

COTTONWOOD HEIGHTS

ORDINANCE NO. 195

AN ORDINANCE AMENDING CHAPTER 2.180 OF THE COTTONWOOD HEIGHTS CODE OF ORDINANCES REGARDING THE CITY'S EMPLOYEE APPEAL BOARD

WHEREAS, effective 14 January 2005, the city council (the "*Council*") of the city of Cottonwood Heights (the "*City*") adopted a code of ordinances (the "*Code*") for the City; and

WHEREAS, the Code includes chapter 2.180 ("*Chapter 2.180*") concerning the creation and operation of an employee appeal board for the City, as required by UTAH CODE ANN. 10-3-1106; and

WHEREAS, the City's administration has requested that Chapter 2.180 be amended to better assure the availability of an unbiased employee appeal board with expertise in employee appeal matters; and

WHEREAS, the Council met in regular session on 9 October 2012 to consider, among other things, amending Chapter 2.180 as requested; and

WHEREAS, the Council has reviewed and analyzed the proposed amendments to Chapter 2.180, a compared copy of which is attached to this ordinance; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interest of the health, safety and welfare of the citizens of the City to so amend Chapter 2.180;

NOW, THEREFORE, BE IT ORDAINED by the city council of the city of Cottonwood Heights as follows:

Section 1. ***Adoption of Amended Chapter 2.180.*** Chapter 2.180 is hereby amended as shown on the attached exhibit, with deletions to current Chapter 2.180 ~~struck through~~ or otherwise shown as deletions, and additions to current Chapter 2.180 underlined or otherwise shown as additions.

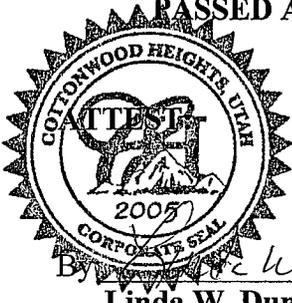
Section 2. ***Action of Officers.*** All actions of the officers, agents and employees of the City that are in conformity with the purpose and intent of this ordinance (this "*Ordinance*"), whether taken before or after the adoption hereof, are hereby ratified, confirmed and approved.

Section 3. ***Severability.*** It is hereby declared that all parts of this Ordinance are severable, and if any section, paragraph, clause or provision of this Ordinance shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of any such section, paragraph, clause or provision shall not affect the remaining sections, paragraphs, clauses or provisions of this Ordinance.

Section 4. ***Repealer.*** All ordinances or parts thereof in conflict with this Ordinance are, to the extent of such conflict, hereby repealed.

Section 5. ***Effective Date.*** This Ordinance, assigned no. 195, shall take immediate effect as soon as it shall be published or posted as required by law and deposited and recorded in the office of the City's recorder, or such later date as may be required by Utah statute.

PASSED AND APPROVED this 9th day of October 2012.



By *Linda W. Dunlavy*
Linda W. Dunlavy, Recorder

COTTONWOOD HEIGHTS CITY COUNCIL

By *Kelvyn H. Cullimore, Jr.*
Kelvyn H. Cullimore, Jr., Mayor

VOTING:

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael L. Shelton	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael J. Peterson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Tee W. Tyler <i>Absent</i>	Yea <input type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the Recorder's office this 9th day of October 2012.

POSTED this 10 day of October 2012.

Chapter 2.180

EMPLOYEE APPEAL BOARD

Sections:

- 2.180.010 Creation.
- 2.180.020 Board composition.
- 2.180.030 Operation.
- 2.180.040 Standard of review.
- 2.180.050 Rights of appellant.
- 2.180.060 Discovery.

2.180.010 Creation.

Pursuant to UTAH CODE ANN. §10-3-1106, an employee appeal board is hereby created for the city.

2.180.020 Board composition.

A. The employee appeal board shall consist of one individual selected by the city manager, with advice and consent of the city council, for purposes of a specific appeal. The manager may maintain a roster of individuals who are qualified and may be available for appointment as the employee appeal board for any specific appeal. ~~five members, determined as follows:~~

~~A. A member of the city council chosen by the city manager with advice and consent of the city council, who shall act as chairperson and shall vote. Such member shall serve until a replacement is appointed and qualified.~~

B. ~~B.~~—The board member shall be a member of the Utah State Bar in good standing or another qualified individual who has expertise or experience in municipal employment matters.

