

.....
Date August 27, 2012

Resolution Scheduling Hearing on proposed Ordinances to Establish an Administrative Hearing Process to Consider Appeals From Decisions by City Officers, and to Amend Parts of Chapter 18 Animals, Chapter 42 Environment, Chapter 78 Peddlers and Solicitors, Chapter 114 Traffic And Vehicles, and Chapter 126 Vehicles for Hire, to Apply the Administrative Hearing Process to Specific Decisions Made by City Officers in the Performance of their Duties

WHEREAS, in the performance of their duties City officers are required to make a number of decisions of a type that directly affect individual citizens; and,

WHEREAS, there is no uniform procedure under the City Code for the consideration of appeals from such decisions; and,

WHEREAS, the City Council has asked that a uniform procedure be developed for the consideration of appeals from such decisions, that increases the use of Administrative Hearing Offices and reduces the necessity for consideration of individual appeals by the City Council; and,

WHEREAS, the City Attorney and City Manager have prepared a proposed ordinance which establishes a uniform administrative hearing process in Chapter 3 of the City Code for the consideration of appeals by citizens from selected decisions by City officers in the performance of their duties, and related ordinances which amend parts of Chapter 18 Animals, Chapter 42 Environment, Chapter 78 Peddlers And Solicitors, Chapter 114 Traffic And Vehicles, and Chapter 126 - Vehicles for Hire, to apply the administrative hearing process to specific decisions made by City officers in the performance of their duties under such chapters.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, as follows:

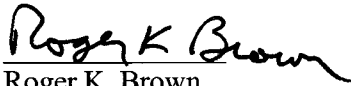
1. That the City Council of the City of Des Moines shall consider adoption of the proposed ordinances establishing a uniform administrative hearing process in Chapter 3 of the City Code, and amending other chapters of the City Code to apply the administrative hearing process to specific decisions made by City officers in the performance of their duties under such chapters.
2. That the City Council shall consider adoption of said ordinances at a public hearing to be held on September 10, 2012, at 5:00 p.m., in the Council Chambers at City Hall.

Date

3. That the City Clerk is hereby authorized and directed to publish notice of said hearing in the form hereto attached all in accordance with §362.3 of the Iowa Code.

MOVED by _____ to adopt.

FORM APPROVED:



Roger K. Brown

Assistant City Attorney

G:\SHARED\LEGAL\BROWN\MISC\Admin Appeals\Regulations\Roll Calls\RC Set Hrg.doc

Exhibits:

- "A" Chapter 3. Administrative Hearing Process
- "B" Chapter 18. Animals (Vicious dogs and illegal and dangerous animals)
- "C" Chapter 42. Environment, Article IV. Noise Control
- "D" Chapter 78. Peddlers and Solicitors, Article III. Transient Merchants
- "E" Chapter 114. Traffic and Vehicles (Impoundments)
- "F" Chapter 126. Vehicles for Hire, Article III. Limousines and Article IV. Taxicabs

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				

MOTION CARRIED APPROVED

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

_____ Mayor

_____ City Clerk

ORDER NO. _____ ROLL CALL LEGAL BULLETIN BOARD FOLLOW UP
REGISTER

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN, that the City Council of the City of Des Moines, Iowa, shall consider adoption of an ordinance which establishes a uniform administrative hearing process in Chapter 3 of the Des Moines City Code for the consideration of appeals by citizens from selected decisions by City officers in the performance of their duties, and related ordinances which amend parts of Chapter 18 Animals, Chapter 42 Environment, Chapter 78 Peddlers and Solicitors, Chapter 114 Traffic And Vehicles, and Chapter 126 Vehicles for Hire, to apply the administrative hearing process to specific decisions made by City officers in the performance of their duties under such chapters.

NOTICE IS FURTHER GIVEN that the City Council will consider the adoption of the proposed ordinances after a public hearing to be held at 5:00 p.m., in the Council Chambers, 400 Robert D. Ray Drive, Des Moines, Iowa, on September 10, 2012.

Copies of the proposed ordinances are available at the office of the City Clerk, City Hall, Des Moines, Iowa. Persons interested in the proposal will be given the opportunity to express their views at that hearing.

CITY OF DES MOINES, IOWA

PUBLISHED IN THE DES MOINES REGISTER ON AUGUST 30, 2012.

Exhibit "A"

Proposed new Chapter 3 establishing a comprehensive and standardized Administrative Hearing Process for the processing and determination of appeals from certain decisions made by City officers in the performance of their duties. The decisions subject to appeal under the Administrative Hearing Process will be designated by further amendments to the City Code.

**Chapter 3. Administrative Hearing Process.
Article 1. General**

Sec. 3-1. Statement of purpose.

This chapter is intended to establish 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.

Sec. 3-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Administrative hearing officer means the person or persons appointed by the city manager pursuant to section 3-3.

Appealable decision means a decision made by a city officer in the performance of the officer's official duties that is specifically allowed by this Code to be appealed to the administrative hearing officer in accordance with the procedures set forth in this chapter. A decision shall be considered to have been made on the date it is memorialized in writing, provided such written decision is promptly served upon the affected parties by personal service or by regular mail addressed to their business address or place of residence.

Appellant means one or more persons who have filed an appeal pursuant to this chapter.

Affected department means the city department which employs the city officer who made the decision appealed from in an administrative appeal proceedings, or who initiated an administrative adjudication proceeding.

City clerk means the city clerk or the city clerk's designee.

Days after or *days before* when used in the computation of the time between a triggering event and some required action shall be calculated by not counting the triggering event and by counting each day before or after the triggering event, as appropriate until and including the date the required action is taken.

Sec. 3-3. Administrative hearing officer—Powers and duties.

- a) One or more administrative hearing officers shall be appointed by the city manager.
- b) An administrative hearing officer shall have all powers necessary to conduct fair and impartial hearings including, but not limited to, the power to:
 - (1) Conduct administrative hearings and issue decisions in conformance with this chapter.
 - (2) Administer oaths and affirmations.

- (3) Hear testimony.
 - (4) Preserve and authenticate the record of the hearing and all exhibits and evidence introduced at the hearing.
 - (5) Regulate the course of the hearing in accordance with this chapter and other applicable law.
 - (6) Issue a final order which includes findings of fact and conclusions of law;
 - (7) To direct the refunding of appeal fees under the conditions set forth in section 3-24.
- c) Nothing in this chapter shall be construed to limit the authority of an administrative hearing officer while serving as the hearing officer in any proceeding brought under authority of other chapters of this Code, unless such proceeding is expressly subject to this chapter.

Sec. 3-4. Rules and regulations, available for public inspection.

The city attorney may promulgate rules for the conduct of administrative hearings consistent with this Code. However, all such rules must be in writing, filed with the city clerk, and approved by resolution of the council before they take effect. All such approved rules shall be available to the public for inspection and copying during normal business hours in the office of the city clerk.

Secs. 3-5 -- 3-10. Reserved.

Article 2. Administrative Appeals
Division 1. General

Sec. 3-11. Scope.

This division shall apply to only those appeals from a decision made by a city officer where the substantive provisions of this Code applicable to such decision specifically authorize an appeal pursuant to this chapter. This division does not alter the established procedures for appealing decisions made by city officers, except to the extent this code has been amended to specifically replace such established procedures with the procedures set forth in this chapter.

Sec. 3-12. Abeyance during appeal.

An appeal stays all proceedings in furtherance of the decision appealed from, unless the director of the affected department certifies to the city clerk in a written statement that a stay would in the director's opinion, cause imminent peril to life or property for reasons set forth in the statement. In such case, such proceedings shall not be stayed. Notice that the proceedings in furtherance of the decision appealed from will not be stayed and will be pursued by the city shall be promptly given to the appellant by phone at the number provided in the notice of appeal, or by regular mail to the address provided in the notice of appeal.

Secs. 3-13 -- 3-15. Reserved.

