

ORDINANCE NO. 2023-13

**AN ORDINANCE AMENDING CHAPTER 3.04 (PERSONNEL) OF THE
CENTERVILLE CITY ORDINANCES REGARDING EMPLOYEE
APPEAL AND THE EMPLOYEE APPEAL BOARD**

WHEREAS, the City Council has previously adopted various provisions of Chapter 3.04 (Personnel) of the Centerville Municipal Code regarding employee appeals and the employee appeal board; and

WHEREAS, the City Council desires to amend various provisions of Chapter 3.04 (Personnel) of the Centerville Municipal Code regarding employee appeals and the employee appeal board as more particularly provided herein; and

WHEREAS, the City Council finds that the proposed amendments to Chapter 3.04 (Personnel) as set forth herein are in the best interest of the City, its employees, and the public which it serves, to provide clear and consistent ordinances regarding employee appeals and the employee appeal board.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF
CENTERVILLE CITY, STATE OF UTAH:**

Section 1. **Amendment.** Chapter 3.04 (Personnel) of the Centerville Municipal Code regarding Employee Appeals and the Employee Appeal Board is hereby amended to read in its entirety as set forth in Exhibit A, attached hereto and incorporated herein by reference.

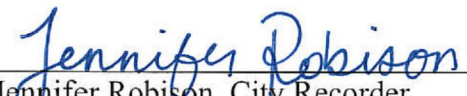
Section 2. **Severability Clause.** If any section, part, or provision of this Ordinance is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Ordinance, and all provisions, clauses, and words of this Ordinance shall be severable. This Section shall become effective without codification.

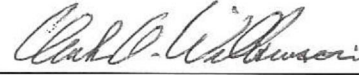
Section 3. **Effective Date.** This Ordinance shall become effective upon publication and posting as required by law.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF CENTERVILLE,
STATE OF UTAH, ON THIS 18th DAY OF JULY, 2023**

ATTEST:

CENTERVILLE CITY


Jennifer Robison, City Recorder

By: 
Mayor Clark A. Wilkinson

Voting by the City Council:

	"AYE"	"NAY"	"ABSENT"
Councilmember Hirst	<u>X</u>	_____	_____
Councilmember Ince	<u>X</u>	_____	_____
Councilmember McEwan	<u>X</u>	_____	_____
Councilmember Mecham	<u>X</u>	_____	_____
Councilmember Summerhays	<u>X</u>	_____	_____

CERTIFICATE OF PASSAGE AND PUBLICATION OR POSTING

According to the provisions of the U.C.A. § 10-3-713, as amended, I, the municipal recorder of Centerville City, hereby certify that foregoing ordinance was duly passed by the City Council and published or posted as required by law on the following referenced dates.

Jennifer Robison
JENNIFER ROBISON, City Recorder

DATE: 7-19-2023

RECORDED this 19th day of July, 2023.

PUBLISHED OR POSTED this 19th of July, 2023.



Exhibit A

CMC 3.04 (Personnel)

3.04 Personnel

3.04.010 Personnel Director

3.04.020 Personnel Policies And Procedures

3.04.030 Equal Opportunity Employer

3.04.040 Employee Appeals

3.04.050 Exclusions

3.04.060 Employee Appeal Board

3.04.070 Employee Appeal Hearing

3.04.080 Employee Appeal Board Decision

3.04.010 Personnel Director

The City Manager is designated as the Personnel Director. As Personnel Director, the City Manager shall implement and maintain the provisions of this Chapter and perform other duties as required by ordinance, resolution, or policy of the City Council.

HISTORY

Adopted by Ord. 2017-03 on 4/4/2017

3.04.020 Personnel Policies And Procedures

The City may establish and adopt personnel policies and procedures consistent with State and Federal laws and regulations for the administration, organization, operation, and conduct of its personnel.

HISTORY

Adopted by Ord. 2017-03 on 4/4/2017

3.04.030 Equal Opportunity Employer

~~It is the~~ The policy of Centerville City ~~is~~ to comply with all ~~F~~ederal, ~~S~~tate and local laws, rules, and regulations in the area of non-discrimination in employment. As such, it is Centerville ~~City~~'s policy to provide equal employment opportunities (EEO) to all employees and applicants for employment without regard to race, color, national origin, religion, sex, sexual orientation, age, pregnancy, child-birth or pregnancy-related condition, disability, genetics, political affiliation, or status as a veteran. This policy applies to all terms and conditions of employment, including recruiting, hiring, placement, promotion, termination, layoff, recall, transfer, leaves of absence, compensation and training.

