

February 11, 2018

Suggested revision of the grievance process submitted by Carol Griswold

Seward, Alaska Code of Ordinances

Title 3: Personnel

Chapter 3.40 Complaint Resolution Procedure

3.40.010 Policy

The City of Seward values its employees. The purpose of this policy is to promote fair and reasonable working conditions and provide a process for all non-union, current, suspended, and terminated employees to resolve internal employment-related complaints. This policy is intended to provide fair and prompt consideration to all employee complaints with the assurance that his/her confidences will be respected. The city prohibits retaliation against any employee who participates in the complaint resolution process. Supervisors, department heads, and the city manager shall ensure that an employee filing a complaint has the opportunity to proceed and be heard at any level of the complaint procedure. The city encourages complaint resolution at the lowest possible administrative level.

All employees, including emergency, temporary, term, on-call, seasonal, probationary, part-time, full-time regular, and union employees are protected against sexual harassment and workplace harassment.

Sexual Harassment complaints are addressed in Title 3: Personnel, Chapter 3.75.010

Workplace harassment complaints are addressed in Title 3: Personnel, Chapter 3.75.020

Employees represented by a union may be governed by the appropriate bargaining unit agreement addressed in Title 3: Personnel, Chapter 3.01.020 Scope (B), Chapter 3.65 Collective Bargaining.

All employees, including emergency, temporary, term, on-call, seasonal, probationary, part-time, full-time, and union employees are protected by all federal and state laws relating to the protection of civil rights and employment laws and regulations including Affirmative Action (AA), and Equal Opportunity (EEO). These are addressed in Title 3: Personnel, Chapter 3.01.015 (5).

3.40.020 Definitions:

A. *Department head*: means each of the following: the finance director, manager of engineering and construction, the manager of electric utility, public works director, the harbormaster, the chief of police, the fire chief, the director of parks and recreation, and the librarian.

(Chapter 3.01.035 (d))

B. *Appropriate administrator* is either the city clerk for employees of the city clerk department, or the city manager for all other employees.

C. *All employee definitions are found in 3.01.035.*

Regular employee means an employee in a regular position, full-time or part-time, who has successfully completed all probationary periods and is not a temporary, seasonal, on-call or emergency employee.

Seasonal employee means an employee hired on a seasonal basis with an expectation to return to their position consistent with the city's needs.

Term employee is an employee in a position, full or part-time, that is designed for a specified period of time of more than nine months and less than two years for a specific purpose or project. A person hired for a term appointment shall be hired under the same provisions and have the same benefits as a regular employee as noted in 3.25.040 with exceptions noted in 3.25.050.

D. *Time measurements*: In the application of this section, "working day" shall exclude Saturdays, Sundays, and city holidays.

E. *Informal Complaint*: An issue brought forth by an employee concerning the workplace that may include, but is not limited to, working conditions, performance, policies, procedures, or problems with co-workers or supervisors. An informal complaint is not a formal complaint/grievance as defined below.

F. *Formal Complaint/Grievance*: A formal procedure to deal with an issue concerning demotion, suspension, or termination of employment and/or alleging a violation of a section or sections of the city charter, city code, policies, personnel rules and regulations, or department rules and regulations, which pertain to the terms or conditions of such employment with the City of Seward.

A formal complaint/grievance is usually appropriate when:

- the person complaining wants to do it formally
- informal complaint attempts have failed
- the allegations are serious
- discipline is a possible outcome if the allegations are substantiated
- the allegations are denied and the person complaining wants to try to substantiate them
- the person complaining has been victimized for complaining
- the complaint is against a superior such as a supervisor, department head, or administrator and a formal procedure helps ensure the aggrieved employee is not disadvantaged.

3.40.025 Stipulations

A. Emergency, temporary, on-call, seasonal, and probationary employees are only allowed to participate in the informal complaint procedure. They are not eligible to participate in the formal complaint/grievance procedure.

B. Only regular part-time, full-time, and term employees are allowed to participate in the formal complaint/grievance procedure. Employees who have been suspended or discharged will proceed directly to Step 4 of the formal complaint/grievance procedure.

C. All discharged employees, including emergency, temporary, term, on-call, seasonal, probationary, part-time, full-time regular, and union employees, shall have the option of completing the standardized exit interview. (3.40.095)

D. The city clerk, city attorney, city manager and union employees are not eligible to participate in the complaint resolution procedure.

E. Supervisors are eligible to participate in the complaint resolution procedure but shall not grieve subordinates.

F. Supervisors will provide the employees involved in the complaint resolution procedure adequate time away from their duties for proper due process.

G. Commencement: A complaint must be initiated within 30 working days after an employee knew or should have known of the act or condition upon which the grievance is based. Failure of the employee to comply with this time limit shall operate as a waiver of the grievance.

