

**TAYLORSVILLE CITY COUNCIL MEETING
AGENDA ITEM SUMMARY**

MEETING DATE: February 15, 2012

AGENDA ITEM: Discussion on potential amendments to Chapter 2.28, Employee Appeal Board..

PUBLIC HEARING REQUIRED – No.

RESOLUTION/ORDINANCE REQUIRED

ORDINANCE ____ RESOLUTION __

PRESENTER: John N. Brems

ISSUE SUMMARY:

This is a discussion of suggested amendments and changes to the City of Taylorsville Code of Ordinances, Chapter 2.28, Employee Appeal Board.

CITY ATTORNEY (Approved as to form):

ATTACHMENTS: Draft Ordinance for discussion.

ACTION REQUIRED: Discussion and direction from the Council.

**TAYLORSVILLE, UTAH
ORDINANCE NO. 12-**

Field Code Changed

**AN ORDINANCE OF THE CITY OF TAYLORSVILLE AMENDING CHAPTER 2.28,
EMPLOYEE APPEAL BOARD**

WHEREAS, the Taylorsville City Council (the "*Council*") met in regular session on _____, 2012, to consider, among other things, amending Chapter 2.28, Employee Appeal Board; and

WHEREAS, the Council has determined that because of the number of employees employed by the City, that the current version of the Employee Appeal Board creates conflict and potential difficult situations; and

WHEREAS, there have been some concern and confusion about standard of review.

NOW, THEREFORE, BE IT ORDAINED by the Council that Chapter 2.28, Employee Appeal Board, of the Taylorsville Code of Ordinances be amended, as set forth in exhibit "A," attached and incorporated herein by this reference. Changes are designated by interlineating the words to be deleted and underlining the words to be added

This Ordinance, assigned Ordinance No. 12-__, shall take effect as soon as it shall be published or posted as required by law, deposited and recorded in the office of the City Recorder, and accepted as required herein.

PASSED AND APPROVED by the Council of Taylorsville, Utah, this ____ day of _____, 2012.

TAYLORSVILLE CITY COUNCIL

By: _____
Jerry Rechtenbach, Chairman

VOTING:

Dama Barbour	Yea ___ Nay ___
Ernest Burgess	Yea ___ Nay ___
Larry Johnson	Yea ___ Nay ___
Kristie Overson	Yea ___ Nay ___
Jerry Rechtenbach	Yea ___ Nay ___

PRESENTED to the Mayor of the City of Taylorsville for approval this ____ day of _____, 2012.

APPROVED this ____ day of _____, 2012.

ATTEST:

Mayor Russ Wall

Cheryl P. Cottle, City Recorder

DEPOSITED in the office of the City Recorder this ____ day of _____, 2012.

RECORDED this ____ day of _____, 2012.

40220.07

EXHIBIT "A"

2.28.010 PURPOSE:

It is the purpose of this chapter to create an employee appeal board to satisfy the requirements of Utah Code Ann. §§ 10-3-1105 and 1106. In addition, the employee appeal board will serve as the final appeal board to hear employee complaints as described in the "grievance process" of the Human Resources Policies and Procedures Manual for Taylorsville or its successor.

2.28.020 BOARD CREATION:

There is hereby created an employee appeal board. The employee appeal board shall consist of three members and one alternate, no more than one of whom is an employee of the city. The members of the employee appeal board shall be appointed or removed without cause by the mayor, with the advice and consent of the city council, and one such member shall be appointed by the mayor, with the advice and consent of the city council as the chair of the employee appeal board.

2.28.030 TERMS AND DUTIES OF BOARD:

Except for the initial term, members of the employee appeal board, including the alternate member, shall serve for a term of three (3) years. The Board shall have jurisdiction to hear appeals from employees with appeal rights who have been discharged, suspended for more than two days without pay, or involuntarily transferred from one position to another with less remuneration.

2.28.040 QUORUM USE OF ALTERNATE MEMBER:

No hearing or action by the employee appeal board shall be official or of any effect except when a quorum of the members is present. Two members, which may include the alternate member, shall constitute a quorum. In the event of a preemptory challenge, as provided below, or the inability or unwillingness of a member of the employee appeal board to serve, then with respect to a preemptory challenge, the alternate member shall serve as a member of the employee appeal board for that specific appeal or with respect to the inability or unwillingness of a member of the employee appeal board to serve during the period that a member of the employee appeal board is unable or unwilling to serve.

2.28.050 PREEMPTORY CHALLENGE:

The employee appealing to the employee appeal board pursuant to this chapter may preemptory challenge one of the members of the employee appeal board in which case such member shall be excused from service during the pending hearing or such employee's appeal.

