

**TAYLORSVILLE CITY COUNCIL**  
**WORK SESSION AGENDA ITEM SUMMARY**

**MEETING DATE:** March 14, 2012

**AGENDA ITEM:** Discussion of an Ordinance amending Chapter 2.28, Employee Appeal Board..

**PUBLIC HEARING REQUIRED –No**

**RESOLUTION/ORDINANCE REQUIRED**

**ORDINANCE   X   RESOLUTION**

**PRESENTER:** John Brems

**ISSUE SUMMARY:**

Discussion of proposed amendments Chapter 2.28 of the City of Taylorsville Code of Ordinances regarding the Employee Appeal Board.

**COMMISSION / ADVISORY BOARD RECOMMENDATION:** N/A

**STAFF RECOMMENDATION:**

**CITY ATTORNEY (Approved as to form):** N/A

**ATTACHMENTS:**

Mr. Brems has provided a red-lined copy of the proposed amendments to Chapter 2.28

**TAYLORSVILLE, UTAH  
ORDINANCE NO. ~~112-~~**

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**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 \_\_\_\_\_, ~~2011~~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 ~~has~~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 ~~Polieies and Proeedures Manual~~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. ~~112-~~\_\_, 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.

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**PASSED AND APPROVED** by the Council of Taylorsville, Utah, this \_\_\_\_ day of ~~July, 2011~~\_\_\_\_\_, 2012.

**TAYLORSVILLE CITY COUNCIL**

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By: \_\_\_\_\_

Jerry Rechtenbach, Chairman

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**SEAL** \_\_\_\_\_

**VOTING:**

<del>Bud Catlin</del>	Yea ___ Nay ___
<del>Larry Johnson</del>	Yea ___ Nay ___
Dama Barbour	Yea ___ Nay ___
<del>Ernest Burgess</del>	Yea ___ Nay ___
<del>Larry Johnson</del>	Yea ___ Nay ___
<del>Morris Pratt</del> <u>Kristie Overson</u>	Yea ___ Nay ___
Jerry Rechtenbach	Yea ___ Nay ___

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**PRESENTED** to the Mayor of the City of Taylorsville for approval this \_\_\_\_ day of ~~July,~~ 2011 \_\_\_\_\_, 2012.

**APPROVED** this \_\_\_\_ day of ~~July, 2011~~ \_\_\_\_\_, 2012.

**ATTEST:** \_\_\_\_\_  
**Mayor Russ Wall**

\_\_\_\_\_  
**Cheryl P. Cottle, City Recorder**

**DEPOSITED** in the office of the City Recorder this \_\_\_\_ day of ~~July,~~ 2011 \_\_\_\_\_, 2012.

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**RECORDED** this \_\_\_\_ day of ~~July, 2011~~ \_\_\_\_\_, 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 an 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 OFFICEBOARD:**

~~Except for the initial term, members~~Members of the employee appeal board, including the alternate member, shall serve for a term of three (3) years. ~~The initial term of one member of the employee appeal board and the alternate member shall expire on June 30, 2009, the initial term of one member of the employee appeal board shall expire on June 30, 2010, and the initial term of the remaining member of the employee appeal board shall expire on June 30, 2011. The employee appeal 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. If two members constitute a quorum, then two affirmative votes are required for all actions of the employee appeal board. 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~~

~~may appeal an employment-related misunderstanding, conflict, or problem to the employee appeal board.~~

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

- A. For purposes of this chapter, an “employee without appeal rights” ~~means 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~~ defined as a person identified in Utah Code Ann. § 10-3-1105(2), as amended from time to time. ~~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.

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#### **2.28.080 PROCEDURE FOR CONDUCTING EVIDENTIARY HEARING:**

~~The employee appeal board shall conduct the hearing and render its decision in accordance with Utah Code Ann. § 10-3-1106. Hearings will be open to the public, unless a closed hearing is requested in writing by the appealing employee and consented to by the city. The~~ Within five (5) business days of the notice of the employee appeal board’s receipt of any appeal from an employee with appeal rights, the parties shall stipulate to a scheduling conference to, among other things, schedule evidence hearings or other procedural issues. ~~The employee appeal board’s authority is limited to conducting an evidentiary hearing and rendering its decision in accordance with Utah Code Ann. § 10-3-1106, as amended from time to time, and matters incident thereto, such as holding scheduling conferences, entering orders regarding procedural issues, and directing the parties to exchange witnesses/exhibit lists in advance of the evidentiary hearing. 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 employee appeal board may exclude from the hearing any witnesses who have not yet given testimony or evidence in the appeal before the employee appeal board. Hearings shall be conducted with appropriate formality and decorum, so that the due process rights of appellantthe parties are protected. Utah rulesRules of evidenceEvidence and rulesRules of civil procedureCivil 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~~

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which was actually considered in making the decision which is being appealed. If mitigating evidence is introduced which was not considered in making the decision being appealed, the employee appeal board may in its discretion 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. ~~With respect to appeals of grievance matters, prove the burden of proof and burden of proceeding shall be on facts supporting the allegations made against the employee and that the disciplinary sanction is proportionate to the employee's misconduct or poor performance.~~ 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 unless the appeal board finds that the decision was arbitrary and capricious or otherwise illegal. The appeal board shall apply a substantial evidence test when determining if the city's decision was arbitrary and capricious. Consistent with the parties' respective burdens of proof and proceeding as set forth in Section 2.28.080, the disciplinary decision being reviewed can only be overturned 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. Substantial evidence means that quantum or quantity of relevant evidence that is adequate to convince a reasonable mind to support a conclusion. If the appeal board finds that there is substantial evidence to support the city's decision, the board shall uphold the decision. If the appeal board finds that there is not substantial evidence to support the city's decision, the appeal board shall overturn the decision. If the appeal board finds in favor of the appealing employee, then the city shall compensate the employee as required by state law.~~

**2.28.095 REMEDIES:**

~~Unless the employee appeal board finds that there is no substantial evidence to support the city's disciplinary decision, the employee appeal 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 ~~as~~by the city or an employee with appeal rights provided ~~in~~by state law.

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Compare 138410-4 to old 124147.

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