

MEMORANDUM

Confidential—Attorney/Client Privileged—Attorney Work Product

TO: Gregg Mandsager

FROM: Matt Brick

DATE: September 5, 2014

SUBJECT: Duties of Loyalty of City Council Member

The City asked for a draft ethics policy and an opinion regarding the obligations of elected officials to the City. There is little case law on this issue, nevertheless, there are certain statutory provisions governing council members and also some common law provisions that should guide council members in their duties.

As a starting point, Iowa Code 63.10 requires all elected officials to take an oath of office before being their term. The oath states, in relevant part, that the official will “solemnly swear that [he/she] will support the Constitution of the United States and the Constitution of the State of Iowa, and that I will faithfully and impartially, to the best of my ability, discharge all the duties of the office of” his/her city. Everything else in this opinion is based upon the elected official taking this oath of office.

The general conflict of interest statutory provision is found at Iowa Code §68B.2A which prohibits a public official from taking outside employment or participating in activities that conflict with the person’s official duties and responsibilities. Under the provision, an official doing so has the option to either stop the activity or publicly disclose the conflict and avoid any

official action or duty (including participating in a vote for the council) that would benefit the outside employment or activity.

Iowa Code §362.5 prohibits any City officer, including a council member from having a direct or indirect interest in a City contract. The obvious genesis of this is that the appearance of impropriety attaches to any contract wherein a council member is receiving a pecuniary profit. There are exceptions to the prohibition enumerated in that section including the contracts entered into through an open, competitive bidding process, contracts for less than \$2,500.00 per year in cities with a population of 2,500 persons or less and contracts for less than \$1,500.00 a year for cities with a population of 2,500 persons or more. In addition there are specific provisions with regard to urban renewal law that prohibit the council member from owning property within the urban renewal zone (should this say TIF District?) from taking part in the decision. (*See Iowa Code §403.16*) (2013).

These are the statutory prohibitions against a conflict of interest and are fairly straightforward. I think it is important; however, to point out some general common law principles that must guide council members in the performance of their duties. These duties parallel the duties of a member of the board of directors of a corporation, whether for profit or not for profit and put the council members in a position wherein they owe a fiduciary duty to the city they serve.

A "**fiduciary duty**" is a duty to act for someone else's benefit, while subordinating one's personal interests to that of the other person. It is the highest standard of duty implied by law. Iowa statutory and common law demands that councilpersons exhibit complete loyalty to the public and seek to avoid subjecting a councilperson to the difficult, and often insoluble task of deciding between public duty and private advantage. See *Wilson v. Iowa City*, 164 N.W.2d 813 (Iowa 1969). Their duty under the principles of equity is to serve their cities honestly, faithfully,

and without negligence. Council members, like a corporation's officers and directors occupy fiduciary relation to the citizens they serve, and hence their acts must be closely scrutinized by the courts, and must be in utmost good faith and fair.

Generally, the duties of a member can be summarized as:

1. The duty to act in good faith.
2. The duty to exercise reasonable care.
3. Finally, the duty of loyalty to the city.

A. Duty of good faith. Council members, like corporate directors, are required at all times to act in good faith when exercising their powers. Simply put, they must be honest in their dealings with the City and keep the City's best interest in mind. Iowa law is clear that a city official owes the city complete loyalty, honesty, and good faith. While this is closely related to the duty of loyalty, this duty requires honesty and integrity in the performance of duties, including treating constituents with dignity and respect, adhering to the policies and procedures established by ordinance or council rules, maintaining the confidentiality of information given to the member in the course of their duties as council members and not engaging in deceitful activities or acting in a manner that brings disrepute upon the city. This duty can be violated when an elected official repeatedly violates an ethics policy, resolution, ordinance or State Code. For example, some cities have struggled in the past with council members meeting in groups to discuss city business and/or elected officials making statements or promises to citizens or contractors outside the scope of their authority.

