

ORDINANCE NO. 1265

AN ORDINANCE OF DRAPER CITY REPEALING AND REENACTING SECTIONS 3-2-120 AND 3-2-130 OF THE DRAPER MUNICIPAL CODE RELATING TO THE EMPLOYEE APPEAL PROCESS

WHEREAS, Utah State law requires municipalities to create an appeal process for employees who are subject to discharge or dismissal only as provided in Utah Code Annotated 10-3-1106; and

WHEREAS, Utah State law allows Draper City the authority to determine the method and manner for conducting an appeal; and

WHEREAS, it is necessary to update and revise the text to reflect amendments to Utah Code Annotated 10-3-1106 and clearly outline the appeal process for the employee to follow and establish the responsibilities and duties of the Employee Appeal Hearing Officer; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF DRAPER CITY, STATE OF UTAH, AS FOLLOWS:

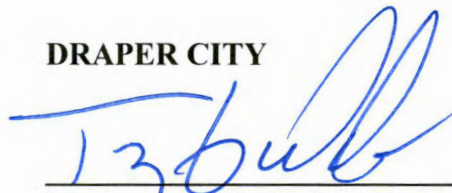
Section 1. Revision. Sections 3-2-120 and 3-2-130 of the Draper City Municipal Code are hereby revised to read as set forth in Exhibit "A".

Section 2. Severability. If any section, part or provision of this Ordinance is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Ordinance, and all sections, parts and provisions of this Ordinance shall be severable.

Section 3. Effective Date. This Ordinance shall become effective immediately upon its publication or posting, or 30 days after final passage, whichever is closer to the date of final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF DRAPER CITY, STATE OF UTAH, ON THE 20TH DAY OF JUNE, 2017.

DRAPER CITY



Mayor Troy K. Walker

ATTEST:



Rachelle Conner, MMC, City Recorder



VOTE TAKEN:

YES

NO

Councilmember Rappleye

✓

Councilmember Stenquist

Councilmember Summerhays

✓

Councilmember Vawdrey

✓

Councilmember Weeks

✓

Mayor Walker

Proposed Municipal Code

3-2-120: Appeals from Disciplinary Actions:

- A. With the exception of those listed below, all employees of the city shall hold their employment without limitation of time, being subject to discharge or dismissal only as provided in Utah Code Annotated 10-3-1106, as amended. Any employee covered herein who is discharged, suspended without pay for more than 16 hours, or involuntarily transferred to a position with less remuneration shall have the right to appeal disciplinary action to the employee appeal hearing officer ("Hearing Officer") in accordance with the provisions of Utah Code Annotated sections 10-3-1105 and 10-3-1106, as amended.
- B. Employees not eligible to appeal a discharge, suspension or transfer as described in Subsection A include:
 - 1. Any officer appointed by the mayor, city manager, or other person or body with power to appoint if the appointment is made in writing; the person's written job description identifies the person's positions as exempt from the protections provided herein; and the position is described in an ordinance as exempt from the protections provided herein;
 - 2. A person who holds the following positions or an equivalent position designated in a city ordinance or personnel policy:
 - a. The chief of police;
 - b. The fire chief;
 - c. Department directors;
 - d. Probationary employees;
 - e. Part time employees; or
 - f. Seasonal or temporary employee;
 - 3. An individual appointed to a position under Part 9, Chapter 3, Title 10 "Appointed Officials and Their Duties" of the Utah Code Annotated, including:
 - a. The city engineer;
 - b. The city recorder;
 - c. The city treasurer; or
 - d. The city attorney.

3-2-130: Employee Appeal Hearing Officer:

- A. Pursuant to Utah Code Annotated 10-3-1106, as amended, the Hearing Officer is designated to hear appeals of employees in accordance with subsection 3-2-120. The city designates the Employee Appeal Hearing Officer as the only internal post-disciplinary appeal procedure for discharges, suspensions without pay for more than 16 hours, or an involuntarily transfer from one position to another with less remuneration for any disciplinary reason (the "Discipline").
- B. Exhaustion of Internal Grievance Procedures. An employee shall exhaust all internal grievance procedures before appealing to the Hearing Officer.
- C. Filing an Appeal.

1. Appeals to the Hearing Officer shall be taken by filing written notice of the appeal with the City Recorder within ten calendar days of receipt of the notice of the final imposition of the Discipline.
2. The appeal shall state the specific reasons for the appeal, including but not limited to the reasons why the employee believes the city's decision was in error, the mailing or email address to be used for further communication with the employee, and the employee's signature.
3. Upon receipt of a properly filed appeal, the city recorder will forward a copy of the appeal to the Hearing Officer.
4. Upon receipt of the appeal from the city recorder, the Hearing Officer will schedule a hearing to take and receive evidence and fully hear and determine the matter which relates to the reason for the discipline. The Hearing Officer may hold a scheduling conference, enter orders regarding procedural issues, and establish deadlines for the parties to exchange witness and exhibits lists.

