



PUBLIC HEARING MOTION SHEET

CITY COUNCIL of SALT LAKE CITY

TO: City Council Members

FROM: Ben Luedtke
Budget and Policy Analyst

DATE: December 1, 2020

RE: **Creating an Appeal Hearing Officer System by
Repealing Civil Service Commission and Employee Appeals Board**

MOTION 1 – CLOSE PUBLIC HEARING

I move that the Council close the public hearing and refer the item to a future date for action.

MOTION 2 – CONTINUE PUBLIC HEARING

I move that the Council continue the public hearing to a future date.

MOTION 3 – CLOSE PUBLIC HEARING AND ADOPT

I move that the Council close the public hearing and adopt ordinances repealing City Code Chapter 2.16, amending the entirety of City Code 2.24, and enacting Chapter 2.98 Competitive Merit-based Recruitment and Promotion Processes in the Fire Department and the Police Department.

Staff note: The numbering of City Code 2.24 would remain the same, however the entire text would be replaced with the new hearing officer system for all eligible employee appeals.

MOTION 4 – CLOSE PUBLIC HEARING AND NOT ADOPT

I move that the Council close the public hearing and proceed to the next agenda item.



1 SALT LAKE CITY ORDINANCE

2 No. ____ of 2020

3 (Repealing Chapter 2.16 and amending Chapter 2.24 of the *Salt Lake City Code*
4 pertaining to the Civil Service Commission and Employee Appeals Board, respectively.)
5

6 WHEREAS, Section 10-3-1106 of the Utah Municipal Code provides that eligible
7 Salt Lake City Corporation employees have the right to appeal certain final disciplinary
8 decisions (i.e. discharge, suspension without pay for more than two days, and involuntary
9 transfer from one position to another with less remuneration) to an appeal board or
10 hearing officer; and

11 WHEREAS, Section 10-3-1106(7)(a) of the Utah Municipal Code provides that
12 “[t]he method and manner of choosing a hearing officer or the members of the appeal
13 board, the number of members, the designation of a hearing officer’s or appeal board
14 member’s term of office, and the procedure for conducting an appeal and the standard of
15 review shall be prescribed by the governing body of each municipality by ordinance;”
16 and

17 WHEREAS, the Salt Lake City Civil Service Commission, established pursuant
18 to Chapter 2.16 of the *Salt Lake City Code*, currently adjudicates all disciplinary appeals
19 filed by eligible employees in the Police Department and Fire Department, while the Salt
20 Lake City Employee Appeals Board, established pursuant to Chapter 2.24 of the *Salt*
21 *Lake City Code*, currently adjudicates all disciplinary appeals filed by eligible employees
22 in all other departments; and

23 WHEREAS, the Salt Lake City Council finds that the appeal process required by
24 Section 10-3-1106 of the Utah Municipal Code should be uniform for all eligible Salt
25 Lake City Corporation employees; and

WHEREAS, the Salt Lake City Council finds that the appeal process required by Section 10-3-1106 of the Utah Municipal Code is intended to promote efficient resolution of appeals while providing due process; and

WHEREAS, the Salt Lake City Council has determined that the following ordinance enacting a uniform disciplinary appeals process for all eligible Salt Lake City Corporation employees promotes these purposes and is in the best interests of Salt Lake City;

NOW, THEREFORE, BE IT ORDAINED by the City Council of Salt Lake City as follows:

SECTION 1. That Chapter 2.16 (Civil Service Commission) of the *Salt Lake City Code* is hereby repealed in its entirety.

