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**MEMORANDUM**

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**DATE:** November 10, 2009

**TO:** City Council Members

**FROM:** Sylvia Richards

**SUBJECT:** Proposed 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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**Potential Motions for both ordinances are included on a separate sheet in your binder under Unfinished Business.**

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**The following information was previously provided to the Council on November 10, 2009.**

**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.

**POTENTIAL MOTIONS FOR EMPLOYEE APPEALS BOARD**  
**ORDINANCE:**

- 1. [“I move that the Council”] Adopt an Ordinance amending Chapter 2.24 of the Salt Lake City Code regarding the Employee Appeals Board.**

**OR**

- 2. [“I move that the Council”] Not adopt an Ordinance amending Chapter 2.24 of the Salt Lake City Code regarding the Employee Appeals Board.**

SALT LAKE CITY ORDINANCE  
No. \_\_\_\_\_ of 2009  
(An ordinance amending Chapter 2.24 (Employee Appeals Board)  
of the *Salt Lake City Code*)

An ordinance amending Chapter 2.24 (Employee Appeals Board) of the *Salt Lake City Code*.

WHEREAS, Utah Code Annotated Sections 10-3-1105 and 1106 require the city to form and maintain an employee appeals board; and

WHEREAS, the City has determined that the current ordinance establishing the membership of the employee appeals board is cumbersome and ineffective; and

WHEREAS, the employee appeals board should have jurisdiction to review certain non-disciplinary employee discharges; and

WHEREAS, the City Council has determined that amending the employee appeals board ordinance is in the City's best interests.

NOW, THEREFORE, be it ordained by the City Council of Salt Lake City, Utah:

SECTION 1. Amending text of *Salt Lake City Code* Chapter 2.24. That Chapter 2.24 of the *Salt Lake City Code* (Employee Appeals Board), shall be, and hereby is, amended to read as follows:

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 January 1, 2010.

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 January 1, 2010. 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.

SECTION 2. Effective Date. This ordinance shall become effective on the date of its first publication.

Passed by the City Council of Salt Lake City, Utah, this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
CHAIRPERSON

ATTEST AND COUNTERSIGN:

\_\_\_\_\_  
CITY RECORDER



Transmitted to Mayor on \_\_\_\_\_.

Mayor's Action: \_\_\_\_\_ Approved. \_\_\_\_\_ Vetoed.

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CITY RECORDER

(SEAL)

Bill No. \_\_\_\_\_ of 2009.

Published: \_\_\_\_\_.

APPROVED AS TO FORM  
Salt Lake City Attorney's Office  
Date 11-12-09  
By [Signature]