

2008

Jodi Howick v. Salt Lake City Employee Appeals Board and Salt Lake City Corporation : Unknown

Utah Court of Appeals

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IN THE UTAH STATE COURT OF APPEALS

<p>JODI HOWICK,</p> <p>Petitioner/Appellants,</p> <p>vs.</p> <p>SALT LAKE CITY EMPLOYEE APPEALS BOARD AND SALT LAKE CITY CORPORATION,</p> <p>Respondents/Appellees.</p>	<p>BRIEF OF APPELLANT</p> <p>Case No. 20080608</p>
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OF THE SALT LAKE CITY EMPLOYEE APPEALS BOARD**

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ORAL ARGUMENT REQUESTED

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PURSUANT TO RULE 24, Utah Rules of Appellate Procedure, Petitioner Jodi Howick (“Howick”) submits this brief.

STATEMENT OF JURISDICTION

This Court has jurisdiction over this appeal from a final action or order of the Salt Lake City Employee Appeals Board pursuant to Utah Code Ann. § 10-3-1106(6) (2007).

STATEMENT OF ISSUES PRESENTED FOR REVIEW

Howick presents the following issues for review by this Court:

I. Whether the Salt Lake City Employee Appeals Board (the “Board”) abused its discretion when it determined that Howick was not entitled to the protections of Utah Code Ann. § 10-3-1106 (2007) because she was allegedly an at-will employee under the law.¹ The standard for appellate review of this issue is de novo for correctness pursuant to Mouty v. Sandy City Recorder, 2005 UT 41, ¶ 11,122 P.3d 521. This issue was preserved by Howick's Notice of Appeal filed July 1, 2008.

II. Whether the Board abused its discretion by violating, and in effect upholding a violation of, Howick’s due process rights pursuant to the Utah Constitution Article 1, § 7. The standard for appellate review of this issue is de novo for correctness pursuant to Tolman v. Salt Lake County Attorney, 818 P.2d

¹ References to codes, ordinances, policies and procedures in this Brief refer to those in effect in 2007.

23, 27 (Utah App. 1991). This issue was preserved by Howick's Notice of Appeal filed July 1, 2008.

III. Whether Howick is entitled to attorney fees and costs under this Court's inherent power in the interest of justice and equity and under the due process provisions of the Utah Constitution. The standard for appellate review of attorney fees issues constitutes a matter within this Court's discretion pursuant to Stewart v. Utah Pub. Serv. Comm'n, 885 P.2d 759, 781-782 (Utah 1994); Culbertson v. Bd. of County Comm'rs, 2008 UT App 22, ¶ 10, 177 P.3d 621; and Spackman v. Bd. of Educ. of Box Elder County School Dist., 2000 UT 87, ¶ 20, 16 P.3d 533. This issue could not be raised in the proceeding before the Board because it is without authority to award fees. Salt Lake City Employee Appeals Board Procedures I, C (the "Procedures"), attached as Appendix 2.

LAWS TO BE INTERPRETED

The following are constitutional provisions, statutes, ordinances, rules and regulations whose interpretation is determinative of the appeal or of central importance to the appeal. The full text of the following citations is set forth in Appendix 1.

Utah Code Ann. § 10-3-1105 (2007).

Utah Code Ann. § 10-3-1106 (2007).

Utah Code Ann. §§ 10-3-702, 815 and 1221 (2007).

SALT LAKE CITY, UTAH, CODE § 2.52.130 (2007).

SALT LAKE CITY, UTAH, CODE §§ 2.53.020, 030 and 060 (2007).

SALT LAKE CITY, UTAH, POLICY 3.01.02 (2007).

Utah Constitution Article 1, § 7.

STATEMENT OF THE CASE

This is an appeal from a decision of the Board denying Howick an appeal from the termination of her employment by the Salt Lake City Attorney's Office in August 2007. The Utah Municipal Code requires cities to provide all but a few categories of municipal employees an appeal if their employment is terminated. Howick believed she was entitled to the protections of the Code, but the City rebuffed her efforts to have the termination reconsidered. When Howick first attempted to obtain a hearing before the Board, the Salt Lake City Labor Relations Officer refused to forward her appeal to the Board on the grounds that Howick was working in an alleged "at-will" position and was therefore not entitled to appeal to the Board.

Howick appealed the City's determination to this Court. This Court determined that it lacked jurisdiction to hear Howick's appeal because the Board had not issued a final action due to the City's refusal to forward her appeal to the Board. However, this Court noted that Howick could seek redress through an extraordinary writ or other action to require the Board to determine whether it had jurisdiction to hear her appeal.

Upon receipt of this Court's decision, the City forwarded Howick's appeal to the Board. In response, the Board sought a legal opinion about whether Howick's position was an at-will position. Without considering any of Howick's

legal arguments demonstrating that her position could not be made at-will by the City, the Board decided that she was an at-will employee and not entitled to an appeal. This appeal followed.

STATEMENT OF FACTS

Howick was employed by the City in the Salt Lake City Attorney's Office ("Attorney's Office") from 1992 to August 2007 as a staff attorney. R. 108-130. In 1998, the Attorney's Office purported to create a new "at-will" attorney position outside of the City's merit system. Staff attorneys were asked to agree to move to the newly-created position in exchange for a raise in pay. Howick moved to this position and signed a document titled "At-Will Employment Disclaimer" in connection with the move. R. 63.

The newly-created position was titled "Appointed Senior City Attorney." The job description for the new position is substantially identical to the City's "Senior City Attorney" job description in its 600 Series Compensation Plan, except that the "Appointed Senior City Attorney" description requires two additional years of experience as a prerequisite for moving to that position and identifies it as an at-will position. This new position was originally included as a part of the City's 600 Series Compensation Plan and was moved a few years later to a newly-created pay plan called the Unclassified Compensation Plan. Most

staff attorneys in the Attorney's Office work under the "Appointed Senior City Attorney" job description.² R. 48, 65-68

During her 15 years of service, Howick worked with many different City managers and received outstanding performance evaluations. R. 110-130. Then in August 2007, Howick's supervisor, Ed Rutan ("Rutan"), City Attorney, terminated her employment without any prior notice and without any cause explicitly on the basis of her alleged at-will status and in violation of the protections afforded to merit system employees by the Utah Municipal Code. Rutan gave Howick no documentation. R. 108. Howick believed that her termination violated the requirements of the Utah Municipal Code and asked several times to meet with Rutan to discuss the basis of his action. However, Rutan refused to meet with her. R. 48; Petitioner's Docketing Statement, Case No. 20070863, attached as Appendix 4, at Exhibit B.

²City compensation plans and job descriptions are available at <http://www.slcgov.com/jobs>. In July, 2008, the City changed its compensation plans to place its Unclassified Compensation Plan in its Executive Compensation Plan. See June 3, 2008 Salt Lake City Council Staff Report www.slcgov.com/council/agendas (follow "June" hyperlink; then follow "Item A10 Compensation Budget FY 08 09" hyperlink under the June 3, 2008 Staff Report Attachments heading (last visited October 1, 2008)), attached as Appendix 3. See also Executive Compensation Plan (sections I, II, III, XVI, XVII and App. A) www.slcgov.com/jobs (follow "City Compensation Plans" hyperlink; then search for "Appointed Compensation"; follow match 6 hyperlink "Compensation Plan for Salt Lake City Corporation Appointed Employees and Elected Officials (last visited October 1, 2008)), also attached as Appendix 3. The "Appointed Senior City Attorney" job description is currently classified under the Executive Compensation Plan as "Level 003." See Executive Compensation Plan, Appendix 3. The former Unclassified Compensation Plan is publicly available through the Salt Lake City recorder's Office.

On September 10, 2007, after being rebuffed in her efforts to discuss the basis for her termination, including the legality of treating her as an at-will employee, Howick filed a Notice of Appeal with the Salt Lake City Recorder to obtain an appeal before the Board as required by Utah Code Ann. § 10-3-1106(3)(a) and City ordinances and procedures. R. 108-130. The City's Labor Relations Officer, who staffs the Board in the appeal process, refused to initiate the appeal process and instead obtained information relating to Howick's former position in the Attorney's Office. The Labor Relations Officer's supervisor, as the City's acting Labor Relations Officer, then issued a letter stating that she had "determined" that Howick was an at-will employee and therefore not entitled to an appeal. Appendix 4, Exhibits A and B. Howick contacted the City pointing out that the Labor Relations Officer's action was contrary to both State law and City ordinance and policy, but the City refused to refer Howick's appeal to the Board. Appendix 4, Exhibits B and C.

On October 22, 2007, Howick filed a Notice of Appeal to this Court. Case No. 20070863, Notice of Appeal. The Court made a sua sponte Motion for Summary Disposition to determine if it had jurisdiction over the appeal. The Court determined that it lacked jurisdiction to hear Howick's appeal because of the refusal of the City to refer Howick's appeal to the Board. The Court dismissed Howick's appeal, but noted in its decision that the City's handling of Howick's appeal to the Board violated the Salt Lake City Employee Appeals Board Procedures (the "Procedures") and that Howick could seek redress through an

extraordinary writ or other action to require the Board to issue a final agency decision on its own jurisdiction. See Howick v. Salt Lake City Corp., 2008 UT App 216, 2008 Utah App. LEXIS 212.

Upon receipt of this Court's decision, the City referred Howick's appeal to the Board. The Board acknowledged receipt of the appeal on June 20, 2008.

R. 104. The Board informed Howick and the City that they could submit documentation related to Howick's appeal for consideration at the Board's meeting on June 26, 2008, but the Board permitted Howick no other participation in its process. R. 74-76, 99-101, 104. Howick submitted a memorandum of law arguing that she was entitled to the protections of Utah Code Ann. § 10-3-1106 because her staff attorney position could not lawfully be made an at-will position. R. 47-68. The City submitted a letter arguing that a court, and not the Board, should determine whether Howick could be treated by the City as an at-will employee. R. 27-46.

On July 1, 2008, pursuant to its Procedures, the Board requested a legal opinion regarding whether Howick was properly classified as an at-will employee from the City Attorney. R. 96; Procedures III.G at Appendix 2. The City Attorney retained special counsel of his choosing, Stanley Preston ("Preston"), to provide the requested opinion. R. 94-95. The opinion found that Howick's position could legally be classified as an at-will position without addressing Howick's legal contentions regarding the City's authority and the requirements of

Utah Code Ann. §§ 10-3-1105 ("Section 10-3-1105") and 1106 ("Section 10-3-1106"). R. 81-87.

On July 15, 2008, in a meeting lasting approximately two minutes, three of five members of the Board met and decided to adopt the conclusions of the special counsel selected by the City Attorney. R. Exhibit A at 2-3. The Board decided that based on Howick's alleged at-will status, she was not entitled to the protections of Section 10-3-1106, thereby upholding the at-will termination of Howick's employment. R. Exhibit A at 3. The Board certified its decision to the Salt Lake City Recorder on July 15, 2008, R. 73, and Howick filed a Notice of Appeal to this Court on July 18, 2008.

The Board met in closed sessions. R. 99-101; 74-76. Howick was permitted no participation in the proceedings before the Board, other than submitting her memorandum. She was not given access to the Preston opinion until Board staff provided Howick with a copy of the record on August 7, 2008, three weeks after the Board's decision. Letter from Shelly Chapman, Salt Lake City Corporation, August 7, 2008, attached as Appendix 5.

SUMMARY OF ARGUMENTS

I. The Board abused its discretion when it determined that Howick was not entitled to the protections of Section 10-3-1106. Rather, the City exceeded the statutory authority granted to it under Sections 10-3-1105 and 1106 and violated the Utah Municipal Code and City requirements when it classified Howick's employment at-will, terminated her employment on the basis of this alleged at-will

status and denied her the protections of Section 10-3-1106. The City cannot violate or exceed its authority under Sections 10-3-1105 and 1106 by any means, whether by ordinance, policy, procedure or contract, and it cannot circumvent the requirements of its own ordinances mandating that the City follow these statutes. Consistent with this Court's previous determinations, municipal actions that exceed their authority are void and cannot be given any effect. The City was obligated to comply with statutory provisions in its rules and in its dealings with its employees, and Howick had the right to expect that the City would. The Board decision should therefore be reversed and Howick should be reinstated and awarded back pay and benefits.

II. The City, the Board, and the Board staff also violated Howick's rights to due process. Howick had a property interest in her employment created by State law and was therefore entitled to pre and post termination due process. She received neither. Due process also requires that the proceedings provided by the Board be meaningful and fair, and they were not. A violation of due process by a Utah governmental agency is an abuse of discretion, and also requires the Board's decision to be reversed and Howick to be reinstated with back pay and benefits.

III. Howick is entitled to attorney fees under this Court's inherent power in the interest of justice and equity pursuant to the private attorney general doctrine and for acts by the City that were in bad faith, vexatious, wanton and for

oppressive reasons. She is also entitled to attorney fees under the due process provisions of the Utah Constitution Article 1, § 7.

ARGUMENT

I. THE BOARD ABUSED ITS DISCRETION BY DETERMINING THAT HOWICK WAS NOT ENTITLED TO THE PROTECTIONS OF SECTION 10-3-1106 BASED ON HER ALLEGED AT-WILL STATUS.

A. MISINTERPRETING THE LAW IS AN ABUSE OF DISCRETION.

This Court reviews the Board’s final action to determine if the Board “abused its discretion or exceeded its authority.” Utah Code Ann. § 10-3-1106(6)(c). The Board requested a legal opinion “about whether the conversion of Ms. Howick’s position to an ‘at-will’ position was done appropriately.” R. 96. Based on the legal opinion it received, the Board determined that “it did not have the authority to review the appeal of Ms. Howick” because Howick was an “at-will” employee. Final Action, R. 73.³

The Board thus found it had no jurisdiction by adopting a legal conclusion that the protections of Utah Code Ann. § 10-3-1106 did not apply to Howick. “In cases where the basic question is what does the law require? the standard is a correction of error standard.” Tolman v. Salt Lake County Attorney, 818 P.2d 23, 28 (Ut. App. 1991) (quoting Savage Indus., Inc. v. Utah State Tax Comm’n, 811 P.2d 664, 668 (Utah 1991). When “a tribunal has stepped out of the arena of

³ While Mr. Buckley’s letter states that the vote of the Board was unanimous, only three of the five Board members were present. See Final Action, R. 73; Attestation, R. 75.

discretion and thereby crossed the law, we review using a correction of error standard, giving no deference to the tribunal's legal determination. We give no deference to such decisions because we are in as good a position as the tribunal to determine the law. Obviously the making of a clearly erroneous factual finding is an abuse of discretion, as is acting unreasonably or misinterpreting the law." *Id.* at 27.⁴

B. THE BOARD MISINTERPRETED STATE LAW WHEN IT HELD THAT HOWICK'S POSITION WAS AT-WILL.

Howick's position cannot be made at-will under the Utah Municipal Code, and thus she cannot be denied the protections of Section 10-3-1106. The Utah State Legislature has created protections for municipal employees and mandated restrictions on municipal employment actions under Sections 10-3-1105 and 1106. Under those mandates, "[e]xcept as provided in Subsection (2), each employee of a municipality shall hold employment without limitation of time, being subject to discharge . . . *only* as provided in Section 10-3-1106." Utah Code Ann. § 10-3-1105(1) (emphasis added). Among the rights included in Section 10-3-1106, "[i]f an employee is discharged . . . the employee may . . . appeal the discharge . . . to a board to be known as the employee appeal board" Utah Code Ann. § 10-3-1106(2)(a).

⁴ This Court noted that when it acts to correct a misinterpretation of law, it is finding an abuse of discretion by the tribunal. *Tolman*, 818 P.2d at 27.

Subsection 10-3-1105(2) states, “[s]ubsection (1) [the grant of protected employment] *does not apply to* [the specifically listed employees in Subsections (2)(a) – (l)].” Utah Code Ann. § 1105(2) (emphasis added.) This statutory language is unequivocal. It expressly grants the protections of Section 10-3-1106 to each employee of a municipality except when the employee is in a position enumerated in the list of exceptions in Section 10-3-1105(2). The Utah Supreme Court has stated:

When interpreting statutory law, our “primary goal . . . is to give effect to the legislative intent, *as evidenced by the plain language*, in light of the purpose the statute was meant to achieve.” We also “assume that each term included in the [statute] was used advisedly.”

Mouty v. Sandy City, 2005 UT 41, ¶ 17, 122 P.3d 521 (emphasis added) (citations omitted).

Courts look to the plain language of a statute when interpreting statutory law. The plain language of Section 10-3-1105 does not exempt Howick’s former position with Salt Lake City from statutory protections. The employees listed in Subsection (2) are: an officer of the City appointed by the mayor or by the comparable person or body in other forms of municipal government,⁵ a police or fire department employee, a police chief or deputy police chief, a fire chief or

⁵ The City does not contend that Howick was an officer of the City, and neither could she have been one. As defined in the Salt Lake City Code, the term “‘officer’ means and includes officers and boards in charge of departments and the members of such boards.” Salt Lake City, Utah, Code § 1.04.010(C)(12). As one of numerous staff attorneys for the City, Howick was not in charge of the City Attorney’s Office or any other department.

deputy or assistant fire chief, a department head or deputy department head, a superintendent, or a probationary, part-time or seasonal employee. Howick was employed as a staff attorney in the City Attorney's Office for 15 years under a job description used by many members of that Office. This position is not included within the list at Subsection (2).

Courts also assume that each term in a statute is used advisedly. The language of Subsection 10-3-1105(2) is drafted precisely, and the Legislature used its terms advisedly. For example, when the Legislature amended this section in 2004, it specifically added the term "assistant" to Subsection 1105(2)(f) in order to include an "assistant fire chief" on the list of employees not subject to statutory protections. *Minutes of the Senate Government Operations & Political Subdivisions Standing Committee* (January 23, 2004) <http://www.le.state.us/~2004/minutes/SGOP0123.pdf>. See also *Minutes of the House Political Subdivisions Standing Committee* (January 30, 2004) <http://www.le.state.us/~2004/minutes/HPOL0130.pdf> (amendment introduced at urging of Utah League of Cities and Towns). The Legislature did not contemplate that other positions, such as this "assistant fire chief" position, could be denied statutory protections unless they were expressly added to the list.⁶

⁶ Other governmental entities also recognize that a position may not be removed from a statutory merit employment system without Legislative authorization. For example, when the State of Utah wanted to remove certain information technology positions from the state merit system, it pursued an amendment to add Utah Code Ann. § 67-19-15(1)(t) in 2005. When Salt Lake County wanted to remove division directors who report to an elected official from its merit system at the

The Legislature's express list of exemptions at Section 10-3-1105 cannot be interpreted to include employment positions that the Legislature omitted. The Utah Supreme Court has stated, "'statutory construction presumes that the expression of one should be interpreted as the exclusion of another.' Thus, we should give effect to any omission in the ordinance language by presuming that the omission is purposeful." Carrier v. Salt Lake County, 2004 UT 98, ¶ 30, 104 P.3d 1208 (quoting Biddle v. Wash. Terrace City, 1999 UT 110, ¶ 14, 993 P.2d 875). The Legislature placed specific and intentionally selected positions on its list at Subsection 10-3-1105(2), omitting all others, and Howick's position is not listed.

Under the plain language of the statute, Howick's position falls under the broad mandate of Subsection (1) requiring that each employee of a municipality hold employment without limitation of time, being subject to discharge only as provided in Section 10-3-1106 and having a right to appeal a discharge. The Legislature has not exempted Howick's position from the statutory protections of Sections 10-3-1105 and 1106, and she is therefore entitled to them.

urging of the Salt Lake District Attorney, the Legislature permitted that change, but grandfathered existing employees in those division director positions. See Utah Code Ann. § 17-33-1 (2008); S.B. 78, 2008 Gen. Sess. (Ut. 2008). See also *D.A. makes case for – cronyism?*, S.L. Tribune, Feb. 10, 2008. No such changes have ever been made to the municipal merit system to permit a city to deny a municipal staff attorney position the protections of Section 10-3-1106.

C. SALT LAKE CITY CANNOT EXCEED ITS STATUTORY AUTHORITY AND VIOLATE THE UTAH MUNICIPAL CODE REGARDLESS OF THE MEANS IT USES, AND ITS ATTEMPTS TO DO SO ARE VOID.

Through its ordinances, policies, procedures, and contracts, Salt Lake City has repeatedly attempted to give itself the power to create at-will positions and deny City employees statutory protections in violation of statute and in excess of the power granted by the Legislature under Sections 10-3-1105 and 1106. However, regardless of the means it uses, the City cannot violate the mandates of the Legislature and exceed its statutory authority. “Whatever power or authority municipalities in this state have is derived from the Legislature.” Salt Lake City v. Sutter, 216 P. 234, 237 (Utah 1923). “Local governments, as subdivisions of the State, exercise those powers granted to them by the State Legislature, [citing cases] and the exercise of a delegated power is subject to the limitations imposed by state statutes and state and federal constitutions.” Harding v. Alpine City, 656 P.2d 985, 986 (Utah 1982) (citing State v. Hutchinson, 624 P.2d 1116 (Utah 1980)). Since Salt Lake City, as a political subdivision of the State, is a creature of statute, its powers are limited to those found in statute. The City is thus bound by the mandates of Sections 10-3-1105 and 1106, and it cannot make Howick an at-will employee in violation of law and in excess of the scope of its powers under those statutes.

If the City attempts to circumvent the Legislature’s directives, the City’s acts are void. The Utah Supreme Court has stated:

It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation Of every municipal corporation the charter or statute by which it is created is its organic act. Neither the corporation nor its officers can do any act, or make any contract, or incur any liability, not authorized thereby, or by some legislative act applicable thereto. All acts beyond the scope of the powers granted are void.

Salt Lake City v. Sutter, 216 P. at 235 (emphasis omitted) quoting 1 Dillon on Municipal Corporations (5th Ed.) § 237. While Utah courts no longer strictly construe a legislative grant of general welfare power to local governments, “local governments are without authority to pass any ordinance prohibited by, or in conflict with, state statutory law.” Hutchinson, 624 P.2d at 1121.⁷

Provisions of law that are illegal and void cannot be given any effect. This Court has stated that when it encounters such provisions, whether in the form of a regulation, rule or otherwise, or actions taken pursuant to them, this Court has “a duty to invalidate them.” Draughon v. Dept. of Fin. Inst., 1999 UT App 42, ¶ 5, 975 P.2d 935. (quoting Crowther v. Nationwide Mut. Ins. Co., 762 P.2d 1119, 1122 (Utah App. 1988). See also, Lorenc v. Call, 789 P.2d 46, 49 (Utah App. 1989).

