

Ordinance 2016-31

SHORT TITLE:

An ordinance amending Provo City Code to specify which individuals are part of the Unclassified Civil Service and which may appeal certain personnel actions. (16-120)

PASSAGE BY MUNICIPAL COUNCIL

ROLL CALL

DISTRICT	NAME	MOTION	SECOND	FOR	AGAINST	OTHER	
CW 1	DAVID SEWELL	✓		✓			
CW 2	GEORGE STEWART		✓	✓			
CD 1	GARY WINTERTON			✓			
CD 2	KIM SANTIAGO			✓			
CD 3	DAVID KNECHT			✓			
CD 4	KAY VAN BUREN			✓			
CD 5	DAVID HARDING			✓			
				TOTALS	7	0	0

This ordinance was passed by the Municipal Council of Provo City, on the 15th day of November, 2016, on a roll call vote as described above. Signed this 7 December 2016.

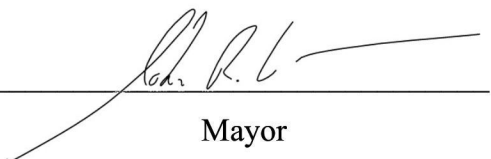


Chair

II

APPROVAL BY MAYOR

This ordinance is approved by me this 8 December 2016.



Mayor


Ordinance 2016-31

III

CITY RECORDER'S CERTIFICATE AND ATTEST

This ordinance was signed and recorded in the office of the Provo City Recorder on the 8th day of December, 2016, with a short summary being published on the 19th day of November, 2016, in The Daily Herald, a newspaper circulated in Provo, Utah. I hereby certify and attest that the foregoing constitutes a true and accurate record of proceedings with respect to Ordinance Number 2016-31.




City Recorder

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A. If a provision of this ordinance conflicts with a provision of a previously adopted ordinance, this ordinance shall prevail.

B. This ordinance and its various sections, clauses and paragraphs are hereby declared to be severable. If any part, sentence, clause or phrase is adjudged to be unconstitutional or invalid, the remainder of the ordinance shall not be affected thereby.

C. The Municipal Council hereby directs that the official copy of the Provo City Code be updated to reflect the provisions enacted by this ordinance.

D. This ordinance shall take effect immediately after it has been posted or published in accordance with Utah Code 10-3-711, presented to the Mayor in accordance with Utah Code 10-3b-204, and recorded in accordance with Utah Code 10-3-713.

END OF ORDINANCE.

EXHIBIT A

Amendments to Provo City Code Chapters 4.02, 4.03, and 4.04

Chapter 4.02 Unclassified Civil Service.

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4.02.010. Unclassified Civil Service - Created - Rules and Regulations.

(1) There shall be an unclassified civil service consisting of all ~~officers and~~ employees of the City, except for the following:

(a) newly hired employees during the period of their initial probation.

(b) part-time employees, seasonal or temporary employees.

(c) contract employees.

(d) the head of a department.

(e) employees covered by the classified civil service.

(f) secretarial or administrative support positions specifically designated to assist an elected official.

(g) personal staff of the Mayor who work in the main office of the Mayor.

(h) Council Office employees.

(i) any employee who has acknowledged in writing that their employment status is appointed or at-will, and

(i) any appointed employee, provided the appointment is made in writing and the position is identified as being exempt from unclassified civil service protection in ordinance and in the position's written classification specification, including, but not limited to, the Chief Administrative Officer and the Chief-Deputy-Mayor's Office. ~~members of the classified civil service, and except for office heads as described hereafter.~~

(2) ~~Department Directors not included in unclassified civil service. All department directors of the City as hereinafter defined shall not be considered unclassified civil service employees in their capacity as department directors and shall not have access to the employee grievance procedure. Said~~ Administrative department heads ~~directors~~ shall be appointed by the Mayor, with the advice and consent of the Municipal Council. If a ny department head ~~director~~ is removed from their position within two (2) years of retirement, a position for other employment within the City will be offered to enable them to be eligible for earned retirement benefits, unless that removal is based on a violation of law by the department head.

(3) ~~Department directors designated.~~ The following offices and positions within the administrative departments of Provo City are hereby declared to be administrative department heads and exempt from unclassified civil service: the Chief of Police, Fire Chief, City Attorney, Director of Public Works, Director of Finance Administrative Services, Director of Energy, ~~Director of Personnel Services~~, Director of Library Services, Director of Parks and Recreation, Director of Redevelopment, Director of Community Development, ~~Director of Information Systems~~, and the Director of Economic Development. The Council Executive Director position is a department head of a non-administrative department and is also exempt from unclassified civil service. At the discretion of the Mayor and with the advice and consent of the Municipal Council, one (1) person may be appointed to hold ~~two~~ one (+2) or more department director head responsibilities; and the department head ~~director~~ shall be compensated at the rate applicable to the highest paid department head ~~director~~ position over which the person is placed in charge.