SECTION 2. That Chapter 2.24 (Employee Appeals Board) of the *Salt Lake City Code* is hereby amended to read as follows:

Chapter 2.24
EMPLOYEE DISCIPLINE APPEALS PROCESS

2.24.010: DEFINITIONS

A. Eligible City Employee: An employee of Salt Lake City Corporation, unless the employee is:

1. An appointed employee as defined by the Utah Municipal Code;
2. The Police Chief, a Deputy Police Chief, or an Assistant Police Chief;
3. The Fire Chief, a Deputy Fire Chief, or an Assistant Fire Chief;
4. A department director or deputy department director;
5. A division director or deputy division director;
6. A superintendent;

7. A probationary employee;
8. A part-time employee, including a paid call firefighter;
9. A seasonal or temporary employee;
10. An individual who works in the office of the Mayor or the City Council;
11. A secretarial or administrative assistant whose position is specifically designated to assist an elected official, a department director, or a deputy department director;
12. The City Engineer;
13. The City Recorder;
14. The City Treasurer;
15. The City Attorney;
16. An employee who has acknowledged in writing that their employment status is appointed or at-will; or
17. An employee who has voluntarily waived the disciplinary appeal procedure provided for in the Utah Municipal Code.

B. Final Appealable Disciplinary Decision: A disciplinary decision that, at the conclusion of all applicable internal grievance procedures, results in an eligible City employee's discharge;³ suspension without pay for more than two working days or, for an eligible City employee whose regular working shift is twenty-four (24) hours, more than one working shift; or involuntary transfer from one position to another with less remuneration.

2.24.020: CREATION OF DISCIPLINARY APPEALS PROCESS:

In accordance with the provisions of this Chapter, disciplinary appeals hearing officers shall hear and adjudicate appeals filed by eligible City employees seeking to overturn final appealable disciplinary decisions.

2.24.030: SELECTION AND TERM OF DISCIPLINARY APPEALS HEARING OFFICER:

A. Selection: The Mayor, with the advice and consent of the City Council and in accordance with Paragraph C of this Section, shall select between four and six individuals to comprise the roster of~~one or more~~ disciplinary appeals hearing officers ~~with the advice and consent of the City Council.~~

B. Term: Each disciplinary appeals hearing officer will serve a two-year term, with a maximum of five (5) consecutive terms or ten (10) total years of service.

C. Qualifications: Each disciplinary appeals hearing officer shall be an attorney who has been licensed to practice law in the State of Utah for a minimum of five years and who has significant professional experience in, or otherwise demonstrated knowledge of, employment law. A disciplinary appeals hearing officer may not currently be employed by Salt Lake City Corporation nor hold public office nor be a candidate for public office during his/her term.

D. Conflict of Interest: A disciplinary appeals hearing officer may not hear and adjudicate appeals in which the disciplinary appeals hearing officer has a conflict of interest prohibited by Chapter 2.44 of the *Salt Lake City Code*.

2.24.040: AUTHORITY OF DISCIPLINARY APPEALS HEARING OFFICER:

A disciplinary appeals hearing officer selected pursuant to this Chapter may hear and adjudicate an appeal filed by an eligible City employee seeking to overturn a final appealable disciplinary decision to:

A. Discharge the employee;

B. Suspend the employee without pay for more than two working days or, for an eligible City employee whose regular working shift is twenty-four (24) hours, more than one working shift; or

C. Involuntarily transfer the employee from one position to another with less remuneration.

All other personnel actions (including, but not limited to, suspensions without pay of two working days or less or, for an eligible City employee whose regular working shift is twenty-four (24) hours, one working shift; written warnings; written or oral coach-and-counsels; non-disciplinary discharges or involuntary transfers; layoff designations; or reassignments due to reorganizations) are not subject to appeal to a disciplinary appeals hearing officer.

2.24.050: PROCEDURE:

The following procedure shall apply to appeals filed by eligible City employees seeking to overturn final appealable disciplinary decisions:

A. Filing of Appeal: All appeals must be: i) filed by an eligible City employee and ii) submitted in writing to the Salt Lake City Recorder within ten (10) calendar days of the date the final appealable disciplinary decision was issued. The appeal shall identify the disciplinary decision being appealed and the specific reason(s) why the employee believes the disciplinary decision should be overturned. An eligible City

employee who is the recipient of a final appealable disciplinary decision is the only individual who may appeal that decision to a disciplinary appeals hearing officer.