B. Duty of care. Council members are required to act with the care of an ordinary prudent person in a like position would exercise under similar circumstances. A part of the duty of reasonable care is a responsibility to keep reasonably informed, participate in discussions and act reasonably. Members of the city council generally are classified in the same manner as outside

directors of a corporation; i.e., they are not involved in the day-to-day operations of the city and they are not charged with having intimate knowledge of all matters dealing with city business. As such, they are entitled to rely on financial data, statements or other information or opinions from the following sources before making decisions on behalf of the city:

- ◆ Officers or employees of the city;
- ◆ Committees or Boards created by the City;
- ◆ Legal counsel;
- ◆ Public accountants; or
- ◆ Any other outside experts.

Council members should be warned, however, that this right to rely on those sources might be affected if the member takes it upon himself or herself to be involved in or interfere with the day-to-day operations of the city. Council members must remember that the role they have assumed is not to manage all facets of city activity but to act within the confines of their role on the council. One of the more severe consequences of violating this provision is that a city's insurance carrier may refuse to provide representation to a specific elected official if said official acts outside the scope of their duty—or, in a worst case scenario, the entire city may lose insurance coverage based on the actions of one member.

C. Duty of loyalty. This duty is most closely linked to issues related to the statutory conflict of interest provisions previously mentioned. Nevertheless, the common law imposes on a councilperson that he or she acts in a manner that he or she reasonably believes to be in the best interests of the city and they disclose any actual or potential conflict of interest to the remainder of the council.

The duty of loyalty requires council members to exercise their powers in the interest of the city, not in their own interest or the interest of another entity or person. By assuming office,

the council member acknowledges that the best interests of the city must prevail over the member's individual interests or the particular interests of the constituency selecting him or her. This duty can even extend to conflicts between the duty owed to the city and to a private employer. It has been stated that, "when one is committed to give loyalty and dedication of effort to both its public office and his private employer, when the interests of these two may conflict, one is faced with pressures and choices to which no public servant should be unnecessarily exposed". The conflict need not be a financial one, nor does it matter whether the member would be swayed by the conflict, "the mere existence of a conflict and not its actual effect requires disclosure". The focus is on situations where the decision making of the member could potentially be affected by the conflict thereby calling into question the member's ability to satisfy this duty and lessening the public's faith in the motives of members. In these situations, the member must recuse him or herself from the matter or the actions of the council may be affected.

It is beneficial to any body to set forth particular guidelines and procedures to be utilized when any issue arises as to the ability of council members to satisfy their fiduciary duties to the city. We have prepared a sample policy that more carefully sets out these matters and creates a mechanism for dealing with these situations. Ultimately, no policy can govern each and every situation and members must constantly monitor their own actions and influences to guard against any activities that call into question their duties to the city and its citizens.

CODE OF ETHICS

Sec. 1.001 Statement of Purpose.

Accepting a position as a public official and/or employee carries with it the acceptance of trust that the official/employee will work to further the public interest; maintaining that public trust is critical to the continued operation of good government. In addition, public decision-making should be open and accessible to the public at-large. To preserve the public trust, there are five principles to which public officials and/or employees should adhere: (i) a public official and/or employee represent and work towards the public interest and not towards private or personal interests, (ii) a public official and/or employee should accept and maintain the public trust to the degree that preserves and enhances the public's confidence in their public officials and/or employees, (iii) a public official and/or employee should exercise leadership in the form that consistently demonstrates behavior that reflects the public's trust, (iv) a public official and/or employee should recognize the proper role of all government bodies and the relationships between various government bodies and (v) a public official and/or employee should always demonstrate respect for others and for other positions.

Sec. 1.002 Definitions.

For the purpose of this Code of Ethics, the following words and phrases shall have the meanings ascribed to them by this section.

Advisory Board shall mean a board, commission or committee of the City that functions only in an advisory or study capacity.

Business Entity shall mean a sole proprietorship, partnership, firm, corporation, association, holding company, jointstock company, receivership, trust or any other entity recognized by law.

Employee shall mean any person employed by the City of Muscatine, Iowa, including those individuals on a part-time basis, but such term shall not be extended to apply to any independent contractor.