⁷ City actions cannot be “directly prohibited by, or . . . inconsistent with the policy of, the state or federal laws or the constitution of this State or of the United States.” Id. at 1126.

1. Salt Lake City Cannot Violate the Law or Exceed Its Statutory Authority By Ordinance.

Utah Code Ann. § 10-3-702 affirms that, “[t]he governing body may pass any ordinance to regulate, require, prohibit, govern, control or supervise any activity, business, conduct or condition *authorized by this act or any other provision of law.*” (Emphasis added.) While municipalities may pass ordinances, they may only do so to the extent those ordinances are authorized by the Utah Municipal Code or other provisions of law. “It is well established that, where a city ordinance is in conflict with a state statute, the ordinance is invalid at its inception.” Hansen v. Eyre, 2005 UT 29, ¶ 15, 116 P.3d 290 (finding Salt Lake City ordinance invalid to the extent that it permitted what state law prohibited.)⁸ The Legislature’s mandates at Sections 10-3-1105 and 10-3-1106 are express limitations on the power that a city is authorized to exercise, and the City cannot exceed them.

In its ordinances, Salt Lake City states that any employee has the right to appeal a discharge pursuant to Utah Code Ann. § 10-3-1106 except “a) those employees set forth in section 10-3-1105(2) . . . and b) *at-will employees.* . . .” Salt Lake City Code § 2.52.130 (emphasis added). This ordinance provision purports to give the City power to create “at-will” positions exempt from statutory

⁸ Even when a city acts under a general welfare clause, specific grants of power “may serve to limit the means available under the general welfare clause, for some limitation may be imposed on the exercise of power by directing the use of power in a particular manner.” Hutchinson, 624 P.2d at 1126.

protections in addition to those allowed by the Legislature in Subsection 10-3-1105(2). This provision exceeds the Legislature's statutory grant of authority and violates Section 10-3-1105, and as such it is void.

2. Salt Lake City Cannot Violate the Law or Exceed Its Statutory Authority By Policies and Procedures.

Salt Lake City has also adopted policies and procedures by which it attempts to give itself an expanded power to create at-will positions. However, just as a city cannot use an ordinance to violate the law or exceed the scope of its statutory authority, it likewise cannot do so by using a policy or procedure.

An administrative agency's authority to promulgate regulations is limited to those regulations which are consonant with the statutory framework, and neither contrary to the statute nor beyond its scope. Administrative regulations may not conflict with the design of an Act, and when they do *the court has a duty to invalidate them* . . . Furthermore, when an administrative official misconstrues a statute and issues a regulation beyond the scope of a statute, it is in excess of administrative authority granted . . . Agency regulations may not abridge, enlarge, extend or modify [a] statute

Draughon, 1999 UT App 42 at ¶ 5 (quotations omitted) (emphasis added). See also Lorenc, 789 P.2d at 49 (a policy more restrictive than a rule promulgated under a statute abrogates the Legislature's objective, and "[w]hen such administrative regulations and policies 'conflict with the design of an Act,' we have a duty to invalidate them" (citation omitted)).

These City policies and procedures also violate other sections of State law, including an express mandate that the Legislature imposes on cities to follow the requirements of the Legislature's merit employment plan. Utah Code Ann. § 10-

3-1221 states, “[e]ach officer [of a city] shall have the power to prescribe rules and regulations, *not inconsistent with general law, the municipal administrative code* [the city’s ordinances], *and the merit plan*” (emphasis added). Likewise, under Utah Code Ann. § 10-3-815, “[t]he governing body of each municipality shall prescribe rules and regulations *which are not inconsistent with the laws of this state*, as it deems best for the efficient administration, organization, operation, conduct, and business of the municipality.” (Emphasis added.)

Salt Lake City Policy 3.01.02 ("City Policies 3.01.01") attempts to define at-will positions by stating, “[a]t-will positions are: A. Executive employees who report directly to the Mayor or a Department Director; B. Unclassified Employees; C. Part-time and seasonal employees; and, D. Regular employees who have not yet completed their probationary period.” This policy makes no reference to Section 10-3-1105, and it designates employees without regard for that section’s statutory requirements. To the extent it designates positions as at-will which are not listed in Section 10-3-1105(2), it is void.

Further, in the Salt Lake City’s Employee Appeal Board Procedures, the City states that its appeal process is available to “each employee of the City” except those in thirteen listed positions. Procedures I, E, Appendix 2.. For ease of comparison, the positions excepted by Section 10-3-1105(2) are set forth below next to the City’s list.

City Procedures

Section 10-3-1105(2)

- | | |
|--|--|
| 1. an officer appointed by the Mayor or the Mayor's designee; | (a) an officer appointed by the mayor or other person or body exercising executive power in the municipality; |
| 2. a member of the police department or fire department who is a member of the classified civil service; | (b) a member of the municipality's police department or fire department who is a member of the classified civil service in a first or second class city; |
| 3. a police chief; | (c) a police chief of the municipality; |
| 4. a deputy police chief; | (d) a deputy police chief of the municipality; |
| 5. a fire chief; | (e) a fire chief of the municipality; |
| 6. a deputy or assistant fire chief; | (f) a deputy or assistant fire chief of the municipality; |
| 7. a head of a City department; | (g) a head of a municipal department; |
| 8. a deputy head of a City department; | (h) a deputy of a head of a municipal department; |
| 9. a superintendent; | (i) a superintendent; |
| 10. a probationary employee; | (j) a probationary employee of the municipality; |
| 11. an hourly part-time employee; | (k) a part-time employee of the municipality; or |
| 12. seasonal employee; or | (l) a seasonal employee of the municipality. |
| 13. any other at-will employee. | |

The City's list follows the State statute with two exceptions. First, the City attempts to expand its powers under its first exception beyond the Legislature's mandate that exempted officers are those appointed by the mayor or the

comparable person or body in other forms of municipal government. Second, the City's thirteenth exception is not contained in the statute. Like City Policy 3.01.02, this section of the Procedures attempts to give the City the ability to create at-will positions without regard for statutory requirements. Like City Policy 3.01.02, it violates State statutory requirements under Sections 10-3-1105 and 10-3-1106, and under Sections 10-3-1221 and 10-3-815, and to that extent it is void.

3. Salt Lake City Cannot Violate the Law or Exceed Its Statutory Authority By Contract.

In addition to violating State requirements through ordinances, policies, and procedures, Salt Lake City also attempts to give itself an expanded power to designate at-will positions in violation of Sections 10-3-1105 and 10-3-1106 by contract. However, all of Salt Lake City's contractual efforts to create at-will positions and deny statutory protections in violation of Sections 10-3-1105 and 10-3-1106 are void. The Utah Supreme Court has stated that cities cannot exceed statutory restrictions on their powers by using contracts. "Neither the corporation nor its officers can do any act, *or make any contract* . . . not authorized [by the statutes creating the city]." Sutter, 216 P. at 235 (emphasis added).

The Utah Supreme Court has held that a governmental entity's personnel policies constitute contracts, not legislative acts, and that a governmental entity lacks authority to promulgate such contracts in contravention of Utah statutory law. University of Utah v. Shurtleff, 2006 UT 51, ¶¶ 26, 28 and 56, 144 P.3d 1109 (finding that university personnel policies were contractual and could not

restrict firearms in contravention of statute). Further, public employees have the right to expect that their employers will create contracts that comply with the law. Thurston v. Box Elder County, 892 P.2d at 1034, 1038 (Utah 1995 (quoting Thurston v. Box Elder County, 835 P.2d 165, 169 (Utah 1992)) (employee wrongfully terminated since “[t]he County had an obligation to comply with the statutory provisions . . . in writing its manual and dealing with employees, and Thurston had the right to expect that the County would”). See also, Brummitt v. Ogden Waterworks Co., 93 P. 828 (Utah 1908) (portions of municipal contracts that exceed statutory powers are void, although other portions of the contract may be enforced).

In this case, Salt Lake City has issued contracts in the form of policies, procedures, compensation plans, job descriptions and disclaimers all purporting to designate positions as at-will without regard to Section 10-3-1105(2). Under some of these documents, the City specifically designates Howick’s position as being at-will. The City also argues that Howick signed one such document in 1998 agreeing that her position would thereafter be designated as at-will. As demonstrated above, the City cannot circumvent State law by contract because such contracts, whether issued as a general personnel policy or entered into with a specific person, exceed the City’s authority and are void and unenforceable.

The Preston opinion advised the Board that the City has the power to exceed statutory limitations on its powers through the use of contracts, but this argument is clearly in error. As Preston notes, a city may voluntarily undertake an

additional duty that it would otherwise have no obligation to perform, but its acts cannot be “inconsistent with the underlying statute.” Preston Opinion, R. 85. Additional contractual rights “[can] not alter *or contradict* an employee’s statutory rights.” Code v. Utah Dep’t. of Health, 2007 UT App 390, ¶6, 174 P.2d 1134 (quoting Buckner v. Rennard, 2004 UT 78, ¶ 32, n.4, 99 P.3d 842).

Preston also advised the Board that if municipal employee rights can be expanded by contract, it follows that Howick could waive statutory and constitutional employment protections. Preston Opinion, R. 86. Again, this argument is clearly in error. As Preston noted, this issue involves “whether the City could ask Ms. Howick to agree to waive those statutory rights.” Preston Opinion, R. 85. The law clearly prohibits the City from exceeding its authority, and Howick cannot give to the City powers that the Legislature expressly withheld for the protection of city employees. Howick cannot give the City the power to circumvent a legislative policy. “Whatever power or authority municipalities in this state have is derived from the *Legislature*.” Sutter, 216 P. at 237 (emphasis added).⁹ “Local governments . . . exercise those powers granted to them by the

⁹ See also Druffner v. Mrs. Fields, Inc., 828 P.2d 1075, 1080 (Utah App. 1992) (finding that a waiver and release agreement purporting to release claims arising from employment, including Fair Labor Standards Act claims, was unenforceable as a matter of law as against public policy; “contracts tending to encourage violation of laws are void as contrary to public policy . . . To permit an employer to secure a release from the worker . . . will tend to nullify the deterrent effect which Congress plainly intended that [FLSA] should have. Knowledge on the part of the employer that he cannot escape liability . . . by taking advantage of the needs of his employees tends to insure compliance in the first place.” (Citations omitted)). See also Farmers Ins. Exch. v. Call, 712 P.2d 231, 236 (Utah 1985)

State Legislature” Harding v. Alpine City, 656 P.2d at 986 (emphasis added).

Salt Lake City cannot circumvent the limitations on its powers or violate the mandates of the Utah Municipal Code by asking for Howick's agreement. Where the Legislature gives the City no power to act, Howick cannot provide it. Instead, the City has “an obligation to comply with the statutory provisions” in its employment practices, and Howick has “the right to expect that the County [City] would.” Thurston, 892 P.2d at 1038.

Salt Lake City cannot use any means to avoid or violate the mandates of Sections 10-3-1105 and 10-3-1106 and other provisions of State code, and all of the City’s efforts to do so are void. Irrespective of the manner of implementation, whenever the City exceeds its statutory authority or violates the law, its acts are void, and this Court has a duty to invalidate those provisions of City ordinances, policies, procedures, and contracts, and actions taken pursuant to them.

(finding that where a household exclusion clause impacted minimum liability coverages mandated by state statute for operating a motor vehicle, it was “contrary to the public policy of this state and the statutory requirements found in the No-Fault Insurance Act as to the minimum benefits provided by statute[,]” and the contract clause thus was invalid.); Code, 2007 UT App 390 at ¶ 6 (“[P]ublic employees’ employment rights generally spring not from contract, but from legislative policy.” (quoting Knight v. Salt Lake County, 2002 Utah App. 100, ¶ 8, 46 P.3d 247)).

D. SALT LAKE CITY ACTED IN VIOLATION OF ITS OWN ORDINANCES REQUIRING IT TO COMPLY WITH STATE LAW.

City ordinances mandate that the City comply with state employment laws, and they place an affirmative duty on the City to remedy any violations. Salt Lake City Code §§ 2.53.020 and 2.53.030(A) expressly mandate that the City must follow State requirements in City employment practices. Salt Lake City Code § 2.53.020 provides that it covers employment practices and decisions relating to the City’s “classified career and civil service systems,” which it defines to mean “those job positions in Salt Lake City government *lawfully included* in the classified career and civil service system, *as defined in title 10, chapter 3 of the Utah Code Annotated*, the City ordinances and City policies enacted pursuant thereto.” (Emphasis added.) The Code further states, “[e]mployment decisions and practices in Salt Lake City government’s classified civil or career service systems that are *contrary to state or federal law are prohibited*.” Salt Lake City Code § 2.53.030(A) (emphasis added). Thus, under the City’s own ordinances, the City must comply with Sections 10-3-1105 and 1106, and City actions taken contrary to those statutes are prohibited.

Further, if the City takes an unlawful employment action, City ordinances impose an affirmative duty on the City to correct unlawful practices. Under Salt Lake City Code § 2.53.060(A), “[i]f there has been a violation of this chapter, corrective, curative, or preventive action *shall* be taken to ensure that violations of this chapter, similar to those found, will not recur.” (Emphasis added). Among

this section's requirements, the employee "*shall* be provided relief, which may include . . . 2. Cancellation of an unwarranted employment action; [and] 3. Restoration of the employee to the position the employee would have occupied absent the violation" Id. at 2.53.060(B) (emphasis added).

As demonstrated above, the City's efforts to make Howick's position at-will violated the Utah Municipal Code and exceeded its authority and are void, and the City's own ordinances require compliance with State law. The Board's decision, which was based entirely on Howick's allegedly at-will status, should therefore be reversed, and Howick should be reinstated with back pay and benefits.

II. HOWICK HAS BEEN DENIED DUE PROCESS AND SHOULD BE REINSTATED.

A. HOWICK HAS A PROPERTY INTEREST IN CONTINUED EMPLOYMENT.

This Court has "referred to public employment as a property right requiring due process upon discharge." Lucas v. Murray City Civil Service Comm'n, 949 P.2d 746, 752 n.2 (Utah App. 1997) (citing Worrall v. Ogden City Fire Dep't., 616 P.2d 598, 601 (Utah 1980)).¹⁰ "[P]ublic employees have a property interest in continued employment if contractual or statutory provisions guarantee continued employment absent 'sufficient cause' for discharge." Lucas, 949 P.2d at 752 (citing Board of Regents v. Roth, 408 U.S. 564, 576-78, 92 S.Ct. 2701 (1972)).

¹⁰ "Utah's constitutional guarantee of due process is substantially the same as the due process guarantees contained in the Fifth and Fourteenth amendments to the United States Constitution." In re Worthen, 926 P.2d 853, 876 (Utah 1996) (citing Untermeyer v. State Tax Comm'n., 129 P.2d 881 (Utah 1942)).

This Court in Lucas found that Utah Code Ann. § 10-3-1012 created a property interest in continued employment for municipal police officers because it granted civil service employees security against discharge without cause and that section of State code “thus limits both the department head’s and the Commission’s discretion in making employment decisions.” Lucas, 949 P.2d at 752-53.

Like Section 10-3-1012, Sections 10-3-1105 and 1106 guarantee continued employment for municipal employees by imposing limits on managerial discretion. Utah Code Ann. § 10-3-1105(1) provides, “[e]xcept as provided in Subsection (2), each employee of a municipality shall hold employment without limitation of time, being subject to discharge . . . only as provided in Section 10-3-1106.” Section 10-3-1106 limits a municipal employer’s discretion by providing that employees may not be discharged for the reasons stated in Subsection (1) or without sufficient cause pursuant to Subsection (3)(b).

Additional limitations on municipal action are imposed under an appeal board’s rules and standards of review as established by city ordinance pursuant to Section 10-3-1106(7). Under Salt Lake City Code ¶ 2.24.060, the Board must determine whether an adverse action was warranted, meaning that the facts support a need for “*discipline or other remedial action*,” and if so, whether the action taken was proportionate to the charges. (Emphasis added.)

As demonstrated in Section I of this Brief, Howick is entitled to the protections of Section 10-3-1106. She thus has a property interest – “a vested right to continued employment absent a legal cause for termination.” Lucas, 949

P.2d at 753. However, the City terminated Howick's employment at-will, and the Board denied jurisdiction based on her alleged at-will status. The Board denied Howick due process that is constitutionally mandated to protect her property interest when it upheld the City's at-will termination of Howick's employment.¹¹ Howick is therefore entitled to reinstatement.

B. THE CITY AND BOARD VIOLATED HOWICK'S DUE PROCESS RIGHT TO FAIR PROCEDURES ADEQUATE TO PROTECT A PROPERTY INTEREST IN CONTINUED EMPLOYMENT.

This Court has found that “[i]f a property interest in continued employment exists, then the employee is entitled to procedures comporting with the minimum requirements of due process, as provided in the Constitution.” Lucas, 949 P.2d at 752. In considering “what process is due” to protect a property interest in continued employment, this Court has held that a deprivation must “‘be *preceded* by notice and opportunity for hearing’ . . . [and this] is not a matter of legislative grace, but of ‘constitutional guarantee.’” Lucas, 949 P.2d at 753 (citing Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313, 70 S. Ct. 652, 656-57, (1950)); Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 541, 105 S.Ct. 1487, 1492 (1985).

Specifically, this Court found that “before termination, minimum due process entitles an employee to oral or written notice of the charges, an

¹¹ “It is a clear abuse of discretion for . . . [an administrative body] to exercise its discretion in such a way as to deny due process to a party appearing before it.” Lucas, 949 P.2d at 754.

explanation of the employer's evidence, and an opportunity for the employee to present his or her side of the story in 'something less' than a full evidentiary hearing." Lucas, 949 P.2d at 753 (citing Loudermill, 470 U.S. at 542, 545). When state statutes also provide for a full post-termination hearing, "the *Loudermill* Court also determined that due process . . . required a full, timely post-termination hearing." Id. The City and the Board failed to meet these procedural due process requirements in Howick's case, and the Board abused its discretion by, in effect, allowing her at-will termination to stand despite a lack of due process.

1. Howick Received No Pretermination Process.

The City insisted that Howick was an at-will employee and claimed that it did not have to have a reason for the decision to terminate her employment. The City thus gave her no notice of any charges against her and no explanation of a basis for any charges or opportunity to tell her side of any story, as mandated under Lucas and Loudermill. However, Howick was not an at-will employee, and the City violated Howick's right to due process before her termination. The Board's decision upheld this denial of due process.

2. The City and Board Failed To Provide Post-Termination Due Process.

The City and its Board also failed to provide constitutionally mandated post-termination hearing procedures. Pretermination procedures must be "coupled with a full post-termination hearing 'at a meaningful time.'" Lucas, 949 P.2d at 754, (citing Loudermill, 470 U.S. at 546-47).

Initially, the Board's staff denied Howick access to any post-termination process based on a decision by the City Labor Relations Officer, who coordinates and provides staff support to the Board under the Procedures. On appeal, this Court pointed out that Howick had a right to obtain a determination from the Board regarding its own jurisdiction and that the Labor Relations Officer had interfered with that right.¹²

After this Court pointed out the City's violation of Howick's rights, her Notice of Appeal was given to the Board. However, the procedure employed by the Board again circumvented any meaningful review. Essentially, the City asked its Board to return the matter to this Court, and the Board did so. Thus, the Board failed to provide constitutionally-mandated post termination due process.

3. The City and Board Failed to Provide a Meaningful and Fair Proceeding in Violation of Due Process Requirements.

The Board also abused its discretion and denied Howick due process by failing to provide her with any meaningful review. "It is a clear abuse of

¹² "Salt Lake City's Employee Appeals Board procedures nowhere permit the City's Labor Relations Officer to issue final decisions regarding the Board's jurisdiction. Rather, those procedures allow the Board to request an opinion from the City Attorney regarding questions of whether an employee is within the class of persons who may appeal. See Salt Lake City Employee Board Procedures, III(G), Appendix 2. Salt Lake City's method of dealing with Howick's notice of appeal circumvents judicial review of the decision regarding the Board's jurisdiction by substituting a letter from the Labor Relations Officer for a final administrative decision of the Board." Howick, 2008 UT App 216. See also Watson v. Univ. of Utah Medical Center, 75 F.3d 569, 580-81 (10th Cir. Utah 1996) (If an employer "agreed to follow a specific avenue to resolve the status of plaintiff's employment, and then actively interfered with that process, they violated plaintiff's right to procedural due process . . .")

discretion for an administrative body to exercise its discretion over the manner in which it conducts its proceedings such that it denies due process to a party appearing before it.” Tolman, 818 P.2d at 28.

This Court has stated that an employee can rely “upon any procedural protections afforded by contract, ordinance, or state statute.” Lucas, 949 P.2d at 752. The Utah Supreme Court has stated that “every person who brings a claim in a court or at a hearing held before an administrative agency has a due process right to receive a fair trial in front of a fair tribunal.” Bunnell v. Industrial Comm’n of Utah, 740 P.2d 1331, 1333 (Utah 1987) (citing Anderson v. Industrial Comm’n, 696 P.2d 1219 (Utah 1985)).

Due process requires certain safeguards. “At a minimum, timely and adequate notice and an opportunity to be heard in a meaningful way are at the very heart of procedural fairness.” In re Worthen, 926 P.2d at 876 (citations omitted). “[T]hese protections are, indeed, fundamental rights which inure to the benefit of every citizen of this state.” Id. at 877. Furthermore, “[f]airness requires not only an absence of actual bias, but endeavors *to prevent even the possibility of unfairness*.” Bunnell, 740 P.2d at 1333 (emphasis added, quotation omitted).

Further, due process requires that an administrative body consider the legal contentions of the party appearing before it. This Court has stated “an agency must at some point address the legal issues raised by a party appearing before it.” Tolman, 818 P.2d at 31 (citing Denver & R.G.W.R.R. v. Central Weber Sewer Improv. Dist., 287 P.2d 884, 887 (Utah 1955)). A determination must be prepared

“in such a fashion as to demonstrate that there is a logical and *legal basis* for the ultimate conclusions.” *Id.* at 32 n.8. The failure to address “legal contentions [is] . . . an abuse of discretion . . .” *Id.* at 32. Additionally, “the making of a clearly erroneous factual finding is an abuse of discretion, as is acting unreasonably or misinterpreting the law.” *Id.* at 27 (emphasis added).

