

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AMENDING MESA CITY CODE SECTION 2, CHAPTER 18, REGARDING THE PERSONNEL APPEALS BOARD.

**NOW THEREFORE, BE IT ORDAINED** by the City Council of the City of Mesa, Arizona, as follows:

SECTION 1: That Title 2, Chapter 18 of the Mesa City Code is hereby amended as follows:

**ADDITIONS TO THE TEXT ARE SHOWN IN BOLD, ALL CAPITAL LETTERS AND UNDERLINED: ABC**

**DELETIONS TO THE TEXT ARE SHOWN AS STRIKE-OUTS: ~~Abe~~**

**2-18-1: MEMBERS OF BOARD, ALTERNATE MEMBERS**  
**2-18-2: BOARD HEARINGS AND PROCEDURAL RULES**  
**2-18-3: ~~ADVISORY OPINIONS~~**  
**2-18-4: ~~EX PARTE COMMUNICATIONS~~**  
**2-18-5: CITY MANAGER DECISION**  
**2-18-6: ~~FAILURE TO APPEAR; WITHDRAWAL OF APPEAL~~**

**2-18-1: MEMBERS OF BOARD, ALTERNATE MEMBERS:**

The Personnel Appeals Board created by Section 404 of the Mesa City Charter shall consist of three (3) members and shall have the qualifications set forth in the Charter. The members of the Personnel Appeals Board shall serve staggered terms of three (3) years each. Continued absence of any member from meetings of the Board shall, at the discretion of the City Council, render any such member liable for immediate removal from office by the Council. Any member absent from three (3) consecutive meetings without being excused shall be considered as having vacated his appointment. In order to insure that a quorum can be obtained, there shall be two (2) alternate members of the Personnel Appeals Board appointed by the Mayor with the approval of the Council to serve for a three- (3-) year term. The alternate members of the Personnel Appeals Board shall sit as members of the Board and shall have all of the powers of a member of the Board during the absence or inability for any reason of any of the other members of the Board to serve. The Personnel Director shall determine when an alternate member shall be called to sit as a member of the Personnel Appeals Board. ~~(1625, 2798)~~

**2-18-2: BOARD HEARINGS AND PROCEDURAL RULES:**

(A) The Board shall conduct a hearing upon receiving notice from the Human Resources Department concerning a review of a grievance or appeal of a dismissal brought pursuant to the Personnel Rules. The Board shall make every effort to schedule the hearing at the earliest possible mutually convenient time. The Board shall provide the parties a written notice of the time, date, and place of hearing not less than ten (10) business days before the first date of such hearing. ~~A party may request a continuance of a hearing no later than three (3) business days prior to the scheduled date. The chairperson may grant a continuance only for good cause shown. After the hearing has started, the Board in its discretion may recess the hearing until a later specified time. (3687, 4956)~~

(B) All Board hearings shall comply with the Arizona Open Meeting Law (A.R.S. §§38-431 et seq.) and Public Records Law (A.R.S. §§39-121 et seq.), as amended. ~~(3687)~~ **ALL BOARD HEARINGS SHALL FURTHER BE CONDUCTED IN ACCORDANCE WITH THE PERSONNEL APPEALS BOARD**

**HEARING PROCEDURAL RULES FOR CLASSIFIED EMPLOYEES (EXCLUDING SWORN LAW ENFORCEMENT) OR THE PERSONNEL APPEALS BOARD HEARING PROCEDURAL RULES FOR SWORN LAW ENFORCEMENT EMPLOYEES, WHICH WERE DECLARED TO BE PUBLIC RECORDS BY RESOLUTION ADOPTED ON SEPTEMBER 22, 2014, AND TO WHICH REFERENCE IS HEREBY MADE AND WHICH ARE INCORPORATED HEREIN, THREE COPIES OF WHICH ARE ON FILE AND AVAILABLE FOR PUBLIC USE AND INSPECTION IN THE OFFICE OF THE CITY CLERK.**