HISTORY

Adopted by Ord. 2017-03 on 4/4/2017

3.04.040 Employee Appeals

- (a) Duration of Employment. Except as provided in CMC 3.04.050, each employee of the City shall hold employment without limitation of time, being subject to discharge, suspension for more than ~~of over~~ two days without pay, or involuntary transfer to a position with less remuneration only as provided in Utah Code § 10-3-1106. Employees excluded under CMC 3.04.050 are considered at-will employees subject to termination with or without cause, with or without advance notice, and without the right to appeal as set forth herein.
- (b) Right to Appeal. If an employee, other than an employee excluded under CMC 3.04.050, is discharged, suspended for more than two days without pay, or

involuntarily transferred to a position with less remuneration for any disciplinary reason, the employee may appeal the final decision regarding to discharge, suspension, suspend without pay, or involuntarily transfer to the Employee Appeal Board described in CMC 3.04.060 in accordance with and subject to the procedures set forth Utah Code § 10-3-1106.

(c) Notice of Appeal. An employee may file an appeal with the Employee Appeal Board by filing a written notice of appeal with the City Recorder within 10 calendar days after the discharge, suspension, or involuntary transfer. The written notice of appeal shall state the grounds for the appeal.

HISTORY

Adopted by Ord. 2017-03 on 4/4/2017

3.04.050 Exclusions

CMC 3.04.040 does not apply to any officer, employee, or position described herein, which officer, employee, or position shall be ~~is~~ deemed at-will and subject to termination with or without cause, with or without advance notice, and without appeal rights pursuant to Utah Code § 10-3-1105.

(a) Designated Positions. CMC 3.04.040 does not apply to a person who holds a position or equivalent position described as follows:

- (1) ~~a~~-police chief
- (2) ~~a~~-deputy or assistant police chief;
- (3) ~~a~~-head of a municipal department or division;
- (4) ~~a~~-superintendent;
- (5) ~~a~~-probationary or introductory employee;
- (6) ~~a~~-part-time employee;
- (7) seasonal, temporary or limited employees;
- (8) ~~a~~-person who works in the office of an elected official; or
- (9) ~~a~~-secretarial or administrative assistant support position that is specifically designated as a position to assist an elected official or the head or deputy head of a municipal department and is specifically designated as an at-will excluded position.

(b) Appointed Officers. CMC 3.04.040 does not apply to any person appointed to a position under Utah Code Title 9, Chapter 3, Part 9, Appointed Officials and Their Duties, including, but not limited to, the City Manager, City Recorder, City Treasurer, City Engineer, City Attorney, Police Chief, and Justice Court Judge.

(c) Layoffs and Reorganizations. CMC 3.04.040 does not apply to any employee who is discharged, suspended for more than two days, or involuntarily transferred to a position with less remuneration if the discharge, suspension, or

involuntary transfer is the result of a layoff, reduction in force, reorganization, or other non-disciplinary action.

- (d) Statutory Exclusions. CMC 3.04.040 does not apply to any officer, employee, or position that is excluded under and in accordance with the provisions of Utah Code § 10-3-1105. In addition to the positions described herein, the City is authorized to appoint up to 5% of the City's workforce as at-will in accordance with Utah Code § 10-3-1105.

HISTORY

Adopted by Ord. 2017-03 on 4/4/2017

3.04.060 Employee Appeal Board

- (a) Created. There is hereby created an Employee Appeal Board for Centerville City ~~created in accordance with Utah Code § 10-3-1106,~~ to hear appeals of covered employees who have been discharged, suspended for more than two days without pay, or involuntarily transferred to a position with less remuneration, in accordance with Utah Code § 10-3-1106.
- (b) Members. The Employee Appeal Board consists of five members, three of whom are chosen by and from the appointed officers and employees of the City and two of whom are chosen by and from the members of the City Council.
- (c) Selection of Members and Alternates.
- (1) Council Members and Alternates. The City Council shall designate two of its members to serve on the Employee Appeal Board, hereinafter referred to as the "Council Members." The City Council shall also designate 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 three of its members to serve on the Employee Appeal Board, hereinafter referred to as "Employee Members." The appointed officers and employees of the City shall also elect three of its members to serve as Alternate Employee Members. Employee Members and Alternate Employee Members shall be elected in the following manner.
- (A) Nomination. The City Manager, or his or her authorized designee, shall send written notice to all appointed officers and employees of the City that they may make written nominations for officer and employee candidates to serve on the Employee Appeal Board and the closing date for filing such nominations to be filed 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 three Employee Members of the Board and three Alternate Employee Members. The election shall be by secret ballot. The three 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.

~~(B)~~(C) Tie Votes. In the event of a tie vote for Employee Members or Alternate Employee Members, the members shall be selected by drawing lots.