Division 2. Initiation and Scheduling of Administrative Appeals

Sec. 3-16. Initiating administrative appeal

- a) No decision by a city officer in the performance of their official duties shall be appealable to the administrative hearing officer in accordance with this chapter unless the right to an administrative appeal in conformance with this chapter is specifically granted by this Code.
- b) *Filing deadline.* When the right to an administrative appeal in conformance with this chapter is specifically granted by this Code from a decision made by a city officer in the performance of their official duties, the appeal must be initiated by timely filing a written notice of appeal with the city clerk. Except as allowed in paragraphs c and d, the notice of appeal must be filed within 10 business days after the date of the decision appealed from. Failure to timely file a written notice of appeal shall constitute a waiver of the right to appeal the decision.
- c) *Exceptions.* The notice of appeal from a decision made by a city official pursuant to the Code sections listed below shall be filed within the times allowed below.
 - 1) *Section 18-59. Declaration that a dog is vicious.*
Section 18-199. Declaration that an animal is an illegal animal.
Section 18-202. Declaration that an animal is a dangerous animal.
The declaration must be appealed by filing a written notice of appeal with the city clerk within three business days of service of the declaration.
 - 2) *(reserved)*
- d) *Late filed notice.* For good cause shown to the reasonable satisfaction of the city clerk, a notice of appeal may be filed after the deadlines established in paragraphs b and c, above, provided the notice of appeal is late filed within 5 business days after the appellant knew, or in the exercise of reasonable diligence should have known, of the issuance of the decision appealed from.
- e) *Date of filing.* The notice of appeal shall be considered filed when received by the office of the city clerk at city hall. However, a notice of appeal delivered by U.S. mail or overnight courier shall be considered to have been timely filed if the postmark date is within the time allowed to file the appeal.
- f) *Contents.* The notice of appeal shall contain the following information:
 - 1) The name and address of the appellant.
 - 2) Contact information for the appellant, including phone number, mailing address and, if available, an e-mail address to which all further notices may be served.
 - 3) The name, phone number and mailing address of any attorney or other person authorized to represent the appellant in the appeal proceedings and to receive the notice of the hearing.
 - 3) The nature of the decision appealed from, including the case or file number if available.
 - 4) The name and/or office of the person who made the decision, if known.
- g) *Filing fee.* A notice of appeal shall not be considered filed until the appellant has paid an application fee in the amount set in the schedule of fees adopted by the city council by resolution. The filing fee shall be subject to refund under the circumstances set forth in section 3-24.

Sec. 3-17. Scheduling and notice of hearing.

- (a) Upon receipt of a notice of appeal the city clerk shall promptly notify the affected department. The affected department shall be responsible for investigating the nature and

merit of the appeal, and shall promptly contact the city clerk to schedule a date and time for consideration of the appeal by an administrative hearing officer. The city clerk shall maintain the schedule of administrative hearings.

- (b) *Timing of hearing.* A hearing shall be scheduled for consideration of the appeal by an administrative hearing officer as promptly as reasonably possible.
- (c) *Service of notice of hearing.* Except as provided in paragraph d, the city clerk shall cause notice of hearing on an appeal to be served on the designated representative of the appellant, or on the appellant if no representative has been designated, in one of the following ways:
 - 1) By regular mail postmarked at least seven business days prior to the hearing and addressed to the address provided in the notice of appeal.
 - 2) By personal service at least five business days prior to the hearing.
- (d) *Exceptions.* The notice of hearing on an appeal from a decision made by a city official pursuant to the Code sections listed below shall be served in the manner provided below:
 - 1) *§18-59. Declaration that a dog is vicious.*
§18-199. Seizure, impoundment and disposition of illegal animals.
§18-202. Seizure, impoundment and disposition of dangerous animals.
The notice shall be served by the chief humane officer on the designated representative of the appellant, or on the appellant if no representative has been designated, in one of the following ways at least 72 hours prior to the scheduled time of the hearing:
 - (i) By personal service.
 - (ii) By service upon any adult at the address provided in the notice of appeal, or by posting on those premises if no adult is present to accept service.
 - (iii) If service cannot be timely made pursuant to (i) or (ii) above within the city boundaries, then by service upon any adult residing at the premises where the animal has been regularly kept or by posting on those premises if no adult is present to accept service, and by calling the telephone number provided for the designated representative of the appellant, or the appellant if no representative has been designated, and leaving a message with anyone who answers or any answering machine identifying the appeal, and the scheduled date, time and place of the hearing on the appeal.
 - 2) *(reserved)*
- (e) *Notice.* The notice of hearing shall identify the date, time and place of the hearing, and shall give notice that default judgment may be entered upholding the decision being appealed if the appellant fails to timely appear at the hearing, either in person or by an authorized representative.
- (f) *Withdrawal of decision.* In the event the affected department elects to withdraw a decision which is the subject of a pending appeal, the affected department shall promptly notify the appellant and city clerk of the withdrawal of the decision. Upon receipt of such notice the city clerk shall refund the filing fee collected pursuant to section 3-16(g) through the normal procurement process.

Sec. 3-18. Delay of hearing.

- (a) Prior to the scheduled date of the hearing, the city clerk may grant a request by an appellant or the affected department to reschedule the hearing for good cause shown to the reasonable satisfaction of the city clerk.
- (b) Any request to reschedule a hearing made on or after the scheduled date of the hearing shall be presented to the assigned administrative hearing officer for determination. The administrative hearing officer may:
 - 1) Grant request for good cause shown to the reasonable satisfaction of the administrative hearing officer;
 - 2) Deny the request for failure to assert good cause; or,
 - 3) Defer a decision on the request until it can be considered at a combined hearing where the request will be considered first, and if granted, will be followed by a hearing on the merits of the appeal.
- (c) If such a request is granted or if a decision on such a request is deferred for consideration at a future hearing, the hearing shall be continued or rescheduled to a future date and time established for public hearings on the relevant type of appeals, in coordination with the city clerk and a representative of the affected department to assure the availability of appropriate city staff and resources at such hearing.
- (d) Notice of the date and time of the hearing shall be served upon the appellant in the same manner as an original notice of hearing, unless the appellant or the appellant's representative is verbally provided with that information during the same conversation, meeting or hearing in which the request for continuance or rehearing was made or renewed by the appellant.

Secs. 3-19 -- 3-20. Reserved.

Division 3. Administrative Appeal Hearings

Sec. 3-21. Administrative hearings.

- (a) Any administrative hearing proceeding shall afford the appellant an opportunity for a hearing before an administrative hearing officer.
- (b) An attorney or other representative who appears on behalf of any person shall file a written appearance on a form to be provided by the city attorney for such purpose, unless such attorney or representative was identified in the notice of appeal.
- (c) The administrative hearing officer may grant continuances only upon a finding of good cause shown.
- (d) All testimony shall be given under oath or affirmation.
- (e) The appellant or the appellant's representative, and a representative of the affected department shall have the right to question any witness.
- (f) If at the time set for a hearing neither the appellant nor the appellant's representative of record appears, the administrative hearing officer may find the appellant in default and proceed with the hearing, accept evidence relevant to the appeal, and conclude with a final determination.
- (g) The formal and technical rules of evidence shall not apply in the conduct of the hearing. Evidence, including hearsay, may be admitted only if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

- (h) The record of all hearings before an administrative hearing officer shall include: (i) a record of the testimony presented at the hearing, which may be made by tape recording or other appropriate means; (ii) all documents presented at the hearing; (iii) a copy of the decision appealed from and of the notice of hearing; and (iv) a copy of the findings and decision of the administrative hearing officer.

Sec. 3-22. Burden of proof.

An appealable decision which has been memorialized in writing and signed by a city officer shall be prima facie evidence of the correctness of the facts specified therein. Except as provided in section 3-23, no appealable decision shall be reversed or amended except upon proof by a preponderance of the evidence that such decision is contrary to the law or this code, or is unsupported by the facts.

Sec. 3-23. Limitations on hearings.

