



CITY OF WASHINGTON, ILLINOIS City Council Agenda Communication

Meeting Date: April 15, 2024

Prepared By: Jon R. Oliphant, AICP, Planning & Development Director
Joe Boyer, Building & Zoning Coordinator

Agenda Item: Mayor Appointment and First Reading Ordinance – Code Enforcement Administrative Adjudication Hearing Officer Appointment

Explanation: An ordinance was approved at the March 18 City Council meeting to implement administrative adjudication for the handling of certain code enforcement cases. Part of that ordinance addresses how cases are brought before a Hearing Officer (HO). The ordinance states that the Hearing Officer is to be appointed by the Mayor with the approval of the Council.

Staff and Mayor Manier recommend that Brian Heller be appointed as the HO. Mr. Heller is a Washington attorney who has experience serving as the HO officer for the City of East Peoria and Tazewell County and is familiar with the ordinance for an administrative adjudication process in Washington. Staff feels that this would be the best fit for the City's needs to handle any such cases.

Fiscal Impact: The attached draft agreement with Mr. Heller would compensate him at a rate of \$150 per hour to before the duties as the HO. The term of the agreement would be for one year commencing on the effective date.

Action Requested: Staff and Mayor Manier recommend the appointment of Mr. Heller at the City Council meeting on April 15 subject to the approval of the attached written agreement that identifies Mr. Heller's duties and compensation for his service. A first reading ordinance for Mr. Heller's agreement is also scheduled for the April 15 Council meeting and would be heard if the appointment is approved. A second reading ordinance would then be scheduled for May 6. Approval of the agreement in that timeframe would allow for any initial cases to be brought to the HO by mid-May unless the desire of the Council would be to waive the second reading, which could allow for cases to be brought to Mr. Heller sooner.

ORDINANCE NO. _____

AN ORDINANCE TO APPROVE AN AGREEMENT BETWEEN THE CITY OF WASHINGTON AND J. BRIAN HELLER OF J. BRIAN HELLER, P.C.

WHEREAS, the City of Washington, Illinois (the “City”) is a home rule municipality; and

WHEREAS, J. Brian Heller (“Heller”), of J. Brian Heller, P.C., an Illinois professional corporation, is a licensed Illinois attorney; and

WHEREAS, pursuant to Section 37.05(A) of the City’s Municipal Code, on April 15, 2024, the Mayor, with the advice and consent of the City Council appointed Heller to serve as the City’s Hearing Officer for the recently established system of administrative adjudication/Code Hearing Unit; and

WHEREAS, Heller’s appointment was subject to approval of a written agreement concerning his duties to be performed and compensation to be paid for his service; and

WHEREAS, the City and Heller now desire to enter into an agreement to set forth Heller’s duties to be performed and the compensation to be paid to Heller to serve as the City’s Hearing Officer; and

WHEREAS, the City Council finds that it is in the best interests of the City and its residents that the City enter into the Agreement Between the City of Washington and J. Brian Heller of J. Brian Heller, P.C. For the Provision of Services as Hearing Officer for the System of Administrative Adjudication/Code Hearing Unit of the City of Washington, which is attached hereto as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF WASHINGTON, ILLINOIS, AS FOLLOWS:

Section 1: The recitals; as set forth above, are incorporated herein as though fully set forth and shall be considered the express findings of the City Council.

Section 2: That the Agreement Between the City of Washington and J. Brian Heller of J. Brian Heller, P.C. For the Provision of Services as Hearing Officer for the System of Administrative Adjudication/Code Hearing Unit of the City of Washington, which is attached hereto as Exhibit A (the “Agreement”) is hereby approved.

Section 3: That the Mayor and the City Clerk of the City of Washington, Illinois are hereby authorized and directed to execute the Agreement.

Section 4: The compensation of J. Brian Heller, as set forth in the Agreement, is hereby expressly authorized by the City Council.

Section 5: All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed insofar as they are in conflict with this ordinance.

Section 6: If any provision of this ordinance is adjudged invalid, such adjudication shall not affect the validity of the ordinance as a whole or of any portion not adjudged invalid.

Section 7: This ordinance shall be in full force and effect from and after its passage, approval and publication as required by law.

PASSED AND APPROVED this _____ day of _____ 2024.

AYES: _____

NAYS: _____

ATTEST:

MAYOR

CITY CLERK

EXHIBIT A

**AGREEMENT BETWEEN THE CITY OF WASHINGTON AND
J. BRIAN HELLER OF J. BRIAN HELLER, P.C. FOR THE PROVISION OF
SERVICES AS HEARING OFFICER FOR THE SYSTEM OF ADMINISTRATIVE
ADJUDICATION/CODE HEARING UNIT OF THE CITY OF WASHINGTON**

THIS AGREEMENT (“**Agreement**”) is effective this _____ day of _____, 2024 (the “**Effective Date**”), by and between the City of Washington, an Illinois home-rule municipal corporation (“**City**”), and J. Brian Heller of J. Brian Heller, P.C., an Illinois professional corporation (“**Hearing Officer**”).

Background

A. On March 18, 2024, the City Council of the City established its System of Administrative Adjudication/Code Hearing Unit (the “**System**”) via ordinance.

B. The ordinance establishing the System requires that one or more qualified hearing officers be appointed by the Mayor, with the advice and consent of the City Council.

