



ADMINISTRATION AND REGULATORY AFFAIRS DEPARTMENT

Departmental Policy

Subject: **Employee Concern Resolution Program**

Policy No.

4-9 Revised

Effective Date:

December 21, 2011

1. AUTHORITY

- 1.1 Chapter 14, Houston Code of Ordinances, Section 14-55.7; Article 14.02, 2011 Meet & Confer Agreement between the Houston Organization of Public Employees (HOPE) and the City of Houston ("Meet and Confer Agreement").

2. PURPOSE

- 2.1 It is the purpose of this policy to establish an Employee Concern Resolution Program (ECRP) that outlines written procedures and forms to address the eligible concerns of any Administration & Regulatory Affairs Department ("ARA") employee.

3. APPLICABILITY

- 3.1 This policy applies to all ARA employees, regardless of civil service protection status (e.g. probationary, part-time, appointed, executives, etc.)

4. DEFINITIONS

- 4.1 ECRP Coordinator – The designated representative of ARA's human resources, who schedules ECRP meetings and maintains records.
- 4.2 ECRP Committee Chairperson – The head of the ECRP Committee. The ECRP Committee Chairperson is not the ECRP Coordinator. The ECRP Committee Chairperson shall be the highest level manager member of the ECRP Committee.
- 4.3 ECRP Committee Vice-Chairperson – The head of the ECRP Committee in the absence of the Chairperson; appointed by the Director.

5. RESPONSIBILITIES

5.1 ARA Director:

- 5.1.1 Shall establish an ECRP Committee and designate the ECRP Committee Chairperson pursuant to the requirements of the Meet and Confer Agreement, and appoint the Vice-Chairperson.
- 5.1.2 Is responsible for reviewing and evaluating Committee findings.

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5.2 ECRP Coordinator:

- 5.2.1 Shall accept all ECRP concerns, reviewing their timeliness and appropriateness for consideration under the ECRP.
- 5.2.2 Shall convey all material(s) related to timely and eligible ECRP concerns to the ECRP Committee and may, at the Director's discretion, attend any ECRP meeting on a non-voting and non-decision making basis.
- 5.2.3 Shall provide timely meeting notices and responses to all parties.
- 5.2.4 Shall process and maintain all ECRP forms, records and related documents in confidential files that are separate from the employees' personnel files.
- 5.2.5 Shall provide a quarterly statistical report of departmental ECRP activities to the Human Resources Director. Reports shall be due on January 15, April 15, July 15 and October 15. The format and content of reports shall be determined by the Human Resources Director.
- 5.2.6 Shall in no way act or function as an employee advocate or serve to provide legal advice of any kind to employees. The ECRP Coordinator shall neither encourage nor discourage ECRP concerns or represent or advocate for or against the employee or the Department.

6. POLICY AMPLIFICATION

- 6.1 An employee may seek review of reasonable concerns, problems and disputes of a factual nature that can be resolved within the department. Concerns that may be addressed by this process include, but are not limited to:
 - 6.1.1 Supervisor conflicts
 - 6.1.2 Employee Performance Evaluations with an overall rating of acceptable or above
 - 6.1.3 Work assignment
 - 6.1.4 Reminder I Memo
- 6.2 The following concerns, most of which have other mechanisms of appeal, are excluded from the ECRP process. This list is not all-inclusive:
 - 6.2.1 Matters expressly identified as grievable pursuant to City of Houston Code of Ordinances Section 14-50 and Article 14.01.01 (Grievable Issues) of the Meet and Confer Agreement.
 - 6.2.1.1 Non-selection for a promotion to a referred position
 - 6.2.1.2 Hazardous working conditions not intrinsic to the job
 - 6.2.1.3 Employee Performance Evaluation with an overall rating of 2.99 or less
 - 6.2.1.4 Failure to receive a performance evaluation if delayed more than six months from the due date
 - 6.2.1.5 Failure to be paid overtime or compensatory time, if eligible, appropriate, and worked

- 6.2.1.6 Written reprimand
- 6.2.1.7 Decision Making Leave
- 6.2.1.8 Temporary Suspensions up to 15 calendar days
- 6.2.1.9 A Reminder II Memo

- 6.2.2 Discrimination and/or sexual harassment complaints
- 6.2.3 Retaliation for filing a discrimination or sexual harassment complaints
- 6.2.4 "Whistle Blower" complaints
- 6.2.5 Matters that are subject to appeals at the Civil Service Commission including, but not limited to, appeals of indefinite suspensions, demotions, or reductions in pay
- 6.2.6 Reviews of temporary suspensions
- 6.2.7 Performance Improvement Discussions (PID)
- 6.2.8 Salaries, raises, Performance Incentive Programs (PIPs)
- 6.2.9 Non-referral complaints by job applicants
- 6.2.10 Job classification challenges
- 6.2.11 Actions taken pursuant to AP 2-2
- 6.2.12 Alcohol and drug test results or procedures
- 6.2.13 Salary continuation
- 6.2.14 Layoffs or reduction in workforce issues
- 6.2.15 Denial of FMLA leave requests/complaints
- 6.2.16 Termination during probation
- 6.2.17 Allegations of criminal misconduct/OIG investigations
- 6.2.18 Any issue cited or addressed in a prior ECRP filed by the same employee
- 6.2.19 City/Departmental Policy

