



**City of East Peoria
Department of Buildings & Inspections
Code Enforcement Division
401 W. Washington Street
East Peoria, IL 61611**

DATE: January 20, 2021
TO: The Honorable Mayor and City Council
THRU: Ty Livingston, Director of Planning and Zoning *TL*
Mark Hill, Commissioner of Accounts and Finance
FROM: Robert Cole, Director of Buildings & Inspections *RC*
SUBJECT: Administrative Code Hearing Officer Agreement

DISCUSSION: The City of East Peoria Code Enforcement Division plays an important role in the community, ensuring quality of life and safety to all the residents of East Peoria. Brian Heller is the City's attorney that presides over the code enforcement hearings.

The City's codes and ordinances enable some form of administrative hearing approach to code enforcement either exclusively or in addition to other compliance actions. Administrative enforcement may include notices, citations, and fines through an administrative enforcement hearing.

The intended outcome in an administrative hearing is to obtain an order from the hearing officer finding a violation of the code, weather that includes ordering a violator to abate a nuisance within a set timeframe, imposing fines or penalties, or confirming recovery for the city's cost of enforcement.

The agreement with Attorney Brian Heller occasionally needs updated to include renewing an approval for a 3- year contract for services. The City has supported using the code hearing process and Mr. Heller brings professionalism and fairness to all residents of East Peoria.

RECOMMENDATION: Accept the (3) year Hearing Officer Agreement from J. Brian Heller Attorney at Law starting January 1, 2021 to December 31, 2023.

File:RC doc. HOA01172021

RESOLUTION NO. 2021-098

**East Peoria, Illinois
_____, 2021**

RESOLUTION BY COMMISSIONER _____

**RESOLUTION APPROVING ADMINISTRATIVE CODE
ENFORCEMENT HEARING OFFICER AGREEMENT
WITH J. BRIAN HELLER, P.C.**

WHEREAS, the City Council has established Chapter 11 of Title of the City Code for the purpose of creating a Code Hearing Department for the administrative adjudication of certain alleged violations of the City Code (the "Administrative Adjudication Ordinance"); and

WHEREAS, the Administrative Adjudication Ordinance provides for the appointment of a hearing officer to assist with the adjudication of such ordinance violations; and

WHEREAS, the City has previously appointed attorney J. Brian Heller to serve as the primary hearing officer under the Administrative Adjudication Ordinance and he has acted in this capacity since 2008, while also previously appointing attorney Paul Brodersen to serve as a hearing officer under the Administrative Adjudication Ordinance on those occasions when Mr. Heller is unavailable to serve by reason of vacation, illness, scheduling conflicts or other absences; and

WHEREAS, City Officials and attorney J. Brian Heller have proposed a new Administrative Hearing Office Agreement three-year agreement effective beginning on January 1, 2021, attached hereto and incorporated herein by reference as "Exhibit A" (the "Administrative Hearing Office Agreement"); and

WHEREAS, the City Council hereby finds that approval of the Administrative Hearing Office Agreement with attorney J. Brian Heller furthers the City's intent for code enforcement under the Administrative Adjudication Ordinance, while also being in the best interests of the City and its citizens;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF EAST PEORIA, TAZEWELL COUNTY, ILLINOIS, THAT:

Section 1. The above recitations are found to be true and correct.

Section 2. J. Brian Heller hereby remains appointed to serve as the primary

hearing officer under the Administrative Adjudication Ordinance, and Mr. Brodersen remains appointed to serve as a hearing officer under the Administrative Adjudication Ordinance on those occasions when Mr. Heller is unavailable to serve by reason of vacation, illness, scheduling conflicts or other absences.

Section 3. The Administrative Hearing Office Agreement with J. Brian Heller, P.C. is hereby approved, and the Mayor and City Clerk are authorized and directed to execute the Administrative Hearing Office Agreement, attached hereto as Exhibit A, together with such changes therein as the Mayor in his discretion deems appropriate; provided, however, that the City shall have no obligation under the Administrative Hearing Office Agreement until such time as an executed original of the Administrative Hearing Office Agreement has been delivered to J. Brian Heller, P.C.