B. Assignment of Disciplinary Appeals Hearing Officer: The Chief Human Resources Officer shall administer a process by which Aa single disciplinary appeals hearing officer from the roster of disciplinary appeals hearing officers shall be assigned to hear and adjudicate each appeal of a final appealable disciplinary decision. If either party to an appeal (i.e. the eligible City employee or the City) objects to the assigned disciplinary appeals hearing officer, a different disciplinary appeals hearing officer shall be assigned, in accordance with the process referenced above, to hear and adjudicate the appeal. However, neither party to an appeal shall be permitted to object to more than one assigned disciplinary appeals hearing officer.

C. Appeal Hearing: Upon receipt of an appeal of a final appealable disciplinary decision, the assigned disciplinary appeals hearing officer shall schedule a hearing to fully hear and adjudicate the appeal. Although an eligible City employee has the right to have an open and public appeal hearing, the disciplinary appeals hearing officer retains discretion to close any portion of the appeal hearing in accordance with applicable law.

D. Standard of Review/Burden of Proof:

1. Eligible City Employees in the Police Department and Fire Department

With respect to the question of whether the facts support a conclusion that the eligible City employee's conduct violated policy, the standard of review is "substantial evidence" and, to prevail, the City must demonstrate that the conclusion is supported by substantial evidence. With respect to the question of

whether the specific disciplinary sanction is proportional, the standard of review is “abuse of discretion” and, to prevail, the City must demonstrate that the disciplinary sanction does not constitute an abuse of discretion. With respect to the question of whether the specific disciplinary sanction is consistent, the standard of review is “abuse of discretion” and, to prevail, the eligible City employee must demonstrate that the disciplinary sanction constitutes an abuse of discretion.

2. All Other Eligible City Employees

With respect to the question of whether the facts support a conclusion that the eligible City employee’s conduct violated policy, the standard of review is “substantial evidence” and, to prevail, the eligible City employee must demonstrate that the conclusion is not supported by substantial evidence. With respect to the question of whether the specific disciplinary sanction is proportional and consistent, the standard of review is “abuse of discretion” and, to prevail, the eligible City employee must demonstrate that the disciplinary sanction constitutes an abuse of discretion.

E. Representation/Confrontation of Witnesses/Examination of Evidence: At an appeal

hearing, an eligible City employee may:

1. Appear in person and be represented by counsel;
2. Confront any witness whose testimony may be considered by the disciplinary appeals hearing officer; and
3. Examine any evidence that may be considered by the disciplinary appeals hearing officer.

164 F. Evidence: With the exception of evidence pertaining to the proportionality and/or
165 consistency of the specific disciplinary sanction, a disciplinary appeals hearing officer
166 may only consider evidence that was previously presented and disclosed to the
167 eligible City employee during the disciplinary process (including any applicable
168 internal grievance procedure) that resulted in the final appealable disciplinary
169 decision.

170 G. Written Decision: A disciplinary appeals hearing officer shall certify his/her written
171 decision with the Salt Lake City Recorder no later than fifteen (15) calendar days
172 after the day on which the appeal hearing concludes. A disciplinary appeals hearing
173 officer may only affirm or overturn the final appealable disciplinary decision and
174 must explain the factual and legal basis for his/her determination. For good cause, a
175 disciplinary appeals hearing officer may extend the fifteen (15) day certification
176 period referenced above to a maximum of sixty (60) calendar days, if the employee
177 and Salt Lake City Corporation both consent to such an extension.

178 H. Audio Recording of Appeal Hearing: The proceedings of each appeal hearing shall
179 be recorded on audio equipment and either party to an appeal may, at their own
180 expense, obtain a written transcript of the hearing prepared by a certified court
181 reporter.

182 I. Rules, Regulations, and/or Procedures: The Mayor, or the Chief Human Resources
183 Officer at the direction of the Mayor, shall adopt and publish rules, regulations,
184 and/or procedures governing the employee discipline appeals process (including pre-
185 hearing and post-hearing matters) that are consistent with this Chapter and applicable
186 law and further the objectives of this Chapter.