The hearing on an appeal from a decision made by a city official pursuant to the Code sections listed below shall be subject to the following restrictions and limitations:

- (1) *Section 114-485.15. Impoundment of a vehicle.*

The sole issue before the administrative hearing officer shall be whether there was probable cause as defined in section 114-485.17 to impound the vehicle and personal property contained within the vehicle in question. The department causing the vehicle to be impounded shall carry the burden of establishing that there was probable cause to impound the vehicle in question. The administrative hearing officer shall decide only that either (i) there was probable cause to impound the vehicle and contents, or (ii) there was no probable cause to impound the vehicle and contents.¹

- (2) *(reserved)*

Sec. 3-24. Final determination

- (a) Upon conclusion of the hearing on an appeal brought pursuant to this chapter, the administrative hearing officer shall issue a final determination affirming, amending and affirming, or reversing the appealed decision. Except as limited in section 3-23, the administrative hearing officer shall have the authority to enter any order, determination or remedy that could have been entered by the city officer in the decision on appeal.
- (b) If the appealed decision is reversed, the administrative hearing officer may order the refunding of the appeal fee collected pursuant to section 3-16(g). If the appealed decision is amended and affirmed, the administrative hearing officer may direct the refunding of a portion of the appeal fee proportionate to the appellant's success on the merits of the appeal.
- (c) In the issuance of a final determination on any appeal, the administrative hearing officer shall inform the appellant of their right to seek judicial review of the final decision by a

¹ Section 114-485.16 provides that if the administrative hearing officer determines there was probable cause to impound the vehicle and contents, the registered owner or person having legal entitlement to possession of the vehicle is responsible for payment of all charges attributable to the impoundment and storage of the vehicle and the costs of the administrative hearing. If the administrative hearing officer determines there was no probable cause, then any such charges actually paid for the impoundment and a reasonable storage period shall be refunded.

certiorari action filed with the district court of Polk County, Iowa, within 30 days of entry of the decision.

- (d) Except as provided in paragraph (e), the final determination of the administrative hearing officer shall be promptly served on the designated representative of the appellant, or on the appellant if no representative has been designated, in one of the following ways:
- 1) By regular mail addressed to the address provided in the notice of appeal.
 - 2) By service upon any adult at the address provided in the notice of appeal, or by posting on those premises if no adult is present to accept service.
 - 3) By personal service.
- (e) *Exceptions.* The final determination of the administrative hearing officer in an appeal from a decision made by a city official pursuant to the Code sections listed below shall be served in the manner provided below:
- 1) §18-59. *Declaration that a dog is vicious.*
§18-199. *Seizure, impoundment and disposition of illegal animals.*
§18-202. *Seizure, impoundment and disposition of dangerous animals.*
The final determination shall be served by the chief humane officer on the appellant or the designated representative, in the same manner as required for service of the notice of hearing.
 - (3) *list additional exceptions*

Sec. 3-25. Appeal of final determination.

- a) Any party aggrieved by a final determination made by an administrative hearing officer pursuant to this article may challenge whether the officer exceeded proper jurisdiction or otherwise acted illegally by commencing a certiorari action in the district court for Polk County, Iowa. The petition to initiate a certiorari action must be filed within 30 days after the entry of the final determination unless an extension of time is allowed by the reviewing court pursuant to Division XIV of the Iowa Rules of Civil Procedure. The city manager is hereby authorized to initiate a certiorari action on behalf of the city when the city manager, in consultation with the city attorney, deems it necessary and appropriate.
- b) The filing of an action in the district court challenging the final determination of the administrative hearing officer does not automatically stop the city from taking action pursuant to such final determination. Unless the city has been served with an order from the district court directing otherwise, the city may proceed with enforcement of an final determination.

Secs. 3-26 -- 3-30. Reserved.

Article 3. (reserved for Administrative Adjudications)

Secs 3-30 -- 3-55. Reserved.

Exhibit "B"

Proposed amendments to Chapter 18 to:

- a) clarify the process for designation and handling of vicious dogs, and illegal and dangerous animal; and,
- b) to have the designation made by the Chief Humane Officer, subject to an appeal pursuant to the administrative appeal procedure in Chapter 3.

**Chapter 18 ANIMALS
ARTICLE I. IN GENERAL**

Sec. 18-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Acreage means a plot of land within the city's corporate limits equal to or greater than an acre.

Adequate shelter means a protective covering which is impervious to moisture and other adverse weather conditions, and includes a door or flap allowing the animal constant access, and which is maintained in a sanitary manner.

Animal shelter means the facility owned by the City of Des Moines used for animal control purposes.

Chief humane officer means the city employee designated by the city manager to exercise the authority of the chief human officer under this chapter, and such employee's designee. administer the animal control unit.

Contractor means a nonprofit corporation that provides animal care, adoption and cremation services, and that has contracted with the City of Des Moines to provide animal shelter services.

Dead animal includes all dead animals, skinned or unskinned, undressed, unslaughtered hogs, cattle, and other animals which have died from disease, accident, or cause other than slaughter for use as food, in accordance with the sanitary laws regulating such act.

Chief of police means the legally designated chief of the police department or a designated representative.

Owner means any person owning, keeping or harboring an animal.

ARTICLE II. DOGS

Sec. 18-41. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~Chief of police means the legally designated chief of the police department or a designated representative.~~

~~Director of public health means the county health center director or a designated representative acting in behalf of the city.~~

Dog means and includes both male and female animals of the canine species.

Owner means any person owning, keeping or harboring a dog.

Service dog or service animal means a dog that is individually trained to do work or perform tasks for the benefit of a person with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being or companionship do not constitute work or tasks for the purposes of this definition.

Vicious dog means:

- (1) Any dog which has bitten or attacked a human being or domestic animal one or more times, without provocation;
- (2) Any dog with a history, tendency or disposition to attack, to cause injury or to otherwise endanger the safety of human beings or domestic animals;
- (3) Any dog that snaps, bites, or manifests a disposition to snap or bite;
- (4) Any dog that has been trained for dog fighting, animal fighting or animal baiting or is owned or kept for such purposes;
- (5) Any dog trained to attack human beings, upon command or spontaneously in response to human activities, except dogs owned by and under the control of the police department, a law enforcement agency of the state or of the United States or a branch of the armed forces of the United States;
- (6) Staffordshire terrier breed of dog;
- (7) The American pit bull terrier breed of dog;
- (8) The American Staffordshire terrier breed of dog; or
- (9) Any dog which has the appearance and characteristics of being predominately of the breeds of Staffordshire terrier, American pit bull terrier, American Staffordshire terrier.

Sec. 18-58. Unlicensed vicious dogs.

All unlicensed vicious dogs shall be deemed illegal ~~animals~~ and shall be destroyed except as provided in section 18-66 of this chapter. This section shall not apply to a dog which, upon initial notice to its owner, the owner agrees to properly license and confine or to a dog for which a hearing has been requested under this article to determine if it is vicious until there has been a final decision on the question raised at hearing at which time the owner may, if the dog is found vicious, properly license and confine the dog.

Sec. 18-59. Seizure, impoundment and disposition of vicious dogs.

[Extensive changes have been made to this section and are not shown.]

- (a) Upon complaint or reasonable suspicion that a particular dog is a vicious dog, the chief

humane officer may cause the matter to be investigated. If after investigation, the chief humane officer determines that a particular dog is a vicious dog as defined in this chapter, the chief humane officer shall declare such dog to be a vicious dog.

(b) Notice that a dog has been declared a vicious dog shall be promptly served upon an owner of the dog, if known, in one of the following ways:

- 1) By personal service upon an owner of the dog, if known.
- 2) If notice cannot be conveniently served on an owner of the dog within the city boundaries, then notice may be served by service upon any adult residing at the premises where the dog is regularly kept or by posting on those premises if no resident adult is present to accept service.
- 3) If notice cannot be conveniently served on an owner of the dog within the city boundaries and the dog is not regularly kept at known location within the city, then service may be made upon the owner by any reasonable means. Such notice, if mailed, shall not be considered served until received or rejected by the owner.

The notice shall include the following: a description of the dog and the basis for the declaration that the dog is vicious, notice that the owner is required to license, insure and confine the dog at all times as required by this article, and notice that the declaration that the dog is vicious may be appealed by filing a written notice of appeal with the city clerk within three business days of the date the notice is served.

(c) Any person owning or having a right to possession of the dog in question may appeal the declaration that the dog is vicious pursuant to the administrative appeal process set forth in chapter 3 of this Code by filing a written notice of appeal with the city clerk within three business days of service of the notice of such declaration. Failure to timely file a written notice of appeal shall constitute a waiver of any right to contest the declaration that the dog is vicious.

