
SALT LAKE CITY COUNCIL STAFF REPORT

DATE: October 17, 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
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cc: Rocky Fluhart, Jamey Knighton, Brenda Hancock, Steve Fawcett, Lyn Creswell, Ed Rutan, DJ Baxter

KEY ELEMENTS:

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. 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 cause for the appellant's discharge or transfer.

MATTERS AT ISSUE:

State law provides that the employee appeals board consists of five members, three of whom shall be chosen by employees and "two of whom shall be members of the governing body." 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. 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. *If the Council has further questions, a representative of the City Attorney's Office is prepared to respond.*

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. The duties of board members take precedent over all other duties.

Appeals are to be in writing and filed in the Office of the City Recorder before the close of the 10th 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. The Mayor or designee may overturn the decision of the Board only if the Mayor or designee determines that the decision was arbitrary and capricious.

OPTIONS:

The Administration plans to hold board member elections during November 13-20. The Council may wish to consider the following options:

1. Advance the ordinance to the November 4th Council Meeting for consideration.
 2. Request additional information or schedule a follow-up briefing prior to considering the resolution.
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10-3-1105. Appointive officers and employees -- Duration and termination of term of office.

All appointive officers and employees of municipalities, other than members of the police departments, fire departments, heads of departments, and superintendents, shall hold their employment without limitation of time, being subject to discharge or dismissal only as hereinafter provided.

10-3-1106. Discharge or transfer -- Appeals -- Board -- Procedure.

(1) No officer or employee covered by Section **10-3-1105** shall be discharged or transferred to a position with less remuneration because of his politics or religious belief, or incident to, or through changes, either in the elective officers, governing body, or heads of departments. In all cases where any officer or employee is discharged or transferred from one position to another for any reason, he shall have the right to appeal the discharge or transfer to a board to be known as the appeal board which shall consist of five members, three of whom shall be chosen by and from the appointive officers and employees, and two of whom shall be members of the governing body.

(2) The appeal shall be taken by filing written notice of the appeal with the recorder within ten days after the discharge or transfer. Upon the filing of the appeal, the city recorder shall forthwith refer a copy of the same to the appeal board. Upon receipt of the referral from the municipal recorder, the appeal board shall forthwith commence its investigation, take and receive evidence and fully hear and determine the matter which relates to the cause for the discharge or transfer.

(3) The employee shall be entitled to appear in person and to be represented by counsel, to have a public hearing, to confront the witness whose testimony is to be considered, and to examine the evidence to be considered by the appeal board.

(4) In the event the appeal board upholds the discharge or transfer, the officer or employee may have 14 days thereafter to appeal to the governing body whose decision shall be final. In the event the appeal board does not uphold the discharge or transfer the case shall be closed and no further proceedings shall be had.

(5) The decision of the appeal board shall be by secret ballot, and shall be certified to the recorder with 15 days from the date the matter is referred to it. The board may, in its decision, provide that an employee shall receive his salary for the period of time during which he is discharged, or any deficiency in salary for the period he was transferred to a position of less remuneration but not to exceed a 15 day period. In no case shall the appointive officer or employee be discharged or transferred, where an appeal is taken, except upon a concurrence of at least a majority of the membership of the governing body of the municipality.

(6) In the event that the appeal board does not uphold the discharge, or transfer, the recorder shall certify the decision to the employee affected, and also to the head of the department from whose order the appeal was taken. The employee shall be paid his salary, commencing with the next working day following the certification by the recorder of the appeal board's decision, provided that the employee, or officer, concerned reports for his assigned duties during that next working day.

(7) The method and manner of choosing the members of the appeal board, and the designation of their terms of office shall be prescribed by the governing body of each municipality by ordinance, but the provisions for choosing the three members from the appointed officers and employees shall in no way restrict a free selection of members by the appointive officers and employees of the municipality.