187 **2.24.060: APPEAL OF DECISION OF DISCIPLINARY APPEALS HEARING**

188 **OFFICER:**

189 A final written decision of a disciplinary appeals hearing officer may be appealed by
190 either party to the Utah Court of Appeals within thirty (30) calendar days of the date the
191 decision was certified with the Salt Lake City Recorder.

192 **2.24.070: STAY OF DECISION OF DISCIPLINARY APPEALS HEARING**

193 **OFFICER:**

194 If a final written decision of a disciplinary appeals hearing officer is appealed, the
195 disciplinary appeals hearing officer may, in the exercise of his/her discretion or at the
196 request of the eligible City employee or Salt Lake City Corporation, stay the effect of the
197 decision until the appeal has been adjudicated.

198 SECTION 3. This ordinance shall become effective upon first publication. If, as
199 of the date of first publication of this ordinance, a disciplinary appeal is pending before
200 the Salt Lake City Civil Service Commission or the Salt Lake City Employee Appeals
201 Board and the appeal hearing has not yet begun prior to the date of first publication of
202 this ordinance, the appellant has the right to have his/her appeal heard and adjudicated by
203 either: i) the Salt Lake City Civil Service Commission or the Salt Lake City Employee
204 Appeals Board (whichever entity is applicable) in accordance with that entity's existing
205 governing ordinances, rules, regulations, and procedures or ii) a disciplinary appeals
206 hearing officer in accordance with the provisions of this Chapter.

207 Passed by the City Council of Salt Lake City, Utah this _____ day of
208 _____, 2020.

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CHAIRPERSON

Approved as to Form:
Salt Lake City Attorney's Office

Katherine N. Lewis, City Attorney

Date

ATTEST:

CITY RECORDER

Transmitted to Mayor on _____.

Mayor's Action: _____ Approved. _____ Vetoed.

MAYOR

CITY RECORDER
(SEAL)

Bill No. _____ of 2020.

Published: _____.

1 SALT LAKE CITY ORDINANCE

2 No. ____ of 2020

3 (Adopting competitive merit-based recruitment and promotion processes for full-time
4 non-appointed positions in the Fire Department and the Police Department.)
5

6 WHEREAS, the Salt Lake City Council has determined that the adoption of
7 competitive merit-based recruitment and promotion processes for full-time non-appointed
8 positions in the Fire Department and the Police Department is in the best interests of Salt
9 Lake City;

10 NOW, THEREFORE, BE IT ORDAINED by the City Council of Salt Lake City
11 as follows:

12 SECTION 1. PURPOSE. The purpose of this ordinance is to adopt competitive
13 merit-based recruitment and promotion processes for full-time non-appointed positions in
14 the Fire Department and the Police Department.

15 SECTION 2. DEFINITIONS.

16 A. Recruitment: The process by which an applicant is selected for a full-time non-
17 appointed position in the Fire Department or the Police Department.

18 B. Promotion: The process by which an applicant is selected for a full-time, non-
19 appointed, non-entry level position in the Fire Department or the Police Department.

20 C. Examination: The process by which, through a competitive job-related assessment
21 (or series of job-related assessments), an applicant's qualifications for recruitment or
22 promotion are evaluated.

23 SECTION 3. GENERAL PRINCIPLES/ADMINISTRATIVE OVERSIGHT.
24

25 A. The Human Resources Department shall oversee the administration of the recruitment
26 and promotion processes for full-time non-appointed positions in the Fire Department

and the Police Department. In overseeing the administration of these recruitment and promotion processes, the Human Resources Department shall adhere to the following general principles:

1. Open merit-based competition, which will include preference being given to current employees of Salt Lake City Corporation.
2. Diversity and inclusivity.
3. The establishment of objective job-related minimum qualifications for each full-time non-appointed position and a requirement that applicants meet such minimum qualifications to be considered for recruitment or promotion.
4. Promotional examinations that ensure each applicant is qualified for the position sought, consider the qualifications of each applicant, and result in a rank-ordered list of qualified applicants.
5. Recognition of the equivalency of merit examination processes administered by other ~~fire protection and~~ law enforcement agencies, for the purpose of recruiting qualified external applicants for non-entry level positions in the Police Department.
6. Recognition that individuals selected for or promoted to the ranks of Captain and Battalion Chief in the Fire Department shall be current employees of the Fire Department.
7. If a memorandum of understanding (“MOU”) between Salt Lake City Corporation and the International Association of Firefighters Local 81 (“Local 81”) is in effect, those provisions of the MOU pertaining to recruitment and promotion processes for eligible employees represented by Local 81 supersede any

recruitment and promotion processes for such employees established in accordance with the provisions of this Chapter.

8. The establishment of probationary periods.

9. The establishment of requirements and time limitations pertaining to employees designated to serve in an “acting” capacity.

10. The establishment of a process by which a current employee of Salt Lake City Corporation who is not selected for promotion may appeal that decision.

SECTION 4. RULES, REGULATIONS, AND/OR PROCEDURES.

The Mayor, or the Chief Human Resources Officer at the direction of the Mayor, shall adopt and publish rules, regulations, and/or procedures governing competitive merit-based recruitment and promotion processes for full-time non-appointed positions in the Fire Department and the Police Department that are consistent with this Chapter, applicable law, and any applicable memorandum of understanding and further the objectives of this Chapter.

SECTION 5. This ordinance shall become effective upon first publication. If, as of the date of first publication of this ordinance, a petition filed pursuant to Chapter 4-2-13 of the Salt Lake City Civil Service Commission Rules and Regulations is pending before the Salt Lake City Civil Service Commission ~~prior to the date of first publication of this ordinance and the petition hearing has not yet begun~~, the petitioner has the right to have his/her petition heard and adjudicated: i) by the Salt Lake City Civil Service Commission in accordance with that entity’s existing governing ordinances, rules, regulations, and procedures or ii) via the appeal process established in accordance with the provisions of this Chapter.

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

75 _____, 2020.

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90 ATTEST:

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CITY RECORDER

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97 Transmitted to Mayor on _____.

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100 Mayor's Action: _____ Approved. _____ Vetoed.

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108 _____
CITY RECORDER

109 (SEAL)

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111 Bill No. _____ of 2020.

112 Published: _____.

CHAIRPERSON

Approved as to Form:
Salt Lake City Attorney's Office


Katherine N. Lewis, City Attorney

Date

MAYOR



CITY COUNCIL TRANSMITTAL


Rachel Otto, Chief of Staff

Date Received: 11/2/2020
Date sent to Council: 11/3/2020

TO: Salt Lake City Council **DATE:** November 2, 2020

FROM: Rachel Otto, Chief of Staff

SUBJECT: Ordinance repealing City Code Chapter 2.16 (Civil Service Commission) and amending Chapter 2.24 (Employee Appeals Board) and replacing both boards with a disciplinary appeal hearing officer; Ordinance adopting competitive merit-based recruitment and promotion processes for full-time non-appointed positions in the Fire Department and the Police Department.

STAFF CONTACTS: Rachel Otto, Chief of Staff

DOCUMENT TYPE: Ordinances

RECOMMENDATION: The Administration recommends that after discussion at a Council work session, the City Council adopt the attached ordinances.

BUDGET IMPACT: N/A

BACKGROUND/DISCUSSION:

Under Utah law, certain Salt Lake City Corporation employees have the right to appeal certain final disciplinary decisions (i.e. discharge, suspension without pay for more than two days, or involuntary transfer from one position to another with less remuneration) to an appeals board or hearing officer. The City currently handles these appeals through two separate bodies created under Salt Lake City Code: the Civil Service Commission (Salt Lake City Code 2.16) and the Employee Appeals Board (Salt Lake City Code 2.24). Specifically, the Civil Service Commission adjudicates all disciplinary appeals filed by eligible employees in the Police

Department and Fire Department, and the Employee Appeals Board adjudicates all disciplinary appeals filed by eligible employees in all other departments.