(d) The chief humane officer may seize and impound any dog which has been declared to be a vicious dog pursuant to this section unless the dog is licensed and insured in conformance with this article and the owner has demonstrated to the reasonable satisfaction of the chief humane officer a willingness and ability to keep the dog confined. A dog so seized and not redeemed shall be impounded for a period of seven days, or until seven days after service of the decision on appeal if the declaration that the dog is vicious is appealed and upheld. If the declaration that the dog is vicious is reversed on appeal, the dog shall be immediately released to the owner or the owner's representative. However, if at the end of the impoundment period the declaration that the dog is vicious remains in effect and the owner has not redeemed the dog or petitioned the district court for a review of the declaration that the dog is vicious, the chief humane officer shall cause the dog to be destroyed except as provided in section 18-66 of this chapter.

(e) Any dog that has been declared to be vicious and that is under impoundment may be redeemed by the owner only if the dog is not under quarantine, and the owner has licensed, insured and demonstrated to the reasonable satisfaction of the chief humane officer a willingness and ability to confine the dog as required by this article for a vicious dog.¹ All costs of such impoundment or quarantine shall be paid by the owner if the dog

¹ The owner can redeem a dog while the appeal is pending only by providing the insurance and doing all the other things required to keep a vicious dog. Once the City has obtain compliance with everything required to keep a

is determined to be vicious. If the dog is not determined to be vicious, the owner shall only pay those costs attributable to initial confinement prior to notice or costs of any required quarantine.

- (f) All dogs declared to be vicious shall have an electronic identification device placed under the dog's skin prior to release from impound or quarantine. Prior to the release of a vicious dog from any impoundment or quarantine, the owner shall pay the fee in the amount set in the schedule of fees adopted by the city council by resolution for the installation of the electronic identification device. If a contractor implants an electronic identification device in a dog pursuant to this section, the contractor shall retain the fee.
- (g) Failure to comply with an order of the chief humane officer issued pursuant to this section and not appealed or if affirmed on appeal shall constitute a misdemeanor.

ARTICLE VI. ILLEGAL AND DANGEROUS ANIMALS

Sec. 18-196. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Dangerous animal means any animal, including a dog, except for an illegal animal per se, as listed in the definition of illegal animal, that has bitten or clawed a person while running at large and the attack was unprovoked, or any animal that has exhibited vicious propensities in present or past conduct, including such that the animal:

- (1) Has bitten or clawed a person on two separate occasions within a 12-month period;
- (2) Did bite or claw once causing injuries above the shoulders of a person;
- (3) Could not be controlled or restrained by the owner at the time of the attack to prevent the occurrence; or
- (4) Has attacked any domestic animal or fowl on three separate occasions within a 12-month period.

Illegal animal means:

- (1) Any animal which is not naturally tame or gentle and which is of a wild nature or disposition and which is capable of killing, inflicting serious injury upon or causing disease among human beings or domestic animals and having known tendencies as a species to do so.
- (2) Any dangerous wild animal as defined in I.C. ch. 717F. ~~animal declared to be illegal by the board of health or the city manager or his or her designee.~~
- (3) Any nondomesticated member of the order Carnivora which as an adult exceeds the weight of 20 pounds.
- (4) The following animals, which shall be deemed to be illegal animals per se:
 - a. Lions, tigers, jaguars, leopards, cougars, lynx and bobcats.
 - b. Wolves, coyotes and foxes.

vicious dog, there seems to be nothing to be gained by continuing to impound the dog. Previously a dog, one impounded, could not be redeemed during the pendency of the appeal.

- c. Badgers, wolverines, weasels, skunks and mink.
- d. Raccoons.
- e. Bears and pandas.
- f. Monkeys and chimpanzees.
- g. Bats.
- h. Alligators, crocodiles and caimans.
- i. Scorpions.
- j. Snakes and reptiles that are venomous.
- k. Snakes that are constrictors over six feet in length.
- l. Gila monsters.
- m. Opossums.
- n. All apes, baboons and macaques.
- o. Piranhas.

Sec. 18-197. Keeping illegal animals prohibited.

No person shall keep, shelter, or harbor any illegal animal as a pet nor act as a temporary custodian for such animal nor keep, shelter, or harbor such animal for any other purpose or in any other capacity within the city, except as provided in section 18-198 of this article.

Sec. 18-198. Exceptions to keeping illegal animals.

The prohibition contained in section 18-197 of this article shall not apply to the keeping of illegal animals in the following circumstances:

- (1) The keeping of illegal animals in a public zoo, bona fide educational or medical institution, humane society, or museum where they are kept as live specimens for the public to view or for the purpose of instruction, research or study.
- (2) The keeping of illegal animals for exhibition to the public by a bona fide traveling circus, carnival, exhibit or show.
- (3) The keeping of illegal animals in a bona fide, licensed veterinary hospital for treatment.
- (4) The keeping of illegal animals by a wildlife rescue organization with appropriate permit from the state conservation commission.
- (5) Any illegal animals under the jurisdiction of and in the possession of the state conservation commission, pursuant to I.C. § 481A.1 et seq. or 481B.1 et seq.
- (6) The keeping of snakes and reptiles that are venomous and the keeping of snakes that are constrictors six feet in length and over by any individual 18 years of age or older who has:
 - a. Received a degree of bachelor of science, based upon courses of instruction which include courses in herpetology, from an accredited college level institution; or
 - b. Successfully completed a course of instruction taught under the auspices of the city zoo on the proper handling, care and keeping of such animals; or

- c. Completed a course of instruction of at least 20 hours duration at an accredited educational institution on the care, handling and keeping of reptiles; and
 - d. Applied for and received from the city clerk a permit to keep such animals, such application to be on a form approved by the city council.
- (7) A person with a disability or a person training an assistive animal has the right to possess an assistive animal. As used in this subsection, the term "assistive animal" means a simian or other animal specially trained or in the process of being trained under the auspices of a recognized training facility to assist a person with a disability.
- (8) The keeping of primates maintained for research or educational programs by the Iowa Primate Learning Sanctuary.
- (9) The conveyance of animals through the city in compliance with all state and federal laws governing the possession and sale of such animal, provided that such animal does not remain within the city longer than necessary for its safe conveyance through the city, and such animal is not removed from the vehicle except as necessary for immediate transfer to another vehicle.

Sec. 18-199. Seizure, impoundment and disposition of illegal animals.

[Extensive changes have been made to this section and are not shown.]

A. *Seizure of illegal animals found at large.*

- (1) If an illegal animal is found at large and unattended upon public property, park property, public right-of-way, or the property of someone other than its owner, thereby creating a hazard to persons or property, such animal may be destroyed by the police department if it cannot be safely captured and impounded. The city shall be under no duty to attempt the capture and impoundment of an illegal animal found at large, nor shall it have a duty to notify the owner of such animal prior to its destruction. Notice of the capture and impoundment of an illegal animal found at large shall be promptly given to the owner, if known, by any reasonable means.

B. *Seizure of illegal animals illegally kept.*

- (1) Upon complaint or reasonable suspicion that an illegal animal is being kept, sheltered or harbored in the city in violation of section 18-197, the chief humane officer may cause the matter to be investigated.
- (a) If, after investigation, the chief humane officer determines that an illegal animal per se is being kept, sheltered or harbored in the city in violation of section 18-197, the chief humane officer shall declare the animal to be an illegal animal per se and shall immediately seize the animal. However, such animal may be destroyed or temporarily left in the possession and control of the owner, if in the discretion of the chief humane officer or chief of police such animal cannot be safely seized and impounded.
 - (b) If, after investigation, the chief humane officer determines that an illegal animal, other than an illegal animal per se, is being kept, sheltered or harbored in the city in violation of section 18-197, the chief humane

officer shall declare the animal to be an illegal animal and shall order the person to permanently place the animal with an organization or group allowed under section 18-198 of this article to possess illegal animals, or destroy the animal, within seven days of the receipt of such order. If the animal is not placed with an organization or group allowed under section 18-198 of this article to possess illegal animals or destroyed within seven days of receipt of such order the chief humane officer shall seize the animal. However, such animal may be temporarily left in the possession and control of the owner pending transfer to an organization or group allowed under section 18-198 of this article to possess the animal or destroyed, if in the discretion of the chief humane officer or the chief of police, such animal cannot be safely seized and impounded.

