

Appeals Board Hearings

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Employees Permitted to Appeal Adverse Employment Actions

- Utah Code §10-3-1106(2)(a)
 - If an employee is discharged, suspended for more than two days without pay, or involuntarily transferred from one position to another with less remuneration for any disciplinary reason, the employee may appeal the final decision to discharge, suspend for more than two days without pay, or involuntarily transfer

Internal Grievance Procedures

- Utah Code 10-3-1106(2)(b)
 - “If the municipality provides an internal grievance procedure, the employee shall exhaust the employee’s rights under than grievance procedure before appealing to the appeal board or hearing officer”

Time for Appeal

- If the City has an internal grievance procedure; 10 calendar days after the employee receives notice of the final disposition of the grievance procedure
- If no internal grievance procedure, 10 calendar days after the discharge, suspension, or involuntary transfer

Makeup up Appeals Board

- Utah Code 10-3-1106(7)(a)
 - The method and manner of choosing a hearing officer or the members of the appeal board, the number of members, the designation of a hearing officer's or appeal board member's term of office, and the procedure for conducting an appeal and the standard of review shall be prescribed by the governing body of each municipality by ordinance

4.03.030. Provo City Unclassified Civil Service Appeal Board Created - Selection of Board Members - Procedural Rules

- (1) A Provo City Unclassified Civil Service Appeal Board ("the Appeal Board") is hereby created, which shall have five (5) members. Two (2) members of the Appeal Board, and two alternates, shall be appointed by the Mayor from the full-time officers and employees of the City, each of whom shall serve for a term of three (3) years, or until their successors are selected, whichever period of time is longer. Three (3) members of the Appeal Board, and three (3) alternates, shall be selected by and from the full-time officers and employees in the unclassified civil service, each of whom shall serve for a term of three (3) years, or until their successors are selected, whichever period of time is longer. Provided, however, that the terms of members of the Appeal Board may be altered as necessary to provide for staggered terms.
- (2) The Human Resources Director shall divide the departments in Provo City into three (3) groups, with each group composed of approximately the same number of officers and employees. Each group shall, by vote, select one (1) officer or employee, and an alternate, from their group to serve as a member of the Appeal Board. The member and the alternate may not be from the same department. The City Recorder shall, upon request, assist in or conduct the election in one (1) or more of the groups.
- (3) If an Appeal Board member not selected by the Mayor shall resign or for any other reason fail to serve, such member shall be replaced by the alternate member selected by the group which selected the subject regular member. If both the member and the alternate resign or for any other reason fail to serve, an interim replacement shall be selected by an election conducted under the same rules applicable to the original selection.
- (4) The Appeal Board may adopt reasonable procedural rules not inconsistent with the Provo City Code or other City ordinances or other applicable law for the conduct of its business. (Enacted 1986-19, Am 1986-32, Am 1990-44, Am 2005-14, Am 2006-45)

3-2-130: APPEAL BOARD:

- A. Board Created: There is hereby created an appeal board pursuant to Utah Code Annotated 10-3-1106, as amended, to hear appeals of employees not listed in subsection [3-2-120B](#) of this chapter who have been discharged, suspended without pay for more than two (2) days, or involuntarily transferred from one position to another with less remuneration for any reason.
- B. Members: The appeal board shall consist of five (5) members, two (2) of whom shall be chosen by and from the appointed officers and employees of the city and three (3) of whom shall be members of the city council.
- C. Selection Of Members And Alternates:
1. Council Members And Alternates: During the annual review of city council member assignments, the city council shall designate three (3) of its members to serve on the appeal board, hereinafter referred to as the "council members", and two (2) of its members to serve as alternate council members.
 2. Officer And Employee Members And Alternates: The appointed officers and employees of the city shall elect two (2) of its members to serve on the appeal board, hereinafter referred to as "employee members", and three (3) of its members to serve as alternate employee members in the following manner:
 - a. Nomination: The city manager shall send written notice to all appointed officers and employees of the city that they may make written nominations for candidates to serve on the appeal board and the closing date for filing such nominations with the city recorder. Nominations received by the city recorder after the closing date will not be considered.