The Board's handling of Howick's appeal did not provide to Howick a fair and meaningful proceeding before a fair tribunal. The Board met twice for a combined total of 21 minutes. R. 8-25; R. Exhibit A. It permitted Howick no participation in the proceeding other than the right to submit "written documentation" to its first meeting, although the City's representative was present during at least one Board meeting.¹³ R. 104. Howick submitted her legal contentions to the Board. R. 47-68. Without addressing Howick's legal contentions, the City argued that the Board should simply accept the City's unlawful classification and allow this Court to consider Howick's contentions on appeal. R. 27-46.

In response, the Board requested a legal opinion from the City Attorney, who recused himself and selected Preston to provide the requested legal opinion. R. 94-95. Preston opined that the City's actions were legal without ever addressing Howick's contentions regarding the City's authority and the requirements of Sections 10-3-1105 and 1106. R. 82-87. Three of the five Board

¹³ The City's Director of Human Resources, who has no role in the Board process, attended at least the Board's first meeting. R. 100.

members then met and adopted Preston's opinion in the Board's second meeting, which lasted approximately two minutes. The Board adopted the opinion through a verbal vote instead of a secret ballot as required by Section 10-3-1106(5)(a)(i).

R. Exhibit A at 3. Preston's opinion was in error, but Howick never even saw the Preston opinion until the City produced the record to her three weeks after the Board rendered its decision. Appendix 5.

These proceedings did not provide Howick any "opportunity to be heard in a meaningful way." In re Worthen, 926 P.2d at 876. The Board never considered Howick's legal contentions as it must. See Tolman, 818 P.2d at 31. The Board's determination does not "demonstrate that there is a logical and *legal basis* for the ultimate conclusions." Id. at 32 n.8. By failing to provide a fair and meaningful proceeding to Howick, the Board abused its discretion.

The City has twice demonstrated that it will not provide due process to Howick. However, in this case, the Court's decision about the legality of treating Howick as an at-will employee will resolve all issues before the Board. For that reason, the Board's decision regarding Howick's status as an at-will employee should be overturned, and Howick reinstated to her position.

III. HOWICK IS ENTITLED TO ATTORNEY FEES.

Howick is entitled to the protections of Section 10-3-1106, and the actions of the City, its Board and Board staff exceeded and violated the Utah Municipal Code and Howick's constitutional rights to due process. Therefore, this Court should award Howick attorney fees pursuant to the legal doctrines set forth below.

A. THIS COURT SHOULD AWARD ATTORNEY FEES TO HOWICK UNDER ITS INHERENT POWER IN THE INTEREST OF JUSTICE AND EQUITY BASED ON THE PRIVATE ATTORNEY GENERAL DOCTRINE.

Under their inherent power to award attorney fees in the interest of justice and equity, “[c]ourts have also awarded attorney fees to a party as a private attorney general when the vindication of a strong or societally important public policy takes place and the necessary costs in doing so transcend the individual plaintiff’s pecuniary interest to an extent requiring subsidization.” Stewart, 885 P.2d at 783 (quotations omitted).¹⁴ This Court has stated that under this doctrine it determines whether a legal action “vindicated ‘a strong or societally important public policy;’ whether ‘the necessary costs in doing so transcend[ed] [Plaintiffs’] pecuniary interest to an extent requiring subsidization;’ and whether this case is exceptional such that an award of fees is appropriate under the private attorney general doctrine.” Culbertson, 2008 UT App. 22, at ¶ 10 (quoting Utahns for Better Dental Health-Davis Inc. v. Davis County Clerk, 2007 UT 97, ¶ 5, 175 P.3d 1036).

Under the first of these factors, vindication of a strong or societally important public policy, this Court has found that the requirement is met when an action is brought not only to protect a party’s property, “but also to require

¹⁴ The Utah Supreme Court has stated that when an issue is presented to an appellate court, “an issue need not [first] be presented to an administrative agency if it cannot properly decide the issue.” Stewart, 885 P.2d at 781. The Board cannot award attorney’s fees or costs. Procedures I, C, Appendix 2.

[government] . . . to abide by its own ordinances . . . Such motivation serves the important public policy of ‘ensur[ing] that [government is] . . . governed by the rule of law, not of man.’” Culbertson, 2008 UT App 22 at ¶ 12 (quoting Fox v. Bd. of County Comm’rs, 827 P.2d 699, 706 (Idaho Ct. App. 1991)). This Court noted that, as in this case, a private action can serve to curb government’s “*willful disregard* of its own ordinances and procedures[,]” and to prevent government officials from “willfully disregarding . . . ordinances to obtain their own economic advantage.” Id. at ¶¶ 13 and 14. This is particularly important where a party has sought “to resolve this issue without litigation, yet their efforts were rebuffed.” Id. at ¶ 15. A private legal action benefits “a large number of citizens” when it forces government “to abide by the rule of law when no other avenue toward that end had been successful.” Id. at ¶ 15

Howick’s action serves such a purpose, and vindicates an important public policy. It demonstrates that cities cannot disregard legislative limitations on their powers and violate the law. “All acts beyond the scope of the powers granted are void.”). “[T]he exercise of a [City’s] delegated power is subject to the limitations imposed by state statutes and state and federal constitutions.” Harding v. Alpine City, 656 P.2d at 986. Further, the court has “a duty to invalidate” acts that exceed a city’s powers. Lorenc, 789 P.2d at 49.

Howick’s case also vindicates important public policies regarding employment. The Utah Supreme Court has stated that an employee’s property right to work and receive compensation for work is “one of the most important of

the liberties vouched safe to one in our society. It was so regarded by the framers of our state constitution. Article XII, § 19.” Backman v. Bateman, 263 P.2d 561, 563 (Utah 1953). The court declared that these rights “are of paramount importance and that they should be safeguarded to the highest possible degree consistent with the public good.” Id. Further, cities have an “obligation to comply with the statutory provisions . . . [in their policies and in] dealing with employees,” and employees have the “right to expect” that they will. Thurston, 892 P.2d at 1038.

Further, Howick’s action vindicates important public policies requiring that the City provide due process. Consistent with the first factor in Culbertson, Howick sought to discuss the illegal nature of the City’s termination action with the City Attorney several times but was rebuffed in her efforts. She then sought to use the City’s administrative process to address this matter, but the Board’s staff refused to provide Howick access to that process despite the clear requirements of the Board’s own Procedures. See Procedures III, G, Appendix 2. After this Court pointed out this clear violation,¹⁵ Howick’s Notice of Appeal was given to the Board. However, Howick’s participation in the appeal was limited to submitting written documentation of her position. The Board sought and obtained a legal opinion, which failed to address Howick’s legal contentions. Nevertheless, three Board members met and adopted that opinion in a meeting lasting approximately

¹⁵ See Howick, 2008 UT App 216.

two minutes. As demonstrated in Section II above, the City denied Howick due process at every step, both before and after the termination of her employment.

Under the second factor of Culbertson, the court examines whether the necessary costs in pursuing this matter transcend Howick's pecuniary interest to an extent requiring subsidization. This matter has created severe hardships for Howick, yet this kind of harm is very difficult and expensive to remedy. An employee must bring a challenge to vindicate these rights at a time when the employee, who is without a job and therefore without an income, is least able to pursue it. Raising a challenge creates severe stress and difficulty for the employee and places at risk the employee's ability to return to the workplace or find other employment. Meanwhile, the City is free to continue to insist on illegal action without suffering similar impacts, and with adequate funding to draw out the process and escalate its difficulties.

Further, Howick's position is one of numerous City positions that are subject to an illegal at-will designation, and thus Howick's action will benefit similarly situated employees and act as a deterrent to future illegal City actions. The City's Unclassified Compensation Plan, which has now been combined with the City's Executive Compensation Plan, was created to cover these illegally classified positions, and these plans were drafted without regard for the statutory provisions of Sections 10-3-1105 and 1106.¹⁶ Meanwhile, employees seeking to

¹⁶ The City combined its Unclassified Compensation Plan and Executive Compensation Plan in July of 2008. See supra note 2 at 5 and Appendix 3. The

vindicate these important rights face strong financial and personal disincentives, and the City's classifications, ordinances, policies, procedures, and contracts have previously gone without challenge.¹⁷ This action will make it less likely that municipal employees, including others at the City, will be subjected to illegal classifications by their employers or be subjected to deliberately protracted and improper processes if they seek to vindicate their rights.

Under the third factor in Culbertson, this case is extraordinary. Howick sought to address obvious problems with the City's action without bringing any legal action at all, but the City refused even to respond. Howick then sought to resolve this matter through the legislatively-mandated administrative process, which requires an appeal board to render a decision within fifteen days. In

new Executive Compensation Plan claims to apply to "Elected Officials and those full-time City employees classified as 'Appointed' employees," which it defines to be "'at-will' employees serving at the pleasure of the Mayor . . ." Executive Compensation Plan, Section II, Appendix 3. The plan lists all of these positions in Appendix A under Levels 001-017 and 097-099. That list not only appears to contain numerous positions that do not comply with the requirements of Sections 10-3-1105 and 1106, it contains five levels which state "Appointments Pending" rather than designating existing positions. It thus appears that the City has retained and intends to include even more illegally classified positions in its newly revised plan despite the fact that when the City adopted this compensation plan in July 2008, Howick had been pointing out the illegal nature of the City's classifications for nearly a year.

¹⁷ The City's newly combined Executive Compensation Plan makes it even less feasible for an employee to challenge the City's illegal classifications. In Section XVI of the plan, the City provides for severance pay for "appointed employees" who are terminated without cause, but only if they "execute a release of all claims approved by the City Attorney's Office." Executive Compensation Plan, Appendix 3. Employees thus must choose between challenging an illegal classification, or receiving severance income after losing their jobs.

response, the City willfully disregarded its own requirements and State law by denying Howick access to the Board. Once this Court pointed out the City's violation, the City then provided for a meaningless process designed to return the matter to this Court.

The Legislature mandates a speedy and cost-effective process for determining these disputes affecting the property rights and income of municipal employees, but the City's deliberate actions have instead forced Howick to incur many tens of thousands of dollars in expense and to spend over a year pursuing a vindication of her rights. The City made a deliberate choice to engage in protracted litigation in an effort to waste Howick's resources and coerce her acceptance of the City's wrongful actions, and these choices were made by the City Attorney and management personnel at the highest levels. The City was unwilling "to respond in a meaningful way to [Howick's] prelitigation claims and its engagement in this protracted litigation distinguishes this case from the run of the mill dispute between a public entity and members of the public." Culbertson, 2008 UT App at ¶ 18. Howick thus has met this Court's three factors, and is entitled to attorney fees under the private attorney general doctrine.¹⁸

¹⁸ Howick is prepared to submit to this Court an affidavit of attorney fees and costs incurred in connection with seeking review of the decision to terminate her employment and vindication of statutory and constitutional rights. When this Court has original jurisdiction of a matter, it has referred factual issues to the District Court for appropriate proceedings. See Foote v. Utah Board of Pardons, 808 P.2d 734, 735 (Utah 1991).

B. THIS COURT SHOULD AWARD ATTORNEY FEES TO HOWICK UNDER ITS INHERENT POWER IN THE INTEREST OF JUSTICE AND EQUITY BASED ON ACTS BY THE CITY IN BAD FAITH, VEXATIONOUSLY, WANTONLY OR FOR OPPRESSIVE REASONS.

Under this Court's equitable powers, it may also award attorney fees when a party acts "in bad faith, vexatiously, wantonly, or for oppressive reasons."

Stewart, 885 P.2d at 782 (citing James W. Moore et al., *Moore's Federal Practice* P 54.77 (2d ed. 1972)). Stewart does not define bad faith, but cases in other contexts offer guidance. In defining bad faith in a statutory context, the court held that these terms imply action that is willful or dishonest, involves "some motive of self-interest," or involves a "deliberate desire to evade knowledge because of a belief or fear that inquiry would disclose a vice or defect -- that is to say, where there is an intentional closing of the eyes or stopping of the ears." Research Planning, Inc. v. Bank of Utah, 690 P.2d 1130, 1132 (Utah 1984) (citations omitted).

In defining bad faith in the analogous context of awarding attorneys fees under Utah Code Ann. 78B-5-825, the Utah Supreme Court has defined good faith as "(1) an honest belief in the propriety of the activities in question; (2) no intent to take unconscionable advantage of others; and (3) no intent to, or knowledge of the fact that the activities in question will hinder, delay, or defraud others." Still Standing Stable, LLC. v. Allen, 2005 UT 46, ¶ 12, 122 P.3d 556 (quoting In Re: Discipline of Sonnenreich, 2004 Utah 3, ¶ 48, 86 P.3d 712. When any one of these factors is lacking a party has acted in bad faith. Id.

The facts of this case demonstrate conduct that it is in bad faith, vexatious, wanton and for oppressive reasons. The City's actions show a "deliberate desire to evade knowledge" and to "close its eyes" as the City Attorney and the City Labor Relations Officer repeatedly rebuffed Howick's requests to examine the law. See Research Planning, Inc., 690 P.2d at 1132. The City could not have had "an honest belief in the propriety of the activities in question" when, among other things, the City Attorney refused to examine the law, the original Labor Relations Officer obtained Howick's job description rather than following the Board's own Procedures, and the acting Labor Relations Officer also refused to follow the Board's Procedures and circumvented the jurisdiction of this Court. See Still Standing Stable, LLC, 2005 UT 46 at ¶ 12.

These actions further demonstrate an intent to "take unconscionable advantage of others[.]" and that the City had a knowledge and intent of activities that would "hinder, delay or defraud others." Id. at ¶ 12. Both State statute and City procedures require an expedited process of fifteen days when an employee appeals to the Board.¹⁹ Yet the City refused to comply with the law, and through its deliberate efforts to create delay, it greatly increased the time and expense necessary for Howick to obtain a review and decision.

The City took these actions despite the fact that the courts have recognized the significance of determining public employment rights. The Utah Supreme

¹⁹ See Section 10-3-1106(3)(a), (3)(b)(i) and (ii), and (5)(a)(i) and (ii). See also Procedures III, F; III G; and IV, A, Appendix 2.

Court noted that employment property rights “are of paramount importance and that they should be safeguarded to the highest possible degree consistent with the public good.” Backman, 263 P.2d at 563.

The City also acted despite the fact that the courts have recognized the hardships associated with improper employment actions. Terminated employees are in a “particularly vulnerable position.” Heslop v. Bank of Utah, 839 P.2d 828, 840 (Utah 1992). The employee may be subjected to a “lengthy wait for vindication, and to the attendant and often traumatic disruptions to his personal and economic life.” Loudermill, 470 U.S. at 549 (J. Marshall concurrence). “During this period the employee is left in limbo[.]” Id. It is “in no respect certain” that even a prompt post-deprivation hearing will make him or her whole – “the wrongfully discharged employee will almost inevitably suffer irreparable injury.” Id. at 550. “Of perhaps equal concern, the personal trauma experienced during the long months in which the employee awaits decision, during which he suffers doubt, humiliation, and the loss of an opportunity to perform work, will never be recompensed, and indeed probably could not be with dollars alone.” Id. Similarly, the Utah Supreme Court has stated that the effects of an arbitrary termination are “far-reaching and drastic” on the lives of “capable and faithful public employees who have given many years to a particular job.” Backman, 263 P.2d at 564.

The City’s actions in this case are egregious, and they constitute conduct that is in bad faith, vexatious, wanton or for oppressive reasons. These actions

have imposed severe hardship and expense on Howick, and have created the very hazards that Utah courts and the United States Supreme Court have spoken against so strongly. The City pursued this course despite the fiduciary nature of its obligations to comply with the law and properly administer employment rights, including through the City's Board process. Therefore, the City's actions meet the test stated in Stewart, and this Court should exercise its inherent equitable power and award attorney fees to Howick.

C. THIS COURT SHOULD AWARD ATTORNEY FEES TO HOWICK UNDER THE DUE PROCESS PROVISIONS OF THE UTAH CONSTITUTION.

The Due Process Clause of the Utah Constitution also provides for the award of attorney fees in this appeal. The Utah Supreme Court has found that the Due Process Clause of Article I, § 7 is self-executing, and that “self-executing constitutional provisions allow for awards of money damages.” Spackman, 2000 UT 87 at ¶ 19 (quotations omitted). The Utah Supreme Court has stated that “judicial tradition gives [a court] the authority to do this under appropriate circumstances.” Id. at ¶ 21. See also Dexter v. Bosko, 2008 UT 29, ¶ 22, 184 P.3d 592 (stating that in Spackman the Supreme Court “noted that the common law gives the judiciary authority to provide civil remedies for constitutional violations under appropriate circumstances.”)

The court in Spackman stated that in a tort suit for damages three elements must be established, and those elements may be applied here. “First, a plaintiff must establish that he or she suffered a ‘flagrant’ violation of his or her

constitutional rights.” Spackman, 2000 UT 87 at ¶ 23. As discussed in Section II of this Brief, Howick suffered a flagrant violation of her constitutional rights to receive due process of law under the U.S. Constitution and under Article I, § 7 of the Utah Constitution. The City’s actions twice deliberately denied due process to Howick despite the requirements of Section 10-3-1106 and the City’s own Procedures mandating a fast and cost-effective process. As a result, Howick was instead forced to pursue an expensive and lengthy process to obtain a fair review. This Court has stated that the City’s actions were not permitted by its own Procedures and that they circumvented judicial review. Howick, 2008 UT App 216.

The Spackman court stated that “[s]econd, a plaintiff must establish that existing remedies do not redress his or her injuries.” Spackman, 2000 UT 87 at ¶ 24. This appeal is not a suit for damages. The remedy available in this appeal is reinstatement, but Howick has incurred many tens of thousands of dollars in legal fees and expenses due to the City’s illegal actions. The existing remedy does not redress Howick’s injuries; if she is reinstated, she will have to spend a substantial portion of her annual government salary to pay expenses that the City illegally forced her to incur. The harm is not remedied in this case if Howick retains her job, but at a cost she can ill afford.

Finally, the Spackman court stated that “[t]hird, a plaintiff must establish that equitable relief, such as an injunction, was and is wholly inadequate to protect the plaintiff’s rights or redress his or her injuries.” Spackman, 2000 UT 87 at

¶ 25. As discussed in the foregoing paragraph, restoring Howick’s job does not make her whole if she must incur the cost of correcting the City’s deliberate and illegal conduct. The Utah Supreme Court noted that the constitutional rights that individuals hold in their employment under the Utah Constitution include “[t]he right to work, the right to engage in gainful occupations, [and] *the right to receive compensation for one’s work. . .*” Backman, 263 P.2d at 562-63 (emphasis added). Non-monetary equitable relief alone will be wholly inadequate to protect Howick’s constitutional rights in her employment under the Utah Constitution, including her right to receive compensation for her work.

The Utah Supreme Court has not limited an award of damages for a violation of Utah’s constitutional due process requirements to cases arising in a particular forum. The Court stated that these damages may be awarded in “appropriate circumstances” at a court’s discretion. Under this flexible standard, damages may be applied to a matter arising before an appeal board that must be appealed to this Court due to a flagrant denial of due process. Howick’s circumstances meet the test established by the Utah Supreme Court to obtain an award of attorney fees as damages under the Due Process Clause of the Utah Constitution, and this Court should award her attorney fees on that basis.

CONCLUSION AND STATEMENT OF RELIEF SOUGHT

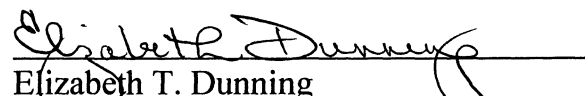
Howick was wrongfully terminated from her position as an attorney for Salt Lake City solely on the basis of her allegedly at-will status in excess of the City's statutory authority and in violation of the Utah Municipal code. Howick was also

denied constitutionally mandated due process to protect her property interest in her employment both before and after the termination of that employment, and by the manner in which the City, its Board and staff conducted the proceedings. Howick therefore requests that this Court:

1. Reverse the decision of the Salt Lake City Employee Appeals Board and reinstate her to her position in the Salt Lake City Attorney's Office because she was a City employee entitled to the protections of Utah Code Ann. §§ 10-3-1105 and 1106, and because her due process rights have been violated by the City and the Board; and

2. Award her attorneys fees and costs incurred in connection with seeking review of the decision to terminate her employment and vindication of statutory and constitutional rights on the bases set forth in Section III above.

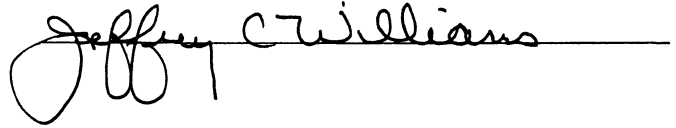
Dated this 3rd day of October, 2008.


Elizabeth T. Dunning
Attorney for Petitioner Jodi Howick

3. CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 31st day of October, 2008, a true and correct copy of the foregoing Petitioners Brief was hand delivered to:

W. Mark Gavre
Parsons Behle & Latimer
201 South Main Street, Suite 1800
Salt Lake City, UT 84111
Attorneys for Salt Lake City Corporation

A handwritten signature in black ink, appearing to read "Jeffrey C. Williams", is written over a horizontal line.

APPENDICES

1. Full text of laws to be interpreted
2. Salt Lake City Employee Appeals Board Procedures
3. June 3, 2008 Salt Lake City Council Staff Report and the Executive Compensation Plan
4. Petitioner's Docketing Statement, Case No. 20070863
5. Transmission Letter sending record in Case No. 20080608.

APPENDIX 1

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*** STATUTES CURRENT THROUGH THE 2007 FIRST SPECIAL SESSION. ***
*** ANNOTATIONS CURRENT THROUGH 2007 UT 34 (4/19/2007); 2007 UT APP 119 (4/19/2007) AND APRIL 15,
2007 (FEDERAL CASES). ***

TITLE 10. UTAH MUNICIPAL CODE
CHAPTER 3. MUNICIPAL GOVERNMENT
PART 11. PERSONNEL RULES AND BENEFITS

Go to the Utah Code Archive Directory

Utah Code Ann. § 10-3-1105 (2007)

§ 10-3-1105. Municipal employees -- Duration and termination of employment -- Exceptions

(1) Except as provided in Subsection (2), each employee of a municipality shall hold employment without limitation of time, being subject to discharge, suspension of over two days without pay, or involuntary transfer to a position with less remuneration only as provided in Section 10-3-1106.

(2) Subsection (1) does not apply to:

(a) an officer appointed by the mayor or other person or body exercising executive power in the municipality;

(b) a member of the municipality's police department or fire department who is a member of the classified civil service in a first or second class city;

(c) a police chief of the municipality;

(d) a deputy police chief of the municipality;

(e) a fire chief of the municipality;

(f) a deputy or assistant fire chief of the municipality;

(g) a head of a municipal department;

(h) a deputy of a head of a municipal department;

(i) a superintendent;

(j) a probationary employee of the municipality;

(k) a part-time employee of the municipality; or

(l) a seasonal employee of the municipality.

