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**MEMORANDUM**

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**DATE:** November 10, 2009

**TO:** City Council Members

**FROM:** Sylvia Richards

**SUBJECT:** Changes to Layoff Ordinance and Employee Appeals Board Ordinance

**CC:** David Everitt, Lyn Creswell, Ralph Chamness, Debra Alexander, and David Salazar

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**BACKGROUND**

The Administration met with Council Members in small groups during the FY 2009-10 annual budget season to discuss potential modifications to the city's Layoff Ordinance as well as changes to the Employee Appeals Board Ordinance as itemized below.

**LAYOFF ORDINANCE: PROPOSED CHANGES**

The proposed changes from the Administration would do the following:

- Require the City to attempt to reduce the impact of layoffs through reorganization, job restructuring or placing employees in vacant positions.
- Eliminate 'bumping rights'. If the City decides to cut costs and eliminate positions, the current practice is to allow the most senior employee (who is usually the highest paid) to bump a less senior employee and take their position. This can cause the City to actually eliminate more positions in order to "protect" the more senior employee.
- Eliminate 'automatic placement'. Preferential consideration will be given to an employee on layoff status. An employee on layoff status may be hired or may receive an interview for a position without having to go through the application process.
- Eliminate the requirement to use seniority as the deciding factor in ending employment for an employee.

These changes do not apply to Appointed employees, Fire Department and Police Department employees, or employees covered by a Memorandum of Understanding (MOU). The Administration indicates that the proposed changes have been discussed with representatives from the Professional Employees Council (PEC).

### EMPLOYEE APPEALS BOARD ORDINANCE: PROPOSED CHANGES

The Administration proposes the following changes to the Employee Appeals Board Ordinance:

- Under the existing ordinance, board members are elected by city employees. According to the Administration, the election process is cumbersome and ineffective. The Administration indicates it has been difficult to retain employees on the Board and employees, despite being elected, are unwilling or unable to hear appeals. The proposed change allows the Mayor to appoint employees after considering suggestions from AFSCME, the PEC and any other employee group and managers. The rationale behind having the Mayor appoint employees is to eliminate the election difficulties and to increase the status of being an appointed representative.
- Reference to *labor relations officer* is replaced by *mayor's designee*
- Allows an employee to appeal a layoff or other non-disciplinary separation decision for failure to follow city policy or decisions
- Outlines appeal procedures
- Board members will serve three-year terms; three members will serve as a panel to hear any appeal. Panels will be selected by the Mayor's designee.

### Duties

Board members are to conduct hearings relating to an employee's appeal from termination, suspension without pay for more than two days, involuntary transfer to a position with less compensation, or layoff. If an appeal is based on disciplinary action, the panel will decide if the department head's action was clearly in error in light of the evidence, including the employee's entire employment history with the city.

If an appeal is based on a layoff, the panel will determine whether the city followed layoff procedures at the time of the layoff. And if the appeal is based on termination for non-disciplinary reasons, the panel will determine whether city followed procedures when the employee was terminated.

These changes do not apply to appointed employees, Fire Department employees or Police Department employees. The Administration has discussed the proposed changes with representatives from AFSCME and the PEC.



RALPH BECKER  
MAYOR

# SALT LAKE CITY CORPORATION

OFFICE OF THE MAYOR

## CITY COUNCIL TRANSMITTAL

David Everitt, Chief of Staff

Date Received: Oct 14, 2009

Date sent to Council: Oct 15, 2009

**TO:** Salt Lake City Council  
Carlton Christensen, Chair

**DATE:** October 14, 2009

**FROM:** David Everitt, Chief of Staff (x7732)  
Office of the Mayor

**SUBJECT:** Layoff Ordinance (Chapter 2.52)

**STAFF CONTACT:** Debra Alexander, Director Human Resources (x6604)

**DOCUMENT TYPE:** Ordinance Amendment

**RECOMMENDATION:** The Administration recommends the City Council amend the attached ordinance

**BUDGET IMPACT:** None

**BACKGROUND/DISCUSSION:** The proposed changes to the Layoff Ordinance simplify the City's process for designating employees for a layoff. The proposed ordinance eliminates the requirement that City seniority be the deciding factor in making layoff decisions. Additionally, the proposed change requires a department director to comply with the City's layoff procedures before an employee is laid off. The proposed changes do not impact appointed employees, employees in the Fire Department, the Police Department, or any employee covered by a Memorandum of Understanding.