(4) The City Administration shall establish rules and regulations for the administration of the unclassified civil service.

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Chapter 4.03 Unclassified Civil Service Appeals.

- 4.03.010. Right of ~~Officers and~~ Employees in the Unclassified Civil Service to Appeal Certain Personnel Actions.
- 4.03.020. Rules for Appeals.
- 4.03.030. Provo City Unclassified Civil Service Appeal Board Created - Selection of Board Members - Procedural Rules.
- 4.03.040. Rules and Practices.

4.03.010. Right of ~~Officers and~~ Employees in the Unclassified Civil Service to Appeal Certain Personnel Actions.

(1) All ~~appointive officers or employees in the unclassified civil service~~ of Provo City, except those **identified** in ~~Subsection (3) of this Section~~ **Provo City Code 4.02.010** shall be entitled to appeal the following to the Provo City Unclassified Civil Service Appeal Board (the "Appeal Board"):

(a) any action resulting in a discharge, ~~demotion,~~ suspension **for more than two days without pay,** or an **involuntary** transfer ~~for a disciplinary purpose~~ to a position with less remuneration;

(b) subsection (1)(a) does not apply to an employee who is discharged or involuntarily transferred to a position with less remuneration if the action is a result of a layoff, reorganization, or other non-disciplinary reason.

(2) No action required by any Section of the Provo City Code or other ordinance shall directly or indirectly be the subject of an appeal to the Appeal Board.

~~(3) This Section shall not apply to part-time or temporary employees or full-time exempt positions. Also, this Section shall not apply to any person eligible for classified civil service, the City Treasurer, City Recorder, City Budget Officer, or personnel assigned to the Mayor's office.~~

4.03.015. Informal Grievance Procedure

The following informal grievance procedures are available to Unclassified Civil Service employees and shall be applied prior to an employee filing a formal appeal to the Appeal Board:

(1) An employee has three business days from the date he/she is notified of the subject action to have an informal discussion about the issue with the department head or his/her designee. This discussion is considered to be an informal appeal of the subject action. Unless the employee and the department head mutually otherwise agree, only those two parties shall be present during the informal discussion, and no formal record or audio recording of the discussion will be kept.

(2) Upon completion of the informal discussion, the department head has three business days to notify the employee of his/her decision to either uphold, overturn, or amend the subject action.

(3) The informal appeal is considered to be denied if the discussion is not held within three business days, or if the employee is not notified of the department head's decision within three business days of having the discussion. The deadlines for the informal appeal process can be extended up to one week if mutually agreed upon by the employee and the department head.

(4) In the event the informal appeal is denied, the employee has three business days from the date of notification to submit a written notice of appeal to the Mayor's Office. The notice of appeal shall be on a form approved by the Mayor's Office. At the discretion of the Mayor, the appeal will be heard by either the Mayor or Chief

Administrative Officer. Unless the employee and the Mayor or Chief Administrative Officer mutually agree otherwise, only those two parties shall be present during this informal discussion, and no formal record or audio recording of the discussion will be kept. The Mayor or Chief Administrative Officer has seven business days from the time the notice of appeal is received to conduct the hearing.

(5) After hearing the appeal, the Mayor or Chief Administrative Officer has three business days to notify the employee of his/her decision to either uphold or overturn the subject action.

(6) The appeal to the Mayor's Office is considered to be denied if the discussion is not held within seven business days of the appeal being submitted, or if the employee is not notified of the decision within three business days of the hearing being held. The deadlines for the appeal process to the Mayor's Office can be extended up to one week if mutually agreed upon by the employee and the Mayor.

(7) In the event the appeal to the Mayor's Office is denied, the employee may formally appeal the subject action to the Appeal Board.

4.03.020. Formal Appeal Board Rules for Appeals.

The following rules shall apply to appeals: (1) To file an appeal, an employee must submit~~An officer or employee appealing, when permitted by the Provo City Code or other City ordinances, shall file a written notice of appeal with the City Recorder within ten (10) calendar working days of the final disposition of the informal grievance procedure after the subject action.~~ The notice of appeal shall be upon a form approved by the Appeal Board. Upon the filing of the appeal, the City Recorder shall forthwith refer a copy of the same to the Appeal Board. Upon receipt of the referral from the City Recorder, the Appeal Board shall, except as provided below, set a date for a hearing, take and receive evidence and fully hear and determine the matter ~~that~~which is the subject of the appeal.