The Administration recommends that the appeal process for all eligible employees be uniform and be handled by a hearing officer qualified to hear employment appeals. For that reason, the Administration is recommending repeal of City Code 2.16 (the Civil Service Commission ordinance) and revision of City Code 2.24 (the Employee Appeals Board ordinance) and replacement of both the Civil Service Commission and the Employee Appeals Board with a qualified hearing officer.

The Administration also recommends that the Council adopt an ordinance establishing competitive merit-based recruitment and promotion processes for full-time non-appointed positions in the Fire Department and the Police Department.

PUBLIC PROCESS: City Council public work session.

1 SALT LAKE CITY ORDINANCE

2 No. ____ of 2020

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4 non-appointed positions in the Fire Department and the Police Department.)
5

6 WHEREAS, the Salt Lake City Council has determined that the adoption of
7 competitive merit-based recruitment and promotion processes for full-time non-appointed
8 positions in the Fire Department and the Police Department is in the best interests of Salt
9 Lake City;

10 NOW, THEREFORE, BE IT ORDAINED by the City Council of Salt Lake City
11 as follows:

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13 merit-based recruitment and promotion processes for full-time non-appointed positions in
14 the Fire Department and the Police Department.

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16 A. Recruitment: The process by which an applicant is selected for a full-time non-
17 appointed position in the Fire Department or the Police Department.

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19 appointed, non-entry level position in the Fire Department or the Police Department.

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21 (or series of job-related assessments), an applicant's qualifications for recruitment or
22 promotion are evaluated.

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25 A. The Human Resources Department shall oversee the administration of the recruitment
26 and promotion processes for full-time non-appointed positions in the Fire Department

and the Police Department. In overseeing the administration of these recruitment and promotion processes, the Human Resources Department shall adhere to the following general principles:

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4. Promotional examinations that ensure each applicant is qualified for the position sought, consider the qualifications of each applicant, and result in a rank-ordered list of qualified applicants.
5. Recognition of the equivalency of merit examination processes administered by other fire protection and law enforcement agencies, for the purpose of recruiting qualified external applicants for non-entry level positions.
6. The establishment of probationary periods.
7. The establishment of requirements and time limitations pertaining to employees designated to serve in an “acting” capacity.
8. The establishment of a process by which a current employee of Salt Lake City Corporation who is not selected for promotion may appeal that decision.

SECTION 4. RULES, REGULATIONS, AND/OR PROCEDURES.

The Mayor, or the Chief Human Resources Officer at the direction of the Mayor, shall adopt and publish rules, regulations, and/or procedures governing competitive merit-based recruitment and promotion processes for full-time non-appointed positions in the Fire Department and the Police Department that are consistent with and further the objectives of this Chapter.

SECTION 5. This ordinance shall become effective upon first publication. If a petition filed pursuant to Chapter 4-2-13 of the Salt Lake City Civil Service Commission Rules and Regulations is pending before the Salt Lake City Civil Service Commission prior to the date of first publication of this ordinance, the petitioner has the right to have his/her petition heard and adjudicated: i) by the Salt Lake City Civil Service Commission in accordance with that entity's existing governing ordinances, rules, regulations, and procedures or ii) via the appeal process established in accordance with the provisions of this Chapter.

Passed by the City Council of Salt Lake City, Utah this _____ day of _____, 2020.

CHAIRPERSON

Approved as to Form:
Salt Lake City Attorney's Office

th N.W.

Katherine N. Lewis, City Attorney

November 2, 2020

Date _____

80 ATTEST:

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84 CITY RECORDER

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87 Transmitted to Mayor on _____.

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90 Mayor's Action: _____ Approved. _____ Vetoed.

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MAYOR

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98 CITY RECORDER

99 (SEAL)

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101 Bill No. _____ of 2020.

