

Rules for Disciplinary Appeals to a Hearing Officer

I. Authority

- a. In accordance with Chapter 2.24 of the Salt Lake City Code, a Disciplinary Appeals Hearing Officer shall hear and adjudicate an appeal filed by an eligible individual seeking to overturn a final appealable disciplinary decision to:
 - i. discharge the employee;
 - ii. suspend the employee without pay for more than two working days or, for an eligible City employee whose regular working shift is twenty-four hours, more than one working shift; or
 - iii. involuntarily transfer the employee from one position to another with less remuneration.
- b. In accordance with Chapter 2.24 of the Salt Lake City Code, a Disciplinary Appeals Hearing Officer may only affirm or overturn the final appealable disciplinary decision being appealed.
- c. In accordance with Chapter 2.24 of the Salt Lake City Code, all other personnel actions (including, but not limited to, suspensions without pay of two working days or less or, for an eligible City employee whose regular working shift is twenty-four (24) hours, one working shift; written warnings; written or oral coach-and-counsels; non-disciplinary discharges or involuntary transfers; layoff designations; performance evaluations; or reassignments due to reorganizations) are not subject to appeal to a Disciplinary Appeals Hearing Officer.

II. Calculating Time

- a. When calculating a period of time identified in Chapter 2.24 of the Salt Lake City Code or these rules, the following provisions apply:
 - i. the calendar day of the event that triggers the calculation of the time period shall be excluded;
 - ii. all other calendar days after the day of the event that triggers the calculation of the time period (including any intermediate Saturdays, Sundays, and legal holidays) shall be included; and
 - iii. if the last calendar day of the time period falls on a Saturday, Sunday, or legal holiday, the time period shall include the next calendar day that is not a Saturday, Sunday, or legal holiday.

III. Appeal Filing

- a. In accordance with Chapter 2.24 of the Salt Lake City Code, an appeal filed with a Disciplinary Appeals Hearing Officer must be:
 - i. filed by an eligible City employee; and

- ii. submitted in writing to the Salt Lake City Recorder within ten (10) calendar days of the date of issuance of the final appealable disciplinary decision.
- b. In accordance with Chapter 2.24 of the Salt Lake City Code, an appeal filed with a Disciplinary Appeals Hearing Officer must identify the disciplinary decision being appealed and the specific reason(s) why the employee believes the disciplinary decision should be overturned. If an appeal fails to include the specific reason(s), a Disciplinary Appeals Hearing Officer may, in their discretion, prohibit the subsequent assertion of such reason(s) at the hearing.

IV. Assignment of Disciplinary Appeals Hearing Officer

- a. After receiving notice from the Salt Lake City Recorder of a timely appeal, the Chief Human Resources Officer (or designee) will assign a Disciplinary Appeals Hearing Officer to hear and adjudicate the appeal and will notify both parties to the appeal (i.e. the employee and the City) of the assignment in writing. Disciplinary Appeals Hearing Officers will be assigned to hear and adjudicate appeals on a rotating schedule and subject to each Disciplinary Appeals Hearing Officer's availability.
- b. In accordance with Chapter 2.24 of the Salt Lake City Code, if either party to an appeal (i.e. the employee or the City) objects to the assigned Disciplinary Appeals Hearing Officer, a different Disciplinary Appeals Hearing Officer will be assigned (in the same manner as provided for in Rule IV(a) above) to hear and adjudicate the appeal, subject to the following:
 - i. in each appeal, neither party shall be permitted more than one objection;
 - ii. an objection must be submitted in writing to the Chief Human Resources Officer (or their designee) within three days of the date the party received notification of the assignment of the Disciplinary Appeals Hearing Officer to the appeal; and
 - iii. an objection must set forth the specific grounds for objection and include all relevant information supporting the objection.

V. Scheduling Conference

- a. Within seven days of the assignment of a Disciplinary Appeals Hearing Officer to hear and adjudicate an appeal (assuming no objections are filed pursuant to Rule IV(b) above), the Chief Human Resources Officer (or their designee) shall contact the parties to the appeal via e-mail to schedule a telephonic or other electronic scheduling conference for the purpose of setting dates for the pre-hearing conference and the hearing.
- b. Subject to the availability of the assigned Disciplinary Appeals Hearing Officer and the parties to the appeal, the hearing should generally be set for a date falling within the 120-day period following the completion of the scheduling conference.

