

ORDINANCE NO. 93654-1116

**AN ORDINANCE ADDING HEARING PROCEDURES FOR HEARINGS BEFORE
CITY COUNCIL TO TITLE 1, CHAPTER 14**

WHEREAS, The City Council is authorized by various City and State code provisions to hold adjudicatory hearings;

WHEREAS, there is presently no procedure in place that is generally applicable to these proceedings;

WHEREAS, City Council wishes establish fair, consistent and uniform procedures for adjudicative appeals and hearings before the Muscatine City Council.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Muscatine, Iowa, as follows:

SECTION 1. Municipal Code Title I of the Muscatine City Code of Ordinances is hereby amended with the addition of Chapter 14 as set forth in Exhibit "A" attached hereto and by this reference made a part hereof.

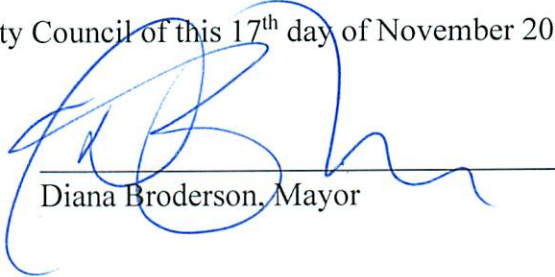
SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. SEVERABILITY CLAUSE. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 4. WHEN EFFECTIVE. This ordinance shall be effective from and after its final passage, approval and publication as provided by law.

Passed and approved by the Muscatine City Council of this 17th day of November 2016.




Diana Broderson, Mayor

ATTEST:


Gregg Mandsager, City Clerk

I certify that the foregoing was published as Ordinance No. 93654-1116 on the 26th day of November, 2016



City Clerk

1st Reading – November 3, 2016

Motion by Council Member Rehwaldt, seconded by Council Member Bynum, to adopt the first reading of Ordinance No. 93654-1116.

AYES: Rehwaldt, Fitzgerald, Natvig, Saucedo, Bynum, Harvey, and Spread

NAYS: None

ABSENT: None

2nd Reading – November 17, 2016

Motion by Council Member Rehwaldt, seconded Council Member by Harvey, to approve the second reading of Ordinance No. 93654-1116.

AYES: Rehwaldt, Fitzgerald, Natvig, Saucedo, Bynum, Harvey, and Spread

NAYS: None

ABSENT: None

3rd Reading – November 17, 2016

Motion by Council Member Rehwaldt, seconded by Council Member Harvey, to approve the third reading of Ordinance No. 93654-1116.

AYES: Rehwaldt, Fitzgerald, Natvig, Saucedo, Bynum, Harvey, and Spread

NAYS: None

ABSENT: None

The Mayor declared Ordinance No. 93654-1116 adopted.

TITLE 1- Administrative

Chapter 14 – Adjudicative Appeals and Hearings

- 1-14-1 Statement of Purpose
- 1-14-2 Definitions
- 1-14-3 Scheduling and Notice of Hearing
- 1-14-4 Hearing Procedures.
- 1-14-5 Supplementation by Resolution

1-14-1 Statement of Purpose. This chapter is intended to establish fair, consistent and uniform procedures for adjudicative appeals and hearings before the Muscatine City Council. Adjudicative hearings are quasi-judicial hearings involving named parties. Testimony during adjudicative hearings is limited to that offered as evidence by the parties involved in the hearing. Public testimony is not accepted in adjudicative hearings. Where procedures for appeals and hearings have been established by ordinance or state law for a specific matter, the Council shall follow those procedures for that matter. When there are no established procedures for an adjudicative appeal or hearing, the Council shall preside over the hearing according to the terms of this Chapter.

1-14-2 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:

“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.

1-14-3 Scheduling and Notice of Hearing. Upon receipt of a notice of appeal or written charges filed with the City Clerk, the City Clerk shall promptly notify the named City Official(s) or Department(s) that an appeal or action has been filed with the City Council. In the case of actions or appeals concerning specific Departments, 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 City Council. In the case of actions or charges filed against named City Officials, the City Clerk shall serve on the respondent a written notice, together with a copy of the complaint or charge as it may have been amended, requiring the respondent to answer the allegations of the complaint at a hearing before City Council at a time and place specified in the notice.

- a) Contents of Notice. The notice shall include:
 - 1. A statement of the time, place, and nature of the hearing;
 - 2. A statement of the legal authority and jurisdiction under which the hearing is to be held;
 - 3. A copy of the appeal, action, or charge filed against the Department or City Official.
- b) Manner of Service of Notice. Service of the notice shall be by registered or certified mail, unless City Code or State law requires another method of service.
- c) Timing of hearing. A hearing shall be scheduled within the time frame provided for by City Code or State law. If no timeframe is provided for by City Code or State law, the hearing shall be scheduled as promptly as is reasonably possible, but no less than ten days after the date of service of notice on the respondent.

