

**CHAPTER 6. EMPLOYEE GRIEVANCE
APPEAL BOARD**

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2-6-1. Establishment of employee grievance appeal board.

There is herewith established an Employee Grievance Appeal Board (hereinafter in this Chapter the "Board").

(Ord. 2006-01, 01-04-2006); (Ord. 91-02, 06-14-91)

2-6-2. Selection of Board members and alternates.

(1) Three members of the board shall be elected in December or January by popular vote of the regular status employees of Tooele City. The election shall be effectuated by the Human Resources Director. If the popular vote results in a tie, the City Recorder shall randomly select one name of those tied to serve on the Board. Three alternates shall be elected in the same manner. The Board members shall serve staggered two-year terms, running from January 1 to December 31. At the first election held, two members shall be selected to serve a two-year term and one member shall be selected to serve a one-year term. Thereafter all terms shall be two years unless terminated sooner as provided herein.

(2) The Tooele City Council, in January of each year following a municipal election, shall appoint two individuals to serve as Board members and a first and second alternate. The City Council shall designate one appointee to serve as Chair of the Board during the appointee's Board term.

(Ord. 2006-01, 01-04-2006); (Ord. 91-02, 06-14-91)

2-6-3. Vacancies.

(1) Whenever a vacancy occurs in the Board due to a conflict of interest, death, illness, accident, termination or resignation of a Board member, the first alternate Board member shall hear the appeal. If the first alternate is unavailable or disqualified, the second and successive alternates shall hear the appeal. The alternate Board member shall come from the same representing group (i.e. City Council appointment v. popular vote) from which the vacancy occurred.

(Ord. 2006-01, 01-01-2006); (Ord. 91-02, 06-14-91)

(2) When a vacancy is filled with an alternate on a temporary basis, the alternate shall fill the vacancy for the specific appeal at issue and then revert back to alternate status. When a vacancy is protracted or permanent, the alternate shall fill the vacancy for the balance of the absent Board member's term. Questions regarding the temporariness or permanency of a vacancy shall be resolved by a vote of the non-absent

Board members.

(Ord. 2006-01, 01-04-2006)

2-6-4. Conflicts of interest.

(1) Board members shall avoid the appearance of impropriety in their actions including avoiding conflicts of interest, undue bias, or prejudice.

(2) Conflicts of interest may occur when the appealing employee and a Board member, for example:

(a) are relatives, as defined in the City's Nepotism policy;

(b) are close neighbors;

(c) are close friends;

(d) have a minister / congregant relationship

(e) have made a campaign contribution to or received a campaign contribution from one or the other;

(f) are immediate co-workers;

(g) have a direct supervisor/subordinate relationship; or,

(h) have both filed grievances involving the same or similar occurrences or issues.

(3) Any party alleging that a conflict of interest exists shall submit a letter in writing to the City Recorder in advance of the hearing date. The City Recorder shall forward the letter to the Board Chair.

(4) A Board member who has been identified as potentially having a conflict of interest may temporarily resign or may be removed from the hearing by majority vote of the remaining Board members.

(Ord. 2006-01, 01-04-2006); (Ord. 91-02, 06-14-91)

2-6-5. Hearing Procedure.

(1) After exhausting all procedural steps afforded to employees by Tooele City's Personnel Policies and Procedures, an employee may appeal to the Appeal Board if the decision resulted in any of the following:

(a) involuntary separation (i.e., termination or dismissal);

(b) suspension without pay for more than two days;

(c) involuntary transfer from one position to another with less remuneration; or,

(d) involuntary demotion to a position of less remuneration.

(2) Appeals to the Appeal Board must be submitted to the City Recorder's Office within ten (10) working days after receiving the final decision from internal grievance processes. The City Recorder will promptly refer a copy of the appeal to the Appeal Board members. Upon receipt of the appeal, the Appeal Board will have up to twenty (20) working days to schedule and conduct a hearing.

