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Office of the City Auditor

## **Audit of the Personnel Board Process**

Report Date: December 27, 2019

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Office of the City Auditor  
2401 Courthouse Drive, Room 344  
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*"Promoting Accountability and Integrity in City Operations"*



**Office of the City Auditor  
Audit of the Personnel Board Process**

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## **Office of the City Auditor**

*"Promoting Accountability and Integrity in City Operations"*

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Senior Auditor

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## Office of the City Auditor Transmittal Letter

Date: December 27, 2019  
To: Thomas A. Leahy, P.E., Acting City Manager  
Subject: Audit of the Personnel Board Process



I am pleased to present the report of our Audit of the Personnel Board Process. The purpose of our audit was to determine the operational effectiveness and efficiency of the Personnel Board process. Findings considered to be of insignificant risk have been discussed with management. We completed our fieldwork on November 8, 2019.

The Office of the City Auditor reports to City Council through the Audit Committee and is organizationally independent of all other City Departments. This report is intended solely for the information and use of the Audit Committee, City Council, and appropriate City management. It is not intended to be, and should not be, used by anyone other than these specified parties. However, this report is a matter of public record and its distribution is not limited.

We would like to thank the management and staff of the Human Resources Department, the Office of the City Attorney, and the Personnel Board for their cooperation and responsiveness to our requests and questions during our audit.

If you have any questions about this report, or any audit-related issue, I can be reached at 385-5872 or via email at [lremias@vbgov.com](mailto:lremias@vbgov.com).

Respectfully submitted,

Lyndon S. Remias, CPA, CIA  
City Auditor

lsr/rc

c: City Council Members  
Audit Committee Members  
Kenneth Chandler, Deputy City Manager  
Regina Hilliard, Director, Department of Human Resources  
Mark Stiles, City Attorney, Office of the City Attorney



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## Office of the City Auditor Audit of the Personnel Board Process

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### **Purpose**

The purpose of our audit was to determine the operational effectiveness and efficiency of the Personnel Board process.

### **Scope and Objectives**

The scope of the audit was for the period January 2016 to October 2019.

The objectives of the audit were to:

- Evaluate the process by utilizing insights from Personnel Board members, managers, and grievants.<sup>1</sup>
- Determine patterns and/or trends by analyzing the data on the grievance appeal hearing results.
- Evaluate the adequacy of the process relative to established policies and operating practices.

### **Methodology**

To accomplish our objectives, we performed the following:

- Met with Personnel Board members and City management and staff.
- Reviewed policies, procedures, and other City and state requirements.
- Performed data analysis of the results of the hearings.
- Conducted confidential surveys of Personnel Board members, managers, and grievants.
- Attended hearings as an observer.
- Reviewed a sample of documentation packages of past hearings.

### **Standards**

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained during this audit provides a reasonable basis for our findings and conclusions based on our audit objectives.

The Office of the City Auditor reports to City Council through the Audit Committee and is organizationally independent of all City Departments. This report will be distributed to the City's Audit Committee, City Council, and appropriate management within the City of Virginia Beach. This report will also be made available to the public through the Office of the City Auditor's webpage.

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<sup>1</sup> A grievant is an employee who filed an appeal to the Personnel Board after: 1) a disciplinary action, 2) being affected by inconsistent application of personnel policies and procedures; 3) being discriminated upon; or 4) being retaliated upon after having initiating or participating in reporting violations of law.



## Office of the City Auditor Audit of the Personnel Board Process

### **Background<sup>2</sup>**

The Personnel Board was established in accordance with the two Code of Virginia Sections that provide for the creation of a Personnel Board and a Grievance Procedure:



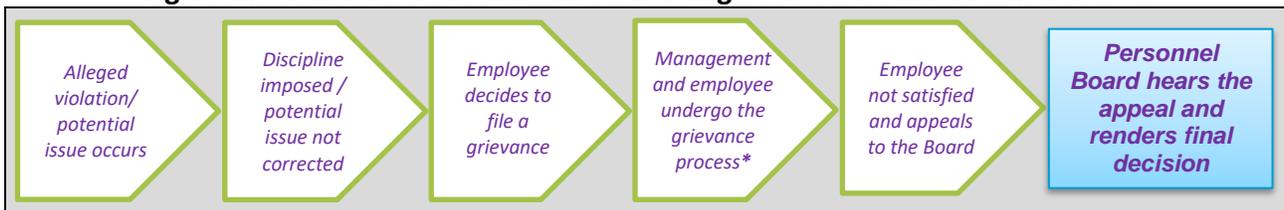
- §2.2-3003 provides a general outline of procedures to resolve grievances and;
- §15.2-1507 provides more detailed requirements for grievances procedures, including resolution through a panel or administrative hearing.

