


COUNCIL COMMUNICATION

	Number:	19-523	Meeting:	December 2, 2019
	Agenda Item:	35	Roll Call:	19-1932
	Submitted by:	Joshua V. Barr, Civil and Human Rights Director		

AGENDA HEADING:

Amending the Des Moines Civil and Human Rights Commission rules and regulations on subcommittees and appeals of ministerial and administrative case closures.

SYNOPSIS:

During the September 2019 Civil and Human Rights Commission meeting, the Commission voted to update its rules, regulations, and ordinance regarding the case determination review and appeals process and subcommittee member appointment process. All updates are underlined and italicized in the Additional Information section below.

FISCAL IMPACT: NONE

ADDITIONAL INFORMATION:

3-21. SUBCOMMITTEES. Subcommittees shall be established from time to time, as the Commission deems necessary to study the problems of prejudice, intolerance, bigotry and discrimination in any field of human relationships within the purview of the Ordinance. In creating each subcommittee, the Commission shall specify a fixed term for its existence and a specific mandate as to its goal and function. At least one (1) Commission member shall serve on any subcommittee established pursuant to this rule and the Ordinance. At the conclusion of the subcommittee's work the Commission shall hold one or more public hearings to consider the findings and recommendations of the subcommittee. The Commission shall determine the further action or study it should undertake at the conclusion of the hearings. The appointing of subcommittee members shall be as follows:

- (1) For new subcommittees: a subcommittee interview team comprised of members of the Commission appointed by the Chair along with department staff appointed by the Director shall review subcommittee applications and interview potential subcommittee members. The subcommittee interview team shall make recommendations to the Commission of which individuals should be appointed to the subcommittee. The Commission will review the recommendations and make the final decision on the subcommittee appointees during the next general commission meeting unless there is a need to appoint subcommittee members sooner which would then be done at a special meeting.
- (2) For existing subcommittees: if existing subcommittees believe that is necessary to appoint additional subcommittee members to further the goal and function of the subcommittee, subcommittee members shall make a formal request to the Commission. Upon approval by the

Commission, the subcommittee shall work with department staff to inform the community about subcommittee application. A designated group of subcommittee members along with the Director and appointed staff person shall serve as the subcommittee interview team. The subcommittee interview team shall make recommendations to the Commission of which individuals should be appointed to the subcommittee. The Commission will review the recommendations and make the final decision on the subcommittee appointees during the next general commission meeting unless there is a need to appoint subcommittee members sooner which would then be done at a special meeting.

4-12. APPEAL OF MINISTERIAL FINDINGS FOR CASE CLOSURES OR ADMINISTRATIVE CLOSURES.

The director's decision to close a file or any portion of a file for any reason may be appealed to the chair, vice-chair, and secretary of the commission. The basis for appeal of a case closure must be in writing composed with or without assistance from the commission staff. The respondent shall be informed of a pending appeal and given an opportunity to respond with reasons the appeal should not be granted pursuant to section 62-3 of Chapter 62 of the Municipal Code of the City of Des Moines. The director shall coordinate a meeting with the director, the chair, vice-chair, secretary, and attorney for the commission to facilitate deliberations and answer questions the chair, vice-chair, and secretary may have about the complaint and the appeal. The complaint, the information on file and the written reasons for the appeal and response to the appeal shall be considered, except no new evidence will be considered unless it is material and relevant to the complaint and was not discovered at the time of the director's decision despite diligent efforts of the complainant and the commission. Evidence for an appeal of a case closure for a failure to cooperate shall be limited to facts appropriate to refute the basis for finding a failure to cooperate. The chair, vice-chair, and secretary of the commission shall either affirm the director's decision, reverse, or remand the case back for further process. If affirmed a final order shall be entered. If reversed or remanded staff shall be directed to proceed accordingly. Notice of the decision on appeal shall be promptly sent to the complainant and respondent.

Sec. 62-3. Procedure for processing complaints.