(3) Nothing in this section or Section 10-3-1106 may be construed to limit a municipality's ability to define cause for an employee termination or reduction in force.

HISTORY: C. 1953, 10-3-1105, enacted by L. 1977, ch. 48, § 3; 2004, ch. 260, § 1.

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2007 (FEDERAL CASES). ***

TITLE 10. UTAH MUNICIPAL CODE
CHAPTER 3. MUNICIPAL GOVERNMENT
PART 11. PERSONNEL RULES AND BENEFITS

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Utah Code Ann. § 10-3-1106 (2007)

§ 10-3-1106. Discharge, suspension without pay, or involuntary transfer -- Appeals -- Board -- Procedure

(1) An employee to which Section 10-3-1105 applies may not be discharged, suspended without pay, or involuntarily transferred to a position with less remuneration:

(a) because of the employee's politics or religious belief; or

(b) incident to, or through changes, either in the elective officers, governing body, or heads of departments.

(2) (a) If an employee is discharged, suspended for more than two days without pay, or involuntarily transferred from one position to another with less remuneration for any reason, the employee may, subject to Subsection (2)(b), appeal the discharge, suspension without pay, or involuntary transfer to a board to be known as the appeal board, established under Subsection (7).

(b) If the municipality provides an internal grievance procedure, the employee shall exhaust the employee's rights under that grievance procedure before appealing to the board.

(3) (a) Each appeal under Subsection (2) shall be taken by filing written notice of the appeal with the municipal recorder within ten days after:

(i) if the municipality provides an internal grievance procedure, the employee receives notice of the final disposition of the municipality's internal grievance procedure; or

(ii) if the municipality does not provide an internal grievance procedure, the discharge, suspension, or involuntary transfer.

(b) (i) Upon the filing of an appeal under Subsection (3)(a), the municipal recorder shall forthwith refer a copy of the appeal to the appeal board.

(ii) Upon receipt of the referral from the municipal recorder, the appeal board shall forthwith commence its investigation, take and receive evidence, and fully hear and determine the matter which relates to the cause for the discharge, suspension, or transfer.

(4) An employee who is the subject of the discharge, suspension, or transfer may:

(a) appear in person and be represented by counsel;

(b) have a public hearing;

(c) confront the witness whose testimony is to be considered; and

(d) examine the evidence to be considered by the appeal board.

(5) (a) (i) Each decision of the appeal board shall be by secret ballot, and shall be certified to the recorder within 15 days from the date the matter is referred to it, except as provided in Subsection (5)(a)(ii).

(ii) For good cause, the board may extend the 15-day period under Subsection (5)(a)(i) to a maximum of 60 days, if the employee and municipality both consent.

(b) If it finds in favor of the employee, the board shall provide that the employee shall receive:

(i) the employee's salary for the period of time during which the employee is discharged or suspended without pay;
or

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

(6) (a) A final action or order of the appeal board may be appealed to the Court of Appeals by filing with that court a notice of appeal.

(b) Each notice of appeal under Subsection (6)(a) shall be filed within 30 days after the issuance of the final action or order of the appeal board.

(c) The Court of Appeals' review shall be on the record of the appeal board and for the purpose of determining if the appeal board abused its discretion or exceeded its authority.

(7) (a) The method and manner of choosing the members of the appeal board, the number of members, the designation of their terms of office, and the procedure for conducting an appeal and the standard of review shall be prescribed by the governing body of each municipality by ordinance.

(b) For a municipality operating under a form of government other than a council-mayor form under Part 12, Optional Forms of Municipal Government Act, an ordinance adopted under Subsection (7)(a) may provide that the governing body of the municipality shall serve as the appeal board.

HISTORY: C. 1953, 10-3-1106, enacted by L. 1977, ch. 48, § 3; 2004, ch. 260, § 2.

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TITLE 10. UTAH MUNICIPAL CODE
CHAPTER 3. MUNICIPAL GOVERNMENT
PART 7. MUNICIPAL ORDINANCES, RESOLUTIONS, AND PROCEDURE

Go to the Utah Code Archive Directory

Utah Code Ann. § 10-3-702 (2007)

§ 10-3-702. Extent of power exercised by ordinance

The governing body may pass any ordinance to regulate, require, prohibit, govern, control or supervise any activity, business, conduct or condition authorized by this act or any other provision of law. An officer of the municipality shall not be convicted of a criminal offense where he relied on or enforced an ordinance he reasonably believed to be a valid ordinance. It shall be a defense to any action for punitive damages that the official acted in good faith in enforcing an ordinance or that he enforced an ordinance on advice of legal counsel.

HISTORY: C. 1953, 10-3-702, enacted by L. 1977, ch. 48, § 3.

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TITLE 10. UTAH MUNICIPAL CODE
CHAPTER 3. MUNICIPAL GOVERNMENT
PART 8. MUNICIPAL ADMINISTRATION

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Utah Code Ann. § 10-3-815 (2007)

§ 10-3-815. Rules and regulations for administration of municipality

The governing body of each municipality shall prescribe rules and regulations which are not inconsistent with the laws of this state, as it deems best for the efficient administration, organization, operation, conduct and business of the municipality.

HISTORY: C. 1953, 10-3-815, enacted by L. 1977, ch. 48, § 3.

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TITLE 10. UTAH MUNICIPAL CODE
CHAPTER 3. MUNICIPAL GOVERNMENT
PART 12. OPTIONAL FORMS OF MUNICIPAL GOVERNMENT

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Utah Code Ann. § 10-3-1221 (2007)

§ 10-3-1221. Municipal administrative code in council-mayor form

It shall also be the duty of the first mayor elected under the provisions of this part to draft and submit to the council, within six months after assuming office, a proposed ordinance providing for the division of the administrative service of the municipality into departments, divisions, and bureaus, and defining the functions and duties of each. Subsequent to the adoption of this ordinance, upon recommendation of the mayor, the council by ordinance may create, consolidate, or abolish departments, divisions, and bureaus and define or alter the functions and duties of each. The compilation of the ordinances shall be known as the "municipal administrative code." Each officer shall have the power to prescribe rules and regulations, not inconsistent with general law, the municipal administrative code, and the merit plan. Prior to the adoption of the municipal administrative code, the mayor shall have power to establish temporary rules and regulations to ensure efficiency and effectiveness in the divisions of the municipal government.

HISTORY: C. 1953, 10-3-1221, enacted by L. 1977, ch. 48, § 3.

2.52.130 Discharge, Suspension Or Transfer:

In all cases where any employee, except: a) those employees set forth in section 10-3-1105 (2), Utah Code Annotated, 1953, or its successor, and b) at-will employees, is discharged, suspended for more than two (2) days without pay (2 shifts for employees who work shifts longer than 8 hours), or involuntarily transferred from one position to another with less remuneration, the employee shall have the right to appeal such action in accordance with sections 10-3-1105 and 10-3-1106, Utah Code Annotated, 1953, or its successor. (Ord. 62-05 § 2, 2005: prior code § 25-11-3)

2.53.020 Covered Employees And Applicants:

This chapter covers employment practices and decisions relating to Salt Lake City government's classified career and civil service systems. "Classified career and civil service systems" means those job positions in Salt Lake City government lawfully included in the classified career and civil service, as defined in title 10, chapter 3 of the Utah Code Annotated, the city ordinances and city policies enacted pursuant thereto. (Ord. 87-98 § 1, 1998)

2.53.030 Prohibited Employment Decisions And Practices:

- A. Employment decisions and practices in Salt Lake City government's classified civil or career service systems that are contrary to state or federal law are prohibited.
- B. Employment decisions and practices in Salt Lake City's classified career service and civil service system shall be based on job related criteria.
 - 1. The term "job related criteria" as used in this chapter means those criteria necessary or desirable to perform successfully the job held or sought. The term includes the personal and professional attributes, qualifications, experience, character, interpersonal skills, education and training, and those qualifications and skills identified in a written job description.
 - 2. The following are not "job related criteria" and shall not be used as a basis for an employment decision or disciplinary action: a) the status of having a lifestyle which is irrelevant to successful job performance; and b) the status of being in or outside of an adult interpersonal relationship or a family relationship.
 - 3. Nothing in this section shall prevent the city from taking disciplinary action with respect to classified career service or civil service employees where there exists a reasonable nexus between an act or failure to act that: a) adversely affects job performance; b) disrupts the workplace; c) undermines the authority of management; d) impairs close working relationships essential to the efficiency of the workplace; or e) otherwise impedes a safe, efficient or effective work environment. (Ord. 87-98 § 1, 1998)

2.53.060 Remedies And Relief:

- A. If there has been a violation of this chapter, corrective, curative, or preventive action shall be taken to ensure that violations of this chapter, similar to those found, will not recur.
- B. If an applicant for a position or an employee in the Salt Lake City government's classified career and civil service systems has been the subject of an employment decision or practice done in violation of this chapter, the applicant or employee shall be provided relief, which may include the following:
 - 1. The applicant may be offered the position the applicant would have occupied absent the violation or, if justified by the circumstances, a substantially equivalent position, unless the evidence indicates that the applicant would not have been selected even absent the violation;
 - 2. Cancellation of an unwarranted employment action;
 - 3. Restoration of the employee to the position the employee would have occupied absent the violation; and
 - 4. Adverse matters relating to an employment decision or practice in violation of this chapter shall be expunged from the applicant's or employee's personnel records. (Ord. 87-98 § 1, 1998)

1. General

- 1.1 Regular full-time employees are eligible for the City's benefits package, subject to the terms, conditions, and limitations of each benefit program and specific employee elections.
- 1.2 Regular part-time employees are eligible for some benefits sponsored by Salt Lake City, subject to the terms, conditions, and limitations of each benefit program and specific employee elections.
- 1.3 Regular full-time and regular part-time employees are selected through an open competitive process.
- 1.4 Part-time and seasonal employees and interns are only entitled to benefits required by federal, state, or municipal law.
- 1.5 Regular full-time and regular part-time employees are subject to a probationary period to determine if further employment with the City is appropriate. The duration of the probationary period is designated when vacancies are filled.
- 1.6 At their discretion, supervisors may extend probationary periods due to job cycle requirements or performance problems or goals. Such extensions shall not exceed 60 days, and must be made in writing not later than 30 days prior to the conclusion of the original probationary period. This provision does not apply to Civil Service employees.
- 1.7 Regular full-time and regular part-time employees are entitled to bidding rights as specified in memoranda of understanding or Division of Human Resources procedures approved by the Attorney's Office.
- 1.8 At will positions are:
 - A. Executive employees who report directly to the Mayor or a Department Director;
 - B. Unclassified Employees;
 - C. Part-time and seasonal employees; and,
 - D. Regular employees who have not yet completed their probationary period.
- 1.9 Definitions:
 - A. Regular full-time: Employees whose positions regularly require 40 hours per week on a full-time schedule.
 - B. Regular part-time: Employees whose positions regularly require 20 hours or more but less than 40 hours per week.
 - C. Part-time or hourly: Employees whose positions require less than 20 hours per week.
 - D. Seasonal: Employees who work during a specific season equal to or less than eleven months in duration defined by the department.
 - E. Intern: Students working for the City through a recognized university or college for a specified period of time, as defined by the department.

F. Exempt/Non-exempt: Employees “exempt” or “non-exempt” from the payment of overtime in accordance with the Fair Labor Standards Act.

G. Probationary period: The period of time that an employee serves as part of the hiring process before career service or civil service status is granted to the employee. For career service employees this period is 180 days. For civil service employees, the length of probationary periods is determined by the Civil Service Commission.

H. Telecommuting: A work arrangement in which the workplace is located, at least part of the time, at an alternative location such as an employee's residence.

CONSTITUTION OF UTAH

PREAMBLE

Article

- I. Declaration of Rights
- II. State Boundaries
- III. Ordinance
- IV. Elections and Right of Suffrage
- V. Distribution of Powers
- VI. Legislative Department
- VII. Executive Department
- VIII. Judicial Department
- IX. Congressional and Legislative Apportionment
- X. Education
- XI. Local Governments
- XII. Corporations
- XIII. Revenue and Taxation
- XIV. Public Debt
- XV. Militia
- XVI. Labor
- XVII. Water Rights
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- XIX. Public Buildings and State Institutions
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- XXI. Salaries [Repealed]
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- XXIV. Schedule

PREAMBLE

Grateful to Almighty God for life and liberty, we, the people of Utah, in order to secure and perpetuate the principles of free government, do ordain and establish this CONSTITUTION.

1896

ARTICLE I

DECLARATION OF RIGHTS

Section

1. [Inherent and inalienable rights.]
2. [All political power inherent in the people.]
3. [Utah inseparable from the Union.]
4. [Religious liberty.]
5. [Habeas corpus.]
6. [Right to bear arms.]
7. [Due process of law.]
8. [Offenses bailable.]
9. [Excessive bail and fines — Cruel punishments.]
10. [Trial by jury.]
11. [Courts open — Redress of injuries.]
12. [Rights of accused persons.]
13. [Prosecution by information or indictment — Grand jury.]
14. [Unreasonable searches forbidden — Issuance of warrant.]
15. [Freedom of speech and of the press — Libel.]
16. [No imprisonment for debt — Exception.]
17. [Elections to be free — Soldiers voting.]
18. [Attainder — Ex post facto laws — Impairing contracts.]
19. [Treason defined — Proof.]
20. [Military subordinate to the civil power.]
21. [Slavery forbidden.]
22. [Private property for public use.]
23. [Irrevocable franchises forbidden.]
24. [Uniform operation of laws.]
25. [Rights retained by people.]
26. [Provisions mandatory and prohibitory.]

Section

27. [Fundamental rights.]
28. [Declaration of the rights of crime victims.]
29. [Marriage.]

Section 1. [Inherent and inalienable rights.]

All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.

1896

Sec. 2. [All political power inherent in the people.]

All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government as the public welfare may require.

1896

Sec. 3. [Utah inseparable from the Union.]

The State of Utah is an inseparable part of the Federal Union and the Constitution of the United States is the supreme law of the land.

1896

Sec. 4. [Religious liberty.]

The rights of conscience shall never be infringed. The State shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; no religious test shall be required as a qualification for any office of public trust or for any vote at any election; nor shall any person be incompetent as a witness or juror on account of religious belief or the absence thereof. There shall be no union of Church and State, nor shall any church dominate the State or interfere with its functions. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or for the support of any ecclesiastical establishment.

1899

Sec. 5. [Habeas corpus.]

The privilege of the writ of habeas corpus shall not be suspended, unless, in case of rebellion or invasion, the public safety requires it.

1896

Sec. 6. [Right to bear arms.]

The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the state, as well as for other lawful purposes shall not be infringed; but nothing herein shall prevent the legislature from defining the lawful use of arms.

1984 (2nd S.S.)

Sec. 7. [Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law.

1896

Sec. 8. [Offenses bailable.]

(1) All persons charged with a crime shall be bailable except:

- (a) persons charged with a capital offense when there is substantial evidence to support the charge; or
- (b) persons charged with a felony while on probation or parole, or while free on bail awaiting trial on a previous felony charge, when there is substantial evidence to support the new felony charge; or
- (c) persons charged with any other crime, designated by statute as one for which bail may be denied, if there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the person would constitute a substantial danger to any other person

or to the community or is likely to flee the jurisdiction of the court if released on bail.

(2) Persons convicted of a crime are bailable pending appeal only as prescribed by law. 1988 (2nd S.S.)

Sec. 9. [Excessive bail and fines — Cruel punishments.]

Excessive bail shall not be required; excessive fines shall not be imposed; nor shall cruel and unusual punishments be inflicted. Persons arrested or imprisoned shall not be treated with unnecessary rigor. 1896

Sec. 10. [Trial by jury.]

In capital cases the right of trial by jury shall remain inviolate. In capital cases the jury shall consist of twelve persons, and in all other felony cases, the jury shall consist of no fewer than eight persons. In other cases, the Legislature shall establish the number of jurors by statute, but in no event shall a jury consist of fewer than four persons. In criminal cases the verdict shall be unanimous. In civil cases three-fourths of the jurors may find a verdict. A jury in civil cases shall be waived unless demanded. 1996

Sec. 11. [Courts open — Redress of injuries.]

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party. 1896

Sec. 12. [Rights of accused persons.]

In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to be confronted by the witnesses against him, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, and the right to appeal in all cases. In no instance shall any accused person, before final judgment, be compelled to advance money or fees to secure the rights herein guaranteed. The accused shall not be compelled to give evidence against himself; a wife shall not be compelled to testify against her husband, nor a husband against his wife, nor shall any person be twice put in jeopardy for the same offense.

Where the defendant is otherwise entitled to a preliminary examination, the function of that examination is limited to determining whether probable cause exists unless otherwise provided by statute. Nothing in this constitution shall preclude the use of reliable hearsay evidence as defined by statute or rule in whole or in part at any preliminary examination to determine probable cause or at any pretrial proceeding with respect to release of the defendant if appropriate discovery is allowed as defined by statute or rule. 1994

Sec. 13. [Prosecution by information or indictment — Grand jury.]

Offenses heretofore required to be prosecuted by indictment, shall be prosecuted by information after examination and commitment by a magistrate, unless the examination be waived by the accused with the consent of the State, or by indictment, with or without such examination and commitment. The formation of the grand jury and the powers and duties thereof shall be as prescribed by the Legislature. 1947

Sec. 14. [Unreasonable searches forbidden — Issuance of warrant.]

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures

shall not be violated; and no warrant shall issue but upon probable cause supported by oath or affirmation, particularly describing the place to be searched, and the person or thing to be seized. 1894

Sec. 15. [Freedom of speech and of the press — Libel.]

No law shall be passed to abridge or restrain the freedom of speech or of the press. In all criminal prosecutions for libel the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true and was published with good motives, and for justifiable ends the party shall be acquitted; and the jury shall have the right to determine the law and the fact. 1894

Sec. 16. [No imprisonment for debt — Exception.]

There shall be no imprisonment for debt except in cases of absconding debtors. 1894

Sec. 17. [Elections to be free — Soldiers voting.]

All elections shall be free, and no power, civil or military shall at any time interfere to prevent the free exercise of the right of suffrage. Soldiers, in time of war, may vote at their post of duty, in or out of the State, under regulations to be prescribed by law. 1896

Sec. 18. [Attainder — Ex post facto laws — Impairing contracts.]

No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be passed. 1896

Sec. 19. [Treason defined — Proof.]

Treason against the State shall consist only in levying war against it, or in adhering to its enemies or in giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act. 1896

Sec. 20. [Military subordinate to the civil power.]

The military shall be in strict subordination to the civil power, and no soldier in time of peace, shall be quartered in any house without the consent of the owner; nor in time of war except in a manner to be prescribed by law. 1896

Sec. 21. [Slavery forbidden.]

Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within this State. 1896

Sec. 22. [Private property for public use.]

Private property shall not be taken or damaged for public use without just compensation. 1896

Sec. 23. [Irrevocable franchises forbidden.]

No law shall be passed granting irrevocably any franchise, privilege or immunity. 1896

Sec. 24. [Uniform operation of laws.]

All laws of a general nature shall have uniform operation. 1896

Sec. 25. [Rights retained by people.]

This enumeration of rights shall not be construed to impair or deny others retained by the people. 1896

Sec. 26. [Provisions mandatory and prohibitory.]

The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise. 1896

Sec. 27. [Fundamental rights.]

Frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government. 1896

Sec. 28. [Declaration of the rights of crime victims.]

(1) To preserve and protect victims' rights to justice and due process, victims of crimes have these rights, as defined by law:

(a) To be treated with fairness, respect, and dignity, and to be free from harassment and abuse throughout the criminal justice process;

(b) Upon request, to be informed of, be present at, and to be heard at important criminal justice hearings related to the victim, either in person or through a lawful representative, once a criminal information or indictment charging a crime has been publicly filed in court; and

(c) To have a sentencing judge, for the purpose of imposing an appropriate sentence, receive and consider, without evidentiary limitation, reliable information concerning the background, character, and conduct of a person convicted of an offense except that this subsection does not apply to capital cases or situations involving privileges.

(2) Nothing in this section shall be construed as creating a cause of action for money damages, costs, or attorney's fees, or for dismissing any criminal charge, or relief from any criminal judgment.

(3) The provisions of this section shall extend to all felony crimes and such other crimes or acts, including juvenile offenses, as the Legislature may provide.

(4) The Legislature shall have the power to enforce and define this section by statute. 1994

Sec. 29. [Marriage.]

(1) Marriage consists only of the legal union between a man and a woman.

(2) No other domestic union, however denominated, may be recognized as a marriage or given the same or substantially equivalent legal effect. 2004

ARTICLE II**STATE BOUNDARIES****Section**

1. [State boundaries.]

Section 1. [State boundaries.]

The boundaries of the State of Utah shall be as follows:

Beginning at a point formed by the intersection of the thirty-second degree of longitude west from Washington, with the thirty-seventh degree of north latitude; thence due west along said thirty-seventh degree of north latitude to the intersection of the same with the thirty-seventh degree of longitude west from Washington; thence due north along said thirty-seventh degree of west longitude to the intersection of the same with the forty-second degree of north latitude; thence due east along said forty-second degree of north latitude to the intersection of the same with the thirty-fourth degree of longitude west from Washington; thence due south along said thirty-fourth degree of west longitude to the intersection of the same with the forty-first degree of north latitude; thence due east along said forty-first degree of north latitude to the intersection of the same with the thirty-second degree of longitude west from Washington; thence due south along said thirty-second degree of west longitude to the place of beginning. 1896

ARTICLE III**ORDINANCE****Section**

[Religious toleration — Polygamy forbidden.]
[Right to public domain disclaimed — Taxation of lands — Exemption.]

Section

[Territorial debts assumed.]
[Free nonsectarian schools.]

The following ordinance shall be irrevocable without the consent of the United States and the people of this State:

[Religious toleration — Polygamy forbidden.]

First: — Perfect toleration of religious sentiment is guaranteed. No inhabitant of this State shall ever be molested in person or property on account of his or her mode of religious worship; but polygamous or plural marriages are forever prohibited. 1896

[Right to public domain disclaimed — Taxation of lands — Exemption.]

Second: — The people inhabiting this State do affirm and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries hereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States. The lands belonging to citizens of the United States, residing without this State shall never be taxed at a higher rate than the lands belonging to residents of this State; but nothing in this ordinance shall preclude this state from taxing, as other lands are taxed, any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person, by patent or other grant, a title thereto, save and except such lands as have been or may be granted to any Indian or Indians under any act of Congress, containing a provision exempting the lands thus granted from taxation, which last mentioned lands shall be exempt from taxation so long, and to such extent, as is or may be provided in the act of Congress granting the same. 1945

[Territorial debts assumed.]