The jurisdiction and authority of the Personnel Board is limited to judging the employing authority's action in the administration of the City's ordinances, management rights, policies, procedures, rules, and regulations. The Personnel Board does not have authority to add to, delete from or amend City ordinances, management rights, policies, procedures, rules, and regulations. However, it may make recommendations regarding these issues to the City Manager.

The Personnel Board process may be the final phase of the City's grievance process, depending on whether the grievant decides to file an appeal (see Figure 1 for more information). It is a fundamentally distinctive process in that an independent body is responsible to render a final decision on the issue at hand. Personnel Board members are appointed by City Council; therefore, it is independent of City management's structure and authority. It is free to render its own decision based upon the evidence and testimony presented without any influence from management. The Personnel Board's decision is final and binding in all cases, as stated in §2.1-114.5:1(d), and must be consistent with the Constitution and laws of the United States or of the State of Virginia or local laws. Either the grievant or management may petition the circuit court for an order requiring implementation of the decision of the Personnel Board.

The City has two types of grievances that may lead to a Personnel Board hearing. Type A<sup>3</sup> grievances may be appealed directly to the Personnel Board at the discretion of the grievant. If a grievant does not appeal a Type A grievance directly to the Personnel Board, then procedures for Type B<sup>4</sup> grievances, which is set forth in City Code Section 2-134, shall be followed.

**Figure 1: Overview of Circumstances Leading to the Personnel Board Process**



\* Note: Not applicable for Type A grievances

<sup>2</sup> Information taken from various sources, such as the City Code, employee interviews, and www.vbgov.com.

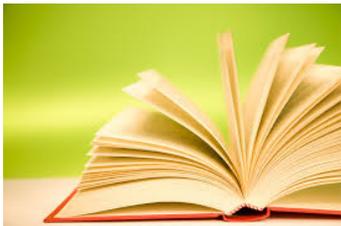
<sup>3</sup> Type A grievance pertains to dismissal, demotion, or suspension for more than 40 consecutive working hours.

<sup>4</sup> Type B grievance pertains to all other grievances that involve issues other than Type A grievances.



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City Code requires that the Personnel Board shall be composed of five qualified voters appointed by the City Council for a term of three years. A member shall serve until the end of his or her term or once a successor has been appointed. One of the five Personnel Board members shall always be a member of the merit service and be employed at a level below that of a division manager. The Personnel Board shall select a Chairperson, a Vice-Chairperson, and a Second Vice-Chairperson among themselves. A majority of the members of the Personnel Board shall constitute a quorum (i.e. three members). When a regular Personnel Board member expects to be absent from a hearing, he or she shall notify the Chairperson who then shall select an alternate to serve in the absence of the regular Personnel Board member.

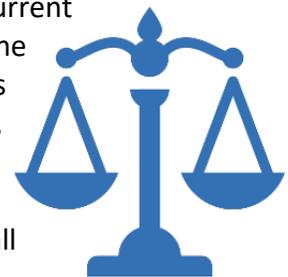


City Code also requires that, in addition to the five regular Personnel Board members, City Council may appoint not more than four alternates to the Personnel Board. Two alternates shall be members of the merit service and shall be employed at a level below that of a division manager. The qualifications and terms of alternate members shall be the same as those of regular members.

Currently, the Personnel Board is comprised of the following:

- Five private citizens who are regular Personnel Board members; one of whom serves as the Chairperson. The citizens volunteer their personal time and resources to review cases and attend hearings without receiving any form of compensation.
- Three City merit-service employees: one as a regular member and serving as the Vice-Chairperson, and two as alternate members. The employee Personnel Board members do not receive any form of additional compensation for their services to the Personnel Board.