(2) ~~The Appeal Board shall not conduct a hearing on an appeal until the officer or employee has had an informal discussion with the officer's or employee's department head, attempting therein to resolve the matters at issue. Said discussion may take place before or after the filing of a notice of appeal. Unless the officer or employee and the department head mutually otherwise agree, only those two (2) parties shall be present during the informal discussion, and no formal record or tape recording of the discussion shall be kept. The Appeal Board shall proceed with a hearing if it finds that a department head has failed or refused to conduct the informal discussion required by this Subsection within ten (10) working days after the officer or employee has requested such a discussion. For the purpose of this Subsection a "working day" shall mean a day during which Provo City Recorder's Office is open to the public.~~

~~(3) The officer or employee shall be entitled to appear in person and to be represented by counsel (who may be, but is not required to be, an attorney at law), to have a public hearing, to confront the witness whose testimony is to be considered, and to examine the evidence to be considered by the Appeal Board.~~

~~(3) The Appeal Board shall uphold the action that~~which~~ is the subject of the appeal unless the same is shown to be arbitrary, capricious, or contrary to law. Action that~~which~~ is contrary to law includes, but is not limited to, action based on race, color, religion, sex, pregnancy or pregnancy-related conditions, childbirth, age, national origin, disability, sexual orientation, gender identity, political affiliation, religious belief, disability or incident to, or through, changes, ~~either~~ in the office of Mayor, members of the Municipal Council, or heads of departments.~~

~~(5) In the event the Appeal Board upholds the action which is the subject of the appeal, the officer or employee shall have fourteen (14) calendar days thereafter to appeal to the Mayor whose decision shall be final. In the event the Appeal Board does not uphold the action which is the subject of the appeal, the case shall, after the awarding of any appropriate remedy described in Subsection (7) of this Section, be closed and no further proceedings shall be had.~~

~~(6) The decision of the Appeal Board shall be by secret ballot, and shall be certified to the employee, the head of the department from whose action the appeal was taken, and the City Recorder ~~within no later than~~ fifteen (15) calendar days from the date on which the hearing is held, ~~the matter is referred to it.~~ Each decision of the Appeal Board shall require a majority of three (3) votes in favor of the decision to take effect. ~~The Appeal Board may, in its decision, provide that an officer or employee shall receive the officer's or employee's salary, or any relevant part thereof, for any period of time during which the officer or employee was wrongfully deprived of the same.~~~~

~~(57) If in the event the Appeal Board finds in favor of the employee, the Appeal 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 less any amounts the employee earned from other employment during this period of time; or~~

~~(b) Any deficiency in salary for the period during which the employee was transferred to a position of less remuneration.~~

~~does not uphold the action which is the subject of the appeal, the City Recorder shall certify the decision to the officer or employee affected, and also to the head of the department from whose order the appeal was taken. The officer or employee shall be paid the officer's or employee's salary, commencing with the next working day following the certification by the City Recorder of the Appeal Board's decision, provided that the employee or officer concerned reports for assigned duties during the next working day.~~

~~(6) The Appeal Board may award only the relief described in this Section. The Appeal Board may not award a merit increase or any other consideration.~~

~~(7) 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. A petition for review must be filed with the Court of Appeals within 30 days after the issuance of the final action or order of the Appeal Board. The Court of Appeals review shall be on the record of the Appeal Board for the purpose of determining if the Appeal Board abused its discretion or exceeded its authority.~~

4.03.030. Provo City Unclassified Civil Service Appeal Board Created - Selection of Board Members - Procedural Rules.

(1) A Provo City Unclassified Civil Service Appeal Board ("the Appeal Board") is hereby created, which shall have five (5) members. Two (2) members of the Appeal Board, and two alternates, shall be appointed by the Mayor from the ~~eligible full-time officers and~~ employees of the City, each of whom shall serve for a term of three (3) years, or until their successors are selected, whichever period of time is longer. Three (3) members of the Appeal Board, and three (3) alternates, shall be selected by and from the ~~eligible full-time officers and~~ employees in the unclassified civil service, each of whom shall serve for a term of three (3) years, or until their successors are selected, whichever period of time is longer. Provided, however, that the terms of members of the Appeal Board may be altered as necessary to provide for staggered terms. An alternate will only officially attend and participate on the board during a grievance hearing when designated to replace an Appeal Board member. Employees in Human Resources and Legal are not eligible to serve as members of the Appeal Board.

