



City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 16 Ordinance # 2525 Council District:

For Meeting of June 1, 2009
(Adoption Date)

AN ORDINANCE TO AMEND (1) LAS CRUCES MUNICIPAL CODE, SECTION 2-736, PERSONNEL APPEALS BOARD, TO DELETE THE SECTION IN ITS ENTIRETY; AND, (2) LAS CRUCES MUNICIPAL CODE, SECTIONS 22-154 THROUGH 22-157, PERSONNEL APPEALS, TO CREATE THE POSITION OF PERSONNEL APPEALS HEARING OFFICER WITH ASSOCIATED DUTIES AND PROCEDURES.

PURPOSE(S) OF ACTION: To amend the Las Cruces Municipal Code ("LCMC") regarding personnel appeals by (1) deleting the section which created the Personnel Appeals Board; and, (2) creating the position of Personnel Appeals Hearing Officer with such officer's associated duties and procedures.

Name of Drafter: Monica Campbell <i>mc</i>		Department: Legal		Phone: 541-2128	
Department	Signature	Phone	Department	Signature	Phone
Originating Department			Budget	<i>[Signature]</i>	541-2107
			Assistant City Manager	<i>[Signature]</i>	541-2271
Legal	<i>[Signature]</i>	541-2128	City Manager	<i>[Signature]</i>	541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

A review of the current personnel appeals procedure determined that it was in the best interests of the City to streamline the process in order to avoid lengthy or costly hearings and in order to provide for applicable due process.

The ordinance amendments will:

- Change the personnel appeals process from that of a board to a hearing officer. This will bring employment law expertise to the complex issues involved with the personnel appeals process.
- Allow both the employee and the City to be represented by counsel. Currently, neither party may be represented by counsel.
- Allow a better record of the proceedings to be developed, used, and retained.
- Allow the decision of the hearing officer to be rejected by the City Manager only after a full record review.

(Continue on additional sheets as required)

- Provide for an appeal of the decision of the hearing officer, or the city manager's rejection of the hearing officer's decision, to the district court.

Concurrent with presentation of this ordinance for adoption, a resolution with amendments to the Personnel Manual will be presented to the City Council in conformance with these ordinance amendments.

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount
N/A	N/A	N/A

1. Ordinance.
2. LCMC, Section 2-736 in legislative format, attached as Exhibit "A".
3. LCMC, Sections 22-154 through 22-157 in legislative format, attached as Exhibit "B".

OPTIONS / ALTERNATIVES:

1. Adopt the ordinance amendments. Adoption means that the personnel appeals process will be streamlined, to include items such as no longer having a board and using a hearing officer, representation by counsel allowed for the employee and the City, full record review by the City Manager of the hearing officer's decision, and the right to appeal to the district court.
2. Do not adopt the ordinance amendments. This action means that no changes will be made to the ordinances, and the personnel appeals hearing process will continue as it currently stands.
3. Modify the ordinance and provide further direction to staff.

(Continue on additional sheets as required)

COUNCIL BILL NO. 09-062
ORDINANCE NO. 2525

AN ORDINANCE TO AMEND (1) LAS CRUCES MUNICIPAL CODE, SECTION 2-736, PERSONNEL APPEALS BOARD, TO DELETE THE SECTION IN ITS ENTIRETY; AND, (2) LAS CRUCES MUNICIPAL CODE, SECTIONS 22-154 THROUGH 22-157, PERSONNEL APPEALS, TO CREATE THE POSITION OF PERSONNEL APPEALS HEARING OFFICER WITH ASSOCIATED DUTIES AND PROCEDURES.

The City Council is informed that:

WHEREAS, a review of the current personnel appeals procedure determined that it was in the best interests of the City to streamline the process in order to avoid lengthy or costly hearings and in order to provide for applicable due process; and

WHEREAS, the ordinance amendments will provide for, among other things, a change in the personnel appeals process from that of a board to a hearing officer; representation by counsel for both the employee and the City; and an appeals process following the decision of the hearing officer.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LAS CRUCES:

(I)

THAT Las Cruces Municipal Code ("LCMC"), Section 2-736 is deleted in its entirety.

(II)

THAT LCMC, Sections 22-154 through 22-157 are amended to read as follows:
Sec. 22-154. Personnel appeals hearing officer.

(a) Pursuant to the provisions of LCMC, § 24-1, et seq., the City of Las Cruces shall appoint a New Mexico licensed attorney who has a background in employment law to act as personnel appeals hearing officer to serve for a term of two years.

(b) Requirements for selecting the hearing officer shall be as follows: the hearing officer appointed shall be a New Mexico licensed attorney experienced in employment law for a private or public concern employing more than 50 employees.

Sec. 22-155. Personnel appeals hearing officer-Duties.

