AN ORDINANCE TO REPEAL THE EXISTING GRIEVANCE PROCEDURE FOR THE TOWN OF ELKTON, VIRGINIA, AND RE-ENACT THE GRIEVANCE PROCEDURE AS FOLLOWS:

A GRIEVANCE PROCEDURE FOR THE TOWN OF ELKTON

I. PURPOSE

A. To afford an immediate and fair method for the resolution of disputes which may arise between the Town of Elkton and its employees.

B. To encourage employees to express themselves about the conditions of work which affect them without fear of reprisals.

C. To ensure that personnel actions are taken in accordance with fair and uniform policies and procedures.

II. THE GRIEVANCE PROCEDURE

A. **Definition of grievance.** A grievance shall be a complaint or dispute by an employee relating to his employment, including but not necessarily limited to:

1. Disciplinary actions, including dismissals, disciplinary demotions, and suspensions, provided that dismissals shall be grievable whenever resulting from formal discipline or unsatisfactory job performance;

2. The application of personnel policies, procedures, rules and regulations, including the application of policies involving matters referred to in subdivision B 3. below;

3. Acts of retaliation as the result of utilization of the grievance procedure or participation in the grievance of another local government employee;

4. Complaints of discrimination on the basis of race, color, creed, political affiliation, age, disability, national origin or sex; and,

5. Acts of retaliation because the employee has complied with any law of the United States or of the Commonwealth, 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 or the General Assembly.

B. **Local government responsibilities and nongrievable complaints.** Local governments shall retain the exclusive right to manage the affairs and operations of government. Accordingly, the following complaints are nongrievable:

1. Establishment and revision of wages or salaries, position classification or general benefits;

2. 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;

3. The contents of ordinances, statutes or established personnel policies, procedures, rules and regulations;

4. Failure to promote except where the employee can show that established promotional policies or procedures were not followed or applied fairly;

5. The methods, means and personnel by which work activities are to be carried on;

6. 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 work force, or job abolition;

7. The hiring, promotion, transfer, assignment and retention of employees within the local government; and,

8. The relief of employees from duties of the local government in emergencies.

In any grievance brought under the exception to provision 6. of this subsection, the action shall be upheld upon a showing by the local government that:

a. There was valid business reason for the action, and,
b. The employee was notified of the reason in writing prior to the effective date of the action.

The classification of a complaint as "nongrievable" shall not be construed to restrict any employee's right to seek or management's right to provide customary administrative review of complaints outside the scope of the grievance procedure.

C. **Coverage of personnel.**

1. Unless otherwise provided by law, all nonprobationary local government permanent full-time and part-time employees are eligible to file grievances with the following exceptions:

a. Appointees of elected groups or individuals;
b. Officials and employees who by charter or other law serve at the will or pleasure of an appointing authority;
c. Deputies and executive assistants to the Mayor;
d. Agency heads or chief executive officers of government operations;

e. Employees whose terms of employment are limited by law;
f. Temporary, limited term and seasonal employees;

2. The Mayor, or his designee, shall determine the officers and employees excluded from the grievance procedure, and shall be responsible for maintaining an up-to-date list of the affected positions.

D. **Compliance.**

1. After the initial filing of a written grievance, failure of either party to comply with all substantial procedural requirements of the grievance procedure, including the panel hearing, without just cause shall result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the noncompliance within five work days of receipt of written notification by the other party of the compliance violation. Such written notification by the grievant shall be made to the Mayor, or his designee.

2. The Mayor, or his designee, at his option, may require a clear written explanation of the basis for just cause extensions or exceptions. The Mayor, or his designee, shall determine compliance issues. Compliance determinations made by the Mayor shall be subject to judicial review by filing a petition with the Circuit Court within thirty days of the compliance determination.

E. **Steps.**

Grievances as defined herein shall be processed as follows:

1. STEP ONE. An employee who has a grievance shall discuss the problem with his immediate supervisor within twenty (20) calendar days after the event or action giving rise to the grievance. The grievance shall be presented orally with the objective of resolving the matter informally. The immediate supervisor shall give the employee an answer within five work days from the time the grievance is presented to him and shall report the result to his immediate supervisor. In all cases the supervisor shall make a record of the grievance presented.

2. STEP TWO. If a grievance is not settled by the immediate supervisor to the satisfaction of the aggrieved employee, the grievant may file a written notice to his department head within five working days of receipt of the answer of the immediate supervisor, settling forth the facts on which the grievance is based. The department head shall hear the appeal within five work days of receipt of the written grievance and shall give a written answer within five work days of the hearing. If the immediate supervisor is the department head, STEP ONE and STEP TWO are consolidated into an single step.