**PUBLIC PROCESS:** Because the proposed ordinance only impacts City employees, the Administration has discussed the proposed changes and the reasoning behind those changes with representatives from the PEC.



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2.52.120 Layoffs:

If the city concludes that it should reduce the number of city employees, it should attempt to reduce the impact of layoffs through reorganization, job restructuring or placement of employees in vacant positions. Employees will be laid off according to the provisions of any applicable Memorandum of Understanding or City policy or procedure.

APPROVED AS TO FORM  
Salt Lake City Attorney's Office  
Date 10-14-09  
By [Signature]

## 2.52.120: ~~LAYOFFS~~ Layoffs:

~~Unless modified by a collective bargaining agreement, whenever it is necessary to reduce the number of employees in any city department because of lack of work or lack of funds, the city shall wherever possible attempt to minimize layoffs by readjustment of personnel through reassignment of duty in other departments. Whenever layoffs are necessary, emergency, temporary and probationary employees performing essentially the same duties shall be laid off first. Permanent employees shall be the last to be laid off, in inverse order of the length of service of employees in the same job classification performing the same job functions and duties. (Ord. 88-86 § 51, 1986; prior code § 25-11-16)~~

If the city concludes that it should reduce the number of city employees, it should attempt to reduce the impact of layoffs through reorganization, job restructuring or placement of employees in vacant positions. Employees will be laid off according to the provisions of any applicable Memorandum of Understanding or City policy or procedure.

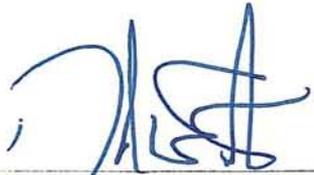


RALPH BECKER  
MAYOR

# SALT LAKE CITY CORPORATION

OFFICE OF THE MAYOR

## CITY COUNCIL TRANSMITTAL

  
David Everitt, Chief of Staff

Date Received: 10/14/2009  
Date sent to Council: 10/14/2009

**TO:** Salt Lake City Council  
Carlton Christensen, Chair

**DATE:**

**FROM:** David Everitt, Chief of Staff (x7732)  
Office of the Mayor

**SUBJECT:** Employee Appeals Board Ordinance (Chapter 2.24)

**STAFF CONTACT:** Debra Alexander, Director Human Resources (x6604)

**DOCUMENT TYPE:** Ordinance Amendment

**RECOMMENDATION:** The Administration recommends the City Council amend the attached ordinance

**BUDGET IMPACT:** None

**BACKGROUND/DISCUSSION:** The proposed changes to the Employee Appeals Board ("EAB") Ordinance simplify the membership selection process; clarify the EAB's duties; allow an employee to appeal a layoff designation or other non-disciplinary separation; and outline the procedures related to an employee's appeal. These changes, in conjunction with the proposed change to the Layoff Ordinance, will provide the City more flexibility in making staffing decisions while providing affected employees an opportunity to appeal those decisions. The proposed changes do not impact appointed employees, employees in the Fire Department, the Police Department.

**PUBLIC PROCESS:** Because the proposed ordinance only impacts City employees, the Administration has discussed the proposed changes and the reasoning behind those changes with representatives from AFSCME and the PEC.

**SCANNED TO:** David  
**SCANNED BY:** [Signature]  
**DATE:** 10/14/09

RECEIVED  
OCT 14 2009

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## Chapter 2.24

### EMPLOYEE APPEALS BOARD

#### 2.24.010 Promulgation Of Procedures:

The mayor's designee shall promulgate procedures to provide for the creation and function of an employee appeals board within the parameters set out in this chapter.

#### 2.24.020 Board Composition:

The mayor shall appoint at least eleven (11) current city employees to serve as board members. Before appointing an employee to the board, the mayor shall consider any recommendations made by employee representatives and/or department directors and shall ensure that the board members are representative of the City's workforce.

#### 2.24.030 Terms Of Office:

Board members shall serve a three (3) year term, unless the term is terminated by disability, resignation, or for reasons relating to cause. The initial terms of office of the board members shall commence \_\_\_\_\_ 1, 2009.