(3) Appealing employees have the right to appear before the Appeal Board in person, to be represented by legal counsel, to present their own witnesses and evidence, to have a public hearing, to confront the witnesses whose testimony is to be considered, and to examine the evidence to be considered by the Appeal Board. Appealing employees do not have the right to

require the City to compel the attendance of witnesses not under the City's direct control.

(4) The defending City representative has the right to appear before the Appeal Board in person, to be represented by counsel, to present their own witnesses and evidence, to confront the witnesses whose testimony is to be considered, and to examine the evidence to be considered by the Appeal Board.

(5) The Appeal Board is entitled to determine the following:

(a) whether the appealing employee was afforded adequate due process;

(b) whether the adverse employment action was lawful;

(c) whether the adverse employment action was supported by substantial evidence; and

(d) whether applicable, established Tooele City Policies and Procedures were substantially followed.

(6) The Appeal Board may not decide an appeal based upon an interpretation of law or policy different from that of managers, override or modify policy previously approved by the City Council by ordinance, override or modify duly enacted laws or regulations, or render findings based on superseded laws, policies, procedures, or practices.

(7) Each decision of the Appeal Board is by secret ballot. The Appeal Board shall transmit the ballots to the City Recorder. The Appeal Board will communicate to the City Recorder the results of the vote within five (5) working days from the date of the appeal hearing. For good cause, the Appeal Board may extend the 5-day period to a maximum of fifteen (15) working days. The City Recorder, in turn, will communicate the decision to the appealing employee and to the Mayor.

(8) If the Appeal Board finds in favor, in full or in part, of the appealing employee, the Appeal Board must provide that the employee receive either (i) the employee's salary for the period of time during which the employee is discharged or suspended without pay, or (ii) any deficiency in salary for the period during which the employee was transferred or demoted to a position of less remuneration. Any reinstatement of salary shall be offset by any compensation the employee received from other employment during the pendency of the appeal. Insurance reinstatement is under the control of the respective insurer and reinstatement may still result in the employee being subject to re-hire status, pre-existing condition clauses, etc.

(9) Both the City and the appealing employee may submit documents and other evidence to the Board in advance of the hearing. Any materials sent to the Board shall be sent to the opposing party at the same time and in the same manner.

(10) Separate from the hearing, the Board shall not independently investigate the facts and circumstances giving rise to the appeal.

(11) Prior to the hearing, Board members shall not discuss with any employee, witness, or other party,

directly or indirectly, the facts and circumstances giving rise to the appeal.

(12) The Board shall have the discretion to determine matters of hearing procedure, including:

(a) the date, time, and place of the hearing;

(b) whether to allow opening statements;

(c) whether to allow closing statements;

(d) the order in which evidence is to be presented;

(e) whether to allow argument on the evidence;

(f) the length of time each party has to present statements and argument, if any, and evidence;

(g) pre-vote deliberations;

(h) the preparation of findings of fact; and,

(i) other procedural matters.

(13) The Appeal Board will deliver to the City Recorder written findings supporting the majority vote.

(14) The City Recorder will keep a record of the appeal. The record will include, among other things, the following:

(a) the marked ballots;

(b) the findings;

(c) any recording of the appeal proceedings; and,

(d) all evidence and materials submitted to the Board by the City and by the appealing employee.

(Ord. 2006-01, 01-04-2006); (Ord. 91-02, 06-14-91)

2-6-6. Court of Appeals.

(1) The result of the Appeal Board's secret ballot vote may be appealed by either the City or the appealing employee to the Utah Court of Appeals by filing with that Court a Notice of Appeal pursuant to U.C.A. §10-3-1106 (1953), as amended.

(2) In the event an appeal is filed with the Court of Appeals, the decision of the Appeal Board, including payment of back wages, will be automatically stayed from the date of the Appeal Board's vote until a ruling has been rendered by the Court of Appeals.

(Ord. 2006-01, 01-04-2006)