Personnel Board members should have reasonable knowledge of the current problems inherent in the management of personnel, particularly those in the public sector, where employees have the responsibility to place public's health, safety, and welfare above personal remuneration. Objectivity, relevant experience, open mindedness, and astute judgement are among the critical attributes needed by Personnel Board members to be able to render fair and impartial decisions and protect the interests of all concerned.



Per the City Code, the Personnel Board is empowered to adopt rules and regulations pertaining to the hearing procedures to be followed. All such rules and regulations shall be adopted by majority vote of all members, signed by the Chairperson and be lodged with the Secretary of the Personnel Board (Secretary). Such rules and regulations are available in the Human Resources Department. The Personnel Board is authorized to amend or rescind any previously adopted rule or regulation by a majority vote of all members of the Personnel Board.

The Human Resources Director has designated a staff member to serve in the capacity of Secretary on his or her behalf. The Secretary attends all meetings but with no voting privileges. The Secretary serves as the point-of-contact for all administrative functions.



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To mitigate the risk of conflicts of interest:

- Each Personnel Board member is required to complete a Virginia Conflict of Interest and Ethics Advisory Council Financial Disclosure Statement annually.
- Conflicts of interest pertaining to personal and professional relationships are prohibited as stated, in detail, in the City Code and the Personnel Board Rules and Regulations.
- The Secretary assesses for potential conflicts of interest among the grievant and Personnel Board members before every hearing.
- The Secretary provides the Employee Roles for Appointed Citizen Groups Administrative Directive as part of the packet provided to new Personnel Board members. The directive contains a statement about conflicts of interest.

The Secretary drives the flow of the appeal process. Among the Secretary's numerous responsibilities are the following:

- Provide the grievant with the Employee Personnel Board Initial Packet, which includes the Personnel Board Rules and Regulations and a Notification of Legal Representation for Appeal to Personnel Board form. The grievant submits the latter form if he or she chooses to have a legal representative in the hearing. If represented by an attorney, the Secretary contacts the Office of the City Attorney, as management would also need the legal representation of a City attorney.
- 
- Upon notification of the grievant's intent to appeal, the Secretary must arrange the time and place of the hearing and notify all involved parties of such time and place within 14 consecutive calendar days. The Personnel Board hearing shall be scheduled, if possible, within 30 consecutive calendar days from the end of the aforementioned 14 consecutive-day period.
  - Obtain and print all documentation from the personnel files and those provided by the grievant and management and assemble them in a package for distribution to Personnel Board members, grievant, and management representatives.
  - Perform all administrative duties during the hearing, including answering basic administrative process questions, taking notes, administering oaths to witnesses, and recording the hearing. Be present for the entirety of the hearing, except during Personnel Board deliberations.
  - Perform post-hearing procedures, such as following up with relevant department personnel, recordkeeping, filing, and sending a formal letter to the grievant of the Personnel Board's decision within five working days from the hearing.



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The Personnel Board hearing is conducted in a formal manner with procedures established by the Personnel Board itself. Below are the procedures conducted in chronological order:

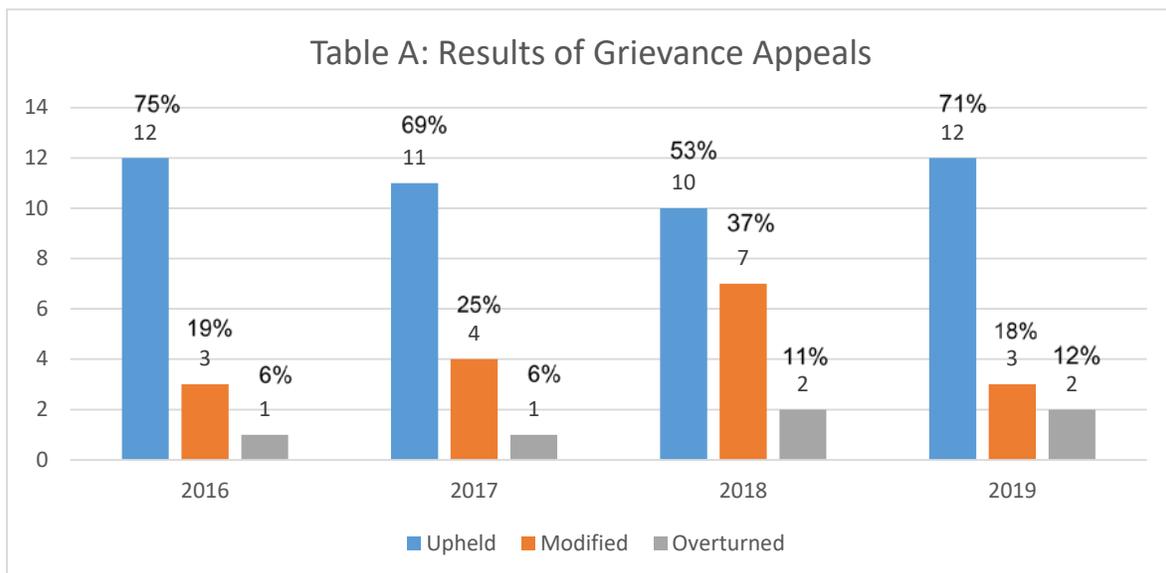
- Hearing called to order by the Chairperson.
- Oath administered to all witnesses and, if applicable, to court reporter.
- Chairperson proposes that the hearing be closed (i.e., held in private).
- Preliminary matters, if any. (Objections to documents, exhibits, tape, or videos).
- Stipulations made by either party (only if legal representatives are present).
- Opening statement by the City representative.
- Opening statement by the grievant or representative.
- City presents witnesses.
- Cross-examination by the grievant or representative.
- Questions by the Personnel Board.
- Grievant or representative presents witnesses.
- Cross-examination by the City representative.
- Questions by the Personnel Board.
- Closing statements by the grievant or representative.
- Closing statements by the City representative.
- Personnel Board notifies grievant that the Personnel Board's decision will be in writing within five working days.
- Hearing closed by the Chairperson.
- Personnel Board retreats for deliberations.
- Personnel Board Chairperson polls the Personnel Board for each member's decision.
- Grievant is informed of the Personnel Board's decision within five business days.



## Results

### Finding 1: One-Third of Appeals Resulted in an Overturned or Modified Decision

In our analysis of Personnel Board appeals data from January 2016 to October 2019 comprising 68 appeals, we found that the Personnel Board disagreed with management's actions on 23 (34%) appeals; rendering a modified decision on 17 (25%) appeals and an overturned decision on six (9%) appeals. Of the six overturned decisions, two involved termination. The Personnel Board bases its decision on the merits of the case and believed that City representatives and documents presented were not convincing in these appeals. Therefore, it is crucial for City representatives to prove to the Personnel Board, in every case, that management's action was appropriate and in accordance with City policies. A substantial portion of the modified and overturned decisions occurred in 2018, but 2019 data is currently trending towards the upheld decision (see Table A for the yearly figures). However, opportunities still exist for further management improvement.



Through interviews and survey responses, we identified some areas where the City could improve the process and, consequently, advance employee relations and overall workplace morale.

- **No Training of Management Representatives**

There is no structured training provided to managers that would help them and their witnesses to be more effective in presenting their case in the Personnel Board hearing. While the City Attorney's Office is providing advice and guidance to those managers who seek them, the City needs to establish a broad-based method of providing training and resources to managers. Comments from interviews and surveys showed a general concern in this area and received low ratings on the following points:

- Understand hearing procedures
- Relatively clear delivery of critical points (e.g. logical, factual)



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- Able to effectively reference documentation/evidence to prove their case

Below are some relevant comments from managers and Personnel Board members:

- *“Absolutely need more guidance and training.”* - (Manager survey)
  - *“Perhaps some type of training document that lays out the case process in detail and provides examples of how to present and what should be included.”* - (Personnel Board survey)
  - *“I’ve never had any input or assistance from the City attorney. Adding that could help. Giving managers training in how to handle these hearings would be useful.”* - (Manager survey)
  - *“Prepare. Seek guidance and assistance from HR or City Attorney’s Office.”* - (Personnel Board survey)
- **Progressive Discipline was not Always Presented (*whenever applicable*)**

Evidence showing that applicable progressive discipline was taken to correct employee misconduct was not always presented in the hearing. City Policy 4.02 Discipline Policy and Procedure requires that management letters imposing discipline shall contain, among others, a “listing of prior disciplinary action(s) which the employee has received.” Personnel Board members commented that one of the most common reasons for a modified or overturned decision is that management has not provided adequate evidence that the applicable progressive discipline has been followed, as required by policy.