C. On April 15, 2024, the Mayor appointed the Hearing Officer to serve as the City’s primary hearing officer under the System. The Hearing Officer’s appointment was subject to approval of a written agreement concerning his duties to be performed and compensation to be paid for his service. The Hearing Officer’s appointment was duly approved by the City Council.

D. The Hearing Officer is an attorney duly licensed to practice law in the State of Illinois for at least three (3) years and is in good standing with the Illinois Supreme Court Attorney Registration and Disciplinary Commission.

E. The Hearing Officer has successfully completed the formal training program required by the Illinois Municipal Code (65 ILCS 5/1-2.1-4(c)) and the City’s Municipal Code. The City Administrator has been provided with proof of completion of such formal training program.

F. In light of the foregoing, the parties hereto desire to enter into a written agreement concerning the Hearing Officer’s duties to be performed and compensation to be paid for such a position.

Agreement

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Background paragraphs set forth above are a material part of, and by this reference are expressly incorporated into, this Agreement.

2. The Hearing Officer shall conduct all administrative adjudicatory hearings of ordinance violations under the System for the City. The Hearing Officer shall have all powers and perform all of the duties as Hearing Officer required by this Agreement, any applicable requirements of the Illinois Municipal Code related to administrative adjudications (65 ILCS 5/1-2.1-1 *et seq.*), and any applicable requirements of the City's Municipal Code (collectively the "Applicable Laws").

3. The City shall pay the Hearing Officer for the performance of the duties contemplated herein at a rate of One Hundred and Fifty Dollars (\$150.00) per hour. Prior to payment, the Hearing Officer shall present to the City Administrator detailed monthly invoices specifying the work performed hereunder. The City shall have no obligation to use the Hearing Officer's services hereunder. Furthermore, the City shall reimburse the Hearing Officer for his reasonable costs and expenses incurred in connection with the performance of his duties hereunder. The Hearing Officer shall provide the City with receipts evidencing such costs and expenses prior to reimbursement. The Hearing Officer is not entitled to any consideration of any kind that is not specifically outlined herein.

4. The term of this agreement shall be for one year commencing on the Effective Date. The Mayor, with the advice and consent of the City Council, shall have the option to reappoint the Hearing Officer or another individual upon expiration of the term. The City Council may remove the Hearing Officer with or without cause at any time, and thus, terminate this Agreement upon notice to the Hearing Officer of such removal. The Hearing Officer may terminate this Agreement upon ninety (90) days written notice to the City.

5. The City and the Hearing Officer agree and acknowledge that the Hearing Officer's appointment and his performance of his duties hereunder do not create an employer-employee relationship between the City and the Hearing Officer. The Hearing Officer is and shall be an independent contractor for all purposes, solely responsible for the results to be obtained and not subject to the control or supervision of the City regarding the manner and means of performing the services and obligations of this Agreement, except as provided herein and in the Applicable Laws. As such, the Hearing Officer shall not be entitled or eligible to participate in benefits or privileges provided or extended by the City to the City's employees, except as otherwise required by law.

6. The Hearing Officer, in consultation with the Tazewell County Circuit Clerk, as applicable, shall determine the dates, hours, and location for the hearings to be conducted, subject to the approval of the City. The Hearing Officer shall provide notice to the City's Code Enforcement Supervisor of the dates, hours, and location available for the hearings at least sixty (60) days prior to the date of the hearings.

7. The City shall defend and indemnify the Hearing Officer for all lawsuits arising out of and within the scope of the duties contemplated herein, unless such lawsuits arise out of willful and wanton conduct or intentional conduct on the part of the Hearing Officer, beyond what is necessary to comply with the terms of this Agreement.

8. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois. All relevant provisions of the laws of the State of Illinois applicable hereto and required to be reflected or set forth herein are incorporated herein by this reference. The exclusive venue for the resolution of any disputes or the enforcement of any rights arising out of or in connection with this Agreement shall be in Tazewell County, Illinois.

9. This Agreement may not be assigned, transferred, or subcontracted by the Hearing Officer to any other person or entity without the written consent of the City.

10. This Agreement shall not be amended unless in writing expressly stating that it constitutes an amendment to this Agreement, signed by the parties hereto.

11. Any notice, demand or request required, or which may be given hereunder shall be deemed to be delivered when deposited in the United States mail, by certified mail, return receipt requested, postage prepaid, addressed to the party at the respective addresses set forth below, or at such other addresses as the parties may from time to time designate in writing:

To City: City of Washington
c/o City Administrator
301 Walnut Street
Washington, IL 61571

To Hearing Officer: J. Brian Heller
200 Walnut Street
Washington, IL 61571

12. Each provision of this Agreement shall be considered separable; and if, for any reason, any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of the Agreement which are valid.

13. The parties agree that the foregoing document herein referenced constitutes all the agreements between the parties.

14. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[SIGNATURE PAGE TO FOLLOW]

[SIGNATURE PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

CITY OF WASHINGTON,
an Illinois home-rule municipal
corporation

J. BRIAN HELLER of
J. BRIAN HELLER, P.C.

By: _____
Gary W. Manier

By: _____
J. Brian Heller

Its: Mayor

Attest:

By: _____
Valeri L. Brod

Its: City Clerk