102 Published: _____.

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12 “[t]he method and manner of choosing a hearing officer or the members of the appeal
13 board, the number of members, the designation of a hearing officer’s or appeal board
14 member’s term of office, and the procedure for conducting an appeal and the standard of
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19 filed by eligible employees in the Police Department and Fire Department, while the Salt
20 Lake City Employee Appeals Board, established pursuant to Chapter 2.24 of the *Salt*
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23 WHEREAS, the Salt Lake City Council finds that the appeal process required by
24 Section 10-3-1106 of the Utah Municipal Code should be uniform for all eligible Salt
25 Lake City Corporation employees; and

WHEREAS, the Salt Lake City Council finds that the appeal process required by Section 10-3-1106 of the Utah Municipal Code is intended to promote efficient resolution of appeals while providing due process; and

WHEREAS, the Salt Lake City Council has determined that the following ordinance enacting a uniform disciplinary appeals process for all eligible Salt Lake City Corporation employees promotes these purposes and is in the best interests of Salt Lake City;

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6. A superintendent;

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- 53 8. A part-time employee, including a paid call firefighter;
- 54 9. A seasonal or temporary employee;
- 55 10. An individual who works in the office of the Mayor or the City Council;
- 56 11. A secretarial or administrative assistant whose position is specifically
- 57 designated to assist an elected official, a department director, or a deputy
- 58 department director;
- 59 12. The City Engineer;
- 60 13. The City Recorder;
- 61 14. The City Treasurer;
- 62 15. The City Attorney;
- 63 16. An employee who has acknowledged in writing that their employment status
- 64 is appointed or at-will; or
- 65 17. An employee who has voluntarily waived the disciplinary appeal procedure
- 66 provided for in the Utah Municipal Code.

67 B. Final Appealable Disciplinary Decision: A disciplinary decision that, at the

68 conclusion of all applicable internal grievance procedures, results in an eligible City

69 employee's discharge, suspension without pay for more than two working days, or

70 involuntary transfer from one position to another with less remuneration.

71 **2.24.020: CREATION OF DISCIPLINARY APPEALS PROCESS:**

72 In accordance with the provisions of this Chapter, disciplinary appeals hearing officers

73 shall hear and adjudicate appeals filed by eligible City employees seeking to overturn

74 final appealable disciplinary decisions.

75 **2.24.030: SELECTION AND TERM OF DISCIPLINARY APPEALS HEARING**

76 **OFFICER:**

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78 with the advice and consent of the City Council.

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80 maximum of five (5) consecutive terms or ten (10) total years of service.

81 C. Qualifications: Each disciplinary appeals hearing officer shall be an attorney licensed
82 to practice law in the State of Utah who has significant professional experience in
83 employment law. A disciplinary appeals hearing officer may not currently be
84 employed by Salt Lake City Corporation nor hold public office nor be a candidate for
85 public office during his/her term.

86 D. Conflict of Interest: A disciplinary appeals hearing officer may not hear and
87 adjudicate appeals in which the disciplinary appeals hearing officer has a conflict of
88 interest prohibited by Chapter 2.44 of the *Salt Lake City Code*.

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91 adjudicate an appeal filed by an eligible City employee seeking to overturn a final
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96 remuneration.

All other personnel actions (including, but not limited to, suspensions without pay of two working days or less, written warnings, written or oral coach-and-counsels, non-disciplinary discharges or involuntary transfers, layoff designations, or reassignments due to reorganizations) are not subject to appeal to a disciplinary appeals hearing officer.

2.24.050: PROCEDURE:

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B. Assignment of Disciplinary Appeals Hearing Officer: A single disciplinary appeals hearing officer shall be assigned to hear and adjudicate each appeal of a final appealable disciplinary decision.

C. Appeal Hearing: Upon receipt of an appeal of a final appealable disciplinary decision, the assigned disciplinary appeals hearing officer shall schedule a hearing to fully hear and adjudicate the appeal. Although an eligible City employee has the right to have an open and public appeal hearing, the disciplinary appeals hearing officer retains discretion to close any portion of the appeal hearing in accordance with applicable law.