7. ECRP Process

The following steps shall apply when initiating an ECRP concern:

- 7.1 Prior to submitting a formal ECRP concern, the employee shall attempt to discuss his/her concern with his/her supervisor to attempt to resolve the issue.
- 7.2 The ECRP Request to Review form (Attachment 1) may be obtained from the departmental ECRP Coordinator.
- 7.3 An employee shall file a concern with the ECRP Coordinator no later than 15 calendar days from the date of the action or inaction giving rise to the concern. The written, completed, ECRP form(s) shall be submitted to the departmental ECRP Coordinator within 15 calendar days after the occurrence of the action or inaction, or the date on which the employee knew or should have known about the concern through the exercise of reasonable diligence. This period includes weekends and City holidays.

- 7.4 The completed ECRP form, with the employee's original signature must be received by the ECRP Coordinator on or before the mandatory deadline. The ECRP form may not be signed by anyone other than the employee and must be delivered in person to the ECRP Coordinator. Faxes and/or email will not be accepted.
- 7.5 Upon receipt of an ECRP form, the ECRP Coordinator will review the concern to determine whether it is timely and can be appropriately accepted and addressed within the ECRP Guidelines. If the matter is determined to be filed untimely or ineligible for resolution through ECRP, the Coordinator shall provide the employee a written notice within five (5) calendar days of filing.
- 7.6 As required in 7.1, the employee must certify that the concern has been addressed with his/her immediate supervisor or manager in an effort to resolve the concern. The ECRP form requires the employee raising the concern to state that he/she has addressed the concern with his/her immediate supervisor or manager prior to submitting an ECRP concern for review.
- 7.7 Either the ECRP Committee or the Director may close without resolution any concern filed which is later determined to be outside the jurisdiction of the Committee or the Director, is untimely filed, is inappropriate to be addressed through this process, or if the employee is not actively pursuing resolution.
- 7.8 Employees who have concerns arising out of the same or similar fact situations, or an employee who files more than one concern, may request to have ECRP meetings consolidated. The ECRP Committee may, at their sole discretion, elect to either combine the concerns or hear the concerns separately.
- 7.9 The department will give the employee filing the concern at least two (2) calendar days' notice of the ECRP Committee review meeting where the concern will be discussed, unless a shorter time is mutually agreed upon.
- 7.10 The burden of proof shall be on the employee filing the concern.
- 7.11 The employee may have a representative of his or her choosing present at the meeting, but the representative may not be another City employee, unless the representative is a certified or probationary Department Union Representative (DUR).
- 7.12 The employee filing the concern may, at the time of filing, request the attendance of fact witnesses only. The actual attendance or testimony of witnesses shall be at the discretion of the Committee. The time off for approved witnesses will be considered City business. The maximum number of witnesses that may be approved is five.
- 7.13 Employees shall be allowed a reasonable amount of time off from their regularly scheduled duties to file a concern and attend Committee review meetings.
- 7.13.1 Such time off shall not be charged against the employee.
- 7.13.2 This allowed time does not include time for preparation, meetings with witnesses, drafting of responses, gathering of evidence, etc.
- 7.13.3 When necessary and appropriate, the governing department may provide an alternative work schedule as needed to accommodate the attendance of the employee at review meetings.
- 7.14 The dates required herein for scheduling the ECRP review meeting may not be extended except:

- 7.14.1 When a government agency's superseding authority's action impacts the employee's schedule.
- 7.14.2 Where the failure to meet a date is the result of the employee's authorized leave of absence or excused illness.
- 7.14.3 Where the parties mutually and voluntarily agree in writing to extend the deadline(s).
- 7.15 ECRP review meetings shall not be open to the public.
- 7.16 No electronic or other technological mode of recording may be used at the ECRP review meeting by any meeting participant. If an employee is discovered to have recorded a meeting in violation of this rule, he/she may be subject to disciplinary action up to and including indefinite suspension.
- 7.17 If the concern is accepted for review, within thirty (30) calendar days from the filing of the ECRP, the ECRP Committee shall convene to hear the concern(s). Each participant at the review meeting shall appear in person and to fully, candidly and openly discuss the concern(s) in an effort to mutually resolve the issue. This meeting shall not exceed a one-hour time limit. Within five (5) calendar days of the meeting, the Committee shall issue an appropriate and reasonable recommendation for resolution, based on reasonable business operation conditions/practices exercised by managers or supervisors within the scope of their authority.
- 7.18 The ECRP Coordinator shall provide the employee with a copy of the ECRP Committee's recommendations (signed by the Committee members) within five (5) calendar days of receiving the signed recommendation from the ECRP Committee.
- 7.19 If the ECRP Committee's recommendation does not resolve the employee's concern, the employee may, within five (5) calendar days from the date of receipt of the Committee's written response, file a request with the ECRP Coordinator, seeking the ARA Department Director's review of the Committee's recommendation. The ARA Director may then accept the Committee's recommendation, modify it, or deny it and order an alternate final resolution.
- 7.20 The ARA Director's final written resolution will be issued to the employee within ten (10) calendar days of the date of the employee's request for the Director's review.
- 7.21 The final determination of a concern will rest with the Department Director. There shall be no further appeal.
- 7.22 ECRP forms, resolutions and related documents shall be kept confidential and in a file separate from the employee's personnel file. Every reasonable effort shall be made to keep the ECRP concern and related documents from disclosure to persons without a need to know, except as required by state, federal or local law.
- 7.23 If an employee's employment with the City ceases for any reason while the ECRP concern is pending, the ECRP concern shall become moot and all further processing shall be discontinued.