- (a) Whenever a verified complaint is filed pursuant to this chapter, a true copy of the complaint shall be transmitted to the person alleged to have committed the illegal discriminatory practice, referred to as the "respondent," within ten days with a bill of particulars setting out the dates and facts upon which the complaint is based. Upon receipt of the complaint, the respondent shall be advised of the right to file a written response to the allegations of the complaint, of the right to counsel and the right to present evidence at any stage of the investigation and hearing and shall be informed of the confidentiality of the human rights commission's investigation and conciliation efforts and the respondent's cooperation in maintaining the non-adversarial environment such confidentiality fosters shall be sought by commission staff.
- (b) The director of the human rights commission shall appoint a member of the commission staff who, under the supervision of the director, shall make a prompt and full investigation of the alleged illegal discriminatory practice and forward to the director a summary of the investigation. If a complainant or respondent fails or refuses to provide information requested for an investigation, the director may issue a subpoena for that information.
- (c) The director and staff member may determine during the investigation that the complaint has no validity or is not within the jurisdiction of the commission. Upon such determination the complaint may be closed with a ministerial finding of no probable cause or no jurisdiction and the complainant and respondent shall be so notified by regular mail at their last known addresses and by electronic mail if an email addresses is known. The complainant may appeal

such ministerial finding to the chair, vice-chair, *and secretary* of the commission within ten days of the *mailing of the* notification. *If complainant timely appeals, respondent shall be notified and given ten days to respond with reasons the appeal should not be granted.*

- (d) If it is determined by the director that no probable cause exists for the complaint, *or any part of the complaint*, the complainant and respondent shall be promptly notified in writing *by regular mail and electronic mail if an email address is known* and the case shall be closed, *or in the case of mixed determinations of cause and no probable cause, the investigation of the portion(s) determined to have no probable cause shall be closed*, unless this finding is appealed to the chair, vice-chair, *and secretary* of the commission within ten days of the notification. *If complainant timely appeals, respondent shall be notified and given ten days to respond with reasons the appeal should not be granted.*
- (e) *Appeals of ministerial findings closing any portion of a complaint shall be determined by the chair, vice chair, and secretary of the commission. The complaint and information on file with the commission concerning the complaint and the appeal shall be considered according to commission rules. The chair, vice-chair, and secretary shall either affirm the director's decision, reverse the director's decision, or remand to the director and staff for further investigation. If the director's decision is affirmed, a final order shall be entered and the complainant and respondent shall be promptly notified. If the director's decision is reversed or remanded staff shall be directed to proceed accordingly with notice sent to the complainant and respondent.*
- (f) If the director determines that probable cause exists for crediting the allegations in the complaint, the staff shall proceed with conciliation and persuasion under the director's supervision.
- (g) An investigation shall be deferred if the same complaint has been filed with an agency with duties and powers similar to the commission which is proceeding with its own investigation of the complaint. The commission's investigation may be stayed pending the completion of the other agency's investigation if it is determined by the director to be in the best interests of the commission.

(C54, § 2-423; O.5775; C62, § 2-423; O.7738; C62, § 25A-14; O.8291, 8920; C75, § 2-322; O.9337; C79, § 2-322; C85, § 2-322; O.11,468; C91, § 2-322; O.11,784; C00, § 62-3; O.13,922)

PREVIOUS COUNCIL ACTION(S):

Date: July 23, 2018

Roll Call Number: [18-1238](#)

Action: [Approving](#) amendments to the Civil & Human Rights Commission rules and regulations. ([Council Communication No. 18-394](#)) Moved by Gatto to adopt. Motion Carried 7-0.

BOARD/COMMISSION ACTION(S):

Board: Des Moines Civil & Human Rights Commission

Date: September 12, 2019

Resolution Number: N/A

Action: Proposed Amendment to Human Rights Ordinance, Chapter 62, Section 62-3: Procedure for Processing Complaints. Hunt Russian moved, Ouya second. PASS 4-0.

Proposed Amendment to Human Rights Commission Rules & Regulations Section 4-12: Appeal of No Probable Cause. Schabel moved, Hunt Russian second. PASS 4-0.

Proposed Amendment to Human Rights Commission Rules & Regulations Section 3-21: Subcommittees. Schabel moved, Hunt Russian second. PASS 4-0.

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

Des Moines Civil and Human Rights Commission appeals process is clarified and complainants can now appeal a mixed finding case of probable cause and no probable cause. The secretary of the Commission is now a part of the appeals review committee.

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