

 <p style="text-align: center;"><b>Council</b> <b>Communication</b> Office of the City Manager</p>	<b>Date:</b> August 27, 2012
	<b>Agenda Item No.</b> 19 <b>Roll Call No.</b> <u>12-1346</u> <b>Communication No.</b> <u>12-471</u> <b>Submitted by:</b> Richard A. Clark, City Manager

**AGENDA HEADING:**

Scheduling the date of hearing on proposed ordinance amendments, to establish a uniform administrative hearing process to consider appeals from decisions by City officers and to apply the administrative hearing process to specific decisions made by City officers in the performance of their duties.

**SYNOPSIS:**

At the May 21, 2012 Council meeting, by Roll Call No. 12-0817, Council directed the City Manager and City Attorney to draft language for changes to the Municipal Code as it relates to the Administrative Hearing Officer appeals process. Staff has drafted proposed ordinance amendments at the request of Council. The hearing will be set for September 10, 2012.

**FISCAL IMPACT:**

Amount: Staff intends to review the associated costs with the increase in hearings that will be seen by the hearing officer and establish a schedule of fees for the appeal process.

Funding Source: N/A

**ADDITIONAL INFORMATION:**

At the request of Council, staff has reviewed the request and recommends amending the following chapters to establish a uniform administrative hearing.

The proposed ordinance includes a new Chapter 3 to the Municipal Code to provide fair, consistent and uniform procedures for the use of an administrative hearing officer to hear and determine appeals from decisions made by City officers in the performance of their official duties. With minimal exceptions, Chapter 3 provides for uniform deadlines and requirements for filing administrative appeals, uniform notice requirements and the coordinated scheduling of administrative hearings. Chapter 3 also provides uniform guidelines for the conduct of an administrative hearing and for the final determination to be made on an appeal.

With the implementation of Chapter 3 and amendments to multiple sections of the Municipal Code, all appeals to decisions made by a City officer will be heard by an administrative hearing officer. Any appeal of the final determination of an administrative hearing officer must be made to district court and not to the City Council. Proposed Code amendments incorporating the Chapter 3 administrative hearing process include extensive revisions to Chapter 18, Animals (seizure, impoundment and

disposition of vicious dogs, dangerous and illegal animals), Chapter 42, Environment (sound variance denials), Chapter 114, Traffic and Vehicles (vehicle impoundments), Chapter 126, Vehicles for Hire (issuance of limousine and taxicab driver's licenses). It is anticipated that amendments to other chapters of the Code will be presented in the future to the City Council to fully incorporate the uniform procedures in Chapter 3.

Although initial discussion centered around possible inclusion of certificates for operation of taxicabs among the items for review by the administrative hearing officer, it was ultimately determined that including the decisions on issuance of taxicab certificates currently reserved to the City Council was not possible given the current framework of Chapter 126. The determination that further taxicab service is required by the public convenience and necessity is at least partially a legislative determination of policy. This is especially true where the last action of the Council purported to create something of a limitation on the number of taxicab licenses issued. Action contrary to either of those provisions by the administrative hearing officer would be problematic at best.

Should Council desire that policy be modified to change the process for licensing the operation of taxicabs from a legislative/policy determination of necessity to a different process, the Legal Department would work with the City Manager to help change the current ordinance from a legislative/policy based action to a ministerial ordinance based on qualifications in lieu of any "cap" or other public convenience/necessity basis.

#### **PREVIOUS COUNCIL ACTION(S):**

Date: May 21, 2012

Roll Call Number: [12-0817](#)

Action: [From](#) Council Member Brian Meyer to discuss Administrative Hearing Officer appeals. Moved by Meyer to receive and file comments and to refer to the City Manager and City Attorney to draft language for changes to the Municipal Code. Motion Carried 7-0.

#### **BOARD/COMMISSION ACTION(S): NONE**

#### **ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:**

Future actions will include public hearings and adoption of the proposed amendments.

For more information on this and other agenda items, please call the City Clerk's Office at 515-283-4209 or visit the Clerk's Office on the second floor of City Hall, 400 Robert D. Ray Drive. Council agendas are available to the public at the City Clerk's Office on Thursday afternoon preceding Monday's Council meeting. Citizens can also request to receive meeting notices and agendas by email by calling the Clerk's Office or sending their request via email to [cityclerk@dmgov.org](mailto:cityclerk@dmgov.org).