D. Appeal Hearing Process.

1. The employee shall be entitled to appear in person before the Hearing Officer and to be represented by counsel at the employee's expense, to have a hearing open to the public, to confront the witnesses whose testimony is to be considered, and to examine the evidence to be considered by the Hearing Officer. The employee or the city may request the hearing be open to the public.
2. The appeal hearing shall be scheduled no later than 30 calendar days after the receipt of the appeal in the city recorder's office, unless agreed upon in writing by the employee and the city.
3. The city recorder shall record and take minutes of each session, except for the Hearing Officer's deliberations.
4. The Hearing Officer may exclude from the hearing any witnesses who have not yet given testimony or evidence in the appeal before the Hearing Officer. 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.
5. The city attorney or designee represents the city's interests. The city may retain independent legal counsel for the Hearing Officer.
6. The Hearing Officer shall review a decision using a "substantial evidence" standard of review. "Substantial evidence" is that quantum and quality of relevant evidence that is adequate to convince a reasonable person to support a conclusion. If the Hearing Officer finds that there is substantial evidence to support the city's action, the Hearing Officer shall uphold the action. If the Hearing Officer finds that there is not substantial evidence to support the city's action, the Hearing Officer shall overturn the decision. If the Hearing Officer overturns the city's action, the Hearing Officer's decision shall provide that the city shall compensate the employee as required by state law.
7. The Hearing Officer can only sustain or overturn a decision.
8. The Hearing Officer may establish hearing procedures consistent with Utah Code Annotated 10-3-1106, and may modify those procedures at the hearing as may be equitable and conducive to a determination of the issues.

E. Decision of the Hearing Officer.

1. The Hearing Officer shall issue a written decision. A decision is final when it is signed and dated by the Hearing Officer, and certified with the city recorder. The city recorder shall distribute the certified decision to the employee, the city manager, the human resources director, the city attorney, and the appropriate department director.
2. Each decision of the Hearing Officer shall be certified to the city recorder no later than 15 business days after the day on which the hearing is held; however, for good cause, the Hearing Officer may extend the 15-day period to a maximum of 60 calendar days, if the employee and the city both consent.

I. Judicial Review. The City or the employee may appeal the Hearing Officer's final decision by filing a petition for review with the Utah Court of Appeals no later than 30 calendar days from the certification date of the Hearing Officer's final decision.

J. Application. This subsection does not apply to an employee:

1. Described in subsection 3-2-120; or
2. Discharged or transferred to a position with less remuneration if the termination or transfer is the result of a layoff, reorganization, or other non-disciplinary reason.

Exhibit "B"

Current Municipal Code

3-2-120: APPEALS FROM DISCHARGE OR TRANSFER:

- A. With the exception of those listed below, all employees of the city shall hold their employment without limitation of time, being subject to discharge or dismissal only as provided in Utah Code Annotated 10-3-1106, as amended. Any employee covered herein who is discharged or transferred to a position with less remuneration for any reason shall have the right to appeal the discharge or transfer to the city appeals board in accordance with the provisions of Utah Code Annotated sections 10-3-1105 and 10-3-1106, as amended.
- B. Employees not eligible to appeal a discharge or transfer include:
1. Any officer appointed by the mayor or other person or body exercising executive power;
 2. The chief of police;
 3. The deputy chief of police;
 4. Department heads;
 5. Deputy department heads;
 6. Superintendents;
 7. Probationary employees;
 8. Part time employees; and
 9. Seasonal employees. (Ord. 846, 8-5-2008)

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.

G. Appeal Procedure and Standard of Evidence:

1. Each appeal shall be taken by filing written notice of the appeal with the city recorder within ten (10) calendar days after the discharge, suspension, or transfer of which the employee complains. If the tenth calendar day falls on a Saturday, Sunday, or recognized city holiday, the deadline to file the written notice of appeal with the city recorder is the following Monday or the next business day after the holiday.

2. Upon the filing of an appeal, the city recorder shall forthwith refer a copy of the appeal to the appeal board.
3. On receipt of the appeal from the city recorder, the appeal board shall forthwith commence its investigation, take and receive evidence, and fully hear and determine the matter which relates to the cause for the discharge, suspension, or transfer.
4. An employee who is the subject of the discharge, suspension, or transfer may:
 - a. Appear in person and be represented by counsel;
 - b. Have a public hearing;
 - c. Confront the witness whose testimony is to be considered; and
 - d. Examine the evidence to be considered by the appeal board.
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.
10. If the appeal board finds in favor of the employee, the board shall provide that the employee shall receive:

- a. The employee's salary for the period of time during which the employee is discharged or suspended without pay; or
 - b. Any deficiency in salary for the period during which the employee was transferred to a position of less remuneration.
11. A final action or order of the appeal board may be reviewed by the court of appeals by filing with that court a petition for review. Each petition under shall be filed within thirty (30) days after the issuance of the final action or order of the appeal board. Per Utah Code Annotated 10-3-1106(6)(c), the court of appeals' review shall be on the record of the appeal board and for the purpose of determining if the appeal board abused its discretion or exceeded its authority. (Ord. 1058, 8-27-2013)

REPEAL

Affidavit of Posting

SALT LAKE/UTAH COUNTY, STATE OF UTAH

I, the City Recorder of Draper City, by my signature below, certify that copies of **Ordinance No. 1265** for the **City of Draper**, which **Passed and Adopted by the City Council of Draper City, State of Utah on the 7th day of July, 2017**, was posted at the following places: Draper City Electronic Bulletin Board, Draper Fire Station 12300 South, and the Draper Crescent Senior Citizens Center, within the municipality.

Posted: July 14, 2017 to August 2, 2017

A handwritten signature in blue ink, which appears to read "Rachelle Conner".

Rachelle Conner, MMC
City Recorder
Draper City, State of Utah