

**ORDINANCE NO. 1058**

**A DRAPER CITY ORDINANCE AMENDING DRAPER CITY MUNICIPAL CODE SECTION 3-2-130, APPEAL BOARD TO CLARIFY TIMELINES AND THAT DAYS ARE CALENDAR DAYS.**

**WHEREAS**, the City Council deems it necessary and appropriate to amend sections to the Draper City Municipal Code to clearly reflect the processes outlined in the Utah Code, as amended; and

**WHEREAS**, the City Council finds it is in the best interest of Draper City and the general health, safety and welfare of the public that these changes to Section 3-2-130 of the Municipal Code should be made;

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

**SECTION I. Amendment.** Draper City Municipal Code Section 3-2-130 is hereby amended to read:

**Section 3-2-130 Appeal Board.**

(a) Board Created. There is hereby created an Appeal Board pursuant to Utah Code Ann. 10-3-1106 as amended, to hear appeals of employees not listed in Draper City Municipal Code 3-2-120(b) who have been discharged, suspended without pay for more than two days, or involuntarily transferred from one position to another with less remuneration for any reason.

(b) Members. The Appeal Board shall consist of five members, two of whom shall be chosen by and from the appointed officers and employees of the City and three 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 of its members to serve on the Appeal Board, hereinafter referred to as the "Council Members," and two 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 of its members to serve on the Appeal Board, hereinafter referred to as "Employee Members", and three of its members to serve as alternate Employee Members in the following manner:

(i) 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.

(ii) Voting. Upon the closing of nominations, an election shall be held by all appointed officers and employees of the City to elect two Employee Members of the Board and three Alternate Employee Members. The election shall be by secret ballot. The two individuals receiving the highest number of votes shall be deemed elected as Employee Members, and the next three individuals receiving the highest number of votes shall be deemed elected as Alternate Employee Members.

(iii) 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 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 no 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 *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:

- (i) appear in person and be represented by counsel;
- (ii) have a public hearing;
- (iii) confront the witness whose testimony is to be considered; and
- (iv) 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:

- (i) whether the facts presented to the Appeal Board support the charges that resulted in the discharge, suspension, or transfer; and
- (ii) 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 *within no later than 15 calendar days from the date the matter is referred to it after the day on which the hearing is held*, unless for good cause, ~~the and with the consent of the employee and the city~~, the Appeal Board extends the ~~period beyond 15 days period to a maximum of 60 calendar days, if the employee and city both consent~~. In no case shall the period be extended beyond 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:

- (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 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 30 days after the issuance of the final action or order of the Appeal Board. Per Utah Code Ann. 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.

**SECTION II. General Repealer.** Ordinances in conflict herewith are hereby repealed to the extent of the conflict.

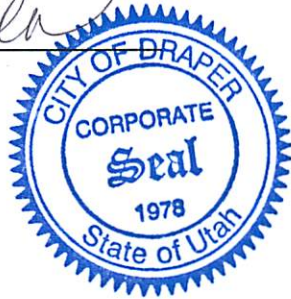
**SECTION III. Effective Date.** This Ordinance shall become effective upon recording by the City Recorder, and 20 days after publication or posting or 30 days after final passage by the City Council, whichever is sooner.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF DRAPER CITY, STATE OF UTAH, ON THIS 21<sup>st</sup> DAY OF August, 2013.**

**ATTEST:**

**DRAPER CITY**

Angie Olsen  
City Recorder, Deputy



Darrell H. Smith  
Darrell H. Smith, Mayor