Third: — All debts and liabilities of the Territory of Utah, incurred by authority of the Legislative Assembly thereof, are hereby assumed and shall be paid by this State. 1896

[Free nonsectarian schools.]

Fourth: — The Legislature shall make laws for the establishment and maintenance of a system of public schools, which shall be open to all the children of the State and be free from sectarian control. 1896

ARTICLE IV**ELECTIONS AND RIGHT OF SUFFRAGE****Section**

1. [Equal political rights.]
2. [Qualifications to vote.]
3. [Voters — Immunity from arrest.]
4. [Voters — Immunity from militia duty.]
5. [Voters to be citizens of United States.]
6. [Mentally incompetent persons, convicted felons, and certain criminals ineligible to vote.]
7. [Property qualification forbidden.]
8. [Ballot to be secret.]
9. [General and special elections — Terms — Election of local officers.]
10. [Oath of office.]

Section 1. [Equal political rights.]

The rights of citizens of the State of Utah to vote and hold office shall not be denied or abridged on account of sex. Both male and female citizens of this State shall enjoy equally all civil, political and religious rights and privileges. 1896

APPENDIX 2

I. Purpose & Background

A. These procedures establish the rules for:

1. the composition, nomination and election of the **Employee Appeals Board**;
2. the filing of **appeals** to the **Employee Appeals Board**;
 3. the exercise of the **Employee Appeals Board's** authority, including conduct of hearings;
 4. the standard of review applicable to matters heard by the **Employee Appeals Board**.

B. The **Employee Appeals Board** is created and functions under Utah Code Annotated § 10-3-1105 & 1106 of the Utah Code, as such statutes may be amended from time to time. The Board has authority to investigate, take and receive evidence, and fully hear and determine the matter that relates to the cause for an employee discharge, suspension without pay for more than two days (2 shifts for employees who work shifts longer than 8 hours) or involuntary transfer from one position to another with less remuneration.

C. The Board has no jurisdiction to review or decide any other personnel matters. The Board has no authority to award attorney's fees or costs to either party. Additionally, the Board has no authority to determine the City's legal liability under federal or state law.

D. Any City officer or employee to which these procedures apply may **appeal** a discharge, suspension without pay for more than two days (2 shifts for employees who work shifts longer than 8 hours) or involuntary transfer from one position to another with less remuneration, to the **Employee Appeals Board**.

E. These procedures shall apply to each employee of the City, except the following employees:

1. an officer appointed by the Mayor or the Mayor's designee;
2. a member of the police department or fire department who is a member of the classified civil service;
3. a police chief;
4. a deputy police chief;
5. a fire chief;
6. a deputy or assistant fire chief;
7. a head of a City department;
8. a deputy of a head of a City department;
9. a superintendent;
10. a probationary employee;
11. an hourly part-time employee;
12. seasonal employee; or
13. any other at-will employee

F. The City labor relations officer in the Management Services Department is responsible for coordinating with the applicable departments that will conduct nominations and elections for elected Board members, coordinating with the Mayor regarding appointments to the pool of appointed Board members, impaneling an **Employee Appeals Board** from the pool of appointed and elected Board members to hear each **appeal** and providing staff support to the **Employee Appeals Board**. The City Attorney shall train and advise the City labor relations officer in all matters relating to the Board's authority and due process.

G. As required by Utah Code, the Employee Appeals Board must certify its decision to the City Recorder within fifteen (15) business days after the Board receives an **appeal**, unless for good cause the Board extends the fifteen (15) day period up to a maximum of 60 calendar days, with the consent of the employee and the City. The following procedures are necessary to assure the Board can effectively render its decision within the statutorily required time.

II. Board Members Selection Procedures

A. The City shall establish a pool of Board members, which shall include fourteen (14) persons: 4 appointed members and 10 elected members (elected members shall consist of five 100/200 series employees and five 300/600 series employees).

1. Appointed Board Members. The Mayor shall appoint four (4) persons to serve on the Board. The next appointment process shall begin in sufficient time for new Board members to be in place by October 1, 2005. The terms of appointed persons serving on the Employee Appeals Board shall be three years and shall begin upon the date of the person's appointment. In the event of a vacancy created by the resignation of an appointed person or by termination for cause, the Mayor may appoint a new person to fill the remaining term of the person who resigned or was otherwise removed from the Board.

2. Elected Board Members. The pool of elected Board members shall consist of one (1) 100/200 series employee and one (1) 300/600 series employee from each of the following departments: (1) Department of Airports, (2) Public Services, (3) Public Utilities, (4) Community Development, and (5) Management Services and other areas or divisions not included in the other four departments listed.

a. Every three years the (1) Department of Airports, (2) Public Services, (3) Public Utilities (4) Community Development and (5) Management Services (including all other areas and divisions not enumerated above except Police and Fire) shall solicit nominations of employees within the respective department or area and conduct elections for the pool of elected Employee Appeals Board members. Nominations must be open for a minimum of ten (10) days. Nominees must be full-time City employees.

b. At least one and no more than five (5) 100/200 series employees and at least one and no more than five (5) 300/600 series employees from each of the respective departments set forth above shall be included on the list of nominees on the election ballot

c. In the event more than 5 nominations are received in any department listed above for each of the two employee groups (100/200 and 300/600), the department may conduct a preliminary election within such department to limit the number of nominees as set forth in paragraph 2.b, above.

d. After nominees are identified, the respective departments shall conduct elections. The election shall be by secret ballot. Each City employee or officer in each of the departments shall be entitled to cast two votes for nominees in their own department: one vote for a 100/200 series nominee and another vote for a 300/600 series nominee. City employees and officers who are not in the Department of Airports, Public Services, Community Development, Public Utilities, Police Department or Fire Department shall be entitled to vote on nominees in Management Services. One 100/200 series nominee and one 300/600 series nominee with the most votes from each department shall comprise the pool of elected persons for the Employee Appeals Board. In case of a tie in any department, the Mayor shall cast the deciding vote.

e. Elected Board members shall serve for three year terms, except for any person who fills the remaining term of a person who has resigned or otherwise been removed from the Board. The next nomination period shall begin in sufficient time for new Board members to be in place by October 1, 2005. Every three years thereafter, the respective

departments shall conduct elections in sufficient time for the terms of elected Board members to begin on October 1 of the year in which they are elected.

f. If a an elected Board member resigns or is otherwise removed from the Board, the remaining elected Board members shall promptly meet and elect, by majority vote, another person from the same department and employee classification series (100/200 or 300/600) as the departing Board member to fill the remaining term of the person who resigns or is otherwise removed from the Board. The City labor relations officer shall assist the Board members to develop a list of nominees.

B. The Mayor or the Mayor's designee may remove any Board member for cause.

III. Appeal Filing Process

- A. Any City officer or employee to whom these procedures apply may **appeal** a discharge, suspension without pay for more than two (2) days (2 shifts for employees who work shifts longer than 8 hours) or an involuntary transfer from one position to another with less remuneration to the Employee Appeals Board. All requests for **appeals** must be in writing, addressed to the City Recorder and filed with the City Recorder within the time limitations contained in these procedures.
- B. The notice of **appeal** shall be in writing and filed before the close of the tenth business day following the employee's receipt of a written decision by the employee's department head effecting or upholding the disciplinary action at issue. The notice of **appeal** must be signed by the appellant employee, or by his or her attorney or representative.
- C. The Notice of **Appeal** shall be in the form or contain the information as set forth in Appendix "A." The form is available at the City Attorney's Office, the City Human Resources office or online at the City's website. The Notice of **Appeal** must (a) set forth with specificity any issue the employee raised in the **appeal** before the department head and which the employee intends to raise on **appeal** to the Board (the employee may not raise any issues before the Board that were not raised in the **appeal** before the department head) ; (b) include copies of any documents the employee intends to introduce at the hearing.
- D. To be considered by the Employee Appeals Board, the Notice of **Appeal** must be filed in the Office of the City Recorder within the time limit specified. The Board has no authority or jurisdiction to hear an **appeal** that is filed beyond the time limits specified in this procedure or filed anywhere other than with the Office of the City Recorder.
- E. The Office of the City Recorder is located in Room 415, City & County Building, 451 South State Street, Salt Lake City, Utah 84111.
- F. Upon receipt of a written **appeal**, the City Recorder shall immediately provide a copy of the **appeal** to the City labor relations officer and to the City Attorney.
- G. If there is a question whether a City employee is within the class of persons who may **appeal** a discharge, suspension or transfer, the Board shall request an opinion from the City Attorney regarding that issue. The City Attorney shall render an opinion no later than the next business day after a request is received.
- H. Any person who voluntarily terminates his or her employment with the City may not **appeal** his or her release from employment to the Employee Appeals Board.

IV. Impaneling a Board for each Appeal

A. When an employee files an **appeal**, the City labor relations officer shall impanel a Board to hear such **appeal** from the pool of Employee Appeals Board members. Each such Board shall consist of five (5) members.

B. The City labor relations officer shall impanel members for each **appeal** who are least likely to have personal knowledge of the cause for the appellant's discharge, suspension or transfer. The City labor relations officer shall designate one of the Board members as the Chairperson for the subject **appeal** and notify that member of his or her designation. At the same time the Board members and the Chairperson receive their notification, the City labor relations officer shall notify the department head of each impaneled Board member. The notification to the respective department heads shall state that the duties of the Board member take precedence over all other duties.

C. As soon as reasonably possible after the labor relations officer receives the **appeal**, the labor relations officer shall notify the appellant, the affected City department, the Board members, and the City Attorney of the date, time, and location the Board will hear the **appeal**. While the labor relations officer may consider requests from either party for a particular hearing date, the availability of the Board members and other requirements imposed by law will constrain the ability of the Board to accommodate the parties.

D. Board members shall receive no additional compensation or benefits beyond their City salary or wages for their service as Board members. However, Board members who are Fair Labor Standards Act non-exempt employees shall be paid their regular rate of pay for time worked for their duties and such time worked shall be considered in determining the City's overtime liability during the work weeks in which the employee serves as a Board member.

V. Appellant's Rights on Appeal

A. An appellant may be represented by any person of his or her choice to act as an advocate at any level of the appeal procedure.

B. An appellant may request City employees and other persons to appear as witnesses during the appeal proceedings and may present any relevant information in mitigation. Such witnesses and information must relate directly to (1) the cause for the action taken, as set forth in the disciplinary decision letter, and (2) any issues raised by either party at the proceeding before the department head.

C. An appellant may cross-examine any witnesses called by the City department during the appeal proceedings. An appellant may inspect documents offered by the City department and may offer evidence in explanation and rebuttal.

D. No City employee may take any reprisals against anyone who participates in an appeal proceeding under this procedure.

E. If the Employee Appeals Board finds in favor of the employee, the next business day after the Board's decision is certified to the City Recorder an employee who has been discharged or involuntarily transferred to a position of less remuneration shall be restored to his or her former position. The employee shall receive the employee's salary for the period of time during which the employee is discharged, or suspended without pay, or any deficiency in salary for the period during which the employee was transferred to a position of less remuneration.

VI. Pre-hearing Procedures

- A. The appellant employee or City department may file with the Board prior to the hearing any relevant documents or written arguments that directly relate to (1) the cause for the discharge or transfer as set forth in the disciplinary decision letter, and (2) any issues raised at the appeal to the department head. In case of such a filing, the appellant or City department shall make six copies of such documents or written arguments for the Board and one copy for the other party to the proceeding. The six copies of relevant documents or written arguments for the Board shall be filed with the City labor relations officer. The party filing such documents or written arguments shall provide a copy of such documents or written arguments to the other party to the proceeding the same day as any filing with the Board.
- B. In each case of the filing of relevant documents or written arguments, the City labor relations officer shall immediately distribute one copy of such materials to each impaneled Board member. The City labor relations officer shall request that each member take any necessary work time to read and review any materials. The City labor relations officer shall request that the department head of each Board member authorize work time for Board members to review materials received.
- C. At any time prior to the hearing, the Board Chair may meet with the parties in a pre-hearing conference. The pre-hearing conference is intended as a mechanism to expedite the proceeding and will not be used to stall or unnecessarily delay the hearing process. At the discretion of the Board Chair, the pre-hearing conference may be conducted telephonically. At the conference, the Board Chair may require the parties to submit a list of witnesses, exhibits, and documents that each party intends to offer in evidence; submit a joint statement detailing stipulated facts not in dispute; submit a joint statement narrowing the matters for consideration by the Board; and make other orders to facilitate an efficient and effective hearing. The pre-hearing conference is informal and not open to the public. Submissions of required information from the pre-hearing conference shall be to the City labor relations officer.
- D. The Board has no legal authority to issue subpoenas. If a party to the proceeding requests that certain information or persons be subpoenaed, the Board shall request the Office of the City Attorney to issue the subject subpoena. The Board has the authority to quash any subpoena issued by the City Attorney or issued by any other office or authority regarding matters that are pending before the Board.
- E. The Board has the authority to direct the participation or attendance of any City employee in the Board's proceedings. Any employee who fails to comply with a Board directive to participate or attend a Board proceeding shall be subject to discipline as determined by the employee's department head.

VII. Hearing Procedures

- A. The City labor relations officer shall employ a court reporter to record the hearing and prepare an official transcript of the hearing. The official transcript of the hearing and all exhibits, written arguments, and other evidence received by the Board shall be the official record of the Employee Appeals Board proceeding.
- B. Board hearings are considered open meetings under Utah law. The Board may close a hearing by complying with the procedures and requirements of Utah Code Annotated Title 52, Chapter 4, Open and Public Meetings.
- C. Board hearings are not judicial or quasi-judicial process. They shall, however, be conducted with appropriate formality and decorum so that the due process rights of all parties are protected and the Board may perform its function. Utah Rules of Evidence and Utah Rules of Civil Procedure are used as guidelines in the conduct of Board hearings, but are not strictly followed or applied. The Board shall not strictly apply rules of evidence regarding authentication, foundation, or hearsay.
- D. Upon motion of either party, the Board may invoke the exclusionary rule for witnesses. However, one department representative of the City's choice will be allowed to remain present at all times.
- E. The City labor relations officer will serve as procedural advisor to the Board and will assist the Board in maintaining order in the proceedings.
- F. Unless the Board Chair rules otherwise for good cause, the hearing should proceed as follows:
1. The Board Chair opens the hearing and asks if the parties are ready. The Board Chair may ask that a summary of any pre-hearing proceedings or activity be placed in the record.
 2. Each party makes an opening statement. The City department makes its opening statement first.
 3. The City department presents evidence. The representative of the City department asks the witnesses questions. After the City representative has questioned each witness, the employee or the representative for the employee is entitled to cross-examine the witness. After cross-examination, the City may ask questions relating to the subject of the cross-examination.
 4. After the City department has presented its evidence, the employee or employee's representative calls witnesses and presents evidence. After the employee or the employee's representative has questioned each witness, the representative of the City department is entitled to cross-examine the witness. After cross-examination, the employee or representative for the employee may ask questions relating to the subject of the cross-examination.
 5. After all witnesses and evidence have been presented, each party makes a closing statement. Ordinarily, the City department makes its closing statement first. The employee or employee representative makes his/her statement next. The City is then entitled to make a final statement to discuss any issues raised in the closing statement of the employee or employee's representative.

6. After the closing statements, the Board Chair thanks everyone and closes the hearing so the Board may consider the matter.

G. Following the hearing, the Board shall meet in a duly noticed, closed meeting to deliberate and reach a decision. The ruling of the Board shall be based on a majority vote of the members. The Board may only uphold or overturn the decision of the Department. The Board may not modify the decision of the Department. The Board shall vote by secret ballot using the following standard of review:

1. Do the facts support the need for discipline or, in the case of a non-disciplinary discharge, the need for remedial action to be taken by the department head? In other words, was 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 department head's position. In order to overturn a disciplinary action, the Board must have a definite and firm conviction that the department head's decision was clearly erroneous.

In an **appeal** where an 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 the analysis set forth in subsection 1, above. However, in an **appeal** of a disciplinary action the Board shall proceed to step 2 of the analysis, as set forth below.

2. In a disciplinary action, if the facts support the need for discipline, is the action taken proportionate to the discipline imposed? Discipline imposed for employee misconduct is within the discretion of the department head. Unless the Board finds the discipline imposed is 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.

VIII. Board Decision

After fully hearing the matter on **appeal**, the Board shall certify its decision with the City Recorder within fifteen (15) business days after receipt of the appeal. For good cause, the Board may extend the 15-day period to a maximum of sixty (60) days, with the consent of the employee and the City. The Board shall set forth findings of fact and conclusions based on such findings regarding the issues to be decided by the Board, as set forth above in paragraph VII. G. 1 and 2. The Board Chair may sign the decision on behalf of the Board. The decision shall be addressed to the appellant, with copies to the head of the City department that took the action that was **appealed**. The City labor relations officer will assure that copies of the certified decision are served on the appellant and on the affected department head.

Revised October 17, 2005 (Major revision to comply with Utah Code Annotated § 10-3-1105 & 1106, and to revise board composition and processes)

References: Utah Code Annotated § 10-3-1105 & 1106
Salt Lake City Code 2.52.130, 2.24.010
Memoranda of Understanding with Employee Organizations
Grievance Procedure for 300, 600 and 700 Series Employees
Policy 3.02.04 Employee Appeals and Grievances
Notice of Appeal Before Salt Lake City Employee Appeals Board

APPENDIX A

NOTICE OF APPEAL BEFORE SALT LAKE CITY EMPLOYEE APPEALS BOARD

NAME OF APPLICANT: _____

ADDRESS OF APPLICANT: _____

TELEPHONE: WORK _____ HOME _____

DEPARTMENT: _____

ACTION BEING APPEALED:

Brief description of action (discharge, suspension, demotion): _____

Date of action being appealed: _____

Person who took action: _____

APPELLANT WILL BE REPRESENTED BY: _____

SPECIFIC STATEMENT OF ISSUES TO BE RAISED ON APPEAL (attach additional pages if necessary):

WITNESSES YOU MAY HAVE TESTIFY APPEAL (attach additional pages if necessary)::

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Name:
Address:
Telephone:

Page 1 of 2
DOCUMENTS YOU INTEND TO INTRODUCE AT THE HEARING :

WHAT ACTION DO YOU WANT THE EMPLOYEE APPEALS BOARD TO TAKE:

I hereby request a hearing before the Employee Appeals Board.

Signature of Appellant

Date

APPENDIX 3

SALT LAKE CITY COUNCIL STAFF REPORT

BUDGET ANALYSIS – FISCAL YEAR 2008-09

DATE: May 30, 2008
BUDGET FOR: **EMPLOYEE COMPENSATION - FISCAL YEAR 2008-09**
STAFF REPORT BY: Sylvia Richards
cc: David Everitt, Lyn Creswell, Steve Fawcett, Sam Guevara, Vic Blanton, Ralph Chamness

Budget Issues and Policy Changes

Proposed Changes to the Compensation Plan for Appointed Employees and Elected Officials

The Administration recommends the following:

A. One Compensation Plan for all Appointed Employees:

All executive and unclassified employees will be consolidated under one compensation plan. With the exception of Justice Court Judges, these employees are *at will*, meaning that their employment may be terminated without cause. The title of the plan will be *Compensation Plan for Appointed Employees and Elected Officials*.

The Administration indicates this change will combine pay structures and create more logical spacing between pay levels. The Justice Court Judges' positions and high-level positions from the Airport and Public Utilities will be housed under this plan. As a reminder, this group of employees does not have career protection and is not represented by a collective bargaining agreement.

B. Changes to Severance for Department Heads:

Changes to the severance policy have been recommended by the Administration.

Current department heads appointed after January 1, 2000 who terminated not for cause and who signed a release of claims shall receive:

- 2 months of base salary pay after 1 full year of City employment;
- 4 months of base salary pay after 2 full years of City employment;
- 6 months of base salary pay after 3 full years of City employment;

The maximum severance for department heads is 6 months.

Other Proposed Compensation Plan Changes

A. Vacation allowance for Recruiting Appointed Employees and 300/600 Series Employees:

The Administration indicates that during tight labor markets there have been challenges recruiting for certain positions. As a recruiting incentive, the Administration proposes to allow negotiation with prospective appointed or

professional employee candidates for up to 120 hours.

B. Bereavement Policy (citywide):

The Administration has proposed to modify the Bereavement Policy and adopt these changes for all employee groups in order to provide a more uniform approach citywide. There were some inconsistencies in the policy from one plan to another, such as, the categories of 'grandfather-in-law and grandmother-in-law' were excluded from one of the plans. This item has been remedied. Also, the term 'domestic partner' was replaced with 'adult designee' in all of the plans.

C. Sick and Other Related Leave or Personal Leave (proposed option of switching from Plan A to Plan B) (citywide):

City employees who were hired on or before November 16, 1997 have the opportunity of switching from Plan A to Plan B during any future city-established enrollment periods at a conversion rate of 40 percent. The remaining 60 percent of accumulated Plan A (Sick Leave) hours are removed from the books.

D. Vacation Buyback Policy (citywide):

The Administration recommends deleting the City's vacation buyback policy from all compensation plans. The Administration indicates that the policy is difficult to administer, and the Administration would prefer to encourage employees to take their vacation time rather than sell it back to the City.

Employee Groups

The City's employee pay structure is a collection of pay grades, each with a pay range or one or more pay steps. In the case of pay *ranges*, movement of the structure does not, in itself, create a salary change; it merely changes the potential for pay adjustments. In contrast, a change in structure containing grades with pay *steps* equates to a corresponding change in pay. The City has both kinds of structures: *ranges* are provided for professional and appointed employees; *steps* are included in all other employee groups.

Following are estimated pay raise costs (percentages) for Fiscal Year 2008-09, assuming all union contracts are settled at a 2.7 percent Cost of Living Allowance (COLA), plus merit increases (which occur on the employee's anniversary date).

100 Series (operations and maintenance employees): The proposed ordinance funds a one-year contract memorandum of understanding contract agreed to by the City and the American Federation of State County & Municipal Employees Local 1004 (AFSCME).

- 2.7% market adjustment on June 29, 2008
- .45% estimated Merit step cost increase
- 3.15% total estimated cost increase

200 Series (technical and clerical employees): The proposed ordinance funds a one-year memorandum of understanding contract agreed to by the City and the American Federation of State County & Municipal Employees Local 1004 (AFSCME).