C. *Disposition of illegal animals.*

- (1) Notice that an animal has been declared an illegal animal subject to seizure, and notice of the seizure, if such animal has been seized and impounded, shall be promptly served by personal service upon an owner of the animal, if known. If notice cannot be promptly served on an owner of the animal within the city boundaries, then notice may be served by service upon any adult residing at the premises where the animal was regularly kept or by posting on those premises if no resident adult is present to accept service. The notice shall include: a description of the animal; a declaration that the animal is an illegal animal or illegal animal per se which has been kept, sheltered or harbored in violation of section 18-197; the basis for such declaration; notice that such animal must be placed with a person or organization permitted by section 18-198 to keep illegal animals who demonstrates to the reasonable satisfaction of the chief human officer that they are willing and capable of keeping the animal confined; and, notice that the decisions to declare the animal an illegal animal and to seize the animal may be appealed by filing a written notice of appeal with the city clerk within three business days of the date the notice is served.
- (2) An illegal animal so impounded and not subject to quarantine may be redeemed by a person or organization permitted by section 18-198 to keep illegal animals, who demonstrates to the reasonable satisfaction of the chief human officer that they are an owner of the animal and are willing and capable of keeping the animal confined.
- (3) An animal so impounded and not redeemed shall be held for a period of seven days, or until seven days after service of the decision on appeal if the decisions to declare the animal an illegal animal and to seize the animal is appealed and upheld. If the decision to declare the animal an illegal animal and to seize the animal are reversed on appeal, the animal shall be immediately released to the owner or the owner's representative. However, if at the end of the impoundment period the decision to declare the animal an illegal animal and, if applicable, the decision to seize the animal remain in effect and the owner has not petitioned the district court for a review of such decisions, the chief humane officer shall cause the animal to be placed with an organization or group allowed under section 18-198 of this article to possess the animal, or shall destroy such animal in a humane

manner.

- D. The orders and declarations concerning an illegal animal issued by the chief humane officer pursuant to this section may be appealed pursuant to the administrative appeal process set forth in chapter 3 of this Code. In order to appeal such order or declaration, written notice of appeal must be filed with the city clerk within three days after receipt of the order or declaration. Failure to file such written notice of appeal shall constitute a waiver of right to appeal the order of the chief humane officer.
- E. Failure to comply with an order of the chief humane officer issued pursuant to this section and not appealed, or after such order has been affirmed on appeal, shall constitute a misdemeanor offense.

Sec. 18-200. Keeping dangerous animals prohibited.

No person shall keep, shelter or harbor for any reason within the city a dangerous animal, as defined in section 18-196, except as provided in section 18-201 of this article.

Sec. 18-201. Exceptions to keeping dangerous animals.

The prohibition contained in section 18-200 of this article shall not apply to the keeping of dangerous animals under the control of a law enforcement or military agency.

Sec. 18-202. Seizure, impoundment and disposition of dangerous animals.

[Extensive changes have been made to this section and are not shown.]

- A. Upon complaint or reasonable suspicion that a dangerous animal is being kept, sheltered or harbored in the city, the chief humane officer may cause the matter to be investigated. If after investigation, the chief humane officer determines that a dangerous animal is being kept, sheltered or harbored in the city by any person, the chief humane officer shall declare such animal to be a dangerous animal and shall order the person owning, sheltering, harboring or keeping the animal to cause it to be destroyed in a humane manner within 3 days of service of the notice of the order, and keep the animal securely confined or leased under the actual control of a person 18 years of age or order until so destroyed.
- B. Notice that an animal has been declared a dangerous animal shall be promptly served by personal service upon an owner of the animal, if known. If notice cannot be promptly served on an owner of the animal within the city boundaries, then notice may be served by service upon any adult residing at the premises where the animal was regularly kept or by posting on those premises if no resident adult is present to accept service. The notice shall include: a description of the animal; a declaration that such animal is a dangerous animal; the basis for such declaration; an order that the owner cause the animal to be destroyed in a humane manner within 3 days of service of the notice; notice that such animal will be subject to seizure if not destroyed within 3 days of service of the notice; and notice that the decision to declare the animal a dangerous animal may be appealed by filing a written notice of appeal with the city clerk within three business days of the date the notice is served. A notice that a dog is a dangerous animal may include as an

- alternative an allegation that a dog is a vicious dog under section 18-59 of this chapter.
- C. If the animal is ordered to be destroyed by the owner, such order must be complied with within three days of its issuance, otherwise the chief humane officer is authorized to seize and impound the animal. Such an animal may also be seized at any time if it is not actually kept securely confined or leashed under the actual control of a person 18 years of age or older until so destroyed. An animal so seized shall be impounded for a period of seven days, or until seven days after service of the decision on appeal if the decision to declare the animal a dangerous animal is appealed and upheld. If the decision to declare the animal a dangerous animal is reversed on appeal, the animal shall be immediately released to the owner or the owner's representative. However, if at the end of the impoundment period the decision to declare the animal a dangerous animal remains in effect and the owner has not petitioned the district court for a review of such decision, the chief humane officer shall cause the animal to be destroyed in a humane manner.
 - D. The orders and declarations concerning a dangerous animal issued by the chief humane officer pursuant to this section may be appealed pursuant to the administrative appeal process set forth in chapter 3 of this Code. In order to appeal such order or declaration, written notice of appeal must be filed with the city clerk within three days after receipt of the order or declaration. Failure to file such written notice of appeal shall constitute a waiver of right to appeal the order of the chief humane officer.
 - E. Any animal which is alleged to be dangerous and which is under impoundment or quarantine shall not be released to the owner, but shall continue to be held at the expense of the owner pending the outcome of the hearing. All costs of such impoundment or quarantine shall be paid by the owner if the animal is determined to be dangerous. If the animal is not determined to be dangerous and was found at large, the owner shall only pay those costs attributable to the initial confinement and any required quarantine. If the animal is not determined to be dangerous and was not at large at the time of confinement, the owner shall only pay those costs attributable to any required quarantine.
 - F. Failure to comply with an order of the chief humane officer issued pursuant to this section and not appealed, or after such order has been affirmed on appeal, shall constitute a misdemeanor offense.

Sec. 18-203. Immediate seizure or destruction of animals.

Any animal found at large which displays dangerous tendencies, or which is an illegal animal, or which has been previously declared vicious or is vicious by breed according to Article II, Section 18(41)(6), (7), (8), or (9) of this Chapter and has bitten without provocation a person or a domestic animal while such vicious dog was not properly confined or leashed may be processed as a dangerous animal under section 18-202 of this article, and the animal may be immediately seized anywhere within the city unless the animal is so dangerous that it cannot safely be apprehended, in which case the chief humane officer, his or her designee, or any police officer is authorized to destroy it immediately.

Exhibit "C"

Amendments to Section 42-257 of Chapter 42, Article IV, Noise Control to make the decision of the Administrative Hearing Officer on denial or revocation of sound permits the final City decision.

Chapter 42 ENVIRONMENT* Article IV. Noise Control

~~Sec. 42-267. Right of appeal of hearing officer's decision and process.~~

- ~~(A) — The decision of the hearing officer under this article may be appealed to the city council by either the director of the community development department, the applicant for the revoked or denied permit, the applicant for a sound variance, or any impacted resident, provided that such entity or person files a written notice of appeal with the city clerk's office within seven days of the hearing officer's decision. Failure to file a written notice of appeal within such period shall be deemed a waiver of the right to appeal the hearing officer's decision to the city council.~~
- ~~(B) — The appeal of the decision of the hearing officer shall be considered and a decision rendered by the city council within 14 days of the filing of the written notice of appeal. The time for considering the appeal may be extended for good cause. The appeal process shall consist of a review by the city council of the transcript of the tape recorded record of the administrative hearing. No additional evidence may be presented as part of the appeal. The sole issue before the council shall be whether the decision of the hearing officer was supported by sufficient evidence. The decision of the city council is final.~~

~~(C00, § 42-267; O.14,746)~~

Sec. 42-267. Right of appeal.

Any party aggrieved by a final determination made by an administrative hearing officer pursuant to this article may challenge whether the officer exceeded proper jurisdiction or otherwise acted illegally by commencing a certiorari action in the district court for Polk County, Iowa. The petition to initiate a certiorari action must be filed within 30 days from the entry of the final determination unless an extension of time is allowed by the reviewing court pursuant to Division XIV of the Iowa Rules of Civil Procedure. The City Manager is hereby authorized to initiate a certiorari action on behalf of the City when the City Manager, in consultation with the City Attorney, deems it necessary and appropriate.