2.28.060 MISUNDERSTANDING, CONFLICT, PROBLEM, ETC.:

Provided an employee has exhausted the grievance process described in the Human Resources Policies and Procedure Manual for Taylorsville or its successor or in situations that would be unreasonable to pursue the grievance process, such as sexual harassment situations, an employee with appeal rights may only appeal a grievance with respect to the following matters: employee-supervisor relationship, duty assignment not affecting job classification, shift and job location assignments, working conditions, practices affecting grant of paid leave time, performance evaluations for nonprobationary employees, secondary employment decisions, and RIF scores.

2.28.070 APPEAL OF DISCHARGE, SUSPENSION WITHOUT PAY, OR INVOLUNTARY TRANSFER:

- A. For purposes of this chapter, an “employee without appeal rights” is defined as a person holding any of the following positions: an officer appointed by the mayor, or other person or body exercising executive power in the city, a police chief, a deputy police chief, a department head, a deputy department head, a superintendent, a probationary employee, a part-time employee, or a seasonal employee. An employee without appeal rights shall have no rights under this chapter.
- B. For purposes of this chapter, an “employee with appeal rights” means all other employees of the city.
- C. An employee without appeal rights who is discharged, suspended for more than two (2) days without pay, or involuntarily transferred from one position to another with less remuneration for any reason may not appeal the discharge, suspension without pay, or involuntary transfer to the employee appeal board.
- D. An employee with appeal rights who is discharged, suspended for more than two (2) days without pay, or involuntarily transferred from one position to another with less remuneration for any reason may appeal the discharge, suspension without pay, or involuntary transfer to the employee appeal board.

2.28.080 PROCEDURE FOR CONDUCTING EVIDENTIARY HEARING:

The employee appeal board shall conduct an evidentiary hearing and render its decision in accordance with Utah Code Ann. § 10-3-1106. Within five (5) business days of the notice of the Board’s receipt of any appeal from an employee with appeal rights, the parties shall stipulate to a scheduling conference to, among other things, scheduling evidence hearings or other procedural issues. The employee appeal board shall have the authority to determine if it has jurisdiction to adjudicate any issues presented or grant any relief requested by the parties. The employee appeal board may – 1) receive and decide motions from the parties regarding any legal issues; 2) direct the parties to exchange witnesses/exhibit lists in advance of the evidentiary hearing; and, 3) issue decisions regarding whether it has authority/jurisdiction to grant the relief sought by any party or the employee’s eligibility to receive an evidentiary hearing under this chapter or applicable state law. Hearings will generally be open to the public but the employee appeal board may, for good cause or to protect the privacy interests of individuals, close any part of the proceedings. Unless it is impractical to do so, the party requesting closure of the hearing (or any part thereof) should make written request seeking closure at least two (2) business days prior to the commencement of any evidentiary hearing. The board may exclude from the hearing any witnesses who have not yet given testimony or evidence in the appeal before the appeal board. Hearings shall be conducted with appropriate formality and decorum, so that the due process rights of the parties are protected. Utah rules of evidence and rules of civil procedure are used as guidelines but need not be strictly followed or applied. Rules of evidence regarding authorization, foundation, hearsay, or relevance need not be strictly applied. Discovery shall be limited to that information which was actually considered in making the decision which is being appealed. If evidence is introduced which was not considered in making the decision being appealed, the employee appeal board shall suspend the proceedings and remand the matter to the person who made the decision. The person who made the decision shall reconsider his decision and may issue a

supplemental written decision within fourteen (14) calendar days. If requested by the employee within fourteen (14) calendar days after receipt of the supplemental written decision, the employee appeal board shall then reconvene and hear the employee's appeal. With respect to appeals of disciplinary matters, the burden of proof and burden of proceeding shall initially be on the city to prove the facts supporting the allegations made against the employee and that the disciplinary sanction is proportionate to the employee's misconduct or poor performance. With respect to appeals of grievance matters, the burden of proof and burden of proceeding shall be on the employee. A record of the proceeding shall be kept.

2.28.090 STANDARD OF REVIEW:

The employee appeal board shall uphold the city's decision against the appealing employee if the appeal board finds that the decision is supported by substantial evidence. Substantial evidence means that quantum or quantity of relevant evidence that is adequate to convince a reasonable mind to support a conclusion. Consistent with the parties' respective burdens of proof and proceeding as set forth in Section 2.28.080, the employee appeal board shall not substitute their own judgment for the disciplinary decision being reviewed and can only overturn a disciplinary decision if the disciplinary decision is not supported by substantial evidence or the disciplinary sanction is disproportionate or inconsistent with sanctions imposed against similarly situated employees with appeal rights.

2.28.095 REMEDIES:

Unless the employee appeal board finds that there is no substantial evidence to support the city's disciplinary decision, the board shall uphold the disciplinary decision. If the employee appeal board does not uphold the disciplinary decision, then the city shall compensate the employee as required by state law. The employee appeal board shall not provide any remedy beyond that required by state law or as authorized in this chapter.

2.28.100 APPEAL OF BOARD DECISION:

The employee appeal board's decision may be appealed by the city or an employee with appeal rights provided by state law.