H. It is expected that the timeframes outlined in this complaint resolution procedure be adhered to. At each step of the procedure, the time requirements may be extended by mutual agreement. Any unforeseen delay will be promptly communicated to either party.

I. Step procedure established: Any complaint shall be handled as follows with each step to be taken only if a satisfactory adjustment cannot be obtained in the previous step or if the complaint is with the superior in that step. In the case of such complaint, the complaint shall proceed to the next step.

J. Settlements: Nothing in this section shall be construed to prevent settlement of a complaint by mutual agreement of the parties at any time.

3.40.030 Supervision of the complaint resolution process

The appropriate administrator, either the city clerk for employees of the city clerk department, or the city manager for all other employees, shall oversee the handling of all employee complaints so that they are processed in accordance with the procedures stated in this chapter. Supervisors and department heads shall keep the appropriate administrator informed of all informal complaints and formal complaints/grievances in progress. Human Resources (HR) shall keep copies of the records, serve as a resource for policy information, and neutral referee of the process. HR shall be free to assist employees without disclosing personnel discussions or confidential information with anyone in their chain of command.

(Ord. 437, 1977; Ord. 610, 1988; Ord. 95-05)

3.40.040 Employee representation

Each employee shall be afforded an opportunity to be represented at every step of the complaint resolution process by a representative of his/her choice. Employees shall contact and discuss their problems with their representative only during break periods, lunch hour, before or after work or at any other time when they are not on duty. However, appeal board grievance hearings may be held during work hours.

(Ord. 437, 1977; Ord. 2000-011, § 1, 2000)

3.40.050 Discussion of a problem with supervisor

Any employee having a problem regarding employment shall first and promptly discuss the problem with the supervisor, unless the complaint is with the supervisor. In this case, and if the problem is not resolved, the employee has the right to present the complaint to the next step in accordance with the step procedure outlined in section 3.40.060.

3.40.060 Complaint Resolution Procedure

A. Informal Complaint Procedure:

This procedure encourages employees and supervisors to resolve work standards and performance issues at the lowest possible administrative level. This procedure is available to all employees. Note that a working day excludes Saturday, Sunday, and city holidays.

Step 1: Optional meeting with immediate supervisor.

The employee who has work-related concerns may, alone or accompanied by a representative, meet within thirty (30) working days with the immediate supervisor to discuss the complaint and try to reach a satisfactory resolution. If that discussion is not possible due to a complaint with the supervisor, or fails to resolve the complaint within five working days from the date the complaint was served, Step 2 will be followed. The complainee shall have five (5) additional working days from conclusion of the date of Step 1 to proceed to Step 2. Failure to do so shall result in a waiver of the complaint.

Step 2: Written statement to immediate supervisor

Clerk employees shall skip step 2 and go Step 3.

The employee shall submit a written, signed statement describing the incident or complaint and the evidence and specific facts upon which it is based, including: personnel involved, events, dates and other information relating to the complaint, and preferred outcome. The statement should be marked, "Personal and Confidential" and addressed to the immediate supervisor within thirty (30) working days after the event(s), not including the day of the occurrence that caused the concern, or within fifteen (15) working days of optional meeting, not including the day of the meeting. Upon receipt of the complaint, the supervisor shall promptly send the employee a written acknowledgement that the statement was received and is under review. The supervisor shall respond to the employee in writing within fifteen (15) working days after the date of complaint or optional meeting. If the concern is not resolved with the employee's supervisor, the employee will proceed to Step 3. The complainee shall have an additional seven (7) working days from conclusion of the date of Step 2 to proceed to Step 3. Failure to do so shall result in a waiver of the complaint.

Step 3: Written complaint to department head or city clerk

City clerk employees submit statement to city clerk. Other employees submit statement to department head.

Employee shall bring the written, signed, dated complaint and supervisor's response to the department head within five (5) working days after receiving the response from the supervisor. Upon receipt, the department head will promptly send employee a written acknowledgement that complaint was received and is under review, mediate with optional meeting as above, and attempt to facilitate a solution satisfactory to all parties. Department head will respond to employee in writing within five (5) working days after receipt of complaint or optional meeting, and advise employee of options.

If the parties cannot reach a satisfactory conclusion, the department head will notify all parties that it appears that a satisfactory conclusion is not likely and advise parties of their options.

Formal Complaint /Grievance Procedure:

Only regular part-time, full-time, and term employees are allowed to participate in the formal complaint/grievance procedure. All appeals from disciplinary action shall be

initiated at Step 3. Employees who have been suspended or discharged will proceed directly to Step 4 of the formal complaint/grievance procedure.