Exhibit "D"

Amendments to Chapter 78 - Peddlers and Solicitors, to:

- a) Have the City Clerk or the City Clerk's designee make the initial decision to revoke, suspend or deny renewal of a Transient Merchant License.
- b) Direct the appeal from the denial, revocation or suspension of a Transient Merchants License to the Administrative Hearing Process; and,
- c) Make the decision of the Administrative Hearing Officer on the denial, revocation or suspension of a Transient Merchants License the final City decision.

Chapter 78 PEDDLERS AND SOLICITORS Article III. Transient Merchants

Sec. 78-70. License issuance.

- (a) A transient merchant license shall not be issued more than 15 days in advance of the commencement of the term of the license. Prior to issuance of three-day or 30-day transient merchant license the city shall confirm that no street use permit has been issued for an event that limits operation of the transient merchant pursuant to section 78-69.01.
- (b) A transient merchant license shall be denied to any applicant who has operated a transient merchant business in material violation of any of the requirements of this article or any other chapter of this Code within the prior 180 days.
- (c) The city clerk or the city clerk's designee shall, upon satisfaction that the information provided in an application for a transient merchant license is true and correct, and that the requirements of this article for issuance of the license have been satisfied, and upon payment of the license fee and posting of the cash bond required by this article, issue the license.
- (d) The city clerk shall deny any application for the operation of a transient merchant business that does not conform with all applicable requirements of this article, the City Code, the Iowa Code and the Iowa Administrative Code.

(O.14,807)

Sec. 78.70.01. Appeal of denial.

- (a) The denial of an application for a transient merchant license may be appealed pursuant to the administrative appeal process set forth in chapter 3 of this Code.
- (b) In the event an application for a transient merchant license is denied, the city clerk or the city clerk's designee shall cause notice of such denial to be promptly communicated to the applicant or the applicant's representative by phone at the phone number provided in the application. Written notice shall also be sent to the applicant at the business address identified in the application informing the applicant of the denial, the reasons therefore, and the applicant's right to appeal the denial to an administrative hearing officer by giving filing a written notice of appeal to with the city clerk within 10 business days after the date of such notice. ~~written notice is mailed.~~
- ~~(b) In the event the denial of a application is timely appealed, the city clerk or the city clerk's designee cause notice of the hearing to be served upon the licensee by personal service at~~

least three business days prior to the date set for the hearing, or by regular mail addressed to the licensee at the licensee's business address as shown on the application a minimum of five days prior to the date set for the hearing. Such notice shall inform the licensee of the time, date and place of hearing. The time within which to file the appeal may be extended by the city clerk or the city clerk's designee for good cause shown.

- (c) ~~If, after such hearing, the hearing officer makes a finding based on substantial evidence that the application and the proposed location and manner of operation of the business conforms to the requirements of this article and to all other applicable requirements of this Code, the hearing officer shall order the issuance of the license. Otherwise, the license shall be denied. The hearing officer may continue the hearing for good cause shown.~~
- (d) ~~The applicant may appeal the decision of the hearing officer to the city council by filing a written notice of appeal with the city clerk within 10 days after the decision is entered of record. Failure to timely file such written notice of appeal shall constitute a waiver of the right to appeal the decision of the hearing officer. The notice of appeal shall state the grounds for such appeal and shall be delivered personally or by certified mail to the city clerk.~~
- (e) ~~The hearing on an appeal to the city council shall be scheduled within 20 days of the receipt of notice of appeal. The hearing may be continued for good cause. After such hearing the city council may affirm or reverse the decision of the hearing officer. Such determination shall be contained in a written decision and shall be filed with the city clerk within three days after the hearing or any continued session thereof. The hearing shall be confined to the record made before the hearing officer, the arguments of the parties or their representatives, any additional evidence which was not available at the time of the hearing before the hearing officer, and any other information the city council deems necessary.~~

(C00, § 78-70.01; O.14,807)

Sec. 78-73. Suspension or revocation of license.

- (a) Upon complaint or reasonable suspicion that a licensee or the licensee's employees or agents has furnished any false information required under this article or has violated or failed to comply with any of the requirements of this article or any other chapter of this Code, the city clerk or the city clerk's designee may cause the matter to be investigated. ~~Whenever~~ If the city clerk or the city clerk's designee finds that the licensee or the licensee's employees or agents has furnished any false information required under this article or has violated or failed to comply with any of the requirements of this article or any other chapter of this Code, the city clerk or the city clerk's designee may give notice to the licensee of the city's intent to suspend or revoke ~~suspend or revoke~~ the license, or to deny its renewal.
- (b) Notice of the city's intent to suspend, revoke, or deny the renew of ~~suspend or revoke~~ a license and a brief summary of the factual basis for such remedial action shall be served upon the licensee, ~~by personal service or by service upon a cashier for the business at a licensed premises, or by regular mail addressed to the licensee at the licensee's business~~

~~address as shown on the application a minimum of five days prior to the date set for the hearing. Such notice shall inform the licensee of the time, date and place of a meeting where the licensee may meet with the city clerk or the city clerk's designee for the purpose of presenting additional information regarding the intended remedial action and the factual basis therefore, and that a final decision on appropriate remedial action will be made after the scheduled time for such meeting. of a hearing before a hearing officer where the suspension or revocation shall be considered and shall set out briefly the reasons therefore. Such notice shall be served upon the licensee by personal service or by service upon a cashier for the business at a licensed premises, or by regular mail addressed to the licensee at the licensee's business address as shown on the application a minimum of five business days prior to the date set for the meeting.~~

- (c) ~~If, after the scheduled meeting and after consideration of all the available information including any information provided at the meeting by the licensee, the city clerk or the city clerk's designee such hearing, the hearing officer makes a finding based on substantial evidence that a violation of this article or another chapter of this Code did in fact take place as alleged, the hearing officer city clerk or the city clerk's designee may suspend or revoke the license or deny its renewal; the determination of whether to so suspend, or revoke the license or deny its renewal such license shall be in the discretion of the hearing officer city clerk or the city clerk's designee and shall be dependent upon the circumstances surrounding the violation and its severity. The decision to suspend, revoke or deny renewal of a license shall be in writing and shall identify the basis for such action. The decision shall be promptly served in the same manner as required for the service of the notice required under subsection (b), and shall not be effective until ten days after so served. The decision shall also give notice that it may be appealed to an administrative hearing officer by filing a notice of appeal with the city clerk within ten business days of the date of the decision. The hearing officer may continue the hearing for good cause shown.~~
- (d) ~~The applicant may appeal the decision of the hearing officer to the city council by filing a written notice of appeal with the city clerk within 10 days after the decision is entered of record. Failure to timely file such written notice of appeal shall constitute a waiver of the right to appeal the decision of the hearing officer. The notice of appeal shall state the grounds for such appeal and shall be delivered personally or by certified mail to the city clerk.~~
- (e) ~~The hearing on an appeal to the city council shall be scheduled within 20 days of the receipt of notice of appeal. The hearing may be continued for good cause. After such hearing the city council may affirm or reverse the decision of the hearing officer. Such determination shall be contained in a written decision and shall be filed with the city clerk within three days after the hearing or any continued session thereof. The hearing shall be confined to the record made before the hearing officer, the arguments of the parties or their representatives, any additional evidence which was not available at the time of the hearing before the hearing officer, and any other information the city council deems necessary.~~
- (d) ~~The decision of the city clerk or the city clerk's designee to suspend, revoke or deny renewal of a license pursuant to this section may be appealed pursuant to the administrative appeal process set forth in chapter 3 of this Code.~~

(ef) A licensee whose license has been revoked or denied for renewal shall not be eligible for another such license for a period of 180 days after such revocation or denial of renewal.

(C42, § 53-9; C54, C62, § 58-13; C75, C79, § 9-130; O.10,723; C91, § 9-130; O.11,672, 13,403; C00, § 78-73; O.14,807)

Exhibit "E"

Amendments to Chapter 114 regarding impoundment appeals to:

- a) direct the appeal to the Administrative Hearing Process; and,
- b) make the decision of the Administrative Hearing Officer the final City decision.

Chapter 114 TRAFFIC AND VEHICLES
Article XII. Criminal Responsibility

Sec. 114-485.12. Right of owner to redeem impounded vehicle.