The personnel appeals hearing officer shall have responsibility to hear appeals, receive evidence, determine facts, approve, disapprove, or modify with the consent of the parties, a decision made by a supervisor, department director or municipal court supervisor, except in grievances which deal with a termination. The decision of the personnel appeals hearing officer shall be based on a preponderance of the evidence presented at the hearing. The burden of going forward initially rests with the City. Determinations of the personnel appeals hearing officer which deal with a termination shall be presented to the city manager in matters involving city employees or to the municipal court presiding judge in matters involving municipal court employees in the form of a recommendation. The city manager or municipal court presiding judge shall, after a whole record review, either accept or reject the recommendation of the personnel appeals hearing officer. If the recommendation is rejected, after a whole record review, by the city manager or municipal court presiding judge, the grieving party shall have no further recourse for internal remedy. Decisions rendered by the personnel appeals hearing officer on the grievance issues of loss of pay, written reprimand, suspension or demotions, reclassifications, transfers, reassignments and changes in shift rotations resulting from a disciplinary action shall be final and binding on all parties.

Sec. 22-156. Waiver of grievance.

Any grievance not filed pursuant to the provisions of this procedure within seven business days of the event or circumstance upon which such grievance is based shall be deemed to have been waived, and no relief shall be granted thereon.

Sec. 22-157. Appeal of personnel appeals hearing officer's decision.

The employee or the city may appeal the decision of the personnel appeals hearing officer or the city manager's rejection of a personnel appeals hearing officer's recommendation to the District Court within 30 days after the date of the decision by following the Rules of Civil Procedure for the District Courts. The decision shall be affirmed unless the decision is found to be:

- a. Arbitrary or capricious and unsupported by substantial evidence;
- b. In violation of applicable constitutional provisions or otherwise illegal; or

c. In excess of statutory authority or jurisdiction of the personnel appeals hearing officer.

(III)

THAT City staff is authorized to do all deeds necessary to accomplish the intent of this Resolution and the Agreement.

DONE AND APPROVED on this _____ day of _____, 2009.

Mayor

ATTEST:

City Clerk

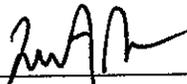
{SEAL}

Moved by: _____

Seconded by: _____

Mayor Miyagishima:	_____
Councillor Silva:	_____
Councillor Connor:	_____
Councillor Archuleta:	_____
Councillor Small:	_____
Councillor Jones:	_____
Councillor Thomas:	_____

APPROVED AS TO FORM:



City Attorney

~~Subdivision X.~~**Personnel Appeals Board****Sec. 2-736. Composition.**

~~The personnel appeals board shall consist of three members and four alternates appointed by the mayor, with the advice and consent of the city council, for unstaggered three year terms. See sections 22-151 through 22-188 for information on the personnel appeals board. Except as stated in this section and division 1 of this article, sections 22-151 through 22-188 remain in effect for the personnel appeals board.~~

Sec. 22-154. Personnel appeals board—Members hearing officer.

(a) ~~The mayor, with the advice and consent of the city council, Pursuant to the provisions of LCMC, § 24-1, et seq., the City of Las Cruces shall appoint a New Mexico licensed attorney who has a background in employment law to act three people who are not employees of the city as personnel appeals board members hearing officer to serve for unstagged a terms of three two years. As soon as practical, after appointment, the board shall meet and elect one of its members as chairperson.~~

(b) Requirements for selecting the board hearing officer shall be as follows: ~~Members~~ The hearing officer appointed shall be a New Mexico licensed attorney experienced in ~~personnel matters or labor relations~~ employment law for a private or public concern employing more than 50 employees and shall be a resident of the county.

(c) ~~Each member of the personnel appeals board shall remain in office until resignation, removal from office for cause, or expiration of term, or is no longer a resident of the county. A member may be removed for cause with approval of a majority of all members of the city council. No member of the board shall be removed for cause until given an opportunity for a public hearing on the charges against him/her. A hearing before the city council must be held within 30 days after receipt of written request for a hearing. Written charges shall be presented to a board member allowing him/her at least ten days to prepare his/her case.~~

~~(d) The mayor, with the advice and consent of the city council, shall also appoint four alternate members to the personnel appeals board using the same requirements as those for the regular appointees. The alternates will serve in situations when one or more of the regular members is excused from hearing a grievance for good reason.~~

Sec. 22-155. Personnel appeals board-hearing officer-Duties.

The personnel appeals board hearing officer shall have responsibility to hear appeals, receive evidence, determine facts, approve, disapprove, or modify with the consent of the parties, a decision made by a supervisor, department director or municipal court supervisor, except in grievances which deal with a termination. The decision of the personnel board appeals hearing officer shall be based on a preponderance of the evidence presented at the hearing. The burden of going forward initially rests with the City. Determinations of the personnel appeals board hearing officer which deal with a termination shall be presented to the city manager in matters

involving city employees or to the municipal court presiding judge in matters involving municipal court employees in the form of a recommendation. The city manager or municipal court presiding judge shall, after a whole record review, either accept or reject the recommendation of the personnel appeals ~~board~~ hearing officer. If the recommendation is rejected, after a whole record review, by the city manager or municipal court presiding judge, the grieving party shall have no further recourse for internal remedy. Decisions rendered by the personnel appeals ~~board~~ hearing officer on the grievance issues of loss of pay, written reprimand, suspension or demotions, reclassifications, transfers, reassignments and changes in shift rotations resulting from a disciplinary action shall be final and binding on all parties.

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