
SALT LAKE CITY COUNCIL STAFF REPORT

DATE: October 7, 2005

SUBJECT: **PROPOSED ORDINANCE AMENDMENTS RELATING TO THE EMPLOYEE APPEALS BOARD AND EMPLOYEE TRANSFER OR DISCHARGE (Chapters 2.24 and 2.52.130)**

AFFECTED COUNCIL DISTRICTS: Citywide

STAFF REPORT BY: Sylvia Jones

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

The Administration has proposed several modifications to Salt Lake City Ordinance Chapters 2.24, and 2.52.130, relating to the City's Employee Appeals Board and employee discharge or transfer. The proposed changes comply with the requirements of the amended state statute.

- A. State law changed in 2004 giving cities more discretion in determining what constitutes a board and how the board functions. It also provides that employee suspensions of more than two days are eligible for appeal. The old statute allowed an appeal to the Mayor and did not allow the City to appeal a decision adverse to the City. In 2004, the state statute was amended to allow either party to appeal to the district court (neither party can appeal to the Mayor).
- B. During the last 18 months, the Administration worked with AFSCME and other employee groups and received their input regarding the revisions to the appeals board makeup and appeal process.
- C. Previously, most of the board members have been elected from the Airport or from Public Utilities, which caused difficulty in forming a balanced and impartial board when an employee from one of these departments filed an appeal.
- D. The Administration has proposed that the pool of board members be increased from 10 members to 14 members. The current ordinance provides that 6 of the board members are elected by City employees and 4 members are appointed by the Mayor. With the proposed changes, 4 members will still be appointed by the Mayor, but the number of elected members will increase to 10.
- E. Currently, the pool of board members is elected by employees citywide (excluding police and fire). The proposed changes to the ordinance provide that elected members shall consist of one (1) 100/200 series employee and one (1) 300/600 series employee from each of the following departments: Airport, Public Services, Public Utilities, Community Development and Management Services as well as other areas or divisions. This will ensure a more widespread representation of the departments, and provide a large enough pool of members to choose from who would not have connections with the department or employee involved in the appeal.
- F. Under the proposed revisions, evidence presented during the appeals process must be relevant and related to the cause for the action and issues raised at the proceeding before the department head.

- G. Discovery (disclosure of pertinent facts or documents) is limited to relevant documents where there is a demonstrated need, according to the proposed amendment.
- H. In 2004, state statute set forth the employees who are entitled to appeal. The proposed amendments from the Administration are in keeping with state statute. (Employees who are not eligible to appeal include appointed employees, probationary employees, etc.)

Appeal boards have 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. The employee appeals board must certify its decision to the city recorder within 15 business days after the board receives an appeal or, for good cause, extend the 15-day period to a maximum of 60 days, if the employee and municipality both consent.

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 precedence over other duties.

OPTIONS:

The Council may wish to consider the following options:

- A. Advance the ordinance to the October 18th Council meeting for consideration.
- B. Request additional information or schedule a follow-up briefing prior to considering the resolution.

OCT 04 2005

COUNCIL TRANSMITTAL

TO: Rocky J. Fluhart,
Chief Administrative Officer

DATE: October 4, 2005

FROM: Jamey Knighton
Labor Relations Manager

SUBJECT: Employee Appeals Board Ordinance

STAFF CONTACT: Jamey Knighton, 535-6604

DOCUMENT TYPE: Ordinance

BUDGET IMPACT: None

BACKGROUND/DISCUSSION:

Pursuant to Utah Code § 10-8-1106, city employees are entitled to a hearing before an appeals board on a termination, suspension for more than two days or demotion to a position for less remuneration. In 2004, the legislature amended this statute significantly. The amended statute gives cities much more discretion to determine what constitutes a board, how the board functions and what procedures will govern the hearing.

The city's existing ordinances that relate to the employee appeals board (Salt Lake City Code §§2.24.010-2.24.070) and to employee discharge or transfer (Salt Lake City Code § 2.52.130) have been revised to comply with the requirements of the amended state statute. The revisions also address some logistical and procedural problems that the city has experienced in connection with the existing ordinances. The AFSCME executive director, Patty Rich, and the AFSCME president, Mike Miller, both have had significant input into the revisions over an extended period. Mayor Anderson and the City Attorney's Office also have been very involved in the revision process.