APPROVED:

Mayor

ATTEST:

City Clerk

J. Brian Heller, P.C.
Attorney at Law
200 Walnut Street
P.O. Box 213
Washington, Illinois 61571

Paul M. Brodersen Sr., Associate
Email – Paul.M.Brodersen@gmail.com

Telephone - (309) 444-9223
Facsimile - (309) 444-9723
E-Mail – jbhpc@comcast.net

January 13, 2021

Robert Cole
City of East Peoria

Via Email: RobertCole@cityofeastpeoria.com

RE: Administrative Code Hearing Officer Agreement

Dear Mr. Cole:

Per our conversation, attached is a proposed new agreement. It is the same as the current July 2015 agreement except for:

Par. 1 the hourly rate increased from \$125 to \$130 immediately and to \$135 January 1, 2022.

Let me know if acceptable.

Very truly yours,

 J. Brian Heller
Hearing Officer

JBH/sat

Attch: Agreement

Exhibit A

HEARING OFFICER AGREEMENT

THIS AGREEMENT entered into by and between the City of East Peoria, an Illinois Municipal corporation, a body politic, hereinafter referred to as "City"; and J. Brian Heller of J. Brian Heller, P.C., hereinafter referred to as "Hearing Officer", this ___ day of _____, 2021.

WHEREAS, previously J. Brian Heller was appointed as Hearing Officer of the City of East Peoria ordinance enforcement department, subject to approval of a written agreement concerning the duties to be performed and compensation to be paid for such position; and

WHEREAS the parties previously entered into such an agreement which needs to be updated; and

WHEREAS, the position of Hearing Officer of the City of East Peoria Code Hearing Department is not contemplated to involve sufficient time to justify the hiring of a full time employee; and

WHEREAS, the Hearing Officer is an attorney licensed to practice law in the State of Illinois for at least three years; and

WHEREAS, the Hearing Officer has completed a formal training program applicable to his duties described herein which satisfies the requirements of 65 ILCS 5/1-2.2-40.

NOW, THEREFORE, in consideration of the herein stated mutual covenants, promises and undertakings by the parties to this Agreement, it is agreed by and between the parties as follows:

1. The Hearing Officer shall conduct administrative adjudicatory hearings of ordinance violations for the City of East Peoria. The Hearing Officer shall perform all of the duties as Hearing Officer required by this Agreement, any applicable requirements of 65 ILCS 5/1-2.2-1, et seq., 65 ILCCS 5/11-31.1-1 et seq. and any applicable requirements of the City Code of the City of East Peoria (collectively the "Applicable Laws".)

2. The City shall pay the Hearing Officer for the performance of the duties contemplated herein at a rate of One Hundred and thirty Dollars (\$130.00) per hour (\$135.00 beginning January 1, 2022) the Hearing Officer performs such duties. Prior to payment, the Hearing Officer shall present to the City's Code Enforcement Officer invoices specifying the work performed. The City shall have no obligation to use the Hearing Officer's services hereunder.

3. The term of this agreement shall be for 36 months commencing January 1, 2021. The City shall have the option to reappoint Hearing Officer or another individual upon expiration of the 36 month period, but the agreement shall continue on a month to month basis until formally terminated. The City may terminate this Agreement and the Hearing Officer's appointment upon 30 days notice to the Hearing Officer.

4. 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 contract, except as provided herein and in the Applicable Laws.

5. The Hearing Officer shall determine the hours for hearings to be conducted, subject to the approval of the City, which approval shall not be unreasonably withheld. The Hearing Officer shall provide notice of the dates and times available for hearing to the City approximately 60 days (or longer) prior to the hearings.

6. 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.

7. This contract 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 reference.

8. This contract may not be assigned or subcontracted by the Hearing Officer to any other person or entity without the written consent of the City.

9. This contract shall not be amended unless in writing expressly stating that it constitutes and amendment to this contract, signed by the parties hereto.

10. Any notice, demand or request required or which may be given hereunder to the respective parties shall be in writing and delivered personally or sent by messenger, telefax, or by air courier service, as follows:

To Hearing Officer:

J. Brian Heller
200 Walnut
Washington, IL 61571

To the City:

City of East Peoria
Attn: City Manager
100 S Main St
East Peoria, IL 61611

Notice shall be deemed given upon delivery or mailing. Changes of address for notice shall be made in compliance with this paragraph.

11. The parties agree that the foregoing document herein referenced constitutes all the agreement between the parties and in witness thereof the parties have affixed their respective signatures on the date first noted.

CITY OF EAST PEORIA.

an Illinois Municipal Corporation

By: _____
Its Mayor

ATTEST:

By: _____
Its Clerk

HEARING OFFICER:

J. Brian Heller