The mayor's designee shall coordinate with the mayor regarding the appointment of board members so that the initial terms of the appointed board members will commence \_\_\_\_\_ 1, 2009. Thereafter, the mayor shall appoint board members every three (3) 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.

#### 2.24.040 Duties:

It shall be the duty of the employee appeals board to conduct hearings related to an employee's appeal from a discharge or termination, suspension without pay for more than two days, involuntary transfer to a position with less remuneration or designation for layoff as outlined in this chapter. The employee appeals board may not hear an appeal filed by:

- A. An employee appointed by the Mayor;
- B. An employee employed by the City Council;
- C. An employee in an at-will position;
- D. An hourly employee;
- E. A seasonal employee;
- F. A probationary employee;

G. An employee in the Police Department; or

H. An employee in the Fire Department.

#### 2.24.050 Board Panel:

Each impaneled employee appeals board shall consist of three (3) members.

The mayor's designee shall select three (3) of the eleven (11) appointed members to serve as the panel to hear any appeal.

#### 2.24.060 Standards Of Review:

The panel of the employee appeals board designated to hear an appeal shall review a department head's decision using the following standards of review.

If an appeal is based upon a disciplinary decision, the designated panel shall determine if the employee has demonstrated that the department head's decision to impose discipline was clearly erroneous in light of the record viewed in its entirety including the employee's entire employment history with the city. The designated panel cannot substitute its own judgment for the department head's judgment, but can only overturn a disciplinary decision if it is clearly erroneous.

If an appeal is based upon a layoff designation, the review by the designated panel shall be limited to whether the city substantially followed its layoff procedures when it designated the employee for layoff.

If an appeal is based upon a termination decision for non-disciplinary reasons, the review by the designated panel shall be limited to whether the city followed its procedures when it terminated the employee.

#### 2.24.070 Rights Of Appellant:

An appellant may appear in person before the panel designated to hear the employee's appeal and be represented by a person of his or her choice. The appellant may also: a) have a hearing held in compliance with Utah's Open and Public Meetings Act; b) confront any witness whose testimony is to be considered; and c) examine the evidence the designated panel will consider in making its decision.

#### 2.24.080 Discovery:

Discovery shall be limited to that information which was actually considered in making the decision which is being appealed. If the employee or the City introduces information which was not considered in making the decision being appealed, the designated panel shall remand the matter to the

department head or designee who made the decision. The department head or designee shall consider the new evidence, reconsider the decision being appealed and issue a written decision within seven (7) calendar days. If the mayor's designee determines the modified decision is within the board's duties, the panel originally designated to hear an appeal shall reconvene and hear the employee's appeal.

2.24.090 Remedy:

If the designated panel determines that discipline should not have been imposed, the city will revoke the discipline and reimburse the employee for any lost wages. If the designated panel determines that an employee was erroneously designated for layoff, the city will reinstate the employee and reimburse the employee for any lost wages. If the designated panel determines that employee should not have been terminated for the stated non-disciplinary reason, the city will revoke the termination and reimburse the employee for any lost wages. The Employee Appeals Board may not provide any remedy beyond that described in this chapter.

APPROVED AS TO FORM  
Salt Lake City Attorney's Office  
Date 10-19-09  
By [Signature]

## Chapter 2.24

### EMPLOYEE APPEALS BOARD

#### 2.24.010: PROMULGATION OF PROCEDURES Promulgation Of Procedures:

The ~~labor relations officer~~ mayor's designee shall promulgate procedures to provide for the creation and function of an employee appeals board within the following parameters set out in this chapter. ~~(Ord. 62-05 § 1, 2005)~~ [MSOffice1]

#### 2.24.020: BOARD COMPOSITION Board Composition:

~~Each impaneled employee appeals board shall consist of five (5) members. (Ord. 62-05 § 1, 2005)~~

#### 2.24.030: BOARD MEMBER POOL:

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

~~A. Appointed Members: The mayor shall appoint four (4) persons~~ at least eleven (11) current city employees to serve on the board.