- c. The assigned Disciplinary Appeals Hearing Officer may, in their discretion, continue a pre-hearing conference or hearing.
- d. Either party to an appeal may request a continuance of a pre-hearing conference or hearing by submitting a written request to the assigned Disciplinary Appeals Hearing Officer. A written request must set forth the grounds for the request and indicate whether the other party has stipulated to the request. The assigned Disciplinary Appeals Hearing Officer may, in their discretion, grant, modify, or deny the request.

VI. Standard of Review/Burden of Proof

a. Police Department and Fire Department Employees

- i. In accordance with Chapter 2.24 of the Salt Lake City Code, with respect to the question of whether the facts support a conclusion that the employee's conduct violated policy, the standard of review is "substantial evidence" and, to prevail, the City must demonstrate that the conclusion is supported by substantial evidence.
- ii. In accordance with Chapter 2.24 of the Salt Lake City Code, with respect to the question of whether the specific disciplinary sanction imposed is proportional, the standard of review is "abuse of discretion" and, to prevail, the City must demonstrate that the disciplinary sanction does not constitute an abuse of discretion.
- iii. In accordance with Chapter 2.24 of the Salt Lake City Code, with respect to the question of whether the specific disciplinary sanction is consistent, the standard of review is "abuse of discretion" and, to prevail, the employee must demonstrate that the disciplinary sanction constitutes an abuse of discretion.

b. All Other Employees

- i. In accordance with Chapter 2.24 of the Salt Lake City Code, with respect to the question of whether the facts support a conclusion that the employee's conduct violated policy, the standard of review is "substantial evidence" and, to prevail, the employee must demonstrate that the conclusion is not supported by substantial evidence.
- ii. In accordance with Chapter 2.24 of the Salt Lake City Code, with respect to the question of whether the specific disciplinary sanction imposed is proportional, the standard of review is "abuse of discretion" and, to prevail, the employee must demonstrate that the disciplinary sanction constitutes an abuse of discretion.
- iii. In accordance with Chapter 2.24 of the Salt Lake City Code, with respect to the question of whether the specific disciplinary sanction imposed is consistent, the standard of review is "abuse of discretion" and, to prevail, the employee must demonstrate that the disciplinary sanction constitutes an abuse of discretion.

VII. Evidence

- a.** In accordance with Chapter 2.24 of the Salt Lake City Code, with the exception of evidence pertaining to the proportionality and/or consistency of the specific disciplinary sanction imposed, a Disciplinary Appeals Hearing Officer may only consider evidence that was previously presented and disclosed during the disciplinary process (including any applicable internal grievance procedure) that resulted in the final appealable disciplinary decision.
- b.** Formal discovery (including, but not limited to, interrogatories, requests for production of documents, requests for admission, depositions, and issuance of subpoenas) is not permitted.
- c.** Unless specifically requested by a Disciplinary Appeals Hearing Officer, written motions and briefing are not permitted. However, a party may make oral motions pertaining to evidentiary issues at the pre-hearing conference or at the hearing.
- d.** With respect to evidence pertaining to the proportionality and/or consistency of the specific disciplinary sanction imposed, the employee may request such evidence from the City by submitting a written request.

VIII. Pre-Hearing Conference

- a.** The pre-hearing conference shall be conducted via telephone or other electronic means.
- b.** By no later than seven (7) days in advance of the pre-hearing conference, each party is required to provide its proposed witness list (specifically identifying all witnesses who that party will or may call to testify at the hearing) and proposed exhibit list (specifically identifying all exhibits which that party will or may seek to introduce at the hearing) to the other party.
- c.** At the pre-hearing conference, the Disciplinary Appeals Hearing Officer shall:
 - i.** Require each party to identify all witnesses that party will or may call to testify at the hearing and resolve any objections raised by the other party to such witnesses;
 - ii.** Require each party to identify all exhibits that party will or may seek to introduce at the hearing and resolve any objections raised by the other party to such exhibits;
 - iii.** Hear any oral motions made by a party pertaining to evidentiary issues;
 - iv.** Hear and decide any other issues pertinent to proper adjudication of the appeal; and
 - v.** In accordance with Section IX below, confirm the length of time allocated for the hearing.