3. STEP THREE. If the grievant is not satisfied with the decision of the department head, he may within five work days file a written appeal to the Town Council. The Mayor shall hear the appeal on behalf of the Town Council and render a written decision within an additional five work days.

4. STEP FOUR. If the Town Council's response does not resolve the grievance, the grievant may proceed with the grievance by requesting a panel hearing. This request shall be made in writing to the Town Council within five work days of receipt of its STEP THREE written response.

With the exception of STEP FOUR the only persons who may normally be present in the management step meetings are the grievant, the appropriate local government official at the level at which the grievance is being heard, and appropriate witnesses for each side. Witnesses shall be present only while actually providing testimony. At STEP FOUR, the grievant, at his option, may have present a representative of his choice. If the grievant is represented by legal counsel, local government likewise has the option of being represented by counsel.

a. **Qualification for panel hearing.**

(1) Decisions regarding grievability and access to the procedure shall be made by the Mayor, or his designee, at any time prior to the panel hearing, at the request of the Town or grievant, within ten calendar days of the request. No city, town, or county attorney, or attorney for the Commonwealth, shall be authorized to decide the question of grievability. A copy of the ruling shall be sent to the grievant. Decisions of the Mayor, or his designee, may be appealed to the Rockingham County Circuit Court for a hearing on the issue of whether the grievance qualifies for a panel hearing. Proceedings for review of the decision of the Mayor or his designee shall be instituted by the grievant by filing a notice of appeal with the Mayor within ten calendar days from the date of receipt of the decision and giving a copy thereof to all other parties. Within ten calendar days thereafter, the Mayor or his designee shall transmit to the Clerk of the Court: a copy of the decision of the Mayor, a copy of the notice of appeal, and the exhibits, if any. A list of the evidence furnished to the Court shall also be furnished to the grievant. The failure of the Mayor or his designee to transmit the record shall not prejudice the rights of the grievant. The Court, on motion of the grievant, may issue a writ of certiorari requiring the Mayor to transmit the record on or before a certain date.

(2) Within thirty days of receipt of such records by the clerk, the Court, sitting without a jury, shall hear the appeal on the record transmitted by the Mayor or his designee 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 the decision of the Mayor or his designee, or may reverse or modify the decision. 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.

b. **Panel hearings in STEP FOUR.**

(1) Qualifying grievances shall advance to STEP FOUR as described below:

This final step shall provide for a hearing before an impartial panel, consisting of one member appointed by the grievant, one member appointed by the Town head and a third member selected by the first two. The parties shall strictly adhere to

the restrictions concerning discussions of the dispute by panel members as set forth herein, during such appointment process. In the event that agreement cannot be reached as to the final panel member, the chief judge of the Rockingham County Circuit Court shall select the third panel member. The panel shall not be composed of any persons having direct involvement with the grievance being heard by the panel, or with the complaint or dispute giving rise to the grievance. Mangers 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 panel 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 the attorney shall serve as a panel member.

(2) The Town shall not be required to have an administrative hearing officer in any case, but may do so in employee termination or retaliation cases at its option. When the Town elects to use an administrative hearing officer as the third panel member in an employee termination or retaliation case, the administrative hearing officer shall be appointed by the Executive Secretary of the Supreme Court. The appointment shall be made from the list of administrative hearing officers maintained by the Executive Secretary pursuant to § 9-6.14:14.1, Code of Virginia, and shall be made from the appropriate geographical region on a rotating basis. If the Town elects to use an administrative hearing officer, it shall bear the expense of such officer's services.

(3) In all cases there shall be a chairperson of the panel and, when panels are composed of three persons (one each selected by the respective parties and the third from an impartial source), the third member shall be the chairperson.

(4) Both the grievant and the respondent may call upon appropriate witnesses and be represented by legal counsel or other representatives at the panel hearing. Such representatives may examine, cross-examine, question and present evidence on behalf of the grievant or respondent before the panel without being in violation of the provisions of § 54.1-3904, Code of Virginia.