~~B. Elected Members: The pool of elected~~ as board members. Before appointing an employee to the board, the mayor shall be elected in accordance with city procedure, and shall consist of one 100/200 series consider any recommendations made by employee and one 300/600 series employee from each of the following

~~departments: 1) representatives and/or 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 directors and shall ensure that the board members are representative of the other departments enumerated above. (Ord. 62-05 § 1, 2005) City's workforce.~~

~~2.24.040: TERMS OF OFFICE:~~

~~030 Terms of office for board~~ Of Office:

~~Board members shall be serve a three (3) years year term, unless the term is 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 of this chapter shall commence~~

~~October \_\_\_\_\_ 1, 2005.~~

2009.

~~The labor relations officer~~ mayor's designee 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~~ 2009.

Thereafter, the mayor shall appoint board members every three (3) 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 (3) years, so that each three (3) 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. (Ord. 62-05 § 1, 2005)~~

#### ~~2.24.050: DUTIES~~ 040 Duties:

~~It shall be the duty of the employee appeals board to conduct hearings under applicable provisions of law or memoranda of understanding. (Ord. 62-05 § 1, 2005)~~  
related to an employee's appeal from a discharge or termination, suspension without pay for more than two days, involuntary transfer to a position with less remuneration or designation for layoff as outlined in this chapter.

#### ~~2.24.060: STANDARD OF REVIEW:~~

~~The employee appeals board shall review a decision by the department head using the following standard of review~~may not hear an appeal filed by:

- A. An employee appointed by the Mayor;
- B. An employee employed by the City Council;
- C. An employee in an at-will position;
- D. An hourly employee;
- E. A seasonal employee;
- F. A probationary employee;
- G. An employee in the Police Department; or
- H. An employee in the Fire Department.

#### 2.24.050 Board Panel:

Each impaneled employee appeals board shall consist of three (3) members.

The mayor's designee shall select three (3) of the eleven (11) appointed members to serve as the panel to hear any appeal.

~~2.24.060A. 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.

B. 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. (Ord. 62-05 § 1, 2005)

### Standards Of Review:

The panel of the employee appeals board designated to hear an appeal shall review a department head's decision using the following standards of review.

If an appeal is based upon a disciplinary decision, the designated panel shall determine if the employee has demonstrated that the department head's decision to impose discipline was clearly erroneous in light of the record viewed in its entirety including the employee's entire employment history with the city. The designated panel cannot substitute its own judgment for the department head's judgment, but can only overturn a disciplinary decision if it is clearly erroneous.

If an appeal is based upon a layoff designation, the review by the designated panel shall be limited to whether the city substantially [MSOffice2] followed its layoff procedures when it designated the employee for layoff.

If an appeal is based upon a termination decision for non-disciplinary reasons, the review by the designated panel shall be limited to whether the city followed its procedures when it terminated the employee.

2.24.070: ~~RIGHTS OF APPELLANT:~~ Rights Of Appellant: \_\_\_\_\_

~~An appellant may present relevant information in mitigation, including the presentation of witnesses and other evidence. Such evidence must relate to: a) the cause for the action taken as set forth in the disciplinary decision letter, and b) any issues raised at the proceeding before the department head. (Ord. 62-05 § 1, 2005)~~

An appellant may appear in person before the panel designated to hear the employee's appeal and be represented by a person of his or her choice. The appellant may also: a) have a hearing held in compliance with Utah's Open and Public Meetings Act; b) confront any witness whose testimony is to be considered; and c) examine the evidence the designated panel will consider in making its decision.

2.24.080: ~~DISCOVERY~~ 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. (Ord. 62-05 § 1, 2005)~~

Discovery shall be limited to that information which was actually considered in making the decision which is being appealed. If the employee or the City

introduces information [MSOffice3] which was not considered in making the decision being appealed, the designated panel shall remand the matter to the department head or designee who made the decision. The department head or designee shall consider the new evidence, reconsider the decision being appealed and issue a written decision within seven (7) calendar days. If the mayor's designee determines the modified decision is within the board's duties, the panel originally designated to hear an appeal shall reconvene [MSOffice4] and hear the employee's appeal.

#### 2.24.090 Remedy:

If the designated panel determines that discipline should not have been imposed, the city will revoke the discipline and reimburse the employee for any lost wages. If the designated panel determines that an employee was erroneously designated for layoff, the city will reinstate the employee and reimburse the employee for any lost wages. If the designated panel determines that employee should not have been terminated for the stated non-disciplinary reason, the city will revoke the termination and reimburse the employee for any lost wages. The Employee Appeals Board may not provide any remedy beyond that described in this chapter.