- 2.7% market adjustment on June 29, 2008
- 0.86% estimated Merit step cost increase

- 3.56% total estimated cost increase

400 Series (Fire Union): The previously agreed upon ordinance approves a memorandum of understanding between Salt Lake City and the Fire Fighters Local. The term of agreement is for one year.

- 2.7% increase to base pay on June 29, 2008
- 1.28% estimated Merit step cost increase
- 3.98 total estimated cost increase

500 Series (Police Union): The ordinance approves a memorandum of understanding between Salt Lake City and the International Union of Police Associations, Local 75, AFL-CIO. The term of agreement is for one year.

- 2.7% increase to base pay on June 29, 2008
- 1.91% estimated Merit step cost increase
- 4.61% total estimated cost increase

300/600 Series (professional): Employees in the 300 series are subject to the overtime provisions of the Fair Labor Standards Act and receive overtime or compensatory time for time worked over 40 hours per week. Employees in the 600 series are salaried and exempt from the FLSA provisions. There are 15 grades in the 300 series (301 to 315) and 15 in the 600 series (601 to 615), but these grades are not steps to which employees advance. Each grade has a salary range that reflects the normal growth potential.

The ordinance prepared for 300/600 Series compensation is not negotiated with a bargaining unit. However, the Administration does work with a group of employee representatives called the Professional Employees Council (PEC) to review the implications of proposed changes.

- 2.7% structure increase and 2.7% general percentage increase (GPI)
- No Merit increases
- 3.87% total estimated cost increase

Previously, the Administration used a factoring system for calculating general pay increases that provided a percentage increase greater than the GPI when an employee's pre-increase salary was below the new midpoint, and an increase smaller than the GPI when the employee's pre-increase salary was above the new midpoint. This approach has been changed such that when an employee's pre-increase salary is above the new midpoint, the increase will be no less than the GPI. In December of 2007, the Citizens Compensation Advisory Committee (CCAC) observed that some private employers and most local public agencies do not use the 'deceleration-above-midpoint' approach. The CCAC recommended that the City follow the practice of other cities, and the Administration acted on this suggestion. The Administration indicates that a majority of the City's employees in this plan are currently below the midpoint. **The Council may wish to ask about the short and long-term costs associated with this change.**

700 Series (regular part-time employees who perform essentially the same duties of employees classified by the City as 100 and 200 series): Employees covered by this compensation plan regularly work 20 or more hours per week but fewer than 40. The plan does not apply to seasonal or temporary employees. Wages are the entry level for the applicable job grouping. These employees receive 4 hours of pay for each holiday. Vacation leave is granted at half of the amount of full-time employees. The City contributes to the state retirement system for these employees. The ordinance prepared for 700 Series compensation is not negotiated with a bargaining unit.

- 2.7% market adjustment beginning June 29, 2008
- No Merit steps

The Council has discussed the percentage of benefits paid for these part time employees previously, and expressed that paying 50 percent of benefits for an employee who the City may want to have work 75 percent of the time may not be equitable. The Council has received a recommendation from the Citizens Compensation Advisory Committee in support of leaving the benefit at 50 percent, but the Council could elect to make the policy decision to make two tiers of benefits for this plan. The Council may wish to ask for a cost estimate from the Administration for this approach.

It should be noted that the Mayor's recommended budget indicates a trend to move seasonal employees to this plan, and provide benefits. The Council may wish to ask regarding the degree to which the Administration anticipates shifting the City's workforce, and the estimated cost as this is phased in.

800 Series (police sergeants, lieutenants, captains): The ordinance prepared for 800 Series compensation is not negotiated with a bargaining unit. However, the Administration does work with a group of employee representatives (PEC and sergeants, lieutenants and captains associations) to review the implications of proposed changes.

- 2.7% increase to base pay on June 29, 2008.
- 0% estimated Merit step cost increase
- 2.7% total estimated cost increase

Employees in the 800 series appear to be presently at their top step, so little or no merit step increase is anticipated.

900 Series (fire captain, battalion chief): The ordinance prepared for the 900 Series compensation is not negotiated with a bargaining unit. However, the Administration does work with a group of employee representatives (PEC) to review the implications of proposed changes.

- 2.7% increase to base pay on June 29, 2008
- 0.23% estimated Merit step cost increase
- 2.93% total estimated cost increase

Most employees in the 900 series are presently at their top step, so merit or step increase is minimal.

Appointed Employees (Includes employees currently classified as Executives and employees currently occupying Unclassified positions): Unclassified employees presently include Justice Court Judges, non-executive appointed staff in the Mayor's Office, Council Office, City Attorney's Office, and administrative secretaries of department directors. As mentioned on page one of this report, the Administration has proposed to move all Appointed employees, including executives and unclassified employees, to the Compensation Plan for Appointed Employees and Elected Officials. Appointed employees are "at will" and subject to termination without cause.

Appointed employees' salaries become subject to midpoint control; midpoints increase by 5.40% to 9.90% for department and division directors (currently classified as "executives"). Base pay is limited to 110% of midpoint. A *general percentage increase* of 2.7% is applied to new structure. Performance-based portion (if any) of pay increase is not added to base salary.

- 4.28% total estimated cost increase
- No Merit steps

Elected Officials:

In accordance with *Resolution No. 70 of 1993*, elected officials' salary for fiscal year 2009 is based in part on a national survey of capital cities having a Mayor-Council form of government and populations in the 100,000 to 400,000 range. **The Council may wish to confirm interest in asking the CCAC to consider modifying the methodology of selecting comparable cities for the national surveys for elected officials.**

- Based on survey results, the increase is 0.8%
- No merit steps

**COMPENSATION PLAN FOR SALT LAKE CITY CORPORATION APPOINTED
EMPLOYEES AND ELECTED OFFICIALS**

I. EFFECTIVE DATE

The provisions of this plan shall be effective commencing July 1, 2008.

II. EMPLOYEES COVERED BY THIS PLAN

Employees subject to this plan shall be the Elected Officials and those full-time City employees classified as "**Appointed**" employees. "**Appointed**" employees are **appointed** and, with the exception of Justice Court Judges who are covered under this plan, are "at-will" employees serving at the pleasure of the Mayor (or the City Council if they are employees of the Office of the City Council). Employees are not covered by the paid leave provisions of this plan while they are on unpaid leave of absence. However, employees on an unpaid military leave of absence may be entitled to the restoration of certain leave benefits as provided by city ordinance.

III. WAGES AND SALARIES

A. Elected Officials

The annual **compensation** of elected officials shall be as provided in APPENDIX "A."

B. Appointed Employees

From June 29, 2008 to June 30, 2009, **Appointed** employees shall be paid within ranges provided in the schedule attached hereto as APPENDIX "B." Any performance-based pay adjustment above the "Base Pay Maximum" of the range will be given as a supplemental payment not added to base. In no case will such annual supplemental payment^{3/4}when divided by 26 and added to the base pay adjustment^{3/4}be allowed to exceed the "Range Top."

C. Other Forms of Compensation

The foregoing shall not restrict the Mayor or the City Council from distributing appropriated moneys to employees of the City in the form of discretionary lump sum supplemental performance-based or special supplemental payments to employees within per annum pay limitations. The Mayor or the City Council may also grant a discretionary retention incentive benefit, if one is necessary to meet employment market conditions or where it would be in the City's best interests to do so.

XVI. SEVERANCE BENEFIT

A. Subject to availability of funds, current **Appointed** employees shall receive the following severance benefit on termination of their employment:

1. Current **Appointed** Employees, Who Were **Appointed** Before January 1, 1989. Current **Appointed** employees, who were **appointed** before January 1, 1989, shall receive a severance benefit determined as follows:

a. **Appointed** employees who have an account, established by prior City policy, and which was credited with a cash value equal to the total accrued sick leave hours available to the employee on December 31, 1988, multiplied by said employee's hourly rate of pay in effect on December 31, 1988, are vested in that account. The hours included in this account are separately accounted for and are not included in the "Plan B Retirement Benefit" under VIII.E.8.a.

Upon the voluntary or involuntary termination of employment from the City, these **Appointed** employees shall receive, at the time of separation, the cash value of their vested account. However, **Appointed** employees, may, during their employment, use the hours in that account for sick leave purposes, although such use will reduce the cash value of the account.

b. Current **Appointed** employees, **appointed** before January 1, 1989, who are terminated not for cause, and who execute a release of all claims approved by the City Attorney's Office, shall receive, as a severance benefit, in addition to subparagraph A.1.a. above: One month's base salary pay, determined on the effective date of termination, for each year of City employment calculated on a pro-rata basis, not to exceed 6 months' base salary. This additional severance benefit shall be provided only if the termination from City employment is involuntary.

2. Current **Appointed** employees **appointed** on or after January 1, 1989 and before January 1, 2000, who are terminated not for cause, and who execute a release of all claims approved by the City Attorney's Office, shall receive a severance benefit, but only for an involuntary termination from City employment.

The severance benefit for said employees shall be: One month's base salary pay, for each year of City employment before January 1, 2000, calculated on a pro-rata basis, not to exceed 6 months' salary.

3. Current Department heads **appointed** on or after January 1, 2000 who are terminated not for cause, and who execute a release of all claims approved by the City Attorney's Office, shall receive a severance benefit, but only for an involuntary termination from City employment.

The severance benefit for said employees shall be: Two months' base salary pay, determined on the effective date of termination, after one full year of City employment, four months' base salary pay after two full years of City employment, or six months' base salary pay after three full years of City employment.

4. Current Appointed employees who are not Department heads, and who were appointed on or after January 1, 2000, who are terminated not for cause, and who execute a release of all claims approved by the City Attorney's Office, shall receive a severance benefit, but only for an involuntary termination from City employment.

The severance benefit for said employees shall be: One week's base salary pay, determined on the effective date of termination, for each year of City employment calculated on a pro-rata basis, not to exceed 6 weeks' base salary.

5. Current Appointed employees with leave hour account balances under Plan A or Plan B, and who execute a release of all claims approved by the City Attorney's Office, shall, in addition to the severance benefit provided under paragraph 1., or paragraph 2., or paragraph 3. in this section XVI. A., receive a severance benefit equal to the "retirement benefit" value provided under section VIII. E. 4. or VIII.F.8, if separation is involuntary and not for cause.

6. Not Eligible for Benefit. The severance benefit provided herein shall not be granted to the following employees:

a. An employee who, at the time of termination of employment, has been convicted, indicted, charged or is under active criminal investigation concerning a public offense involving a felony or moral turpitude. This provision shall not restrict the award of full severance benefits should such employee subsequently be found not guilty of such charge or if the charges are otherwise dismissed.

b. An employee who has been terminated or asked for a resignation by the Mayor, Chief Administrative Officer or Department Director under bona fide charges of nonfeasance, misfeasance or malfeasance in office.

c. An employee who fails to execute a Release of All Claims approved by the City Attorney's Office, where required as stipulated above.

7. Replaces Retirement Election. An employee who elects and is paid a benefit by the City pursuant to retirement election is not eligible to receive a severance benefit as provided herein, except as provided under paragraph A.1.a. above.

XVII. AUTHORITY OF THE MAYOR AND CITY COUNCIL

Employees covered by this **compensation** plan may be **appointed**, classified, and advanced under rules and regulations promulgated by the Mayor, the Civil Service Commission, or the City Council, if applicable, within budget limitations established by the City Council.

APPENDIX A - ELECTED OFFICIALS SALARY SCHEDULE

Bi-Weekly Rates

July 29, 2008

Mayor \$4,390.19

Council Members **\$878.04**

	Mid	Top		
098	\$4,100.80	\$5,325.60	\$5,858.40	\$6,550.00
097	\$3,024.14	\$4,320.20	\$4,752.22	\$5,616.26
001	\$4,100.80	\$5,325.60	\$5,858.40	\$6,550.40
002	\$3,728.00	\$4,841.60	\$5,325.60	\$5,955.20
003	\$3,420.00	\$4,441.60	\$4,886.40	\$5,463.20
004	\$3,137.60	\$4,075.20	\$4,482.40	\$5,012.00
005	\$2,905.60	\$3,773.60	\$4,150.40	\$4,640.80
006	\$2,690.40	\$3,493.60	\$3,843.20	\$4,297.60
007	\$2,514.40	\$3,264.80	\$3,592.00	\$4,016.00
008	\$2,349.60	\$3,051.20	\$3,356.80	\$3,753.60
009	\$2,196.00	\$2,852.00	\$3,136.80	\$3,508.00
010	\$2,052.00	\$2,665.60	\$2,932.00	\$3,278.40
011	\$1,936.00	\$2,514.40	\$2,765.60	\$3,092.80
012	\$1,826.40	\$2,372.00	\$2,609.60	\$2,917.60
013	\$1,723.20	\$2,237.60	\$2,461.60	\$2,752.80

014	\$1,625.60	\$2,111.20	\$2,322.40	\$2,596.80
015	\$1,533.60	\$1,992.00	\$2,191.20	\$2,449.60
016	\$1,446.40	\$1,879.20	\$2,067.20	\$2,311.20
017	\$1,364.80	\$1,772.80	\$1,949.60	\$2,180.00

**No position may be removed from or
added to this Appointed Employee Pay Plan
without approval of the City Council.**

Level	001	002	003
	Chief Administrative Officer	Chief of Staff	Public Services Deputy Director
	City Attorney	Police Chief	Chief Information Officer
		Public Services Director	Communication Director
		Management Services Director	Senior Advisor - Mayor
		Fire Chief	Finance Director
		Deputy City Attorney	City Prosecutor
		City Council Office Exec Director	Airport Operations Director
			Airport Maintenance Director
			P. Util. Finance Administrator
			Airport Finance/Acct Director
			Information Mgt Serv Dir - Airport
			Airport Engineering Director
			Airport Admin/Comm Director
			Redevelopment Director
			City Council Deputy Director
			Appointed Sr. City Attorney
			Airport Police Chief
			City Engineer
			Public Utilities Deputy Director

Level	004	005	006	007
	Assistant Police Chief	P.S. Fin/Admin Serv Director	Sorensen Center Director	Public Policy Analyst
	Planning Director	Building Official	Chief Procurement Officer	Const Liaison/Pub Pol Analyst
	DCED Dep Director - Comm Dev	HAND Director	City Courts Director	Community Facilitator

DCED Dep Director - Econ Dev	Transportation Engineer	Airport PR/Marketing Director	Downtown Transp Dev Coord
City Treasurer	Public Utilities Chief Engineer	Comp Adm/EE Rel Coordinator	Emergency Mgt Program Dir
Human Resources Director	Civilian Review Bd Investigator	City Recorder	
Deputy Fire Chief	Sustainability Director		
Airport Plan/Cap Prog Dir	Assistant Planning Director		
Wtr. Quality/Treat Administrator			
Dep City Eng/Major Projects			

Level	008	009	010	011
	Appointments Pending	Coord For Human Rights/Divers Assistant Communication Dir Assistant To Chief of Staff Youth City Programs Manager		Council Constituent Liaison Econ Dev Mgr Small Business Const Liaison/Budget Analyst Com Affairs/ADA Analyst Community Liaison

Level	012	013	014	015
	Appointments Pending	Assistant To The Mayor Administrative Assistant Off Mgr/Mayor/Comm Affair	Appointments Pending	Admin Asst To Office of Mayor Staff Assistant Admin Secretary II Management Support Coordinator Coalition Coordinator Executive Office Assistant

Level	016	017	097	099
	Appointments Pending	Appointments Pending	Justice Court Judge	Executive Director Of Airports

098

Public Utilities Director

DCED Director

APPENDIX 4

Elizabeth T. Dunning, Esq., #3896
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299 South Main Street, Suite 1800
Salt Lake City, Utah 84111-2263
(801) 521-5800
Counsel for Appellant

FILED
UTAH APPELLATE COURTS
NOV 13 2007

IN THE UTAH STATE COURT OF APPEALS

Jodi Howick, Petitioner, vs. Salt Lake City Corporation, Respondent.	DOCKETING STATEMENT Case No. 20070863
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PURSUANT TO RULE 9, Utah Rules of Appellate Procedure, Petitioner Jodi Howick ("Howick") submits this Docketing Statement.

1. Nature of the proceeding. This appeal is from the final action or order of Salt Lake City Corporation (the "City") on the Notice of Appeal of her termination filed by Howick before the Salt Lake City Employee Appeals Board on September 10, 2007.

2. Jurisdiction. This Court has jurisdiction pursuant to Utah Code Annotated § 10-3-1106(6).

3. Relevant dates.

A. Date the final judgment or order appealed from was entered:
September 21, 2007.

B. Date the notice of appeal or petition for review was filed:
October 22, 2007.

C. (1) Date any motions filed pursuant to Rules 50(b), 52(b) or 59, Utah Rules of Civil Procedure, Rule 24, Utah Rules of Criminal Procedure, or Utah Code Annotated § 77-13-6 were filed: None.

4. Appellant is not an inmate.

5. Rule 54(b). This appeal is not from an order in a multiple-party or multiple-claim case in which the judgment had been certified as a final judgment by the trial court pursuant to Rule 54(b), Utah Rules of Civil Procedure.

6. This is not a criminal case.

7. Issues on appeal. Howick intends to assert the following issue(s) on appeal:

A. Issue: Salt Lake City exceeded its statutory authority and violated the Utah Municipal Code by attempting to create or creating at-will positions not authorized by and contrary to the Utah Municipal Code and terminating Howick's employment pursuant to such status.

Determinative law: Utah Code Ann. §§ 10-3-702, 10-3-815, 10-3-1105, 10-3-1106 and 10-3-1221; University of Utah v. Shurtleff, 144 P.3d 1109 (Utah 2006); Salt Lake City v. Sutter, 216 P. 234 (Utah 1923); Draughon v. Dept. of Financial Institutions, 975 P.2d 935 (Utah App. 1999); Lorenc v. Call, 789 P.2d 46 (Utah App. 1989).

Standard of Review: De novo review for correctness. Mouty v. Sandy City, 122 P.3d 521 (Utah App. 2005).

B. Issue: Salt Lake City violated the Utah Municipal Code and its own ordinances, policies and procedures by denying Howick access to the appeal process established for City employees to appeal termination decisions. To the extent the City's policies and procedures are interpreted to create a class of at-will employees who are not entitled to the protection of Utah Code Annotated § 10-3-1106 in addition to those identified by the Utah Municipal Code, they violate the Utah Municipal Code.

Determinative law: Utah Code Ann. §§ 10-3-702, 10-3-815, 10-3-1105, 10-3-1106 and 10-3-1221; Salt Lake City Code §§ 2.53.030(a); 2.53.020; Salt Lake City Employee Appeals Board Procedures; Carrier v. Salt Lake County, 104 P.3d 1208 (Utah 2004); Draughon v. Dept. of Financial Institutions, 975 P.2d 935 (Utah App. 1999).

Standard of review: De novo review for correctness. Mouty v. Sandy City, 122 P.3d 521 (Utah App. 2005).

C. Issue: Salt Lake City acting under color of state law violated Howick's right to due process under the Fourteenth Amendment to the U.S. Constitution and thereby violated 42 United States Code § 1983 and under Article 1, § 7 of the Utah Constitution by terminating her employment on an at-will basis and denying her access to the appeal process established by the Utah Municipal Code for City employees to appeal termination decisions.

Determinative Law: Utah Code Ann. §§ 10-3-1105 and 1106; Cleveland Bd. of Ed. v. Loudermill, 470 U.S. 532 (1985); Spackman v. Bd. of Educ. of Box Elder County School District, 16 P.3d 533 (Utah 2000).

Standard of Review: De novo for correctness. Strawberry Elec. Serv. Dist v. Spanish Fork City, 918 P.2d 870 (Utah 1996).

d. Issue: Howick is entitled to attorney's fees under the Court's inherent power in the interest of justice and equity, under the due process provisions of the U.S. and Utah Constitutions and 42 U.S.C. § 1988 and as damages for her termination.

Determinative law: Stewart v. Utah Pub. Serv. Comm'n, 885 P.2d 759 (Utah 1994); Lorenc v. Call, 789 P.2d 46 (Utah App. 1989); Heslop v. Bank of Utah, 839 P.2d 828 (Utah 1992).

Standard of review: Within the Court's discretion. Stewart v. Utah Pub. Serv. Comm'n, 885 P.2d 759 (Utah 1994); Prince v. Tooele County Hous. Auth., 834 P.2d 602 (Utah App. 1992).

8. Factual summary. In 1998 the Salt Lake City Attorney's Office purported to create a new at-will attorney position outside of the City's merit system. Attorneys working in the Office were asked to agree to move to the newly-created positions in exchange for a raise in pay. In August 2007, Howick's employment was terminated without notice after 15 years of excellent performance explicitly on the basis of her at will status and in fact for reasons that violated the protections afforded to merit system employees pursuant to the Utah

Municipal Code. Howick asked several times to meet with Salt Lake City to discuss the basis of its action, but Salt Lake City refused to meet.

Howick then appealed her termination to the Salt Lake City Employee Appeals Board in accordance with the Utah Municipal Code and Salt Lake City Ordinances and Policies. Salt Lake City's Labor Relations Officer, who staffs the City's Employee Appeals Board but has no substantive responsibilities in the appeal process, refused to initiate the appeals process and wrote to Howick giving the Labor Relations Officer's opinion that Howick was an at-will employee and therefore not entitled to an appeal.

Howick contacted Salt Lake City pointing out that the Labor Relations Officer's action was contrary to both state law and City Ordinance and Policy and asked whether in spite of the unlawful nature of her action, the Labor Relations Officer's letter would be certified as the final action of the Employee Appeals Board as required by statute. At first Salt Lake City represented in writing that the Labor Relations Officer's letter was not Salt Lake City's final action on Howick's appeal of her termination. Three days later the City reversed its position and informed Howick in writing that no further action would be taken on her appeal to the Employee Appeals Board.

9. Assignment. This appeal is not subject to transfer by the Supreme Court to the Court of Appeals pursuant to Utah Code Annotated § 78-2-2(4).

10. Related appeals. There are no related appeals.

11. Attachments. The following are attached:

A. The final order or action from which the appeal is taken:
letter of Jamey Knighton, Salt Lake City Labor Relations Officer, dated
September 21, 2007, attached as Exhibit A.

B. Correspondence from Howick requesting clarification of
whether Exhibit A constitutes the final decision of Salt Lake City, attached as
Exhibit B.

C. Correspondence first denying and then confirming that
Exhibit A constitutes the final decision of Salt Lake City, attached as Exhibit C.