Knowingly shall mean a person acts knowingly, or with knowledge, with respect to the nature of his/her conduct or to circumstances surrounding his/her conduct when he/she is aware of the nature of his/her conduct or that the circumstance exist. A person acts knowing or with knowledge, with respect to a result of his/her conduct when he/she is aware that his/her conduct is reasonably certain to cause the result.

Officer shall mean any member of the City Council, the Planning and Zoning Commission, the Board of Adjustment, and any member of a board, commission, task force or committee established by ordinance, resolution, charter or state law that has final approval authority over any application, permit, license or other City approvals provided however; no members of an advisory board shall be deemed an officer of the City.

Substantial Interest shall mean:

- A. A person has a substantial interest in the business entity if:
 - (1) the interest is ownership of ten percent (10%) or more of the voting stock or shares of the business entity or ownership of either ten percent (10%) or more or five thousand dollars (\$5,000.00) or more of fair market value of the business entity; or
 - (2) funds received by the person from the business entity exceed ten percent (10%) of the person's gross income for the previous year; or
 - (3) the person holds a position of member of the board of directors or other governing board of the business entity; or
 - (4) the person serves as an elected officer of the business entity; or
 - (5) the person is an employee of the business entity; or
 - (6) the person is a creditor, debtor or guarantor of the business entity in the amount of five thousand dollars (\$5,000.00) or more; or
 - (7) property of the person has been pledged to the business entity or is subject to a lien in favor of the business entity in the amount of five thousand dollars (\$5,000.00) or more.

- B. A person does not have a substantial interest in a business entity if:
 - (1) the person has been designated by the City Council to serve as a member of the board of directors or other governing board of a business entity; and
 - (2) the person receives no remuneration, either directly or indirectly, for his/her service on such board; and
 - (3) the primary nature of the business entity is either charitable, non-profit or governmental.

- C. A person has a substantial interest in real property if the interest is an equitable or legal ownership interest with a fair market value of two thousand five hundred dollars (\$2,500.00) or more.

- D. A person has a substantial interest under this ordinance if the person's spouse or a person related to the person in the first degree by consanguinity or affinity has a substantial interest under this ordinance.

A person is related in the first degree of consanguinity to his/her father, mother, brother, sister, son or daughter. A person is related in the first degree of affinity to his/her father-in-law, mother-in-law, brother's spouse, sister's spouse, son-in-law or daughter-in-law.

Sec. 1.003 Standards of Conduct.

Subsection 1. General Principles.

Members shall comply with the laws of the United States, the State of Iowa and the City of Muscatine, Iowa's ordinances and policies in performance of their public duties. Members shall work for the common good of the people of Muscatine, Iowa and not for the private person or personal interest.

Subsection 2. Contact of Members and Contact of Meetings.

A member's professional and personal conduct must be above reproach and must avoid even the appearance of impropriety. Members shall refrain from abusive conduct and should also refrain from making personal charges or verbal attacks upon the character or motives of other members of the council, boards and commissions, the staff, city employees or the public. Council members should treat all city employees, fellow council members and the public in a respectful manner and shall not speak ill of the City of Muscatine, Iowa, any city employee, fellow council members or the public at a public meeting. All complaints or concerns about city employees shall be transmitted through the City Administrator who shall be charged with investigating those complaints. Any complaints about city employees should be made in writing, signed and dated.

Subsection 3. Public Meetings.

All gatherings in person or by electronic means, whether formal or informal, of a majority of the Members must be conducted in open session unless exceptions or exemptions are specifically provided by law. "Open session" means a meeting to which all members of the public have access.

Members shall prepare themselves for all public meetings, listen attentively to all public discussions, hearings and presentations made to the Council or committee and participate in the business of the body. Members shall refrain from interrupting speakers, making personal comments not pertaining to the business of the body and from making any comments that are inappropriate or otherwise interfere with the orderly conduct of the meetings. Members shall conduct themselves according to the Rules of Order established by city ordinances and Iowa law. Members shall base their decisions on the merit and substance of the matter at hand and not upon a political, personal or unrelated considerations in decision making.