IX. Hearing

- a.** The parties are required to appear in-person for a hearing, unless the employee waives their right to an in-person hearing in writing. If an employee waives their right to an in-person hearing, a hearing shall be conducted via video and all parties and representatives (as well as all witnesses during the period of time when they are testifying) are required to be visible on-camera when the hearing is in session.
- b.** Although the employee has the right to an open and public hearing, upon request, the assigned Disciplinary Appeals Hearing Officer may, in their discretion, close any portion of the hearing in accordance with the Open and Public Meetings Act, Utah Code § 52-4-101 *et seq.* or other applicable law.
- c.** Four hours and thirty minutes of hearing time on a single business day is presumed to be sufficient to complete a hearing. Subject to Section IX(d) below, the assigned Disciplinary Appeals Hearing Officer may, in their discretion, allocate additional hearing time upon a showing of good cause.
- d.** A hearing shall not exceed eight hours of hearing time on a single business day, and a hearing cannot be conducted over multiple days.
- e.** Each party shall be allocated an equal amount of time to present their case. For example, if four hours and thirty minutes have been allocated for a hearing, each party shall receive two hours and fifteen minutes for case presentation.
- f.** A hearing shall proceed in the following order:
 - i.** For Police Department and Fire Department employees, the City shall present its case first. For all other employees, the employee shall present their case first.
 - ii.** Opening Statements (Opening Statements shall not exceed ten minutes of time). The party required to present their case second may defer their opening statement until the presentation of their case.
 - iii.** Witness testimony (if applicable) from the party required to present its case first, followed by cross-examination of each witness (if applicable) from the opposing party. Time spent on cross-examination of witnesses shall count against the cross-examining party's total time allocation as opposed to the direct-examining party's total time allocation.
 - iv.** Witness testimony (if applicable) from the party required to present its case second, followed by cross-examination of each witness (if applicable) from the opposing party. Time spent on cross-examination of witnesses shall count against the cross-examining party's total time allocation as opposed to the direct-examining party's total time allocation.
 - v.** Closing Arguments (Closing Arguments shall not exceed fifteen minutes of time). The party required to present their case first is required to make the first Closing

Argument, though that party may set aside up to ten minutes of their allotted fifteen minutes for rebuttal.

- g.** Upon request, the assigned Disciplinary Appeals Hearing Officer may invoke the exclusionary rule with respect to testifying witnesses. However, the employee and the City Department Director (or designee) shall be allowed to remain in the hearing at all times.
- h.** The Utah Rules of Evidence may be used as general guidelines but shall not be strictly applied. If an evidentiary objection is made during the hearing, the Disciplinary Appeals Hearing Officer may either sustain, overrule, or disregard the objection.

X. Decision and Order

- a.** In accordance with Chapter 2.24 of the Salt Lake City Code, a Disciplinary Appeals Hearing Officer shall certify his/her written decision with the Salt Lake City Recorder no later than fifteen (15) calendar days after the day on which the appeal hearing concludes.
- b.** A Disciplinary Appeals Hearing Officer may only affirm or overturn the final appealable disciplinary decision and must explain the factual and legal basis for his/her determination.
- c.** For good cause, a Disciplinary Appeals Hearing Officer may extend the fifteen (15) day certification period referenced above to a maximum of sixty (60) calendar days, if both parties consent to such an extension.
- d.** The written decision must also notify the parties that the decision can be appealed to the Utah Court of Appeals within thirty (30) calendar days of the date the decision was certified with the Salt Lake City Recorder.
- e.** Subject to Section X(a) and Section X(c) above, a Disciplinary Appeals Hearing Officer may require the prevailing party to draft a proposed written decision and, in the discretion of the Disciplinary Appeals Hearing Officer, allow the non-prevailing party a specific period of time within which to object to the prevailing party's proposed written decision.