Written Complaint: An employee's formal complaint must be in writing, dated, and signed by the employee. The complaint must:

- Explain the nature of the complaint and the specific circumstances at issue, including personnel involved, events, dates, and other information relating to the complaint;
- Identify the issue as concerning termination of employment and/or alleging a violation of a section or sections of the city charter, city code, policies, personnel rules and regulations, or department rules and regulations, which pertain to the terms or conditions of such employment with the City of Seward; and
- Identify preferred resolution.

Step 1 Complaint to Immediate Supervisor

The employee shall submit the complaint to his/her immediate supervisor within thirty (30) working days of the incident that gave rise to the employee's concern, or within thirty (30) working days of incident. Any discussion at the informal complaint level will not be included in the thirty (30) working day period. Upon receipt of the complaint, the supervisor shall send the employee a written acknowledgement that the complaint was received and is under review. The aggrieved employee may meet with the supervisor alone or accompanied by a representative, to discuss the grievance. The supervisor shall provide a written response to the employee regarding the complaint within fifteen (15) working days of receiving the written complaint, not including the date of presentation. If the supervisor fails to meet or answer any grievance within the time limits prescribed for such action by this chapter, or if the response is not satisfactory to the employee, such grievance shall automatically advance to the next step.

Step 2 Appeal to Department Head

In the event there is no response, or the grievance is not satisfactorily resolved at the supervisor's level, the employee may proceed to submit an appeal in writing to the department head within seven (7) working days after the supervisor's response was received or the response period expired. To initiate the appeal the employee must submit a signed and dated grievance that includes:

- A copy of the formal complaint;
- A copy of supervisor's response;
- Reason(s) for disagreeing with the supervisor's response; and
- State preferred solution

The department head may meet with the aggrieved employee alone or accompanied by a representative, and the immediate supervisor to discuss the grievance. Upon receipt of the complaint, the department head shall send the employee a written acknowledgement that the complaint was received and is under review. The department head shall investigate the appeal and shall provide a written response to the employee within seven (7) working days of the date of presentation of the appeal by the employee, not including the date of presentation. If the department head fails to meet or answer any grievance within the time limits prescribed for such action by this chapter, or if the response is not satisfactory to the employee, such grievance shall automatically advance to the next step.

Step 3 Appeal to City Manager

An aggrieved employee in the city clerk department shall proceed directly to Step 4. All appeals from disciplinary action excepting suspension or discharge shall start at Step 3, including demotion. Employees who have been suspended or discharged must proceed directly to Step 4. All other employees who still believe the matter has not been satisfactorily resolved at the department head level, may submit a signed and dated written appeal to the city manager within seven (7) working days of receiving the department's written response, or expiration of response period, not including the day the response was given or response period expired.

All pertinent, correspondence, records, and documentation from the initial complaint and previous appeals should be included. The city manager may meet with the aggrieved employee, alone or accompanied by a representative, the department head, and the immediate supervisor. Upon receipt of the complaint, the city manager shall send the employee a written acknowledgement that the complaint was received and is under review. The city manager shall reply to the grievance in writing within seven (7) working days of the date of presentation of the written grievance, not including the day of presentation. If the city manager fails to meet or answer any grievance within the time limits prescribed for such action by this chapter, or if the response is not satisfactory to the employee, such grievance shall automatically advance to the next step.

Step 4 Personnel Appeal Board:

- a. The employee, alone or accompanied by a representative, shall have the opportunity for a hearing with the personnel appeal board. If this is an appeal of a disciplinary action including demotion, suspension, or discharge, or alleged violation of the personnel rules and regulations, the employee may request a hearing before a personnel appeal board by submitting a request to the appropriate administrator, either the city clerk or city manager, for a hearing within five (5) working days after receiving the decision from which the appeal is taken, not including the day the decision was received.
- b. The personnel appeal board shall consist of three (3) people chosen from a current list of 10-12 personnel appeal board volunteers maintained by the city clerk. Appeal board volunteers must be at least 21 years of age, have no criminal record, no prior employment with the city, are not an elected city official, and are registered voters of either the Seward, Bear Creek, or Lowell Point Precincts for at least one year. They shall have no personal relationship, city business dealings or other significant knowledge of or dealings with the employee or the department. Appeal board volunteers term of service shall be 3 years. There shall be no compensation for serving on the appeal board.
- c. The appropriate administrator, either the city manager or city clerk shall select one person from the list, the employee shall choose one person from the list, and the third person shall be mutually agreed upon to serve on the appeal board. In the event of inability to agree on a third member, the employee will be given the first opportunity to strike a name from the list, then the administrator and employee will alternately strike names from the list until only one name remains. The remaining name will be the third board member. The personnel appeal board will agree to designate one of its members as chair.