- b. Voting: Upon the closing of nominations, an election shall be held by all appointed officers and employees of the city to elect two (2) employee members of the board and three (3) alternate employee members. The election shall be by secret ballot. The two (2) individuals receiving the highest number of votes shall be deemed elected as employee members, and the next three (3) individuals receiving the highest number of votes shall be deemed elected as alternate employee members.
- c. Eligibility: All full time Draper City employees who have successfully completed their probationary period are eligible to serve on the appeal board, with the exception of the city manager, city attorney and assistant city attorney.

D. Limitation On Members: No person may sit on the appeal board who also sat on a predisciplinary hearing of the appealing employee or whose employment with the city has terminated.

E. Term: Elected members shall serve a one year term from the date of their appointment and employee members shall serve for a term of two (2) years from the date of their election. Members may serve additional terms in accordance with the election and appointment procedures set forth herein.

F. Vacancies: Any vacancy in an employee member position shall be first filled by an alternate employee member by drawing lots; and if no alternate employee member is available, by nomination and election as provided herein at the time such vacancy occurs. Any vacancy in council member position shall be filled first by an alternate council member by drawing lots; and if no alternate council member is available, by appointment provided herein at the time such vacancy occurs.

Procedure

- Utah Code 10-3-1106(7)(a)
 - “...the procedure for conducting an appeal and the standard of review shall be prescribed by the governing body of each municipality by ordinance”

Procedure

- Utah Code 10-3-1106(3)
 - Board *shall*: take and receive evidence
 - Employee *may*: appear in person, be represented by counsel, have an open hearing, confront witnesses, examine evidence

Procedure

- How formal should the proceeding be?
 - Opening and closing arguments
 - Direct and Cross examination of witnesses
 - Admission of exhibits
 - Objections by parties

- Record for potential Court of Appeals Review
 - Audio recording or transcription of hearing
 - Retain counsel to advise appeals board

G. Appeal Procedure And Standard Of Evidence:

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- 5. The proceedings before the appeal board shall be recorded.
- 6. In reaching its decision, the appeal board shall determine, based upon substantial evidence:
 - a. Whether the facts presented to the appeal board support the charges that resulted in the discharge, suspension, or transfer; and
 - b. Whether those facts warrant the discipline imposed, taking into consideration the employee's overall work history, including, without limitation, prior incidents of workplace misconduct or failure of job performance, the seriousness of the alleged conduct at issue, prior verbal warnings, written reprimands or other discipline given to the employee, and whether the discipline imposed is consistent with the city's past practice in similar circumstances, if any.
- 7. Substantial evidence means that quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion (Lucas v. Murray Civil Serv. Comm'n, 949 P.2d 746, 758 Utah ct. app. 1997; Thomas v. Draper City, 2006 UT app 287).
- 8. Each decision of the appeal board shall be by secret ballot, and shall be certified to the city recorder no later than fifteen (15) calendar days after the day on which the hearing is held, unless for good cause, the appeal board extends the period to a maximum of sixty (60) calendar days, if the employee and city both consent. In no case shall the period be extended beyond sixty (60) calendar days. At the time it renders its decision, the appeal board shall submit to the city recorder written findings of fact on which the board relied in reaching its decision.
- 9. In consultation with the city manager, the appeal board may employ legal counsel to assist in conducting any investigation or hearing and in drafting any required findings of fact.

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Legal Standard

- Do the facts support the action taken by the City?
- Do the charges warrant the sanction imposed?

Nelson v City of Orem, 2013 UT 53, ¶ 23, 309 P. 3d 237

Legal Standard

- Sanction is warranted if:
 - It is proportionate to the offense
 - It is consistent with previous sanctions imposed by the City

Nelson v City of Orem, 2013 UT 53, ¶ 23, 309 P. 3d 237

Issuance of Final Disposition

- Utah Code 10-3-1106(5)
 - The appeal board...shall certify a decision...with the recorder no later than 15 days after the day on which the hearing is held
 - For good cause, the appeal board or hearing officer may extend the 15 day period...to a maximum of 60 calendar days, if the employee and municipality both consent

Court of Appeals Review

- Final Action by Appeals Board may be reviewed by the Court of Appeals
- Court of Appeals Review
 - Based on Record from Appeals Board Hearing
 - Abuse of discretion standard
- Utah Code 10-3-1106(6)
 - Petition for Review must be filed within 30 days after *issuance of final action or order*.

Thank you!