8. ECRP COMMITTEE

- 8.1 The ECRP Committee shall be a standing committee appointed by the ARA Director. The composition and size of the ECRP Committee may be changed at the discretion of the

ARA Department Director. The highest level manager shall be the Chair of the Committee. The Vice-Chairperson of the Committee shall be appointed by the Director. The ECRP Committee shall be comprised of the following:

- 8.1.1 Three ARA managers or administrators with classifications having pay grades 26 or higher.
- 8.1.2 Four employees with classifications having pay grades 25 and below.
- 8.1.3 At least five Committee members must be present at the ECRP review meeting to constitute a quorum and there must be at least two members present from each group defined in 8.1.1 and 8.1.2 above.
- 8.1.4 Each ECRP Committee member present at a meeting will be required to cast a vote and sign each individual response.
- 8.1.5 The Chairperson will be responsible for conducting all Committee meetings in accordance with this policy.
- 8.1.6 The Vice-Chairperson will be responsible for conducting meetings in the absence of the Chairperson.
- 8.1.7 Members of the ECRP Committee will be held to standards of confidentiality regarding ECRP concerns and meetings. Information provided or discussed during a meeting or on an ECRP form should only be divulged in accordance with existing standards and procedures for confidential employee information. Additionally, ex parte (partisan) communications about the subject matter of a pending ECRP between an employee with an ECRP concern and any member of the ECRP Committee shall not take place outside an ECRP meeting.
- 8.1.8 The ECRP Committee will review submitted ECRP concerns that were filed timely and are eligible for resolution through ECRP.
- 8.1.9 Upon first reviewing an employee's ECRP concern, an ECRP Committee member must immediately notify the Chairperson if he/she has a need to recuse himself/herself from reviewing/hearing that particular concern. Additionally, an ECRP Committee member must recuse himself or herself from Committee proceedings if the Committee is reviewing the Committee member's ECRP concern.

9. COMPLIANCE AND RETALIATION

- 9.1 It shall be a violation of Civil Service rules and regulations for any supervisor to take any retaliatory action against any employee who files an ECRP Concern when utilizing or participating in any procedure established by this policy.
- 9.2 It shall also be a violation for the employee to retaliate against a supervisor or another employee for participating in the ECRP process.
- 9.3 Disciplinary action is not suspended by an employee's participation in this program. Any disciplinary action taken after an employee filed a concern does not necessarily constitute retaliation.

9.4 If the supervisor or an employee is discovered to have retaliated against another employee for filing the ECRP concern or participating in the ECRP process in violation of this policy, he/she may be subject to disciplinary action up to and including indefinite suspension.

9.5 Employees and witnesses involved in the ECRP process may or may not be sworn for testimony. However, if the employee is found untruthful about the filed ECRP concern or testimony in violation of this policy whether sworn or not, he/she may be subject to disciplinary action up to and including indefinite suspension.

10. ATTACHMENT(S)

10.1 Attachment 1 – Administration & Regulatory Affairs Department, Employee Concerns Resolution Program, Request for Review Form



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Departmental Policy

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Effective Date:

Upon Approval

ATTACHMENT I
EMPLOYEE CONCERNS RESOLUTION PROGRAM
REQUEST FOR REVIEW
(Please Print)

I, _____, currently an employee (full-time or part-time) of the City of Houston, Administration & Regulatory Affairs Department, am requesting a review of the following issue (Please be specific about dates, names of other parties, and witnesses. Please attach any documents needed for review of this issue.):

Date of Incident or Concern: _____

Date Concern was addressed with immediate supervisor: _____

Supervisor's Name: _____

Concern Details (attach an additional sheet if necessary): _____

How do you want the issue resolved? _____

Employee Signature: _____ Employee No. _____

Classification: _____

Division/Section: _____ Shift (if applicable): _____

Mediator Signature: _____ Date: _____

Received in Employee Relations Office by: _____ Date: _____

Employee Relations Officer Signature: _____ Date: _____