~~(d) Conflict of Interest. Limitation on Members. No member person may sit on the Employee Appeal Board for any given appeal if that member who was involved in the disciplinary investigation of the appealing employee, was involved as a witness to or participant in the issues or disciplinary action involved, also sat on a pre-disciplinary hearing of the appealing employee or or otherwise has a conflict of interest, whose employment with the City has terminated.~~

~~(e) Departments. No more than one member from the same department shall sit on the Employee Appeal Board at the same time for any given appeal. If more than one member from a department is voted to the Employee Appeal Board, the member from that department to sit on the Employee Appeal Board for any given appeal shall be determined by drawing lots.~~

~~(d)~~(f) Prohibited Members. The City Manager, City Attorney, and HR Manager are prohibited from sitting on the Employee Appeal Board.

~~(e)~~(g) Term. Elected Employee Members and designated Council Members shall serve for a term of two years from the date of their election or designation. Members may serve additional terms in accordance with the election and appointment procedures set forth herein.

~~(f)~~(h) 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 a 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 as provided herein at the time such vacancy occurs.

~~(g) Procedures. All appeals to the Employee Appeal Board shall be conducted in accordance with Utah Code § 10-3-1106, and applicable provisions of the personnel policies and procedures adopted by the City.~~

HISTORY

Adopted by Ord. 2017-03 on 4/4/2017

3.04.070 Employee Appeal Hearing

~~(a) Jurisdiction. The Employee Appeal Board only has jurisdiction to hear employee appeals from a discharge, suspension for more than two days without pay, and involuntary transfer to a position with less remuneration for any disciplinary reason. The Employee Appeal Board does not have the authority or jurisdiction to hear or decide any other personnel matter.~~

- (b) Notice of Appeal. An Employee Appeal is initiated by an employee filing a notice of appeal with the City Recorder in accordance with CMC 3.04.040. Upon receipt of a notice of appeal, the City Recorder shall promptly provide a copy of the appeal to the Employee Appeal Board, the City Manager, and the City Attorney.
- (c) Scheduling Hearing. Upon receipt of the appeal, the Employee Appeal Board shall schedule a date and time for the hearing and provide the employee with notice of the appeal hearing.
- (d) Appeal Hearing. At the date and time scheduled, the Employee Appeal Board shall conduct the appeal hearing. The appealing employee may appear in person at the hearing and be represented by counsel. The appealing employee shall have the right to examine the evidence to be considered by the Employee Appeal Board and to confront any witnesses whose testimony is to be considered.
- (e) Open Meeting. Unless otherwise provided herein, the hearing will be open to the public and recorded. The Employee Appeal Board may close any or all portions of the hearing for reasons allowed by law under the Utah Open and Public Meetings Act, as set forth in Utah Code §§ 52-4-101, et seq.
- (f) Evidence. In an appeal of a final disciplinary action, neither the appealing employee nor the City may raise issues or introduce new evidence before the Employee Appeal Board that the employee or the City did not raise as part of the disciplinary action proceedings or decision-making process. The scope of issues and evidence considered by the Employee Appeal Board shall be limited to the issues and evidence considered during the disciplinary action proceedings and final decision.
- (g) Rules of Procedure. The Employee Appeal Board is not required to follow the Utah Rules of Civil Procedure or the Utah Rules of Evidence, but shall follow procedures sufficient to provide due process and fair proceedings.
- (h) Standard of Review. The Employee Appeal Board shall uphold the final disciplinary action decision unless the Board finds the decision was arbitrary and capricious or otherwise illegal. The disciplinary action decision is considered arbitrary and capricious if the decision is not supported by substantial evidence in the record. The appealing employee bears the burden of demonstrating the final disciplinary action decision is not supported by substantial evidence. For purposes of this standard of review, substantial evidence is considered that quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion.

3.04.080 Employee Appeal Board Decision

- (a) Decision. The Employee Appeal Board must make its decision by secret ballot. After making its determination, the Employee Appeal Board shall outline the facts relied upon and the conclusions made based on the facts and render a written decision regarding the appeal. The written decision of the Employee Appeal Board shall be issued and certified no later than fifteen days after the date of the hearing. The Employee Appeal Board and the appealing employee may agree to extend this time as more particularly provided in Utah Code § 10-3-1106. The Employee Appeal Board shall provide a copy of its decision to the appealing employee, the City Manager, and the City Attorney.

(b) Final Action. If the Employee Appeal Board finds in favor of the employee, the Employee Appeal Board shall provide that the employee receive 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 or unemployment benefits during this period of time or any deficiency in salary for the period during which the employee was transferred to a position of less remuneration.

(c) Appeal. The final written decision of the Employee Appeal Board may be appealed to the Utah Court of Appeals by filing a petition for review. The petition for review shall be filed with the Court of Appeals within 30 days after the issuance of the final written decision of the Employee Appeal Board. The Court of Appeals' review shall be on the record of the Employee Appeal Board for the purpose of determining if the Employee Appeal Board abused its discretion or exceeded its authority.