Finder may submit a written request for information to the respondent (and Director of the affected agency if not the named respondent) which, in addition to specific questions, may request a response to the allegations contained in the complaint. The response to the Board's or its designated Fact Finder's request for information shall be delivered to the Secretary to the Board within twenty (20) calendar days from the date the request is sent.



- (4) The Board or its designated Fact Finder may require the complainant, respondent and/or affected agency to provide such additional information as it deems necessary to conduct an investigation.
- (5) The Board or its designated Fact Finder may require a fact-finding conference with the parties involved prior to making a final determination regarding the complaint. The conference would be an investigative forum intended to define the issues, to determine the elements in dispute and to ascertain whether there is a basis for a negotiated settlement of the complaint.
- (6) The Board may conduct an evidentiary hearing as follows:
 - a. When conciliation efforts fail, or when the Board or its designated Fact Finder determines that the conciliation process will not be in the best interest of the complainant or the respondent, the Board may set the matter for the employment investigation hearing.
 - b. Notice of the time and place of the hearing shall be mailed to the parties at least twenty (20) calendar days before the date of the hearing.
 - c. All hearings shall be closed to the public. Only the Board, the Secretary to the Board, the Board's legal counsel, and the parties and their legal counsel shall be allowed to attend. The Chief Administrative Officer or designee and Director of Human Resources, or designee, shall also be privileged to attend. The director of the affected agency, if not also the respondent, shall also be allowed to attend if the Board, in its discretion, believes that his or her presence would be beneficial to the proceedings. Witnesses shall only be allowed to attend for the period of their testimony.
 - d. The Board's designated Fact Finder shall be required to present its investigative findings to the Board at the beginning of the hearing.
 - e. The Board shall not be bound by statutory rules of evidence or technical rules of procedure.
 - f. Both the complainant and the respondent shall appear and be heard in person, but may be assisted by counsel.
 - g. All testimony shall be given under oath or affirmation.
 - h. The burden of persuasion shall be on the complainant.
 - i. Any party who fails to appear at a hearing or to respond to a request for information by a specified date, in the absence of good cause shown, shall be deemed to have waived all further rights to appear or present evidence.
 - j. Irrelevant, immaterial and unduly repetitious evidence shall at the discretion of the Board Chairperson, or the Board member presiding over the hearing, be excluded. The rules of privilege shall be given effect.
 - k. The Board may accept relevant documents or other evidence into the record as exhibits. Documents to be submitted at the hearing by a party must be distributed to the Board and the other party no later than ten (10) calendar days prior to the hearing. Documents not submitted in accordance with this rule will only be admitted when the Board determines that just cause exists for failure to follow this rule.
 - l. The parties also shall be given an opportunity to present an opening statement and closing argument of their case.
 - m. The hearing shall be recorded by the Secretary to the Board.
 - n. The Board shall state findings of fact and conclusions of law in writing. Within ten (10) calendar days of the date of completion of the hearing, the findings of the Board shall be mailed to the parties. A copy of the findings shall also be delivered to the Chief Administrative Officer or designee and City Council's designee.
 - o. If the Board determines that the respondent has not engaged in an improper or unlawful employment practice, it shall dismiss the complaint.
 - p. If the Board determines that there is reasonable cause to believe that the respondent has committed an improper or unlawful employment practice, it shall state its findings and may issue recommendations to eliminate the practice, including, but not limited to:

**Personnel Rules for
The Classified
Service**



**City of Richmond,
Virginia
May 28, 2013**

- (i) Hiring, reinstating, promoting or upgrading the position of the complainant, with or without back pay, and providing such fringe benefits as the complainant has been denied; and revising personnel policies and procedures.
- (ii) The Board may appoint a panel of no less than five (5) of its members, including one member of the classified service, to conduct a hearing in lieu of full board consideration. However, if the Board had previously designated any of its members to serve as the Fact Finder, these members shall not be appointed to the hearing panel.
- (iii) The Board's authority to investigate a complaint is not limited to the procedures outlined in paragraphs A, B, C, and D of this section. However, the Fact Finder shall be bound to investigate all complaints within the requirements and limitations set out in the written referral from the Board.

9.8 Dismissal Procedure And Authority - When the Director Human Resources or designee determines that the complaint is not timely filed, or fails to state a claim under Code sections 2-242(3) or 2-242(4) the complaint shall be dismissed.

9.9 Settlement - When the Board determines that there is reasonable cause to believe that an improper or unlawful employment practice has occurred or is occurring, the Board shall endeavor to eliminate such practice by informal methods of persuasion, conciliation and mediation.

When conciliation or negotiated settlement is successful, the terms of the agreement shall be reduced to writing and signed by the complainant, respondent, director of the affected agency, if appropriate, and the Chairperson of the Board within ten (10) calendar days of the agreement. However, any agreement entered into by a respondent or agency director must be made in consultation with the Chief Administrative Officer or designee and the City Attorney's office.

9.10 General

- (1) If the Board fails to act by dates specified herein, neither the rights of the complainant nor the respondent will be prejudiced. However, the Board shall endeavor to investigate all complaints in a timely, efficient and effective manner.
- (2) If the complainant fails to comply with the provisions stated herein or the investigation of the complaint, except where good cause is shown the failure may be deemed a waiver of any rights provided herein and the complaint may be dismissed by the Board.
- (3) After the initial filing, all correspondence to complainant relative to the case should be sent by certified mail, hand delivery or by courier who will furnish a receipt.
- (4) All documents, recorded testimony and findings shall remain confidential, as allowed by the Virginia Freedom of Information Act.
- (5) Findings of the Board, its designated Fact Finder or the Commission are not intended to be a final adjudication of the merits of the complaint or to prejudice the rights of any party under any state or federal law.

— CONCLUSION —