

ORDINANCE 2000-04

AN ORDINANCE OF NORTH OGDEN CITY CREATING AN APPEALS BOARD, PROVIDING FOR A PROCEDURE OF SELECTING COUNCILMEN AND EMPLOYEES TO SERVE AS MEMBERS OF THE APPEALS BOARD AND ESTABLISHING PROCEDURES FOR THE APPEALS BOARD TO FOLLOW

RECITALS

Pursuant to Utah Code Ann. §10-3-1106, the City is required to establish an appeals board and to create a procedure for choosing the members of the appeals board.

The City has not previously established an appeals board and desires now to do so.

NOW THEREFORE, be it hereby ordained by the City Council of North Ogden City as follows:

**Section 1:** There is hereby added a Chapter 28 to Title 2 of the North Ogden Municipal Code, which shall read as follows:

Chapter 2.28

APPEALS BOARD

Sections:

2.28.010	Establishment and Purpose
2.28.020	Board Members
2.28.030	Appointment of Council Members
2.28.040	Appointment of Employee Members
2.28.050	Appeals to the Appeals Board
2.28.060	Referral to the Appeals Board
2.28.070	Employee Member Disqualification
2.28.080	Appeals Board Procedure
2.28.090	Decision
2.28.100	No Appeal by City
2.28.110	Appeal by Appellant

2.28.010      Establishment and Purpose. There is hereby established an appeals board in North Ogden City. The purpose of the appeals board shall be to consider appeals brought by employees of the city who are discharged or transferred to a position with less remuneration, except that the following employees shall not be eligible to appeals before the appeals board:

1. Members of the North Ogden Police Department;
2. Members of the North View Fire Department;
3. Heads of Departments; and
4. Superintendents.

2.28.020 Board Members. The Board of Appeals shall consist of five members. All board members shall serve for a term of two years from the date they are appointed. Members of the Board of Appeals shall be selected prior to July 1 in even-numbered years. Nothing herein shall be construed to prevent any member of the Appeals Board from serving for two or more consecutive terms and there shall be no limit on the number of terms any member of the Appeals Board may serve. Two members shall be members of the City Council ("the Council Members") and shall be appointed as set forth in section 2.28.030. The remaining three members of the Appeals Board shall be employees or appointed officers of the City ("the Employee Members") and shall be appointed as set forth in section 2.28.040.

2.28.030. Appointment of Council Members. The Council Members of the Appeals Board shall be appointed by the city council at a regularly-scheduled meeting of the city council.

A. The mayor shall have ballots prepared prior to the meeting listing each member of the city council.

B. The mayor shall not be eligible to serve on the Appeals Board and his name shall not be listed on the ballots. The mayor also shall not participate in the voting for the Council Members of the Appeals Board.

C. At the meeting, the mayor shall distribute the ballots to the council members and each council member shall vote for two council members to serve as the Council Members of the appeals board, provided that no city councilman may cast both of his or her votes for the same member of the council.

D. The mayor shall count the ballots and announce the results of the balloting during the meeting at which the council votes.

E. The city councilman having the highest number of votes shall be the Chairman of the Appeals Board. The city councilman having the second-highest number of votes shall be a member of the Appeals Board. The city councilman having the third-highest number of votes shall be an alternate and shall serve on the Appeals Board only if the Chairman and Council Member are unable to serve.

D. If there is a tie among three or more members of the council for the highest number of votes, the names of the three or more tied city councilmen shall be put into a hat and the mayor shall draw three names out of the hat. The first name drawn shall be the Chairman of the Appeals Board. The second name shall be a member of the Appeals Board. The third name drawn shall be the alternate. All other tied members of the shall not be members of the Appeals Board.

E. If there is one city councilman who receives more votes than any other and a tie between two or more city councilmen for the next-highest number of votes, the city councilman receiving the highest number of votes shall be the Chairman of the Appeals Board. The mayor shall put the names of the tied city councilmen into a hat and draw two names out of the hat. The city councilman whose name is drawn out of the hat first shall be a member of the Appeals Board. The city councilman whose name is drawn out second shall be the alternate. The other city councilmen who were tied shall not be members of the Appeals Board.

F. All other ties in the voting for Council Members shall be broken by putting the names of the tied city councilmen in a hat and drawing out names until all of the vacancies in the Appeals Board are filled.

2.28.040      Appointment of Employee Members.

A. For purposes of choosing the three members of the Appeals Board from among the employees and appointed officer of the City ("the Employee Members"), the City shall be divided into four Divisions. The Divisions shall be:

1. The employees and appointed officers of the North Ogden Police Department;
2. The employees and appointed officers of the North View Fire Department;
3. The employees and appointed officers of the Public Works Department of North Ogden City; and
4. The employees and appointed officers of all other departments of the City.

B. Each Division shall have a person designated as the Division Lead, who shall supervise the selection of the Employee Member from his or her Division. The Division Leads shall be:

1. For Division 1, the Chief of the North Ogden Police Department.
2. For Division 2, the Chief of the North View Fire Department.
3. For Division 3, the head of the Public Works Department.
4. For Division 4, the City Administrator.