- ~~(C) All Board hearings shall be informal, except that testimony shall be given under oath or affirmation administered by the chairperson. The technical rules of evidence shall not apply, except for statutory provisions relating to privileged communications. The Board shall permit no prehearing discovery. The chairperson shall have the power to rule on objections and to judge and disallow or limit testimony or evidence that is irrelevant, immaterial, incompetent, or unduly repetitious. (3687)~~
- ~~(D) All prehearing motions shall be filed in writing at least fifteen (15) business days prior to the hearing. The other party shall be given an opportunity to respond to any motions. The chairperson may issue procedural orders for the hearing and shall rule on motions concerning procedural matters, but the Board shall decide all motions concerning the merits of the grievance or appeal. (3687, 4956)~~
- ~~(E) The chairperson shall administer an oath or affirmation to each witness. At the request of either party, the chairperson shall order that nonparty witnesses who will testify during the hearing be excluded from the hearing room until such time as they will testify. The Board members may ask questions of witnesses for clarification at any time. (3687)~~
- ~~(F) The order of proceedings shall be as detailed in the Personnel Appeals Board Hearing Procedural Guidelines. (3687, 4956)~~
- ~~(G) The Personnel Appeals Board may hear the matter in an executive session pursuant to A.R.S. §38-431.03 (A)(1). If the matter is noticed for an executive session, the appellant may request that the Board hear the appeal in an open meeting. The Board shall grant this demand if made. The standard of proof for the Board will be a preponderance of evidence. The parties and legal counsel/representative are not entitled to attend the deliberation in the executive session. (3687, 4956)~~
- ~~(H) Any decision made by the chairperson pursuant to this Section may be overturned by a majority vote of the Board. (3687)~~
- ~~(I) The City department shall have the burden of supporting the City's disciplinary action by a preponderance of evidence. (3687, 4956)~~
- ~~(J) The City Clerk's Office shall ensure that proper public notice, including an agenda, is provided for all Board hearings. The Personnel Office shall act as secretary to the Board in sending information packets to members and fulfilling other clerical responsibilities of the Board. (3687)~~

**2-18-3: ADVISORY OPINIONS:**

- ~~(A) Upon the conclusion of the Board's discussion and consideration, the Board shall vote on the matter in an open meeting. (3687)~~
- ~~(B) Within five (5) business days of the vote taken at hearing, the Board shall deliver its written advisory opinion to the City Manager. The Board shall set forth its findings and reasons in support of its recommendation. (3687)~~
- ~~(C) The Board shall provide to the appellant, affected department head, and Personnel Director a written copy of the advisory opinion. (3687)~~

**~~2-18-4: EX PARTE COMMUNICATIONS:~~**

~~(A) The Board shall base its decision solely on the evidence it receives at the hearing. (3687)~~

~~(B) Except as provided in Section 2-18-5(A), no party or other person shall contact the Board concerning the merits of the grievance or appeal outside of the hearing process prescribed in Section 2-18-2. (3687)~~

**2-18-5: CITY MANAGER DECISION:**

(A) After receiving the written advisory opinion, the City Manager may contact the Board to seek additional advice or information concerning the matter. ~~(3687)~~

(B) The City Manager may accept or reject the Board's advisory opinion. Within a reasonable period of time, not to exceed thirty (30) days, from receipt of the Board's advisory opinion, the City Manager shall notify the appellant, affected department head, and Personnel Director of the City Manager's decision. The thirty- (30-) day period may be extended should circumstances arise that preclude the City Manager from completing a review in a timely manner. Such decision shall be in writing and final for purposes of judicial review. ~~(3687)~~

**~~2-18-6: FAILURE TO APPEAR; WITHDRAWAL OF APPEAL:~~**

~~(A) In the event the appellant fails to appear either in person or by representative without just cause, the Board shall consider the matter to have been abandoned, and the appellant shall forfeit any right to appeal the matter. (3687)~~

~~(B) The appellant may submit a written request to the City Manager to withdraw a matter at any time prior to the Board's advisory opinion. Withdrawal of a matter shall forfeit the appellant's right to appeal in that instance. (3687)~~

SECTION 2: That the City hereby adopts by reference and without amendment the Personnel Appeals Board Hearing Procedural Rules for Classified Employees (Excluding Sworn Law Enforcement) and Personnel Appeals Board Hearing Procedural Rules for Sworn Law Enforcement Employees, which were declared to be public records of the City of Mesa by Resolution adopted on September 22, 2014, three copies of which are on file and available for public use and inspection in the office of the City Clerk.

SECTION 3: That the Mesa City Code, as amended, will remain in full force and effect, save and except as amended by this Ordinance.

SECTION 4: That the terms and provisions of this Ordinance are severable and if any section, subsection, sentence, clause, phrase or portion of this Ordinance, or any part of the Mesa City Code adopted herein by reference, is for any reason held to be invalid, unenforceable or unconstitutional by a court of competent jurisdiction, the remaining portions of this Ordinance shall remain in effect.

SECTION 5: The effective date of this Ordinance shall be 30 days following adoption by the Mesa City Council.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 6th day of October, 2014.

APPROVED:

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Mayor

ATTEST:

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City Clerk