D. Howick's Notice of Appeal to the Salt Lake City Employee
Appeal Board, filed with the Salt Lake City Recorder on September 10, 2007,
attached as Exhibit D.

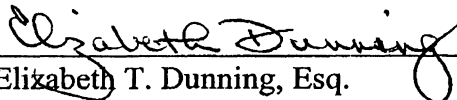
E. The Notice of Appeal to this Court attached as Exhibit E.
There are no orders extending the time for the filing of a notice of appeal.

F. There is no notice of claim.

G. There are no motions filed pursuant to Rules 50(b), 52(b),
54(b), or 59, Utah Rules of Civil Procedure, Rule 24, Utah Rules of Criminal
Procedure, or Utah Code Annotated § 77-13-6.

H. Appellant is not an inmate.

Dated this 13th day of November, 2007.


Elizabeth T. Dunning, Esq.
Attorney of Record

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Docketing Statement
was mailed by first class mail this 13th day of November, 2007, to the following:

Mark Gavre
Parsons Behle & Latimer
201 South Main Street, Suite 1800
Salt Lake City, Utah 84111

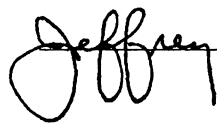
 Jeffrey C. Williams

EXHIBIT A

JAMEY KNIGHTON
DIRECTOR, HUMAN RESOURCE MANAGEMENT

SALT LAKE CITY CORPORATION
DEPARTMENT OF MANAGEMENT SERVICES
DIVISION OF HUMAN RESOURCE MANAGEMENT

ROSS C. "ROCKY" ANDERSON
MAYOR

September 21, 2007

RECEIVED

SEP 24 2007

Holme, Roberts
& Owen, LLP

VIA FAX (521-9639) and U.S. MAIL

Elizabeth T. Dunning
Holme Roberts & Owen, LLP
299 South Main Street, Suite 1800
Salt Lake City, Utah 84111-2263

Re: Jodi Howick

Dear Ms. Dunning,

This letter is in response to the "Notice of Appeal before Salt Lake City Employee Appeals Board" you filed on Jodi Howick's behalf. In my role as the Labor Relations Office, I am responsible for the administration of the city's Employee Appeals Board policy and procedures. The City's EAB procedures identify specific employee classifications that are excluded from the right to appeal an employment action to the EAB.

I have carefully reviewed the policies, procedures and ordinances that pertain to the Employee Appeals Board and have determined the Employees Appeal Board does not have jurisdiction to review the termination of appointed or at-will employees. Because Ms. Howick was an Appointed Senior City Attorney, the appeals board does not have jurisdiction to hear her appeal. As a result, the appeal will not be forwarded to a hearing board.

Sincerely,

Jamey Knighton
(AB)

Jamey Knighton, SPHR; CCP
Director of Human Resources
Salt Lake City Corporation

cc: Ed Rutan



UTAH QUALITY AWARD 1995

451 SOUTH STATE STREET, ROOM 115, SALT LAKE CITY, UTAH 84111

TELEPHONE: 801-535-7900 • FAX: 801-535-6614



EXHIBIT B



Holme Roberts & Owen LLP
Attorneys at Law

SALT LAKE CITY

**SENT VIA FACSIMILE
AND U.S. MAIL
535-7640**

BOULDER

September 28, 2007

COLORADO SPRINGS

Ralph E. Chamness
Salt Lake City Attorney's Office
451 South State, Suite 505A
Salt Lake City, UT 84111

DENVER

Re: Jodi Howick

Dear Ralph:

LONDON

I received a brief letter from Jamey Knighton, Director of Human Resources, on September 21, 2007, informing me that, acting in her position as labor relations officer, she has determined that the Salt Lake City Employee Appeals Board does not have jurisdiction to review Ms. Howick's appeal of her discharge. Ms. Knighton's letter raises serious concerns.

LOS ANGELES

MUNICH

Under the Employee Appeals Board Procedures ("Procedures"), the City labor relations officer's duties are limited to coordinating the election and appointment of Employee Appeals Board members and providing staff support to the Board. See Procedures, Section I.F. Under Section III.G of the Procedures, the Board in the first instance determines if there is a question whether a City employee is within the class of persons who may appeal a discharge, and if there is a question, the Board is required to request an opinion from the City Attorney. Ms. Knighton's letter does not comply with these Procedures, is arbitrary and constitutes a denial of process.

SAN FRANCISCO

If Ms. Knighton sought legal advice prior to preparing her September 21 letter, this raises additional concerns. The Procedures provide that the City Attorney shall train and advise the City labor relations officer in all matters related to the Board's authority and due process. See Procedures, Section I.F. In this case, such advice raises the same issue about conflict of interest that seeking a formal

Holme Roberts & Owen LLP
Attorneys at Law

Ralph E. Chamness
September 28, 2007
Page 2

opinion from the City Attorney under Section III.G. would present. If Ms. Knighton sought legal advice from her immediate supervisor, Lyn Creswell, who is an attorney, the conflict of interest issue remains because, although he is currently serving as Salt Lake City Chief Administrative Officer, he retains the right to return to his senior attorney position in the City Attorney's Office, and, in any event, all legal advice must be rendered under the authority of the City Attorney.

Other serious conflict of interest issues arise in the way in which Ms. Howick's appeal has been handled. The City labor relations officer at the time Ms. Howick's appeal was filed on September 10, 2007, was Marco Kunz. Ms. Kunz took no action on the appeal and has now obtained Ms. Howick's former position as counsel for the Salt Lake City Department of Airports. Ms. Knighton, Ms. Kunz's former supervisor, then sent her letter purporting to deprive Ms. Howick of any right to appeal her discharge.

The City's Conflict of Interest ordinance requires that City employees avoid even the appearance of impropriety and more specifically that when an individual employee's interests may be affected by a decision, that the conflict be disclosed and the employee not be involved in the decision. It further prohibits employees from using their positions to further their own or others professional interests. Salt Lake City Code, Sections 244.030 and 040. The Employee Appeals Board Procedures are also sensitive to issues of conflict of interest. For instance, they provide that the City labor relations officer must impanel Board members for an appeal who are least likely to have personal knowledge regarding the matter. See Section IV.B. Such attention to conflicts of interest does not appear to have been exercised at any point in the handling of Ms. Howick's appeal, and these facts raise serious questions. We are not aware of any conflict of interest waiver issued by the City in this matter, and, for the reasons set forth above, the City Attorney could not properly grant such a waiver in this matter. Salt Lake City Code, Section 2.44.180.

We ask that the City follow its Procedures and comply with the law without the influence of the conflicts that have seriously affected Ms. Howick and impaired City processes. Further, as you and I discussed in connection with obtaining an

Holme Roberts & Owen LLP
Attorneys at Law

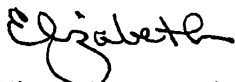
Ralph E. Chamness
September 28, 2007
Page 3

opinion prior to Ms. Knighton sending her letter because Mr. Rutan took the action being challenged in Ms. Howick's appeal, he has a conflict of interest in writing the required opinion. The opinion must therefore be provided by an unbiased and independent attorney knowledgeable in the law.

Ms. Howick had been an outstanding City employee for 15 years until she was discharged based on an alleged at will status and informed that this was a business decision incident to a change in a department head. Ms. Howick has been trying to resolve this matter amicably through reinstatement to her employment and continues to believe this is possible and in the best interests of both parties. If the city will act in good faith and without conflicts of interest, this matter can be readily resolved.

If it is the City's position that Ms. Knighton's letter is the final action or order of the Employee Appeals Board, does she intend to certify the decision to the City Recorder as required by Section I.G of the Procedures? If she does not and the City intends Ms. Knighton's September 21 letter to be the only and final action or order of the Employee Appeals Board and Salt Lake City, please let me know immediately and in writing so Ms. Howick can proceed with the appeal process.

Very truly yours,



Elizabeth T. Dunning

Holme Roberts & Owen LLP
Attorneys at Law

SALT LAKE CITY

**SENT VIA FACSIMILE
AND U.S. MAIL
536-6111**

BOULDER

October 19, 2007

COLORADO SPRINGS

Mark Gavre
Parsons Behle & Latimer
201 South Main Street
Suite 1800
Salt Lake City, Utah 84111

DENVER

Re: Jodi Howick

Dear Mark:

LONDON

Thank you for your letter of today's date and for returning my telephone call to your office so promptly. As I told you when we spoke, it is important for Salt Lake City to clarify how it intends to handle Ms. Howick's appeal of her termination from this point.

LOS ANGELES

MUNICH

SAN FRANCISCO

The Utah Municipal Code and the City's Employee Appeals Board Procedures make clear that the appeal of a termination is to be conducted and concluded promptly. Under the Utah Municipal Code, the employee has only ten days to file a notice of appeal with the city recorder. U.C.A. §10-3-1106(3)(a). The Code requires the recorder to refer the matter to the appeal board "forthwith," and the appeal board must commence its investigation and hear the matter "forthwith." U.C.A. §10-3-1106(3)(b)(i) and (ii). The appeal board has only 15 days from the date of the referral to certify its decision to the city recorder, unless for good cause and with the consent of the employee and the city, the board extends the time for certifying its decision to a "maximum" of 60 days. U.C.A. § 10-3-1106(5)(a)(i) and (ii). Once the appeal board receives the appeal from the city recorder, if there is a question whether a City employee is within the class of persons who may appeal a discharge, the Board must request a legal opinion, ordinarily from the City Attorney. The City Attorney must render an opinion "no later than the next business day after a request is received." Employee Appeals Board Procedures, III.G.

Mark Gavre
October 19, 2007
Page 2

Jodi Howick filed her Notice of Appeal on September 10, 2007 and presumably the City Recorder provided a copy of the appeal to the City labor relations officer the next day. We are therefore long past the 15 day period in which appeal boards are required to act in the absence of consent of the employee.

We have no interest in filing a premature appeal. On the other hand, we are not willing to continue in limbo outside the process required by the Utah Municipal Code and the City's own ordinances, policies and procedures and without any time constraints on the City. For these reasons, it is important for us to know first, that Ms. Howick's appeal has now been referred to the Employee Appeals Board and second, whether you have been retained to provide the opinion contemplated by Section III.G of the City's Employee Appeals Board Procedures. If you have not been retained to provide that opinion, we would like to know whether the City has retained someone else to do so.

I understand that you have only recently been retained by the City in this matter, but given the date of Jamey Knighton's letter, we need to resolve these issues by Monday, October 22, 2007.

I look forward to talking with you on Monday.

Very truly yours,

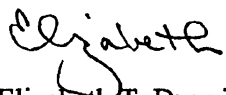

Elizabeth T. Dunning

EXHIBIT C



A PROFESSIONAL
LAW CORPORATION

201 South Main Street
Suite 1800
Salt Lake City, Utah 84111
Telephone 801.532.1234
Facsimile 801.536.6111

Salt Lake City • Las Vegas • Reno

RECEIVED

OCT 22 2007

Holme, Roberts
& Owen, LLP

Direct Dial
(801) 536-6834
E-Mail
MGavre@parsonsbehle.com

October 19, 2007

VIA FACSIMILE AND MAIL 521-9639

Elizabeth T. Dunning
HOLME, ROBERTS & OWEN
299 South Main St., Suite 1800
Salt Lake City, Utah 84111

Re: Howick v. SLC Corporation

Dear Elizabeth:

I am writing to confirm a point we discussed in the telephone conversation we had yesterday. It is the position of the Salt Lake City Corporation that the letter from Jamey Knighton that you received on or about September 21, 2007 does not constitute a final action or order of the Employee Appeals Board under Section VIII of the Employee Appeals Board procedures or Utah Code Ann. § 10-3-1106(6). Accordingly, no 30-day period for appeal to the Utah Court of Appeals or other time limitation runs from the date of Ms. Knighton's letter.

I look forward to receiving your letter containing your legal analysis of Ms. Howick's situation. Thank you for your cooperation in this matter.

Sincerely,

Parsons Behle & Latimer

W. Mark Gavre

WMG/cmg
cc: Ralph E. Chamness, Esq.



A PROFESSIONAL
LAW CORPORATION

201 South Main Street
Suite 1800
Salt Lake City, Utah 84111
Telephone 801.532.1234
Facsimile 801.536.6111

Salt Lake City • Las Vegas • Reno

W. Mark Gavre

Direct Dial
(801) 536-6834
E-Mail
MGavre@parsonsbehle.com

October 22, 2007

RECEIVED

OCT 23 2007

VIA FACSIMILE AND MAIL 521-9639

Elizabeth T. Dunning
HOLME, ROBERTS & OWEN
299 South Main St., Suite 1800
Salt Lake City, Utah 84111

Holme, Roberts
& Owen, LLP

Re: Howick v. SLC Corporation

Dear Elizabeth:

I am writing as a follow up to the telephone conversation we had on Friday afternoon. At that time I had sent you my letter of October 19, 2007 but had not received your letter of the same date. I read your letter this morning when I got into the office.

When we spoke on Friday, you asked whether there would any formal action by the Employee Appeals Board (the "Board"). In your letter, you outline certain steps that you believe the Board would take in the case of an appeal to the Board. I have now reviewed the Board's policies and procedures and have concluded that the Board has no jurisdiction over the termination of Ms. Howick. She was an at-will employee and signed an at-will agreement in 1998. For your convenience, I enclose a copy of her at-will agreement. The Board's policies expressly state that they do not cover at-will employees:

2. Employees Not Covered by this Policy

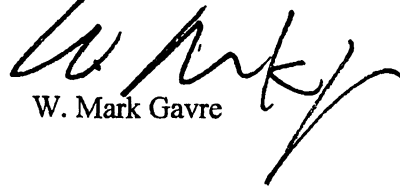
2.1 This policy does not apply to at-will employees, who may be terminated with or without cause.

Elizabeth T. Dunning
October 22, 2007
Page Two

Given that the Board's policies and procedures expressly state that they do not apply to at-will employees and given that Ms. Howick was a long-standing at-will employee, the Board would not have jurisdiction over Ms. Howick's termination. Accordingly, the Board would not be in a position to take any formal action with regard to Ms. Howick's termination.

Sincerely,

Parsons Behle & Latimer



W. Mark Gavre

WMG/kr
cc: Ralph E. Chamness, Esq.

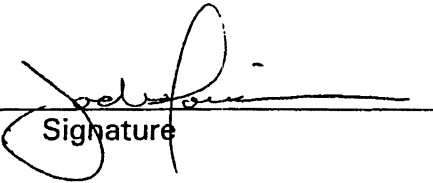
Jodi Howick

**SALT LAKE CITY CORPORATION
AT-WILL EMPLOYMENT DISCLAIMER**

2008 JUL 29 PM 2:23

I understand that, if I am appointed by the Salt Lake City Attorney to the "Appointed Senior City Attorney" position, my employment will be at-will and will be for no fixed length of time.

I understand that no oral or written statements (in personnel manuals, policies, procedures, or elsewhere) or any conduct of the Mayor, City Attorney, or other City official at any time, other than in a written contract of employment signed by the Mayor or City Attorney, can create an express or implied contract to the contrary.


Signature

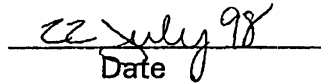

Date

EXHIBIT D

**NOTICE OF APPEAL
BEFORE
SALT LAKE CITY EMPLOYEE APPEALS BOARD**

NAME OF APPLICANT: Jodi Howick

ADDRESS OF APPLICANT: c/o Elizabeth Dunning, Esq.
Holme Roberts & Owen, LLP
299 S. Main
Salt Lake City, Utah 84111

RECEIVED

SEP 10 2007

TELEPHONE: 521-5800 (Ms. Dunning's phone number)

CITY RECORDER

DEPARTMENT: Salt Lake City Attorney's Office

ACTION BEING APPEALED:

Brief description of action: Discharge.

Date of action being appealed: August 31, 2007.

Person who took action: Edwin Rutan

APPELLANT WILL BE REPRESENTED BY: Elizabeth Dunning, Holme Roberts & Owen, LLP.

SPECIFIC STATEMENT OF ISSUES TO BE RAISED ON APPEAL:

Appellant worked for Salt Lake City Corporation for fifteen years with numerous City managers, and she received outstanding performance evaluations. Appellant was verbally informed by her supervisor that she would be discharged as of August 31, 2007, without any prior notice and without any cause. As the basis for this action, Appellant's supervisor relied on Appellant's alleged at-will employment status created by the City contrary to the requirements imposed by Utah Code Ann. §§ 10-3-1105 and 1106 and other laws and policies. Also contrary to those provisions, Appellant's supervisor indicated that his decision was a business decision incident to changes in a department head, and the decision may also have been affected by issues incident to changes in elective officers and otherwise contrary to law and policy. Appellant's supervisor provided no other basis for the decision and no documentation in connection with the decision. Appellant respectfully requests reinstatement to her employment based on the following:

Appellant's at-will employment status was not lawfully created under Utah Code Ann. §§ 10-3-1105 and 1106 and other laws and policies, and Appellant is entitled to the protections of those statutes, laws and policies.

Among other things, the action taken was contrary to the requirements of Utah Code Ann. §§ 10-3-1105 and 1106 and other laws and policies as a discharge without any notice and without any cause, and as a discharge incident to changes in a department head and/or elective officers.

WITNESSES YOU MAY HAVE TESTIFY ON APPEAL:

Edwin Rutan
City Attorney's Office
535-7788

Ralph Chamness
City Attorney's Office
535-7788

Dennis Ferguson
Williams & Hunt
257 East 200 South
Salt Lake City, Utah, 84111
521-5678

Others as may be identified during a discovery process.

DOCUMENTS YOU INTEND TO INTRODUCE AT THE HEARING

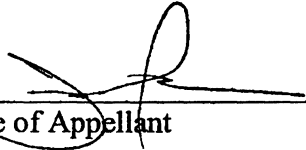
Performance evaluations given to Appellant and letter of recognition.

Documents as may be identified during a discovery process.

WHAT ACTION DO YOU WANT THE EMPLOYEE APPEALS BOARD TO TAKE:

Appellant respectfully requests reinstatement to her employment with full back pay and benefits.

I hereby request a hearing before the Employee Appeals Board.



Signature of Appellant

10 Sept 07

Date

Salt Lake City Corporation

AIR - Director's Office Performance Review

Employee Name: JODI L. HOWICK
Job Title: Senior City Attorney
Review Period Start: 1/1/2006
Review Period End: 12/31/2006
Reviewer: Russ Pack

Goals 5.00 *Outstanding performance*
Goals covered within the review period.

Section Weight: 50%

Airport penalty processes (part 1) 5.00 *Outstanding performance*

Due Date: 12/31/2006

Weight: 14%

Category: Financial

Description:

Review current penalty and official decision making structures used by the Airport, and reuse these structures to enhance the legal and operational needs of those processes

Measurement: Review current structures. Identify areas where changes would better address Airport legal and operational needs. Prepare policies, ordinances and other documents needed to make changes. Implement the changes.

Airport services organization 5.00 *Outstanding performance*

Due Date: 12/31/2006

Weight: 14%

Category: Efficiency/Effectiveness

Description: Determine the most appropriate methods for organizing airport profit-generating rights and services, such as a services corporation, and implement that method.

Measurement: Review possible structures and identify best method. Implement method by preparing governing documents and required practices.

AUA preparation 5.00 *Outstanding performance*

Due Date: 12/31/2006

Weight: 14%

Category: Customer

Description:

Compile and review use agreement options that may be advisable for upcoming carrier negotiations. Prepare a proposed draft recommending text that reflects best practices and updated legal provisions. Assist with negotiation efforts.

Measurement: Compile documents from other airports that I don't already have. Prepare outline identifying and recommending potential provisions. Prepare draft of a new agreement for review by Airport management.

Contract forms revisions (part 1) 5.00 *Outstanding performance*

Due Date: 12/31/2006

Weight: 14%

Category: Efficiency/Effectiveness

Description: Review form documents used for Airport contracts. Identify need for additional forms. Prepare standardized language for common provisions based on current law and best practices. Write form specific provisions based on current law and best practices. Prepare and issue new forms, and maintain official copies.

Measurement: Compile a list of forms and identify needs for new forms. Complete standardized sections for City and federal requirements, and common boiler provisions. Complete rewrites for leasing and real property forms.

Implement Airport policy system (part 2) 5.00 Outstanding performance

Due Date: 12/31/2006

Weight: 15%

Category: Workforce Quality

Description: Work with procurement committee to create a program using factors such as living wages that will benefit City procurement.

Measurement: Finalize program in accordance with the Mayor's schedule. Incorporate all factors for consideration. Create a program that will withstand legal challenge.

Pursue Airport legislative issues 5.00 Outstanding performance

Due Date: 12/31/2006

Weight: 14%

Category: Efficiency/Effectiveness

Description: Identify legislative needs (federal, state and local). Prepare text, and work with the legislative process to obtain passage of issues.

Measurement: Draft text, and obtain passage of bills and ordinances presented.

Pursue Kern River Litigation (part 2) 5.00 Outstanding performance

Due Date: 12/31/2006

Weight: 15%

Category: Efficiency/Effectiveness

Description: Pursue the needs of the litigation to defend the City's interests. Pursue settlement options as they may become available. Manage outside counsel and direct the case, and prepare documents and strategies in support of the case.

Measurement: Respond to all case deadlines. Manage costs effectively. Obtain best available court rulings. Provide documents and advice in support of settlement discussions.

Competencies 5.00 Outstanding performance

Competencies selected by Airport and Division management.

Section Weight: 50%

Quality Management 5.00 Outstanding performance

Weight: 20%

Fosters quality focus in others 5 Outstanding performance

Sets clear quality requirements 5 Outstanding performance

Measures key outcomes 5 Outstanding performance

Solicits and applies customer feedback 5 Outstanding performance

Improves processes, products, and services 5 Outstanding performance

Because JODI is extremely motivating, others are inspired to put a strong emphasis on quality. She sets quality requirements that are exceptionally well defined. The measures she creates provide thorough and accurate results regarding key outcomes. JODI proactively gathers and incorporates feedback to continuously strengthen customer satisfaction. Her contributions toward the improvement of processes, products, and services are outstanding.

Leadership	5.00	<i>Outstanding performance</i>
Weight: 20%		
Exhibits confidence in self and others	5	<i>Outstanding performance</i>
Inspires respect and trust	5	<i>Outstanding performance</i>
Reacts well under pressure	5	<i>Outstanding performance</i>
Shows courage to take action	5	<i>Outstanding performance</i>
Motivates others to perform well	5	<i>Outstanding performance</i>

JODI maintains a high level of self-confidence and clearly communicates her belief in other people's abilities. Through her actions she has earned the complete respect and trust of other people. She performs exceptionally well in high-pressure situations and she demonstrates strong leadership by never hesitating to take action. She exhibits an impressive ability to inspire the best performance from others.