D. Standard of Review/Burden of Proof: The eligible City employee bears the burden of proving that the final appealable disciplinary decision should be overturned. With respect to the question of whether the facts support a conclusion that the eligible City employee's conduct violated policy, the standard of review is "substantial evidence" and, to prevail, the eligible City employee must demonstrate that the conclusion is not supported by substantial evidence. With respect to the question of whether the specific disciplinary sanction is proportional and consistent, the standard of review is "abuse of discretion" and, to prevail, the eligible City employee must demonstrate that the disciplinary sanction constitutes an abuse of discretion.

E. Representation/Confrontation of Witnesses/Examination of Evidence: At an appeal hearing, an eligible City employee may:

1. Appear in person and be represented by counsel;
2. Confront any witness whose testimony may be considered by the disciplinary appeals hearing officer; and
3. Examine any evidence that may be considered by the disciplinary appeals hearing officer.

F. Evidence: With the exception of evidence pertaining to the proportionality and/or consistency of the specific disciplinary sanction, a disciplinary appeals hearing officer may only consider evidence that was previously presented during the disciplinary process (including any applicable internal grievance procedure) that resulted in the final appealable disciplinary decision.

G. Written Decision: A disciplinary appeals hearing officer shall certify his/her written decision with the Salt Lake City Recorder no later than fifteen (15) calendar days

after the day on which the appeal hearing concludes. A disciplinary appeals hearing officer may only affirm or overturn the final appealable disciplinary decision and must explain the factual and legal basis for his/her determination. For good cause, a disciplinary appeals hearing officer may extend the fifteen (15) day certification period referenced above to a maximum of sixty (60) calendar days, if the employee and Salt Lake City Corporation both consent to such an extension.

H. Audio Recording of Appeal Hearing: The proceedings of each appeal hearing shall be recorded on audio equipment.

I. Rules, Regulations, and/or Procedures: The Mayor, or the Chief Human Resources Officer at the direction of the Mayor, shall adopt and publish rules, regulations, and/or procedures governing the employee discipline appeals process that are consistent with and further the objectives of this Chapter.

2.24.060: APPEAL OF DECISION OF DISCIPLINARY APPEALS HEARING

OFFICER:

A final written decision of a disciplinary appeals hearing officer may be appealed by either party to the Utah Court of Appeals within thirty (30) calendar days of the date the decision was certified with the Salt Lake City Recorder.

2.24.070: STAY OF DECISION OF DISCIPLINARY APPEALS HEARING

OFFICER:

If a final written decision of a disciplinary appeals hearing officer is appealed, the disciplinary appeals hearing officer may, in the exercise of his/her discretion or at the request of the eligible City employee or Salt Lake City Corporation, stay the effect of the decision until the appeal has been adjudicated.

SECTION 3. This ordinance shall become effective upon first publication. If a disciplinary appeal is pending before the Salt Lake City Civil Service Commission or the Salt Lake City Employee Appeals Board prior to the date of first publication of this ordinance, the appellant has the right to have his/her appeal heard and adjudicated by either: i) the Salt Lake City Civil Service Commission or the Salt Lake City Employee Appeals Board (whichever entity is applicable) in accordance with that entity's existing governing ordinances, rules, regulations, and procedures or ii) a disciplinary appeals hearing officer in accordance with the provisions of this Chapter.

Passed by the City Council of Salt Lake City, Utah this ____ day of _____, 2020.

CHAIRPERSON

Approved as to Form:
Salt Lake City Attorney's Office



Katherine N. Lewis, City Attorney

November 2, 2020

Date

ATTEST:

CITY RECORDER

Transmitted to Mayor on _____.

202 Mayor's Action: _____ Approved. _____ Vetoed.

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MAYOR

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210 _____
CITY RECORDER

211 (SEAL)

212

213 Bill No. _____ of 2020.

214 Published: _____.