The major changes in the ordinances are as follows:

Salt Lake City Code §§2.24.010-2.24.070

1. Selection of board members. The pool of board members shall be increased from 10 members to 14 members. Previously, six (6) of the board members were elected by city employees and four (4) were appointed by the Mayor. The amendments provide that four (4) members will still be appointed by the mayor, but the number of elected members will increase to ten (10). Previously, the elections were open to nominations from the city in general. The amendments provide that one (1) 300 series employee and one (1) 600 series employee will be elected from each of five departments (Airports, Public Services, Public Utilities, Community Development and Management Services/all other areas or divisions (except Police or Fire).

This revised selection process will ensure that all departments in the city are represented and facilitate selection of a panel of five from the pool of 14 members that will not have any connections with the department or employee involved in a particular appeal.

2. Standard of Review. The standard of review to be applied by the board is set forth more specifically. This revision clarifies what that board is to determine and will promote greater consistency.
3. Issues to be addressed on appeal. The limited nature of the review is clarified and the scope of appeal expressly limited to issues related to the disciplinary action being appealed. This provision will provide guidance to the board in resolving disputes regarding the scope of issues to be addressed in the appeal.
4. Discovery. Discovery is limited to relevant, non-privileged information. The standard of a substantial, demonstrable need is set forth. This revision will provide a standard that will enable the board to resolve discovery disputes between the parties. A new section 2.24.080 has been added to deal with this matter.

Salt Lake City Code 2.52.130: Discharge or Transfer.

This ordinance has been amended to set forth the employees who are entitled to appeal in accordance with the amended Utah Code §§ 10-3-1105 and 1106.

RECOMMENDATION:

The Labor Relations Manager, after consultation with the City Attorney's Office, the Mayor and AFSCME leadership, recommends adoption of the amendments to the Employee Appeals Board ordinances, as discussed above. The proposed amendments are in accordance with Utah law. Further, the amendments address problems with the existing ordinance related to scheduling, selection of hearing panels, clarity of review standards, and overall functioning of the board.

SALT LAKE CITY ORDINANCE
No. _____ of 2003~~5~~
(Employee Appeals Board)

AN ORDINANCE AMENDING CHAPTERS 2.24 AND 2.52.130 OF THE
SALT LAKE CITY CODE, RELATING TO EMPLOYEE APPEALS BOARD.

Be it ordained by the City Council of Salt Lake City, Utah:

SECTION 1. That Chapter 2.24 of the Salt Lake City Code, relating to
Employee Appeals Board, be, and the same hereby is, amended as follows:

Chapter 2.24

EMPLOYEE APPEALS BOARD

2.24.010 Promulgation of ~~Rules~~Procedures:

The labor relations officer shall promulgate ~~rules~~procedures to provide for the
creation and function of an ~~employee appeals board~~Employee Appeals Board within the
following parameters set out in this chapter. (~~Prior code § 25-2-1~~)(Ord. 75-03 § 1, 2003)

2.24.020 Board Composition:

Each ~~appeals board~~impaneled Employee Appeals Board shall consist of five (5)
~~members: three (3) elected members and two (2) appointed members.~~ (~~Prior code § 25-2-~~
~~1~~).

2.24.030 Board Member Pool:

The city shall establish a pool of ~~ten (10) employee appeals board members: six~~
~~(6) city officers or employees chosen by election, four (4) city officers or employees~~
~~appointed by the mayor.~~ (~~Prior code § 25-2-1~~)

The City shall establish a pool of Board members, which shall include fourteen (14) persons: 4 appointed members and 10 elected members (elected members shall consist of five 100/200 series employees and five 300/600 series employees).

Appointed Members. The Mayor shall appoint four (4) persons to serve on the Board.

Elected Members. The pool of elected Board members shall be elected in accordance with City procedure, and shall consist of one (1) 100/200 series employee and one (1) 300/600 series employee from each of the following departments: (1) Department of Airports, (2) Public Services, (3) Public Utilities, (4) Community Development, and (5) Management Services and other areas or divisions (except the Police and Fire Departments) not included in the other departments enumerated above.