Adaptability	5.00	<i>Outstanding performance</i>
Weight: 20%		
Adapts to changes in the work environment	5	<i>Outstanding performance</i>
Manages competing demands	5	<i>Outstanding performance</i>
Accepts criticism and feedback	5	<i>Outstanding performance</i>
Changes approach or method to best fit the situation	5	<i>Outstanding performance</i>

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Customer Focus	5.00	<i>Outstanding performance</i>
Weight: 20%		
Displays courtesy and sensitivity	5	<i>Outstanding performance</i>
Responds promptly to service requests	5	<i>Outstanding performance</i>
Identifies customer needs	5	<i>Outstanding performance</i>
Explains services clearly	5	<i>Outstanding performance</i>
Handles difficult situations	5	<i>Outstanding performance</i>

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Job Knowledge	5.00	<i>Outstanding performance</i>
Weight: 20%		

Competent in required job skills and knowledge	5	<i>Outstanding performance</i>
Exhibits ability to learn and apply new skills	5	<i>Outstanding performance</i>
Keeps abreast of current developments	5	<i>Outstanding performance</i>
Requires minimal supervision	5	<i>Outstanding performance</i>
Displays understanding of how job relates to others	5	<i>Outstanding performance</i>
Uses resources effectively	5	<i>Outstanding performance</i>

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Summary	5.00	<i>Outstanding performance</i>
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Summarizes performance during the review period.

Development Plans

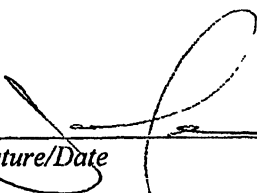
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Employee Comments

Reviewer Comments

Employee Acknowledgment

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 5 Dec 06
Employee Signature/Date

Russell Paer 12-5-06
Reviewer Signature/Date

Next Level Signature

Salt Lake City Corporation
AIR - Director's Office Performance Review

Employee Name: [REDACTED]
Job Title: Executive Director
Review Period Start: 1/1/2005
Review Period End: 12/31/2005
Reviewer: Russell Pack

Goals **5.00** *Outstanding performance*
Goals covered within the review period.

Section Weight: 50%

Airport penalty processes (part 1) **5.00** *Outstanding performance*

Due Date: 12/31/2005

Weight: 14%

Category: Financial

Description:

Review current penalty and official decision making structures used by the Airport, and reuse these structures to enhance the legal and operational needs of those processes.

Measurement: Review current structures. Identify areas where changes would better address Airport legal and operational needs. Prepare policies, ordinances and other documents needed to make changes. Implement the changes.

Airport services organization **5.00** *Outstanding performance*

Due Date: 12/31/2005

Weight: 14%

Category: Efficiency/Effectiveness

Description: Determine the most appropriate methods for organizing airport profit-generating rights and services, such as a services corporation, and implement that method.

Measurement: Review possible structures and identify best method. Implement method by preparing governing documents and required practices.

AUA preparation **5.00** *Outstanding performance*

Due Date: 12/31/2005

Weight: 14%

Category: Customer

Description:

Compile and review use agreement options that may be advisable for upcoming carrier negotiations. Prepare a proposed draft recommending text that reflects best practices and updated legal provisions. Assist with negotiation efforts.

Measurement: Compile documents from other airports that I don't already have. Prepare outline identifying and recommending potential provisions. Prepare draft of a new agreement for review by Airport management.

Contract forms revisions (part 1) **5.00** ***Outstanding performance***

Due Date: 12/31/2005

Weight: 14%

Category: Efficiency/Effectiveness

Description: Review form documents used for Airport contracts. Identify need for additional forms. Prepare standardized language for common provisions based on current law and best practices. Write form specific provisions based on current law and best practices. Prepare and issue new forms, and maintain official copies.

Measurement: Compile a list of forms and identify needs for new forms. Complete standardized sections for City and federal requirements, and common boiler provisions. Complete rewrites for leasing and real property forms.

Implement Airport policy system (part 2) **5.00** ***Outstanding performance***

Due Date: 12/31/2005

Weight: 15%

Category: Workforce Quality

Description: Work with procurement committee to create a program using factors such as living wages that will benefit City procurement.

Measurement: Finalize program in accordance with the Mayor's schedule. Incorporate all factors for consideration. Create a program that will withstand legal challenge.

Pursue Airport legislative issues **5.00** ***Outstanding performance***

Due Date: 12/31/2005

Weight: 14%

Category: Efficiency/Effectiveness

Description: Identify legislative needs (federal, state and local). Prepare text, and work with the legislative process to obtain passage of issues.

Measurement: Draft text, and obtain passage of bills and ordinances presented.

Pursue Kern River Litigation (part 2) **5.00** ***Outstanding performance***

Due Date: 12/31/2005

Weight: 15%

Category: Efficiency/Effectiveness

Description: Pursue the needs of the litigation to defend the City's interests. Pursue settlement options as they may become available. Manage outside counsel and direct the case, and prepare documents and strategies in support of the case.

Measurement: Respond to all case deadlines. Manage costs effectively. Obtain best available court rulings. Provide documents and advice in support of settlement discussions.

Competencies **5.00** ***Outstanding performance***

Competencies selected by Airport and Division management.

Section Weight: 50%

Quality Management **5.00** ***Outstanding performance***

Weight: 20%

Fosters quality focus in others

5

Outstanding performance

Sets clear quality requirements

5

Outstanding performance

Measures key outcomes	5	<i>Outstanding performance</i>
Solicits and applies customer feedback	5	<i>Outstanding performance</i>
Improves processes, products, and services	5	<i>Outstanding performance</i>

Because JODI is extremely motivating, others are inspired to put a strong emphasis on quality. She sets quality requirements that are exceptionally well defined. The measures she creates provide thorough and accurate results regarding key outcomes. JODI proactively gathers and incorporates feedback to continuously strengthen customer satisfaction. Her contributions toward the improvement of processes, products, and services are outstanding.

Leadership	5.00	<i>Outstanding performance</i>
Weight: 20%		
Exhibits confidence in self and others	5	<i>Outstanding performance</i>
Inspires respect and trust	5	<i>Outstanding performance</i>
Reacts well under pressure	5	<i>Outstanding performance</i>
Shows courage to take action	5	<i>Outstanding performance</i>
Motivates others to perform well	5	<i>Outstanding performance</i>

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Adaptability	5.00	<i>Outstanding performance</i>
Weight: 20%		
Adapts to changes in the work environment	5	<i>Outstanding performance</i>
Manages competing demands	5	<i>Outstanding performance</i>
Accepts criticism and feedback	5	<i>Outstanding performance</i>
Changes approach or method to best fit the situation	5	<i>Outstanding performance</i>

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Customer Focus	5.00	<i>Outstanding performance</i>
Weight: 20%		
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Job Knowledge	5.00	<i>Outstanding performance</i>
Weight: 20%		
Competent in required job skills and knowledge	5	<i>Outstanding performance</i>
Exhibits ability to learn and apply new skills	5	<i>Outstanding performance</i>
Keeps abreast of current developments	5	<i>Outstanding performance</i>
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Summary	5.00	<i>Outstanding performance</i>
Summarizes performance during the review period.		

Development Plans


Plan developed and agreed upon to enhance employee career movement.

Employee Comments

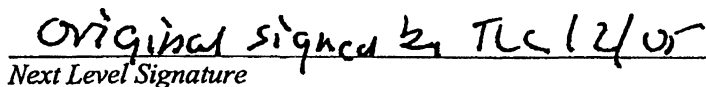
Reviewer Comments

Employee Acknowledgment

I have reviewed this document and discussed the contents with my manager. My signature means that I have been advised of my performance status and does not necessarily imply that I agree with the evaluation.

 _____
Employee Signature/Date 14 Feb 06

 _____
Reviewer Signature/Date

 _____
Next Level Signature

12/31/2004

Salt Lake City Corporation
AIR - Director's Office Performance Review

Employee Name: JODI L. HOWICK
Job Title: Appt. Sr. City Atty.
Review Period Start: 1/1/2004
Review Period End: 12/31/2004
Reviewer: Tim Campbell

Goals **5.00** *Outstanding performance*
Goals covered within the review period.

Section Weight: 50%

Airline bankruptcy preparations **5.00** *Outstanding performance*

Due Date: 12/31/2004

Weight: 16%

Category: Financial

Description: Review Delta's arrangements with the Airport, and those of other carriers in or nearing bankruptcy. Address issues that can be structured to create more favorable results in bankruptcy. Monitor carrier activities.

Measurement: Monitor carrier account balances and advise on collection activities to maintain accounts at no more than 30 days. Create a list of all Delta contracts with the Airport and recommend any needed changes under those agreements. Recommend and/or take actions on other issues.

Create City Value-Based Procurement Pro **5.00** *Outstanding performance*

Due Date: 12/31/2004

Weight: 17%

Category: Customer

Description: Work with procurement committee to create a program using factors such as living wages that will benefit City procurement.

Measurement:

Finalize program in accordance with the Mayor's schedule. Incorporate all factors for consideration. Create a program that will withstand legal challenge.

Finalize adoption of Airport Use Agreeeme **5.00** *Outstanding performance*

Due Date: 12/31/2004

Weight: 17%

Category: Efficiency/Effectiveness

Description: Assist with issues arising as AUAs are signed. Draft Supplemental Agreements needed to implement loading bridge arrangements.

Measurement: All AUA signed. All Supplemental Agreements signed.

Implement Airport policy system **5.00** ***Outstanding performance***

Due Date: 12/31/2004

Weight: 17%

Category: Workforce Quality

Description: Create a system that facilitates policy adoption at the Airport. Draft forms and guidelines, and work with each Airport division to discuss responsibilities for policy adoption and the maintenance of policies. Initiate process to work with each division to revise the current manual and address their needs.

Measurement:

Draft form and guidance documents. Meet with each division to kick off the process. Provide legal review for policies submitted. Compile and maintain the policy book.

Pursue Airport legislative issues **5.00** ***Outstanding performance***

Due Date: 12/31/2004

Weight: 16%

Category: Financial

Description: Identify legislative needs (federal, state and local). Prepare text, and work with the legislative process to obtain passage of issues.

Measurement: Draft text, and obtain passage of bills and ordinances presented.

Pursue Kern River Litigation **5.00** ***Outstanding performance***

Due Date: 12/31/2004

Weight: 17%

Category: Efficiency/Effectiveness

Description: Pursue needs of the litigation to defend the City's interest. Pursue settlement options as they may become available. Manage outside counsel and direct the case, and prepare documents and strategies in support of the case.

Measurement:

Respond to all case deadlines. Manage costs effectively. Obtain best available court rulings. Provide documents and advice in support of settlement discussions.

Competencies	5.00	<i>Outstanding performance</i>
Competencies selected by Airport and Division management.		

Section Weight: 50%

Quality Management	5.00	<i>Outstanding performance</i>
Weight: 20%		
Fosters quality focus in others	5	<i>Outstanding performance</i>
Sets clear quality requirements	5	<i>Outstanding performance</i>
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Leadership	5.00	<i>Outstanding performance</i>
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Adaptability	5.00	<i>Outstanding performance</i>
Weight: 20%		
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Job Knowledge	5.00	<i>Outstanding performance</i>
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Competent in required job skills and knowledge	5	<i>Outstanding performance</i>
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Summary	5.00	<i>Outstanding performance</i>
Summarizes performance during the review period.		

Development Plans

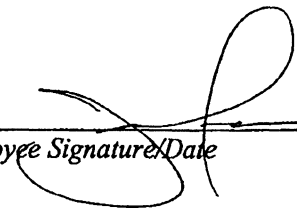
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Employee Comments

Reviewer Comments

Employee Acknowledgment

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 25 Feb 05
Employee Signature/Date

 3-9-05
Reviewer Signature/Date

Next Level Signature

Salt Lake City Corporation
AIR - Director's Office Performance Review

Employee Name: JODI L. HOWICK
Job Title: Appt. Sr. City Atty.
Review Period Start: 1/1/2003
Review Period End: 12/31/2003
Reviewer: Timothy Campbell

Goals **5.00** *Outstanding performance*
Goals covered within the review period.

Section Weight: 50%

AIR-Legal-Establish Service Priorities **5.00** *Outstanding performance*
Due Date: 6/30/2003
Weight: 12%
Category: Customer

Description: Work with Airport divisions to establish legal service priorities.
Measurement:
Produce a white paper regarding division needs and priorities

AIR-Legal-Establish Service Priorities-2 **5.00** *Outstanding performance*
Due Date: 6/30/2003
Weight: 13%
Category: Customer

Description:
Provide timely and accurate support to the Airport's contract administration processes.
Measurement:
Compile data re: needs, actions, turn-around times and tracking methods, and determine best practices.

AIR-Legal-Facilitate policy implement **5.00** *Outstanding performance*
Due Date: 6/30/2003
Weight: 13%
Category: Efficiency/Effectiveness

Description: Facilitate the Airport's adoption and use of departmental rules and policies, and work toward implementation
Measurement:
Develop and implement an interim legal review and adoption process, and develop a white paper regarding overall structural needs

AIR-Legal-Facilitate policy implement.-2 **5.00** ***Outstanding performance***

Due Date: 6/30/2003

Weight: 12%

Category: Efficiency/Effectiveness

Description: Structure appropriate contractual relationships with the airlines, and work toward implementation with Airport staff

Measurement:

Produce a base negotiations document with negotiation options.

AIR-Legal-Protect Airport Assets **5.00** ***Outstanding performance***

Due Date: 6/30/2003

Weight: 13%

Category: Financial

Description:

Review and revise measures in Airport contracts and practices to protect Airport assets against financial risk.

Measurement:

Prepare list of enhanced terms and practices, and follow an implementation schedule.

AIR-Legal-Protect Airport Assets-2 **5.00** ***Outstanding performance***

Due Date: 6/30/2003

Weight: 12%

Category: Financial

Description:

Review and revise contract language and legal processes to enhance the Airport's ability to recover sums due.

Measurement: Prepare list of enhanced terms and practices, and follow an implementation schedule.

AIR-Legal-Pursue Training Resources **5.00** ***Outstanding performance***

Due Date: 6/30/2003

Weight: 13%

Category: Workforce Quality

Description: Identify and pursue training and resources that will enhance effectiveness

Measurement:

Track training and resource use and determine its effectiveness

AIR-Legal-Pursue training resources-2 **5.00** ***Outstanding performance***

Due Date: 6/30/2003

Weight: 12%

Category: Workforce Quality

Description:

Continue to make the work environment pleasant

Measurement:

Celebrate special occasions as a staff at least once a month

Competencies	5.00	<i>Outstanding performance</i>
Competencies selected by Airport and Division management.		

Section Weight: 50%

Quality Management	5.00	<i>Outstanding performance</i>
Weight: 20%		
Fosters quality focus in others	5	<i>Outstanding performance</i>
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Adaptability	5.00	<i>Outstanding performance</i>
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Job Knowledge	5.00	<i>Outstanding performance</i>
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Summary	5.00	<i>Outstanding performance</i>
Summarizes performance during the review period.		

Development Plans

Plan developed and agreed upon to enhance employee career movement.

Strengths to build on

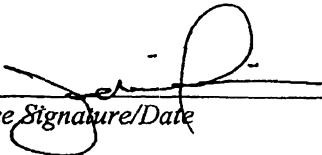
- 1 - Continue ACI involvement
- 2 - ABA Air & Space Forum editorial board
- 3 - Teach Westminster Aviation Law class

Employee Comments

Reviewer Comments

Employee Acknowledgment

I have reviewed this document and discussed the contents with my manager. My signature means that I have been advised of my performance status and does not necessarily imply that I agree with the evaluation.

 5 March 2004

Employee Signature/Date

 3-9-04

Reviewer Signature/Date

Next Level Signature



DEEDEE CORRADINI Major
LOUIS E. MILLER Executive Director

Board
Annette P. Cumming Chair
Curtis E. Ackerlind Jr.
E. J. "Jake" Gam
Peter R. Huntsman
Eddie P. Mayne
Don L. Skaggs
Roger M. Smedley
Richard R. Steiner
Elaine B. Weis

July 12, 1994

Mr. Roger Cutler, Esq.
City Attorney
Salt Lake City Corporation
451 South State Street, Room 505
Salt Lake City, Utah 84111

Dear Roger:

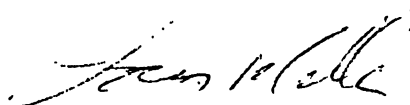
Jodi provided me with a copy of the "Highlights from 1993-94" that she submitted to you regarding the work she performed for the Salt Lake City Airport Authority. Obviously, it is difficult to summarize accomplishments for an entire year in a two page memorandum; however, she has hit on the highlights from last year.

The purpose of this letter is to provide you with my comments regarding Jodi's performance. She is one of the most responsible and dedicated individuals I have had the pleasure of working with. Assignments are completed in a timely manner with thorough research and a reasonable basis for the conclusions presented. Jodi is willing to put in the necessary time to complete projects with very compressed schedules to meet the demanding requirements of operating a major large hub airport, served by two reliever airports. The Salt Lake City Airport Authority is continually recognized for outstanding performance in many areas and Jodi's contributions to our success are significant.

I appreciate you recognizing the tremendous demands we face regarding full time, in-house legal counsel, over and above the requirements we have for litigation support, condemnation proceedings, insurable liability claims, employment issues and particular issues requiring specific legal expertise. Having Jodi available at all times has certainly made my job easier and provides me the opportunity to make critical decisions, that have legal implications, in a timely matter to better serve our tenants and the travelling public.

Thanks again for your support of the Airport Authority's programs and I look forward to another productive and successful year.

Sincerely,


Louis E. Miller

cutler

SALT LAKE CITY CORPORATION
'300" Series Performance Evaluation Tabulation Sheet

Department Law Employee Jodi Howick
 Social Security Number _____ Date 9/14/93
 Job Title Asst. City Atty Pay Class 320-M Job Code 4206

To finalize an employee evaluation, the following sheet should be completed and the original returned to the Office of Personnel Management. The department should retain the yellow copy for its records. Completed employee evaluation sheets (Job Skills and Behaviors) should be kept by the department. They should not be sent to the personnel department unless requested by the supervisor or employee.

JOB SKILLS

	Weight	Supervisor	Employee	Second Supervisor
Legal writing 1.	<u>20%</u>	<u>5</u>	<u>5</u>	<u>5</u>
Legal reasoning ² .	<u>20%</u>	<u>5</u>	<u>5</u>	<u>5</u>
Dept. knowledge ³ .	<u>20%</u>	<u>4</u>	<u>4</u>	<u>4</u>
Strategy & tactics ⁴ .	<u>20%</u>	<u>4+</u>	<u>5</u>	<u>5</u>
Litigation skills ⁵ .	<u>20%</u>	<u>4</u>	<u>4</u>	<u>4</u>

DIMENSIONS

	Supervisor	Employee	Second Supervisor
1. Communication Skills	<u>5</u>	<u>5</u>	<u>5</u>
2. Supervisory Skills	<u>N/A</u>	<u>N/A</u>	<u>-</u>
3. Job Knowledge	<u>4</u>	<u>4</u>	<u>4</u>
4. Productivity	<u>5</u>	<u>5</u>	<u>5</u>
5. Organization	<u>5</u>	<u>5</u>	<u>5</u>
6. Cooperative	<u>5</u>	<u>5</u>	<u>5</u>

If you approve granting the employee a merit raise, mark the box and attach a completed PER-400.



*see attch
and*

Supervisor's Signature

[Signature]

Date

11-22-93
10-19-93

EXHIBIT E

Elizabeth T. Dunning, Esq. (#3896)
HOLME ROBERTS & OWEN LLP
299 South Main Street, Suite 1800
Salt Lake City, Utah 84111-2263
Telephone: (801) 521-5800
Facsimile: (801) 521-9639

FILED
UTAH APPELLATE COURTS

OCT 22 2007

FILED DISTRICT COURT
Third Judicial District

OCT 22 2007

By SALT LAKE COUNTY
Deputy Clerk

Attorneys for Petitioner

UTAH COURT OF APPEALS

JODI HOWICK,

Petitioner,

vs.

SALT LAKE CITY CORPORATION,

Respondent.

NOTICE OF APPEAL

~~0709115267~~

Pattar

Notice is hereby given that Petitioner Jodi Howick, by her attorney Elizabeth T. Dunning, pursuant to U.C.A. 10-3-1106 appeals to the Utah Court of Appeals the final action or order on the appeal of Petitioner to the Salt Lake City Employee Appeals Board entered in this matter by letter to Petitioner from the City Labor Relations Officer, dated September 21, 2007.

The appeal is taken from the entire final action or order.

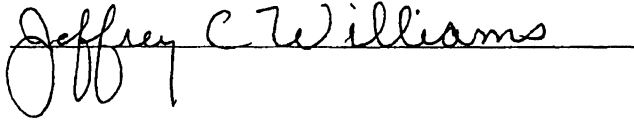
Dated this 22nd day of October, 2007.

Elizabeth Dunning
Elizabeth T. Dunning
Attorney for Petitioner Jodi Howick

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 22nd day of October, 2007, a true and correct copy of the foregoing **Notice of Appeal** was served by U.S. mail, postage prepaid, as follows:

W. Mark Gavre
Parsons Behle & Latimer
201 South Main Street, Suite 1800
Salt Lake City, UT 84111
Attorneys for Respondent Salt Lake City
Corporation

A handwritten signature in black ink, reading "Jeffrey C. Williams", is written over a horizontal line. The signature is cursive and includes a large, stylized initial "J" and "W".

APPENDIX 5

SAM GUEVARA
DIRECTOR, HUMAN RESOURCE MANAGEMENT

SALT LAKE CITY CORPORATION
DEPARTMENT OF MANAGEMENT SERVICES
DIVISION OF HUMAN RESOURCE MANAGEMENT

RALPH BECKER
MAYOR

August 7, 2008

Elizabeth Dunning
Holme Roberts & Owens, L.L.P.
299 South Main Street
Salt Lake City, Utah 84111

Re: Requested Documentation

Dear Ms. Dunning,

Enclosed is the documentation you requested concerning the Jodi Howick appeal.

Sincerely,

Shelly Chapman

Shelly Chapman
Human Resource Consultant

Cc: W. Mark Gavre
201 South Main Street, Suite 1800
Salt Lake City, Utah 84111

Edwin P. Rutan, II
City Attorney
Salt Lake City Corporation

Human Resources
Salt Lake City Corporation