C. During each even-numbered year, the employees and appointed officers in each Division shall appoint one person from among their number to represent the Division on the Appeals Board. The appointment shall be by secret ballot distributed to the employees of each Division. The Division Lead shall call a special meeting of the employees and appointed officers in his or her division the purpose of selecting an Employee Member from that Division.

D. The Division Lead shall notify the Mayor of the time of the special meeting and the Mayor or his designate shall attend the meeting.

E. At the meeting, the mayor or his designate shall explain the purpose of the meeting and shall explain the purpose of the Appeals Board. The mayor or his designate shall also supervise the election of the Employee Members.

F. Prior to the special meeting, the Division Lead shall prepare ballots. The ballots shall list the names of each employee and appointed officer in the Division, including the Division Lead, and shall provide a space beside each name for the employees and appointed officers to indicate the employees or appointed officer they are voting for.

G. The employees of each Division shall each vote for two employees or appointed officers in the Division, provided that no employee or appointed officer shall cast both of his votes for the same person. Ballots on which one or two names are marked shall be valid, but ballots on which three or more names are marked shall be invalid and shall not be counted. The Division Lead shall participate in the voting.

H. The mayor or his designate shall count the votes. The employee or appointed officer receiving the highest number of votes shall be the Employee Member from that Division.

The employee or appointed officer receiving the second-highest number of votes shall be the alternate from that Division.

I. In the event two or more employees or appointed officers from any Division are tied, the mayor or his designate shall place the names of the tied employees or appointed officers into a hat and draw out two names. The first name drawn shall be the Employee Member from that Division. The second name drawn shall be the alternate from that Division.

J. In the event one employee or appointed officer receives more votes than any other and there is a tie for the second-highest number of votes, the employee or appointed officer with the highest number of votes shall be the Employee from that Division. The mayor or his designate shall place the names of the employees or appointed officers with the second-highest number of votes into a hat and draw one name. That person shall be the alternate from that Division.

2.28.050      Appeals to the Appeals Board.      Any employee who is discharged or transferred to a position with less remuneration and who is eligible for a hearing before the Appeals Board shall comply with all policies in the North Ogden City Personnel Policies and Procedures Manual before filing an appeal with the Appeals Board. If the employee has complied with all applicable personnel policies and is still unsatisfied with the result, the employee may file an appeal with the Appeals Board by filing written notice of the appeal with the City Recorder within ten days of receiving the final decision under the City's personnel policies.

2.28.060.      Referral to the Appeals Board.      Upon receiving an appeal under Section 2.28.050, the City Recorder shall transmit a copy of the appeal to the Chairman of the Appeals Board as quickly as reasonably possible.

2.28.070.      Employee Member Disqualification. In any appeal before the Appeals Board, the three Employee Members of the Appeals Board shall be determined by disqualifying the Employee Member of the Appeals Board which was selected by:

A. In the case of an appeal by an employee who was discharged, the Division in which the appellant worked immediately prior to the discharge, or

B. In the case of an appeal by an employee who was transferred to a position with less remuneration, the Division in which the appellant worked immediately prior to the transfer.

2.28.080.      Appeals Board Procedure. Upon receiving notification of an appeal from the City Recorder, the Chairman of the Appeals Board shall contact all of the members of the Appeals Board who will sit on the appeal and call a meeting of the Appeals Board to begin considering the appeal. The following procedures shall govern the Appeal Board's consideration of the appeal:

A. The first order of business in any investigation shall be to determine whether any member of the Appeals Board has a conflict of interest which would prevent that member from participating in the investigation. The following shall be examples of conflicts which would prevent an Appeals Board member from participating in the investigation:

1. Working closely with the appellant, either immediately prior to the discharge or transfer or at some time in the past;
2. Strong feelings in favor of or against the appellant;
3. Strong feelings in favor of or against the department head or other person who made the decision to discharge the appellant or to transfer the appellant to a position with less remuneration.

B. Any member of the Appeals Board may notify the Chairman that he or she believes he or she may have a conflict which would disqualify that person from impartially considering the appeal before the Appeals Board. If the Chairman receives notice from any member of the Appeals Board of a conflict, the Chairman shall meet with the member. During the meeting, the member shall explain the conflict to the Chairman and the Chairman shall decide whether the member shall be excused. The decision of the Chairman regarding an attempt by a member of the Appeals Board to be excused shall be final.

1. If the Chairman decides not to excuse a member of the Appeals Board under this section, the member shall participate in the investigation.

2. If the Chairman excuses a member of the Appeals Board from participating in an investigation under this Section, the Chairman shall appoint an alternate to take the excused member's place. If the excused member was a Council Member, the Chairman must replace the excused member with the council alternate. If the excused member was an Employee Member he or she must be replaced with the alternate from the Division which selected the excused member.

3. If the Chairman requests to be excused, the other Council Member of the Board of Appeals shall make a decision on his or her request. If the Chairman is excused, the other original Council Member shall assume the duties of the Chairman.