(2) The Human Resources Director shall divide the departments in Provo City into three (3) groups, with each group composed of approximately the same number of ~~unclassified civil service officers and~~ employees. Each group shall, by vote, select one (1) ~~officer or~~ employee, and an alternate, from their group to serve as a member of the Appeal Board. The member and the alternate may not be from the same department. The City Recorder shall, upon request, assist in or conduct the election in ~~any requesting one (1) or more of the~~ groups. Unclassified civil service employees in Human Resources and Legal are eligible to participate in the vote but are not eligible to serve on the Appeal Board. The City Recorder is not eligible to vote or to serve on the Appeal Board.

(3) If an Appeal Board member not selected by the Mayor shall resign or for any other reason fail to serve, such member shall be replaced by the ~~corresponding~~ alternate member ~~selected by the group which selected the subject regular member.~~ If both the member and the alternate resign or for any other reason fail to serve, an interim replacement shall be selected by an election conducted under the same rules applicable to the original selection.

(4) The Appeal Board may adopt reasonable procedural rules not inconsistent with the Provo City Code or other City ordinances or other applicable law for the conduct of its business.

4.03.040. Rules and Practices.

(1) The City may:

- (a) direct, assign, transfer, lay-off or take disciplinary action in relation to any ~~officer or~~ employee;
- (b) determine appropriate staffing levels and work performance standards; the content of the workday, including workload factors; the quality and quantity of services to be offered to the public; and the means and methods of offering those services;
- (c) determine whatever actions may be necessary to carry out responsibilities in situations of bona fide emergency.

(2) All ~~officers and~~ employees shall have the right to review any matter related to their employment with their administrative superiors, including matters ~~that~~ which cannot be appealed to the Appeal Board. It is the policy of the City to encourage the free exercise of this right.

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Chapter 4.04 Pay Plans.

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4.04.100. Employer Contributions for Provo City Employee Retirement Programs.

The following shall apply only to Provo City employees eligible to participate in the Utah Retirement System as defined in Title [49](#) of the Utah Code and elected officials:

(1) Provo City shall contribute to the Utah Retirement System the required employer and employee defined benefit contributions for all employees defined as Tier I by the retirement system.

(2) Provo City shall contribute to the Utah Retirement System the required employer amount for all employees defined as Tier II by the retirement system.

(3) Provo City shall provide a matching contribution to employee's 401(k) defined contribution plan with the Utah Retirement System as follows:

(a) The matching contribution by Provo City for a given pay period shall be equal to two percent (2%) of the employee's earnings in that pay period or the amount of the eligible contribution made by the employee for that pay period, whichever is less.

(b) All matching contributions shall be based on an employee's earned base wages as set out in the Pay Range Table or as established in Section [4.04.110\(1\)](#), Provo City Code, plus any eligible longevity and/or specialist pay, but shall not include any other earnings, payments, or reimbursements.

(c) Matching contributions shall commence with the pay period beginning June 26, 2011, for employees and elected officials hired or elected before July 1, 2011. For elected officials, the Chief Administrative Officer, and appointed department directors as designated in Section [4.02.010\(3\)](#), Provo City Code, who take office or are appointed on or after July 1, 2011, matching contributions shall commence with the pay period in which they take office or are appointed to the position. Except as otherwise provided herein, for employees who are appointed, hired, or rehired on or after July 1, 2011, matching contributions shall commence with the first pay period after the employee has completed any required probationary period or one (1) year of service from the time of their appointment, hire, or rehire, whichever is longer.

(d) An employee drawing a pension from the Utah Retirement System is not eligible for a City contribution.

(e) All other defined contribution plan provisions are governed by the applicable Utah Retirement System defined contribution plan and Title [49](#) of the Utah Code.

(4) Employees that qualify for, and exempt out of, the Tier I retirement system may receive a contribution equivalent to the Tier I required employer and employee defined benefit contributions. Any such contribution shall be made to a defined contribution plan approved by Provo City.

(5) Provo City may also make other retirement related contributions as permitted and/or required by State or Federal law.

(6) For purposes of participation eligibility in the Utah Retirement System, the Mayor shall be certified as a full-time elected official, and the members of the Municipal Council shall be certified as part-time elected officials, and contributions to that system shall be made in accordance with the Utah State Retirement and Insurance Benefit Act.

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