- (a) The registered owner or person having a legal entitlement to possession of a motor vehicle impounded pursuant to section 114-485.11 of this article may redeem ~~claim~~ the vehicle by paying to the city its impound and preservation fee and in addition paying the city's towing contractor an amount sufficient to cover all of the towing contractor's charges attributable to the towing and storage of the vehicle. The city's impound and preservation fee shall be in the amount set in the schedule of fees adopted by the city council by resolution. If a hearing pursuant to the administrative appeal process set forth in chapter 3 of this code section 114-485.16 of this article is held and a the administrative hearing officer determines there was no probable cause to impound the vehicle, the costs attributable to the impoundment and storage not to exceed fifteen days shall be refunded by the city clerk through the normal procurement process. ~~upon the presentation to the city treasurer of the following:~~
 - (1) ~~A certificate of no probable cause issued by the city; and~~
 - (2) ~~The bond receipt.~~
- (b) If a motor vehicle was impounded pursuant to section 114-485.02 of this article, all delinquent parking citation-complaints must be satisfied.
- (c) If the vehicle is not redeemed until a final determination has been entered pursuant to the administrative appeal process set forth in chapter 3 of this code, the vehicle may be redeemed upon payment of all charges referred to in section 114-485.16 of this article less any portion thereof subject to refund under paragraph (a) above. ~~not claimed until after a hearing requested pursuant to section 114-485.15 of this article, the vehicle may be claimed (i) upon payment of all charges referred to in section 114-485.16 of this article or (ii) upon presentation of a certificate of no probable cause within two working days of its issuance to the party in possession of the vehicle.~~
- (d) ~~Failure to timely present such certificate will result in assumed liability on the part of the owner or person having legal entitlement to possession to the vehicle for all related storage charges.~~

(C62, § 30-1753; O.8084, 8777; C75, C79, § 27-1780; O.10,362; C91, § 27-485.12; O.11,650, 11,896, 14,203)

Sec. 114-485.14. Notice of impoundment.

When a vehicle has been impounded pursuant to this chapter, the registered owner of the vehicle shall be sent, by certified mail to the owner's last known address of record within 72 hours of the impoundment, excluding weekends and holidays, a notice of the impoundment along

with a description of any personal property contained within the vehicle and of the right to a hearing pursuant to this article. Notice personally presented within such period to the owner or person having a legal entitlement to possession shall satisfy the mailing requirement. The notice shall identify: i) that the owner or any person having a legal entitlement to possession of the vehicle may appeal whether there was probable cause to impound the vehicle by filing a notice of appeal with the city clerk within ten business days of the impoundment; and ii) if the appeal results in a determination that there was no probable cause to impound the vehicle, the costs attributable to the impoundment and storage not to exceed fifteen days will be refunded. (C79, § 27-1782; O.10,362, 10,681; C91, § 27-485.14; O.11,650)

Sec. 114-485.15. Right to hearing.

- (a) The registered owner or a person having a legal entitlement to possession of a vehicle impounded pursuant to this article has a right to a post-seizure administrative hearing before an administrative hearing officer pursuant to the administrative appeal process set forth in chapter 3 of this Code designated by the city manager to determine whether there was probable cause to impound the vehicle and any personal property contained within the vehicle, provided the registered owner or person having a legal entitlement to possession files a written ~~demand~~ notice of appeal with the city clerk's office within ten days of mailing of the notice of the impoundment. ~~A copy of this article shall be given to the person requesting a hearing.~~
- (b) Failure to request a hearing within such time period or to attend a scheduled ~~post-seizure hearing on such appeal~~ shall be deemed a waiver of the right to such a hearing. (C79, § 27-1783; O.10,362, 10,681; C91, § 27-485.15; O.11,650, 13,535)

Sec. 114-485.16. Conduct of hearing.

The post-seizure administrative hearing provided in this article shall be conducted pursuant to the administrative appeal process set forth in chapter 3 of this code. If the administrative hearing officer determines there was no probable cause to impound the vehicle, the costs attributable to the impoundment and storage not to exceed fifteen days shall be refunded pursuant to section 114-485.12 of this article. ~~The post-seizure administrative hearing provided in this article shall be conducted before the hearing officer designated by the city manager within a reasonable period of time, but not to exceed 15 business days, excluding Saturdays, Sundays and city holidays, from the date of receipt of a written demand therefor. Such hearing may be continued from time to time for good cause. The sole issue before the hearing officer shall be whether there was probable cause to impound the vehicle and personal property contained within the vehicle in question. The department causing the vehicle to be impounded shall carry the burden of establishing that there was probable cause to impound the vehicle in question. The hearing officer shall decide only that either (i) there was probable cause to impound the vehicle and contents, or (ii) there was no probable cause to impound the vehicle and contents. If the hearing officer determines there was probable cause to impound the vehicle and contents, the registered owner or person having legal entitlement to possession of the vehicle is responsible for payment of all charges attributable to the impoundment and storage of the vehicle and the costs of the administrative hearing. If the hearing officer determines there was no probable cause, the hearing~~

~~officer shall prepare a certificate of no probable cause, and the bond filed or charges paid shall be refunded pursuant to section 114-485.12 of this article. The proceedings at the administrative hearing shall be tape recorded by the hearing officer. Such tape recording shall serve as the official record of the administrative hearing for appeal purposes. The hearing officer shall retain all such tape recordings until the time for filing a notice of appeal has expired. If a notice of appeal is timely filed, the hearing officer shall retain the tape recorded record of the administrative hearing until the appeal has been acted upon by the city council. The decision of the hearing officer shall in no way affect any criminal proceeding in connection with the impoundment in question. Criminal charges, if any, may only be challenged in the appropriate court.~~

~~(C79, § 27-1784; O.10,362, 10,681; C85, § 27-1784; O.11,289; C91, § 27-485.16; O.11,650)~~

Sec. 114-485.17. Probable cause to impound.

For the purposes of this article, the term "probable cause to impound" shall mean such a state of facts as would lead a person of ordinary care and prudence to believe there was a breach of law for which the vehicle may be removed and impounded under section 114-485.11 of this article.

~~(C79, § 27-1785; O.10,362; C91, § 27-485.17; O.11,650)~~

Sec. 114-485.18. Right to appeal hearing officer's decision.

~~— The decision of the hearing officer made pursuant to this article may be appealed to the city council by either the department causing the vehicle to be impounded or the registered owner or person having legal entitlement to possession of the impounded vehicle, provided the department or the registered owner or person having legal entitlement to possession of the impounded vehicle files a written notice of appeal with the city clerk's office within seven days of the hearing officer's decision. Failure to file a written notice of appeal within such period shall be deemed a waiver of the right to appeal the decision of the hearing officer to the city council.~~

~~(C79, § 27-1786; O.10,362; C91, § 27-485.18; O.11,650)~~

Sec. 114-485.19. Appeal process.

~~— The appeal filed under this article shall be considered and a decision rendered by the city council within 14 days of the filing of the written notice of appeal. The time for considering the appeal may be extended for good cause. The appeal process shall consist of a review by the city council of the transcript of the tape recorded record of the earlier administrative hearing. No additional evidence may be presented as a part of the appeal. The sole issue before the council shall be whether the decision of the hearing officer was supported by sufficient evidence. The decision of the city council on the question of probable cause is final. If the city council finds no probable cause, the hearing officer shall issue the certificate of no probable cause. The decision shall in no way affect any criminal proceeding in connection with the impoundment in question. Criminal charges, if any, may only be challenged in the appropriate court.~~

~~(C79, § 27-1786.01; O.10,362; C91, § 27-485.19; O.11,650)~~

Exhibit "F"

Amendments to Chapter 126-Vehicles For Hire to redirect appeals regarding taxi and limousine driver's licenses to the Administrative Hearing Process

Chapter 126 Vehicles for Hire

Article III. Limousines

Sec. 126-70.4. Approval of application.