C. Subject to subsection (D) below, the board member shall serve for the term of office specified in the council resolution approving the appointment, which shall not exceed four years. If the resolution does not specify a term of office, then the term of office shall be for duration of the employee appeal specified in the approving resolution.

D. The board member is subject to removal by the city manager, with advice and consent of the city council, at any time, with or without cause. Without limiting the generality of the foregoing, the board member may be removed if the manager determines that any condition or relationship exists which may prevent the board member from performing its duties under this chapter with appropriate expertise and impartiality. ~~Another member chosen by the city manager from among the city's department heads or statutory officers, or another person not affiliated with the city's government, who may have expertise or experience in municipal employment matters. Such member shall serve at the city manager's pleasure. The city manager himself shall not, however, sit on the employee appeal board.~~

~~C. Three appointed or regular city employees, who shall be elected and chosen from the appointed officers and employees of the city. Such election shall be conducted by the director of the city's human resources division, under supervision of the director of the city's administrative services department in January of each year, and shall be by secret ballot. These board members shall originally serve terms of one, two, and three years and shall thereafter serve terms of two~~

years. Such members of the appeals board may not participate in a hearing when any of the following conditions exist:

1. When the member is the appellant or has been formally disciplined within the 12 months preceding the hearing;
2. When the member is employed in the same department as the appealing employee;
3. When the member declines to serve on the board for purposes of the appeal due to personal involvement in the events leading to the subject disciplinary action or for any other valid reason; or
4. When the member is related by blood or by marriage to the appealing employee.

E. The city manager's decision on this issue shall be conclusive.

D. If a member of the appeals board declines or otherwise is disqualified from participating in a hearing, then that member shall be replaced, either for the purpose of that hearing or permanently, by another temporary member, who shall be an employee or appointed officer of the city chosen by the balance of the appeal board appointed by the city manager with advice and consent of the city council.

2.180.030 Operation.

A. The appeal board is authorized only to hear appeals of city employees under UTAH CODE ANN. §10-3-1106(1), which is limited to those certain employees described in UTAH CODE ANN. §10-3-1105, as amended, by city employees who have been discharged, suspended for over two days without pay, or involuntarily transferred to a position with less remuneration for any reason.

B. Appeals to the appeal board shall be subject to, and shall comply with, the requirements of UTAH CODE ANN. §10-3-1106.

C. Hearings shall be conducted in accordance with:

1. UTAH CODE ANN. §10-3-1106; and

2. Any additional procedures promulgated by the city's human resources director in consultation with the city attorney, subject to approval by the city manager.

D. Votes shall be by secret ballot.

E. The ruling of the appeal board shall be final, subject to any appeal right to the Court of Appeals under UTAH CODE ANN. §10-3-1106(6).

2.180.040. Standard of review.

The employee appeal board shall review a decision using the following standard of review:

A. Step 1: Do the facts support the need for discipline or other remedial action as set forth in the decision under appeal? In other words, was the action warranted? If the city's account of the evidence is plausible in light of the record viewed in its entirety, the decision should be upheld, even though the board may have weighed the evidence differently had it been in the decision maker's position. In order to overturn a disciplinary action, the board must have a definite and firm conviction that the underlying decision was erroneous.

B. In an appeal where the employee was discharged, not for disciplinary reasons but because the employee was no longer able or qualified to do the job, the board's analysis shall end with step 1 of the analysis as set forth in subsection (A), above. However, in an appeal of any other disciplinary action, the board shall proceed to step 2 of the analysis, set forth in subsection (C), below.:

C. Step 2: In a disciplinary action, if the facts support the need for action to be taken, is the action taken proportionate to the charges? Discipline imposed for employee misconduct is within

the discretion of his supervisor, department head and city manager as provided elsewhere in this title. Unless the board finds the penalty so harsh as to constitute an abuse, rather than an exercise of the department head's discretion, the decision of the department head should be upheld.

2.180.050. Rights of appellant.

An appellant may present relevant information in mitigation, including the presentation of witnesses and other evidence. Such evidence must relate to:

A. ~~(a)~~ The cause for the action taken as set forth in the disciplinary decision, and

B. ~~(b)~~ Any issues raised at the prior internal proceeding(s) before the supervisor, department head, city manager, or designee.

2.180.060. Discovery.

Discovery shall be limited to that which is relevant and not privileged, and for which each party has a substantial, demonstrable need for supporting their respective claims or defenses.