

★ **Roll Call Number**

Agenda Item Number

32A

Date September 10, 2012

An Ordinance entitled, "AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by adding and enacting a 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",

presented.

MOVED by _____ that this ordinance be considered and given first vote for passage.

FORM APPROVED:

(First of three required readings)

Roger K. Brown
 Roger K. Brown
 Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				
MOTION CARRIED			APPROVED	
_____ Mayor				

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.

_____ City Clerk

ORDINANCE NO. _____

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by adding and enacting a 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.

BE IT ORDAINED by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, be and is hereby amended by adding and enacting a 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, as follows:

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.

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 day of 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.
 - (4) The nature of the decision appealed from, including the case or file number if available.
 - (5) 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.

(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 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.
 - (2) (reserved)

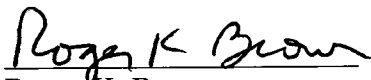
Sec. 3-25. Appeal of final determination.

- (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.**

Sec. 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law. However, any administrative appeal for which the initial notice of appeal was received by the City Clerk prior to the date of such publication shall continue to be governed by the procedural rules in effect at the time such appeal was so received.

FORM APPROVED:


 Roger K. Brown
 Assistant City Attorney