1-14-4 Hearing Procedures.

- a) Hearing Before City Council. For hearings conducted by the City Council, the Mayor shall preside over the hearing and preserve order thereat. If the Mayor is unavailable due to conflict or otherwise, the Mayor Pro Tem shall preside at the hearing. In the event of unavailability of both the Mayor and Mayor Pro Tem, the hearing shall be called to order by the Clerk, and the Council shall immediately select one of its members to serve as Acting Mayor Pro Tem, and he or she shall have the same rights and privileges as other members of the council.
- b) City Council's Powers. The City Council shall have the power necessary to conduct fair and impartial hearings including but not limited to, the power to administer oaths and affirmations, to hear testimony, and to rule upon motions, objections, and the admissibility of evidence. In addition, Council shall have the power, at the request of the complainant, the Department Head or the respondent, to issue subpoenas to compel the attendance of witnesses at such hearing and to compel any person to produce any books or papers involved in the

complaint. If a witness fails or refuses to obey a subpoena issued by the hearing officer, the hearing officer may petition the district court having jurisdiction for issuance of a subpoena and the court shall issue the subpoena as by law provided. Refusal to obey such subpoena shall be subject to punishment for contempt.

- c) Opportunity to Present Argument and Evidence. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved and to be represented by counsel at their own expense. The case for the City department may be presented by any member of the City staff, by the City Attorney or, if the City Attorney is unavailable due to conflict or otherwise, an attorney appointed by the Council. The hearing need not be bound by the strict rules of procedure or evidence, but the admission of evidence should be based on sound discretion.
- d) Consequences of Failure to Appear: If a party fails to appear in a contested case proceeding after proper service of notice, the Council may proceed and make a decision in the absence of the party.
- e) Content of Record
 - 1. The record in a case shall include;
 - i. All pleadings, motions, and intermediate rulings;
 - ii. All evidence received or considered and all other submissions;
 - iii. A statement of all matters officially noticed;
 - iv. All questions and offers of proof, objections, and rulings thereon;
 - v. All findings, orders and exceptions.
- f) Public Hearing. The hearing shall be open to the public unless closed session is permitted by Iowa Code section 21.5 or the hearing is otherwise exempted from the provisions of Iowa Code section 21. The hearing shall be recorded either by mechanized means or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party.
- g) Findings of Fact. Findings of fact shall be based solely on the evidence in the record and on matters officially noticed in the record.
- h) Final determination. Upon conclusion of the hearing, the Council shall

allow the parties to submit written briefs and proposed decisions. Upon receipt, if any, of these briefs and decisions, the Council shall make written findings of fact and conclusions of law establishing the basis for its final determination. Any party claiming to be aggrieved by a final determination made by Council pursuant to this Chapter may challenge whether the Council exceeded proper jurisdiction or otherwise acted illegally by commencing a action in the appropriate court within thirty (30) days after the entry of the final determination.

1-14-5 Supplementation by Resolution. The City Council may supplement these rules in a case-by-case situation in order to provide due process to all participants in a hearing.

PROOF OF PUBLICATION

I, Jeff Lee, being duly sworn, on my oath, say that I am an advertising clerk at the *Muscatine Journal*, a newspaper of general circulation, published in the City of Muscatine, Muscatine County, Iowa; and that the following Notice:

Muscatine City Clerk

Ordinance No. 93654-1116

Of which the annexed printed slip is a true, correct and complete copy, was published in said *Muscatine Journal* one time having been made there in on:

November 26, 2016

Jeff Lee

**STATE OF IOWA
MUSCATINE COUNTY**

28th day of November, 2016

Steve Thor, Notary Public



Steve Thor
Iowa Notarial Seal
Commission number 168839
My Commission Expires 03/24/2017

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Passed and approved by the Muscatine City Council of this 17th day of November 2016.

ATTEST:
Diana Broderson, Mayor
Gregg Mandsager, City Clerk

I certify that the foregoing was published as Ordinance No. 93654-1116 on the 26th day of November, 2016

**Gregg Mandsager,
City Clerk**

1st Reading - November 3, 2016
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NAYS: None
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EXHIBIT A
TITLE 1- Administrative
Chapter 14 - Adjudicative
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1-14-1 Statement of Purpose

1-14-2 Definitions

1-14-3 Scheduling and Notice of Hearing

1-14-4 Hearing Procedures.

1-14-5 Supplementation by Resolution

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