- (a) If the traffic engineer determines, with or without a hearing, that the applicant meets the requirements for issuance of a limousine driver's license he or she shall issue a license. If the traffic engineer is unable to make a determination that the applicant meets the requirements based on the contents of the application and a report on the applicant's criminal background provided by the police department, the traffic engineer shall schedule the application for further consideration at a public hearing. Unless the date and time of the hearing is scheduled by agreement with the applicant, notice of the date, time and place of the hearing shall be sent by regular mail to the applicant at the address shown on the application at least 10 days before the date of hearing.
- (b) If at the conclusion of the hearing the traffic engineer determines the applicant does not meet the requirements, he or she shall deny the license. However, the traffic engineer may issue a ~~license if any conviction resulting in probationary limousine driver's license for up to one year if:~~ i) the applicant can demonstrate that a holder of a certificate of public convenience and necessity to conduct a limousine service has offered to employ the applicant upon obtaining a limousine driver's license; and, ii) the requirements are not satisfied only because of minor misdemeanor offenses, or suspension of an operator's license under I.C. ch. 321, 321A or 321J or any other suspension of an operator's or chauffeur's license which did not involve driving behavior which is indicative of a disregard for public safety. Any probationary license issued under this subsection shall be subject to immediate revocation by the traffic engineer in the event the applicant is shown to have engaged in any criminal offense or traffic violation that would disqualify the applicant from satisfying the requirements in section 126-70.2. The traffic engineer shall make a quarterly review of all such provisional licenses to assure there have been no further convictions of traffic violations or criminal offenses ~~entered-charged~~ against the applicant during such quarter.
- (c) Any applicant who is denied a license by the traffic engineer may appeal the determination pursuant to the administrative appeal process set forth in chapter 3 of this Code. In order to appeal such determination, written notice of appeal must be filed within ten business days of the traffic engineer's decision. ~~request a hearing before the city council by filing a written appeal with the city clerk within ten days of the final action. Such appeal shall be heard by the city council within 25 days of the date the notice of appeal is filed with the city clerk. The sole issue before the city council on such appeal shall be whether the traffic engineer has abused his or her discretion in denying the license. No additional evidence may be presented in the appeal.~~

Sec. 126-70.9. Suspension, revocation or denial of license.

- (a) If any person who has a current limousine driver's license has his or her state driver's license suspended or revoked, or is convicted of, pleads guilty to, or stipulates to the facts of any criminal offense during the license period, he or she shall immediately notify the traffic engineer.
- (b) Any limousine driver license may be suspended, revoked, or denied renewal for (1) violations of this article, or (2) acts demonstrating lack or absence of good moral character, or (3) providing false information on the license application or renewal.
- (c) No license shall be suspended, revoked or denied renewal except after a hearing of the matter before the traffic engineer. The traffic engineer, upon being informed of grounds for suspension, revocation or denial of renewal, shall schedule a hearing of said matter and shall cause notice of said hearing to be delivered to the licensee or applicant by mailing notice in the regular mail at least ten days before the date of hearing to the licensee's or applicant's address as shown on the most recent application.
- (d) If, after such hearing, the traffic engineer determines (1) that a violation of this article did in fact take place, (2) that the person committed acts demonstrating lack of good moral character, or (3) that the person falsified an application for a license or a renewal, the traffic engineer may, depending on the number or severity of the acts, suspend a license for up to 30 days, revoke a license, or deny an application for a license renewal.
- (e) Any licensee or applicant may appeal such decision pursuant to the administrative appeal process set forth in chapter 3 of this Code. In order to appeal such determination, written notice of appeal must be filed with the city clerk to the city council by notifying the city clerk in writing of the appeal within ten business days of the date of the traffic engineer's decision. ~~Such appeal shall be heard by the city council within 25 days of the date the notice of appeal is filed with the city clerk. The sole issue before the city council on such appeal shall be whether the traffic engineer abused his or her discretion in denying the license. No additional evidence may be presented in the appeal.~~
- (f) A licensee whose license has been revoked shall immediately surrender his or her license to the traffic engineer and shall not be eligible to apply for another such license for a period of 180 days after such revocation. A person whose application has been denied shall not be eligible to reapply for a period of 180 days after such denial. The 180-day period shall commence on the day final city action is taken by either the traffic engineer or, if appealed, the administrative hearing officer. ~~city council.~~

Article IV. Taxicabs

Sec. 126-220. Approval of original application.

- (a) If the traffic engineer determines, with or without a hearing, that the applicant meets the requirements for issuance of a taxicab driver's license, he or she shall issue a license. If

the traffic engineer is unable to make a determination that the applicant meets the requirements based on the contents of the application and a report on the applicant's criminal background provided by the police department, the traffic engineer shall schedule the application for further consideration at a hearing. Unless the date and time of the hearing is scheduled by agreement with the applicant, notice of the date, time and place of the hearing shall be sent by regular mail to the applicant at the address shown on the application at least 10 days before the date of hearing.

- (b) If at the conclusion of the hearing the traffic engineer determines the applicant does not meet the requirements, he or she shall deny the license. ~~h~~However, the traffic engineer may issue a probationary taxicab driver's license for up to one year if: any conviction resulting in i) the applicant can demonstrate that a holder of a certificate of public convenience and necessity to conduct a taxicab service has offered to employ the applicant upon obtaining a taxicab driver's license; and, ii) the requirements are not satisfied only because of minor misdemeanor offenses, or suspension of an operator's license under I.C. ch. 321, 321A or 321J or any other suspension of an operator's or chauffeur's license did not involve driving behavior which is indicative of a disregard for public safety. Any probationary license issued under this subsection shall be subject to immediate revocation by the traffic engineer in the event the applicant is shown to have engaged in any criminal offense or traffic violation that would disqualify the applicant from satisfying the requirements in section 126-218. The traffic engineer shall make a quarterly review of all such provisional licenses to assure there have been no further convictions of traffic violations or criminal offenses entered-charged against the applicant during such quarter.
- (c) Any applicant who is denied a license by the traffic engineer may appeal the determination pursuant to the administrative appeal process set forth in chapter 3 of this Code. In order to appeal such determination, written notice of appeal must be filed with the city clerk within ten business days of the traffic engineer's decision. request a hearing before the city council by filing a written appeal with the city clerk within ten days of the final action. Such appeal shall be heard by the city council within 25 days of the date the notice of appeal is filed with the city clerk. The sole issue before the city council on such appeal shall be whether the traffic engineer has abused his or her discretion in denying the license. No additional evidence may be presented in the appeal.

Sec. 126-225. Suspension, revocation or denial.

- (a) If any person who has a current taxicab driver's license has his or her state driver's license suspended or revoked, or is convicted of, pleads guilty to, or stipulates to the facts of any criminal offense during the license period, he or she shall immediately notify the traffic engineer.
- (b) Any taxicab driver's license may be suspended, revoked, or denied renewal for (1) violations of this article, or (2) acts demonstrating lack or absence of good moral character, or (3) providing false information on the license application or renewal.

- (c) No license shall be suspended, revoked or denied renewal except after a hearing of the matter before the traffic engineer. The traffic engineer, upon being informed of grounds for suspension, revocation or denial of renewal, shall schedule a hearing of said matter and shall cause notice of said hearing to be delivered to the licensee or applicant by mailing notice in the regular mail at least ten days before the date of hearing to the licensee's or applicant's address as shown on the most recent application.
- (d) If, after such hearing, the traffic engineer determines (1) that a violation of this article did in fact take place, (2) that the person committed acts demonstrating lack of good moral character, or (3) that the person falsified an application for a license or a renewal, the traffic engineer may, depending on the number or severity of the acts, suspend a license for up to 30 days, revoke a license, or deny an application for a license renewal.
- (e) Any licensee or applicant may appeal such decision pursuant to the administrative appeal process set forth in chapter 3 of this Code. In order to appeal such determination, written notice of appeal must be filed with the city clerk within ten business days of the traffic engineer's decision. ~~to the city council by notifying the city clerk in writing of the appeal within ten days of the date of the traffic engineer's decision. Such appeal shall be heard by the city council within 25 days of the date the notice of appeal is filed with the city clerk. The sole issue before the city council on such appeal shall be whether the traffic engineer abused his or her discretion in denying the license. No additional evidence may be presented in the appeal.~~
- (f) A licensee whose license has been revoked shall immediately surrender his or her taxicab badge to the traffic engineer and shall not be eligible to apply for another such license for a period of 180 days after such revocation. A person whose application has been denied shall not be eligible to reapply for a period of 180 days after such denial. The 180-day period shall commence on the day final city action is taken by either the traffic engineer or, if appealed, the administrative hearing officer. ~~city council.~~