Minutes
Tempe Merit System Board
July 26, 2017

Minutes of the Tempe Merit System Board Meeting, held on Wednesday, July 26, 2017, 8:00 a.m., Hatton Hall at the Governor Benjamin B. Moeur House Campus, 34 East Seventh Street, Tempe, Arizona.

Board Members Present:
James P. Foley, Chair
Bill Munch
Johnny Tse

Not Present:
Craig Hittie, Appellant

City Staff Present:
Jon O'Connor, Deputy Internal Services Director – Human Resources
Melanie Stoddard, Executive Assistant to Human Resources, Staff to the Board
Ashley Hayashi, Human Resources Tech, Staff to the Board

Others Present:
David Park, Assistant City Attorney
Kathryn Baillie, Appellant Attorney

Witnesses Present
Paul Bentley
Naomi Farrell
Peggy Morales
Theresa James
Elizabeth Gath
Karen Pierce
Levon Lamy
Keith Smith
Wayne Knowles

Chair James Foley called the Meeting to order at 8:00 a.m.

Chair Foley addressed Agenda Item I, convening the Hearing on the Appeal of Craig Hittie at 8:00 a.m. Roll call was taken for the record. Chair Foley instructed the Witnesses present as to the confidentiality of their testimony and informed them that they would be sworn in under oath at time of testimony. Witnesses were then excused until called upon to testify.

Chair Foley stated that Mr. Hittie requested a public hearing and noted that at the point of deliberations, Mr. Hittie would have the opportunity to stipulate whether deliberations may occur in private session should he wish to do so. Chair Foley noted that there was one Pre-Hearing Motion filed on July 11, 2017, by the City Attorney's Office to restrict evidence coming into the record. The following day, the Appellant's Council, Kathryn Baillie, stated she would not be

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introducing additional documentary evidence other than the evidence provided by the City. The evidence provided by the City will be treated as joint exhibits.

Chair Foley stated that the purpose of the hearing is to review evidence, take testimony and make a recommendation to the City Manager as to the appropriateness of two disciplinary actions, a demotion and termination taken against Craig Hittie. Chair Foley read a list of the sustained allegations of violations of Personnel Rules from the disciplinary demotion and termination documents.

Mr. Hittie was given a disciplinary action resulting in demotion on September 30, 2016. He responded to these allegations in his Part II response dated October 12, 2016, and after the Human Services Department considered his response, was given his Part III notice of demotion dated November 22, 2016. He requested an Administrative Review, which was conducted by Chad Weaver, Community Development Director on January 13, 2017. After meeting with Mr. Hittie and reviewing information provided by the City and Mr. Hittie, Mr. Weaver supported the recommendation of demotion with a pay reduction and transfer to a non-supervisory position.

As a disciplinary measure, Mr. Hittie was demoted effective February 16, 2017, from Housing and Revitalization Manager to Housing Services Specialist II for violation of the following Personnel Rules & Regulations:

> **Rule 406.C.1**, “The employee has exhibited a lack of sufficient competency or efficiency to perform assigned duties and responsibilities.”
>
> **Rule 406.C.4**, "The employee has been insubordinate or has failed to follow reasonable direction from a supervisor."
>
> **Rule 406.C.9**, "The employee has been abusive in attitude, language, behavior, or conduct toward another employee or the public.”

Mr. Hittie was given a second Part I Disciplinary Action on December 12, 2016. He responded to these allegations in his Part II response dated December 23, 2016, and after the Human Services Department considered his response, was given his Part III notice of termination dated February 15, 2017. He requested an Administrative Review, which was conducted by Kevin Kane, Tempe Municipal Court Presiding Judge. After reviewing information provided by the City and Mr. Hittie, Judge Kane sustained the recommended disciplinary action of termination dated March 17, 2017. As a disciplinary measure, Mr. Hittie was terminated effective March 21, 2017, for violation of the following Personnel Rules & Regulations:

> **Rule 406.C.9**, “The employee has been abusive in attitude, language, behavior, or conduct toward another employee or the public.”
>
> **Rule 406.C.11**, “The employee has engaged in behavior that does not meet a reasonable standard of workplace civility and respect in his or her interactions with other employees, or the public.”

Chair Foley continued saying, the Hearing is an informal fact finding process and all parties are expected to conduct themselves with respect and consideration for one another. The Board is not bound by strict rules of evidence or procedure. He also said he will rule on objections and has the discretion to disallow evidence of testimony that is irrelevant, immaterial, incompetent or unduly repetitious. He outlined the Board’s responsibilities which are to determine whether there is

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sufficient evidence to support the City's findings that the Appellant violated rules or performed unsatisfactorily. If the Board determines that the evidence does not support the City's findings, the Board will recommend revocation of the disciplinary action. The Board is to determine whether the City gave due consideration to relevant facts and circumstances surrounding the acts which led to the discipline. If the Board finds that the charges were supported by evidence, but that other mitigating facts and circumstances were not considered, members may recommend a modified disciplinary action.

Chair Foley detailed the conduct expected from participants during the Hearing and reviewed the Board responsibilities. He further noted that the Appellant has the burden of proof and will make the first presentation, noting that each party has 3.5 hours to present its case, after which the Board will go into deliberation.

Chair Foley prefaced Kathryn Baillie's opening statement questioning, "It is my understanding that Mr. Hittie will not be present today?" Ms. Baillie responded saying, "Apparently, that is the case."

David Park moved to dismiss this matter given the fact that the appellant was not present. He stated that the guidelines do not provide for a hearing in absentia. The guidelines do, however, allow for the City to examine and cross examine the Appellant and give the Board an opportunity to evaluate credibility of the administrative review and Part II that the Appellant put forward. Mr. Park indicated that the City does not have that opportunity without the Appellant being present. He stated that if Mr. Hittie does not care enough to show up and use the City's resources and time without an opportunity for the Board to evaluate the Appellant's credibility, or anything to be submitted, Mr. Park motioned that the Hearing be dismissed.

Chair Foley asked Kathryn Baillie for a response.

Ms. Baillie stated that she agreed with the City because the burden of proof is on the Appellant. She stated that because the burden is on the Appellant, the Appellant needs to be present. She further stated that she cannot testify on behalf of her client and is required to present what he has written in his responses to a document in the possession of the City. The Appellant is not present to advise the Board what he meant by the document or what his frame of mind was when he sent certain text messages and emails. She said the City has the right to question the Appellant on cross-examination or on direct examination. She confirmed that she was not able to produce the Appellant for the City to move forward.

For the record, Ms. Baillie said that her office has maintained records of every email that has been sent to both of Mr. Hittie's email addresses. Thus, he is well aware of today's Hearing. He was provided with the time of the Hearing in early June. She advised the Appellant that it would be important for him to contact her. She noted that although she has not received contact from Mr. Hittie, she has been diligent in trying to advise him in this action. Ms. Baillie indicated that Mr. Hittie knew the date, the time and the location of the hearing and she was in hopes that he would be in attendance.

Chair Foley asked Ms. Baillie if she had any objection to the City's motion. She stated that she had no objection and repeated that she could not testify on behalf of her client. Hearing no objection from Ms. Baillie, Chair Foley granted the City's motion.

The Hearing was dismissed and the meeting ended at 8:13 a.m.

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Jon O'Connor, Merit System Board Secretary

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