- d. The board shall conduct the hearing expeditiously and in a manner to obtain a clear understanding of the facts. The procedure shall be informal. Technical rules regarding evidence and witnesses do not apply. Witnesses will be considered on duty status if they would otherwise be on duty at the time of the hearing. **The city prohibits intimidation or retaliation against any witness who participates in the complaint resolution process.** The hearing shall be recorded.
- e. The board shall submit a written report of its findings and determinations to all interested parties within thirty (30) working days after hearing testimony. The decision of the board is the final step within the administrative process of the City of Seward.
- f. Should either party fail or refuse to abide by the decision of the appeal board, either party will be free to take whatever action it deems necessary and such action will not be considered in violation of this code.
(Ord. 437, 1977; Ord. 95-05; Ord. 2000-011, § 1, 2000)

3.40.070 Violations of formal compliant/grievance procedure

Any employee who takes a grievable issue outside the city without first attempting to resolve said problems in accordance with the grievance procedure shall be subject to disciplinary action, with the exception of the employee's representative, see 3.40.040. However, nothing in this chapter shall be deemed to revoke any legal means of redress to the courts.

(Ord. 437, 1977; Ord. 610, 1988; Ord. 2000-011, § 1, 2000)

3.40.080 Time limits

(a) If the complaint resolution procedures are not initiated within the time limits established by this chapter, the employee shall be considered as having waived his/her right to grieve the particular violation and initiation of a complaint for the same act or omission is thereafter barred.

(b) Any complaint not taken to the next step of the complaint resolution procedure within the time limits established by this chapter shall be considered settled on the basis of the last reply made and received in accordance with the provisions of this chapter.

(c) If the city fails to meet or answer any complaint within the time limits prescribed for such action by this chapter, such complaint shall automatically advance to the next step.

(d) If the grievance hearing before the appeal board under step 4 of the formal complaint/grievance procedure is not held within 90 days from the date of the hearing request, the grievance shall be considered abandoned and the matter shall end, except if failure to hold the hearing is caused by the city's refusal to meet at any time during that period, it shall be deemed that the city has considered the grievance to be in favor of the grievant and shall resolve the matter accordingly.

(Ord. 437, 1977; Ord. 610, 1988; Ord. 2000-011, § 1, 2000)

3.40.085 Extension of time limits.

The time limits prescribed in this chapter for the initiation and completion of the steps of the complaint resolution procedure may be extended by mutual consent of the parties so involved. Likewise, any step in the complaint resolution procedure may be eliminated by mutual consent. Mutual consent shall be indicated in writing and shall be signed by all parties.

(Ord. 437, 1977; Ord. 610, 1988)

3.40.090 No discrimination or reprisals.

Employees are entitled to have complaints resolved without fear of recrimination or penalty. Employees shall be free from interference, restraint, coercion, discrimination or reprisal in utilizing or for utilizing the complaint resolution procedures contained in this chapter. Employees shall be free from interference, restraint, coercion, discrimination or reprisal in testifying in a complaint resolution procedure conducted under this chapter. (Ord. 437, 1977; Ord. 92-23)

3.40.095 Exit interview

All discharged employees, including emergency, temporary, term, on-call, seasonal, probationary, part-time, full-time regular, and union employees, shall have the option of completing the standardized Exit Interview.

3.40.096 Supervisor Evaluation

All discharged employees, including emergency, temporary, term, on-call, seasonal, probationary, part-time, full-time regular, and union employees, shall have the option of completing the standardized 360-Degree Supervisor's Evaluation form.

Excellent resources:

<http://www.eoc.sa.gov.au/eo-business/employers/dealing-complaints-workplace/complaints-between-staff/formal-complaints>

<http://www.eoc.sa.gov.au/eo-business/employers/dealing-complaints-workplace/complaints-between-staff/formal-complaints>

Soldotna Code of Ordinances 2.28.050 Grievance Procedure

https://library.municode.com/ak/soldotna/codes/code_of_ordinances?nodet=TIT2ADPE_CH_2.28PECO_2.28.050GRPR

Questions: at what stage should disciplined and discharged employees enter the complaint procedure?

Term employee rights to a formal complaint/grievance needs to be verified. I suggest that term employees are temporary and as such do not have formal complaint/grievance rights Can an appeal board applicant be a prior city employee ie not currently employed?

3.25.050. - Term appointments.

The appointing authority, or a department head with the approval of the city manager, may appoint term employees. A term employee is an employee in a position, full or part-time, that is designed for a specified period of time of more than nine months and less than two years for a specific purpose or project. A person hired for a term appointment shall be **hired under the same provisions and have the same benefits as a regular employee**, except that a term employee appointed to a position of less than one year shall not accumulate annual leave or be authorized military or education leave. However, annual leave shall be credited retroactive to the date of term appointment if a term employee is appointed as a regular employee without a break in service as an employee of the city.

(Ord. 92-18; Ord. 95-05; Ord. 95-14; Ord. 2000-011, § 1, 2000)

2/11/18 Carol Griswold