~~2.24.040 — Conduct Of Elections:~~

~~— The labor relations officer shall adopt rules for the conduct of elections for the six officers or employees chosen by election. (Prior code § 25-2-1)~~

~~2.24.050 — Terms Of Office:~~

~~— Terms of office for board members shall be three (3) years, unless terminated prior thereto by disability, resignation, or for reasons relating to cause. (Prior code § 25-2-1)~~

~~2.24.060 — Duties.~~

~~— It shall be the duty of the appeals board to conduct hearings under applicable provisions of law or memoranda of understanding. (Prior code § 25-2-1 (part))~~

2.24.040 Terms of Office:

Terms of office for Board members shall be three (3) years, unless terminated prior thereto by disability, resignation, or for reasons relating to cause. The initial terms of office of the Board members appointed and elected in accordance with subsection 2.24.030 shall commence October 1, 2005.

The labor relations officer shall coordinate with the Mayor regarding the appointment of Board Members so that the initial terms of the appointed Board members will commence October 1, 2005. Thereafter, the Mayor shall appoint Board members every three years. In the event of a vacancy created by the resignation or removal of an appointed Board member, the Mayor shall appoint a new person to fill the remaining term of the person who has resigned or otherwise been removed from the Board.

The labor relations officer shall coordinate with the respective departments that will conduct the nomination and election process so that the initial terms of the elected Board members will commence October 1, 2005. Thereafter, the departments shall conduct elections every three years, so that each three year term of the elected Board members shall begin on October 1 of the applicable year. In the event of a vacancy created by the resignation or removal of an elected Board member, the remaining elected Board members may elect a new person from the department and job classification series of the departing Board member, who shall fill the remaining term of the person who has resigned or otherwise been removed from the Board.

2.24.050 Duties:

It shall be the duty of the Employee Appeals Board to conduct hearings under applicable provisions of law or memoranda of understanding. (Ord. 75-03 § 1, 2003)

2.24.060 Standard of Review:

The Employee Appeals Board shall review a decision by the department head using the following standard of review:

Step 1: Do the facts support the need for discipline or other remedial action by the department head? In other words, was action warranted? If the City's account of the evidence is plausible in light of the record viewed in its entirety, the decision should be upheld, even though the Board may have weighed the evidence differently had it been in the department head's position. In order to overturn a disciplinary action, the Board must have a definite and firm conviction that the department head's decision was clearly erroneous.

In an appeal where an employee was discharged, not for disciplinary reasons but because the employee was no longer able or qualified to do the job, the Board's analysis shall end with Step 1 of the analysis, as set forth above. However, in an appeal of a disciplinary action the Board shall proceed to Step 2 of the analysis, as set forth below.

Step 2: In a disciplinary action, if the facts support the need for action to be taken, is the action taken proportionate to the charges? Discipline imposed for employee misconduct is within the discretion of the department head. Unless the Board finds the

penalty is so harsh as to constitute an abuse, rather than an exercise of the department head's discretion, the decision of the department head should be upheld.

2.24.070 Rights of Appellant

An appellant may present relevant information in mitigation, including the presentation of witnesses and other evidence. Such evidence must relate to (1) the cause for the action taken as set forth in the disciplinary decision letter, and (2) any issues raised at the proceeding before the department head.

2.24.080 Discovery

Discovery shall be limited to that which is relevant and not privileged, and for which each party has a substantial, demonstrable need for supporting their respective claims or defenses.

SECTION 2. That Chapter 2.52.130 of the Salt Lake City Code, relating to Employee Appeals Board, be, and the same hereby is, amended as follows:

2.52.130 Discharge or Transfer

In all cases where any employee, except (1) those employees set forth in Section 10-3-1105(2), Utah Code Annotated, 1953, or its successor, and (2) at-will employees, is discharged, suspended for more than two days without pay (2 shifts for employees who work shifts longer than 8 hours), or involuntarily transferred from one position to another with less remuneration, the employee shall have the right to appeal such action in accordance with §§ 10-3-1105 & 1106, Utah Code Annotated, 1953, or its successor.

(Prior code § 25-11-3)

SECTION 23. That this ordinance shall take effect immediately upon the date of its first publication.

Passed by the City Council of Salt Lake City, Utah this _____ day of _____, 20035.

CHAIRPERSON

ATTEST:

CHIEF DEPUTY CITY RECORDER

Transmitted to Mayor on _____.

Mayor's Action: _____ Approved. _____ Vetoed.

MAYOR

CHIEF DEPUTY CITY RECORDER

(SEAL)

Bill No. _____ of 20035.

Published: _____.

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