### Recommendations:

- 1.1 Establish a broad-based method of providing training and resources to managers that includes detailed classroom-type training session and online documentation to develop effective techniques in presenting testimony and evidence and preparing their witnesses for the Personnel Board hearing.

### Finding 2: Hearing Package Documentation Needs Improvement

The hearing documentation package provided to Personnel Board members, grievant, grievant’s attorney, management, and the City attorney handling the appeal needs to be improved to facilitate for an efficient review. The following are areas where improvements should be made:

- Unnecessary documentation from the personnel files – The hearing packages we reviewed contained large amounts of documentation from the personnel files that were mostly irrelevant, unrelated, or untimely to the appeal. Depending on the length of the grievant’s tenure with the City, these documents comprised, at least, 40% of the package. They included, but were not limited to, decades-old performance evaluations, candidate’s application snapshot, InSite notification details, child support reporting forms, and race/national origin information. Management stated that including everything in the personnel files mitigates the risk of missing pertinent documents. However, including



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documents not directly related to the case is meaningless, detracts from those that are important, and unnecessarily increases workload of Human Resources staff, costs to the City, and time and effort to review the package.

- Absence of written guidance for the grievant – No written guidance is provided to the grievant to ensure that only relevant documents are provided. The Secretary occasionally provides guidance to those who inquire about the process; however, providing written guidance to each grievant would facilitate efficiency and consistency, and reduce the City’s exposure to financial and/or legal risks. Below are some of the examples that the guide should address:
  - Documents obtained by the grievant from City files, records, and computers that are unrelated, irrelevant, or excessive. These add unnecessary costs to the City in terms of time and resources to generate and assemble them. Furthermore, the City should provide guidance on how much City time the grievant could use in relation to this.
  - Private documentation without proof of permission to use.
  - Unredacted personal, medical, or other confidential information.
  - City documentation without a Freedom of Information Act (FOIA) request.
  - Incorrectly designating witnesses as either material or character.
- Critical documents were not always included – Some Personnel Board members have commented that sometimes they learn, only through questioning, that critical documents, such as investigative reports, were not included in the package. Excluding critical documents can adversely affect the outcome of the appeal.
- Entire policy instead of excerpts – Policies are generally comprehensive and lengthy; therefore, having only relevant portions of the policy makes it easier and faster to get to the main case points. For example, the 12-page Grievance Policy and Procedure mostly explains the grievance process preceding the appeal and is no longer relevant at the time of the hearing, yet the entire policy was always provided.
- Lack of an effective format – Overall, the format of the package is good, but we noted the following:
  - Some Table of Contents descriptions were vaguely described in that they lacked dates, key details, or details that differentiate one from the other. Examples of those were “Comments for Evaluation (on several documents),” “Request for Leave (on several documents),” “Staff Disclosure Statement,” “Professional Forum,” and “Return of Service.”



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- Compact disks (CD) for photo/video evidence were provided instead of the more prevalent and more user-friendly Universal Serial Bus (USB) thumb drives. Some Personnel Board members have expressed frustrations over the use of CDs.

### Recommendations:

- 2.1 Develop a process with inputs from Human Resources, City Attorney's Office, and the Personnel Board on what baseline documents should be provided.
- 2.2 Develop written guidance for the grievant that provides information about documentation support, time usage during business hours, and general information about the Personnel Board process. This should be included in the grievant's Personnel Board Initial Packet provided by Human Resources.
- 2.3 Ensure that critical documents are always included in the hearing package. The written guide that we recommended above could help the grievant with this.
- 2.4 Provide only relevant excerpts of City policies.
- 2.5 Improve the document descriptions in the Table of Contents and provide USB thumb drives, when appropriate, in lieu of CDs.