C. After the final members of the Appeals Board which will hear the appeal have been determined, the members of the Appeals Board shall set a timetable for the investigation. The timetable shall provide for the conclusion of the investigation within 15 days of the date the Chairman of the Appeals Board received notice of the appeal.

D. As part of its investigation, the Appeals Board shall, at a minimum, interview:

1. the appellant,
2. the person who made the decision to discharge the appellant or transfer the appellant to a position with less remuneration; and
3. any person who made a decision on the issue under the city's personnel policies.

E. The Appeals Board may interview any other witnesses or employees who the Appeals Board believes have information which will be helpful in making a decision in the appeal. The Appeals Board shall have authority to compel employees and officers of the City to attend its meetings and be interviewed, but shall have no power of subpoena to compel other persons to cooperate with its investigation.

F. The Appeals Board shall not have power to place persons under oath, but the Appeals Board may inform employees and officers of the City that any misrepresentations made

before the Appeals Board may be cause for discipline, up to and including termination of employment with the City.

G. The Appeals Board shall have access to all records of the City which are classified as public documents under the Governments Records Access and Management Act, Utah Code Ann. §§63-2-101 et. seq.

H. The meetings of the Appeals Board may be held during business hours or at any other time convenient to the members of the Appeals Board. If the members of the Appeals Board cannot agree on a time to hold meetings, the Chairman shall set the times for the meetings of the Appeals Board, and all members of the Appeals Board shall be required to attend all meetings of the Appeals Board.

I. The Chairman of the Appeals Board shall preside over all meetings of the Appeals Board.

J. The City shall pay all members of the Appeals Board and employees interviewed by the Appeals Board their normal hourly wage during all times the members are attending meetings of the Appeals Board.

K. The appellant shall have the right:

1. to be present at all meetings of the Appeals Board,
2. to be represented by counsel of the appellant's choice at all stages of the investigation, provided that nothing herein shall be construed to create a duty on the part of the City to supply counsel for the appellant,
3. to confront any witnesses interviewed by the Appeals Board, and
4. to examine all evidence considered by the Appeals Board.

L. All meetings of the Appeals Board shall be closed to the public, except that the appellant may request an open hearing, in which case the meetings of the Appeals Board shall be open to the public.

2.28.090. Decision. At the conclusion of its investigation, the Appeals Board shall make a decision. The decision shall be made by secret ballot.

A. After receiving all pertinent evidence and testimony, the Appeals Board may hold a closed meeting to discuss the appeal.

B. The Chairman of the Appeals Board shall prepare ballots, which shall have spaces for the members of the Appeals Board to vote to affirm the discharge or transfer or to overturn the discharge or transfer.

C. The voting shall be by secret ballot and the completed ballots shall be returned to the Chairman of the Appeals Board, who shall collect the ballots, count the votes, and certify the decision of the Appeals Board to the City Recorder.

D. The City Recorder shall send a copy of the Appeals Board's decision to the appellant as soon as the City Recorder receives the decision.

E. If the Appeals Board votes to overturn the discharge or transfer:

1. the appellant shall be reinstated to employment or to the previous wage,
2. the appellant shall be paid his previous wage from the time of the decision forward, provided that the appellant returns to employment with the City, and

3. the Appeals Board shall vote again to determine whether the appellant shall be paid to reimburse the appellant for the time the appellant was discharged or transferred.

a. The Appeals Board may reimburse the appellant for the time the appellant was discharged or transferred, provided that under no circumstances may the Appeals Board vote to reimburse the appellant for more than 15 days.

b. If the Appeals Board votes to reimburse the appellant,

i. a discharged appellant shall be paid his or her full wage for the time the appellant was discharged, up to 15 days, and

ii. a transferred employee shall be paid the difference between the previous wage and the new wage for the time the transfer was in force, up to 15 days.

2.28.100 No Appeal by City. If the Appeals Board votes to overturn the discharge or transfer, the proceeding before the Appeals Board shall be closed and the City shall have no right to appeal the decision of the Appeals Board. Nothing in the Appeals Board's decision shall affect the City's right to take other disciplinary action against the appellant short of discharge or transfer in response to the circumstances which led to the original discharge or transfer.

2.28.110 Appeal by Appellant. If the Appeals Board affirms the discharge or transfer of the appellant, the appellant shall have the right to appeal the Appeals Board's decision to the city council. The appeal shall be made by filing a written notice of appeal with the City Recorder within fourteen (14) days of the time the Appeals Board announces its decision.

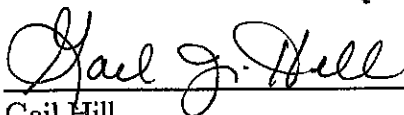
**Section 2:** This ordinance shall take effect immediately upon its passage.

PASSED and ADOPTED this \_\_\_\_ day of March, 2000.



Gary A. Harrop  
Mayor

ATTEST:



Gail Hill  
City Recorder