(5) Rules for panel hearings are as follows:

(a) The Town shall provide each panel member, the grievant and his or her attorney, if any, with copies of this grievance procedure, the grievant's written notice and the Town's written decision at least ten days prior to the convening of the panel in order that each member may review the documents. A list of documents provided to the panel shall be provided to the grievant and his or her attorney, if any. The grievant and his or her attorney, if any, shall be allowed access to and copies of all relevant files intended to be used in the grievance proceeding. Upon the request of either party, the panel shall review the evidence which the parties intend to present prior to the hearing, so that the panel may be aware of the nature of the dispute prior to the hearing. The evidence at such review may be presented to the panel through written or oral summaries. Such a review may be made by the chairperson alone, instead of the full panel, upon the consent of both parties. At its discretion, the panel may request that both parties submit and exchange documents or exhibits that they wish to be considered in the hearing before the hearing date to allow panel members time to read them.

The panel may also request the parties to submit and exchange a list of their witnesses prior to the hearing.

(b) Panel hearings are not meant to be conducted as full court proceedings and panels shall not be bound by the technical rules of evidence. Panels, however, should take into account all reliable and substantial evidence produced at the hearing.

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

(d) All evidence shall be presented in the presence of the panel and the parties, except by mutual consent of the parties;

(e) No panel member shall discuss the nature of the dispute with either party or their representative, either directly or through intermediaries, prior to the hearing. No panel member shall conduct any private investigation of the dispute. No panel member shall discuss any aspect of the dispute at any time with any other person except during the course of the hearing and the deliberations of the panel, or as directed by a court of competent jurisdiction. At the conclusion of the hearing, each panel member, including the chairperson, shall after first being duly sworn, certify that they have complied and shall comply in the future with the foregoing requirement. A panel member who fails to so certify shall not be permitted to vote upon the decision of the panel.

(f) At the option of each party, opening statements may be made at the beginning of the hearing and the panel may ask for such statements in order to clarify the issues involved in the grievance.

(g) The Town and thereafter the grievant, or their representatives, shall then present their claims, proofs, and witnesses who shall submit to questions or other examination. The panel may, at its discretion, vary this procedure but shall afford full and equal opportunity to all parties for presentation of any material or relevant evidence and shall afford the parties the right of cross-examination.

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

(i) Witnesses other than the parties shall remain in the hearing room only while giving their testimony.

(j) Members of the panel may question anyone giving testimony in order to clarify points being made.

(k) Exhibits offered by the grievant or the agency may be received in evidence by the panel and, when so received, shall be marked and made a part of the record.

(l) The parties shall produce such additional evidence as the panel may deem necessary to an understanding and determination of the dispute. The panel shall be judge of the relevancy and materiality of the evidence offered. Evidence is to be taken in the presence of the panel and both parties.

(m) After both parties have had the opportunity to present their evidence, the panel chairperson shall specifically inquire of all parties whether they have any further proof to offer or witnesses to be heard. Upon receiving negative replies, both parties shall be given the opportunity to make closing statements summarizing their positions, following which the hearing should be declared closed.

(n) The panel shall render its decision within ten (10) work days of the conclusion of the hearing. The facts found and the reasons for the panel's decision must be set forth in writing. Panels are to decide cases on the merits.

(o) The decision of the panel shall be filed in writing by the panel chairman with the Town Treasurer, with copies to the Mayor, the grievant, and the grievant's immediate supervisor and/or department head.

(p) If a written request to reconsider the panel decision is submitted by either party within five (5) work days of receipt of the decision, the panel by majority vote may elect to review its decision and/or reopen the hearing for good cause shown.

(q) The Mayor shall implement any remedy to the extent that it is consistent with law and written policy. If either party believes the decision to be inconsistent with the law and written policy, they shall inform the Mayor, the panel and the other party in writing within five (5) work days of receipt of the decision. The question of whether the relief granted by a panel is consistent with written policy shall be determined by the Mayor, or his designee, unless such person has a direct personal involvement with the event or events giving rise to the grievance, in which case the decision shall be made by the Rockingham County Commonwealth's Attorney.

(r) The decision of the panel shall be final and binding and shall be consistent with the provision of law and written policy.

(s) The panel does not have authority to formulate policies or procedures or to alter existing policies or procedures.

(t) The majority decision of the panel, acting within the scope of its authority, be final, subject to existing policies, procedures and law;

c. **Implementation of panel decisions.**

Either party may petition the Rockingham County Circuit Court for an order requiring implementation of the panel decision.

Enacted this 18th day of November, 1991.
with corrections to Item II, Sec. C, No. 2

Charles E. Dean
Charles Dean, Mayor

Attest:

Norma R. Leap
Clerk

CORRECTION:

Item II. Section C. No. 2 will read as follows:

The Mayor, or his designee, shall maintain a current list of the officers and employees excluded from the grievance procedure pursuant to Subparagraph C.1.