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## SALT LAKE CITY COUNCIL STAFF REPORT

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**DATE:** October 31, 2003

**SUBJECT:** **PROPOSED ORDINANCE AMENDMENT TO ESTABLISH A POOL OF MEMBERS TO SERVE ON EMPLOYEE APPEALS BOARDS**

**AFFECTED COUNCIL DISTRICTS:** Citywide

**STAFF REPORT BY:** Gary Mumford

**ADMINISTRATIVE DEPT. AND CONTACT PERSON:** Management Services  
Jamey Knighton, Labor Relations Specialist

**CC:** Rocky Fluhart, Jamey Knighton, Brenda Hancock, Steve Fawcett, Lyn Creswell, Ed Rutan, DJ Baxter

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On October 21, 2003, the City Council received a briefing on a proposed ordinance amendment to establish a pool of members to serve on employee appeals boards. State law allows employees of municipalities that have been discharged or transferred and demoted to appeal to a five-member board with three of the members elected by employees. Representative from the Administration explained that the City's appeals board has met two or three times in the last six months. The Administration is requesting the establishment of a pool of six employees elected and four appointed. For each appeal, the City's labor relations officer will select a five-member board (three elected and two appointed) to consist of those who are least likely to have personal knowledge of the individual. Employees serving in the pool or on an appeals board don't receive any additional pay for these services. The state statute is being studied by the Utah League of Cities & Towns. If new legislation is introduced and the legislature changes the statute, then the Administration will propose appropriate revisions to the City's ordinance.

### **RECOMMENDED MOTION:**

Council Members decided to forward the ordinance to a formal Council Meeting for consideration. Council Members may wish to consider the following motion.

["I move that the Council"] **Adopt the ordinance amending Chapter 2.24 of the Salt Lake City Code relating to employee appeals boards.**

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The following information was provided previously.  
It is provided again for your reference.

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Employees of Salt Lake City Corporation that have been discharged or involuntarily transferred to a position with less pay can appeal the action to an employee appeals board consisting of three City employees chosen by election and two City employees that are appointed. According to state law, the employee appeals board must certify its decision to the city recorder within 15 business days after the board receives an appeal. Under current City ordinance, one additional alternate employee is elected and one additional alternate is appointed so that a board can consider appeals during times when one

member of either elected members or appointed members is on vacation or otherwise not available. Even though there are two alternates, there have been times when it is still difficult to convene a board and conduct the investigation within the 15-day time restraint.

Under the current ordinance and the proposed ordinance, the appointed board members are designed by the Mayor. Council staff discussed with the City Attorney's Office whether this could be in conflict with State law since appointed board members are to be appointed by the "governing body." The informal response was that although the statute refers to the "governing body," the Utah Supreme Court in "Martindale v. Anderson" (1978) stated that such term is an antiquated holdover from the time when there was only a unified system of municipal government. With the advent of the strong mayor/council form of government, the Supreme Court indicated that rather than be governed by the historic definition of "governing body," under the strong mayor/council form, it was necessary to look at the actual power being performed. While the Council adopts staffing documents and compensation plans, the actual hiring, discipline and termination of executive branch employees is an executive function. Accordingly to the City Attorney's Office, when reading "governing body" as to executive branch employees, the term "mayor" should be read into such term.

Police officers and fire fighters can appeal to a civil service commission and are not eligible to appeal to the City's Employee Appeals Board. Department heads and at-will employees are also not eligible to appeal to the Board. All other City employees, including those represented by AFSCME, are eligible to file an appeal. Members of the Board receive no additional compensation. Elected and appointed members serve for three-year terms.

Appeals are to be in writing and filed in the Office of the City Recorder before the close of the 10<sup>th</sup> business day following the employee's receipt of a written decision by the employee's department head effecting or upholding the discharge or transfer. The written appeal must include the specific reasons for the appeal. The City's Employee Appeals Board has authority to investigate, take and receive evidence, and fully hear and determine the matter that relates to the cause for an employee discharge or involuntary transfer from one position to another with less remuneration. The appellant may be represented by any person to act as an advocate and may request City employees and other persons to appear as witnesses during the appeal proceedings. The City's labor relations officer serves as procedural advisor to the Board.

Decisions of the Employee Appeals Board are not merely recommendations but are the actual outcome of the appeal. If the Board's decision is to overturn the discharge or transfer, no further proceeding is allowed by state law. The employee is to be restored to the former position on the next business day after the decision is certified to the City Recorder. The Board may as part of its decision, provide that the appellant receive his or her salary for the period of time during which the employee was discharged, or any deficiency in salary for the period the employee was transferred. If the Board decides to uphold a discharge or transfer, the Board includes in its decision a notice to the appellant of the right to appeal to the Mayor or designee.

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