### Finding 3: Personnel Board Orientation Process Could be Enhanced

The orientation process for new Personnel Board members could be enhanced to ensure that they completely understand the process prior to becoming a voting member. Currently, orientation is limited to just providing a Welcome Packet that includes the Personnel Board's Rules and Regulations and the City's Discipline Policy and Procedures. Personnel Board decisions have significant and consequential impact to employees' careers and workplace morale; therefore, the City needs to ensure that they have a solid understanding of their responsibilities. We noted the absence of the following:

- Observing, at least, one hearing prior to serving as a voting member. Observing a hearing is important as it provides the new Personnel Board member the opportunity to see first-hand how the hearing is conducted.
- Meeting with the Personnel Board Chairperson to review the Welcome Packet, policies, procedures, and expectations, as well as obtain further clarification prior to hearing their first case.

### Recommendations:

Enhance the Personnel Board member orientation process by recommending that the new member:



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- 3.1 Attend, at least, one hearing as an observer.
- 3.2 Meet with the Personnel Board Chairperson.

### **Finding 4: Absence of Annual Reporting of Results**

There is no requirement to report the statistical results of the Personnel Board activities to City Manager on an annual basis. The Personnel Board is an integral part of the City's employee grievance process, and the visibility of its results provides transparency and accountability, as well as recognition for the contributions of its members.

#### **Recommendation:**

- 4.1 Implement annual reporting of the Personnel Board results to City Manager to provide transparency, accountability, and recognition of Personnel Board members' contributions.

### **Conclusion**

Overall, we determined that the Personnel Board process is operating effectively. However, opportunities exist to improve management's efficiency in presenting the case, the hearing documentation package, and the Personnel Board member orientation, as well as implement annual reporting to City Council.

### **Acknowledgements**

We like to thank the people who worked with us during the audit including the Human Resources Department, the Office of the City Attorney, and the Personnel Board for their cooperation and responsiveness to our requests, questions, recommendations, and suggestions.

We also like to give special thanks to the Personnel Board members for volunteering their time and talent in service to the City of Virginia Beach.



# City of Virginia Beach

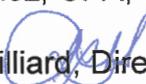
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## INTER-OFFICE MEMORANDUM

**DATE:** December 19, 2019

**TO:** Lyndon S. Remias, City Auditor  
 Tony Gonzalez, CPA, Senior Auditor, Office of the City Auditor

**FROM:** Regina S. Hilliard,  Director of Human Resources

**SUBJECT:** **Personnel Board Process Audit Report**

Thank you for the opportunity to review the audit results for the personnel board process. We provided most of our feedback during the meeting, as noted below.

### Responses

#### 1.1

Instructor training provided to managers would compromise the neutrality of Human Resource's role during the grievance process. As stated at the exit conference on November 21, 2019, Human Resources will consider developing a guide or "toolkit" that will be available to both the grievant and management representatives to assist them in understanding hearing procedures and how to develop a fact-based case.

It should be noted that, if progressive discipline documentation exists, it is being provided in the hearing packet. If limited or no progressive discipline exists, it may be due to the department electing not to follow the established progressive discipline process due to the nature of the action.

#### 2.1 – 2.3

As the administrator for this process, it is critical that Human Resources remain in a neutral role. Therefore, it would be inappropriate for Human Resources or the City Attorney's Office to provide guidance on baseline documents to be included as exhibits. There are often strategy decisions made by the individual (management or grievant) presenting their case to the personnel board where they determine what relevant documents should be included in the hearing package. For example, years of successful performance evaluations may be a factor that a grievant wants to use in their case. If the Personnel Board wishes to change the rules and regulations with regard to the baseline documents that should or should not be included in the hearing package, Human Resources and the City Attorney's Office would certainly take their recommendations for review and consideration.

Lyndon S. Remias, City Auditor  
Tony Gonzalez, CPA, Senior Auditor, Office of the City Auditor  
December 19, 2019  
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**2.4**

Providing a portion of a policy would require that Human Resources or the City Attorney's Office determine what the grievant or management should want. It is imperative that these offices remain in a neutral role.

**2.5**

We will improve the document descriptions in the Table of Contents. CDs are not being used by Human Resources. On the occasion that we receive a CD from hearing participants we will encourage parties to use USB thumb drives, whenever possible.

**3.1 – 3.2**

The recommendations in this area are already in place and routinely occur. Human Resources can remind the personnel board chair, when onboarding new members, that these things should occur.

**4.1**

We can implement this recommendation.

RSH/stj

cc: Deputy City Manager Kenneth L. Chandler  
Mary C. Graessle, Employee Relations Manager  
Stacy E. Hawks, Employee Relations