Section 4. No council member, board member, officer or employee, directly or indirectly or by others on his/her behalf or his/her request or suggestion, shall:

- (a) engage in any private business, transaction or employment, or have any substantial interest therein, which is incompatible or in conflict with the proper and impartial discharge of his/her duties on behalf of the City or which would be in violation of conflict of interest prohibitions found at Iowa Code §68B.2A or which would violate provisions of Iowa Code §362.5(2) (2013);
- (b) represent any private party before the public body on which the official sits or over which the official has appointment or budgetary powers;
- (c) disclose without authorization or use to further a personal interest, confidential information acquired in the course of his/her official duties;
- (d) grant or influence the granting of any special consideration, advantage or favor, to any person, group, firm or corporation, beyond that which is the general practice to grant or make available to the public at-large;
- (e) accept anything of economic value such as money, service, gift, loan gratuity, favor or promise thereof for the purpose and intent of which is to influence any such councilor, board member, officer or employee of the City in the exercise of his/her official judgment, power or authority, unless specifically exempted by Iowa Code §68B.22;
- (f) make personal use of staff, vehicles, equipment, materials or property of the City except in the course of his/her official duties or as duly authorized by the proper City councilor, board member, officer or employee;
- (g) participate in the appointment, vote for appointment or discussion of any appointment of an immediate family member or business associate or use his/her position, directly or indirectly, to effect the employment status of an immediate family member or business associate to any City office or position, paid or unpaid;
- (h) receive or have any financial interest in any sale to the City of any real estate when such financial interest was received under circumstances which would lead a reasonable person to expect that the City intended to purchase, condemn or lease said real estate

Sec. 1.004 Ex-Parte Communications.

In any such quasi-judicial matter (e.g. personnel decisions, condemnation proceedings, zoning rules, matters involving the issuance of a permit or approval) or the award of a contract before the Council, Board, Commission or Committee, a public councilor, board member or officer sitting on such Council, Board, Commission or Committee, shall not, outside of that Council, Board, Commission or Committee, communicate with or accept a communication from a person for which there are reasonable grounds for believing to be a party to the matter being considered, if such communication is designed to influence the councilor's, board member's or officer's action on that matter. If such communication should occur, the councilor, board member or officer shall disclose it at an open meeting of the Council, Board, Commission or Committee prior to its consideration of the matter.

Sec. 1 005 Disclosure of Interest and Recusal Procedures.

Whenever a matter comes before the Council, Board, Commission or Committee, as to which any conflict of interest standard, as prescribed in Section 1.003 of this Code of Ethics, applies to one of its members, the following provisions shall apply:

- (a) A councilor, board member, officer or employee shall disclose the existence of any substantial interest in a business entity or real property involved in any decision pending before such councilor, board member, officer or employee, or the body of which the councilor, board member, officer or employee is a member.
- (b) Following such disclosure, such councilor, board member or officer shall not participate in any consideration, discussion or vote on the matter before the Council, Board, Commission or Committee. If the councilor, board member or officer wishes to address the issue at an open public meeting, said councilor, board member or officer may participate as a member of the public. During deliberation and vote on the matter, the councilor, board member or officer may participate as a

member of the public. The councilor, board member or officer may attend an executive session to discuss the matter at the invitation of the Council, Board, Commission or Committee, if such attendance complies with the statutory requirements of the Open Meetings Act.

- (c) The councilor, board member or officer shall not, during any part of the Council, Board, Commission or Committee meeting pertaining to the matter requiring the disclosure, represent, advocate on behalf of or otherwise act as the agent of the person or business entity in or with which the councilor, board member or officer has such an interest or relationship.
- (d) The foregoing shall not be construed as prohibiting the councilor, board member or officer from testifying as to factual matters at a hearing of the City Council, the Planning and Zoning Commission, the Board of Adjustment, or any other board, commission or committee.

Sec. 1 006 Advisory Opinions.

- (a) Where any councilor, board member, officer or employee has a doubt as to the applicability of any provision of this Code of Ethics to a particular situation, or as to the definition of terms used herein, he/she may apply to the City Attorney, by way of the City Administrator, for an advisory opinion. The councilor, board member, officer or employee shall have the opportunity to present his/her interpretation of the facts at issue and of the applicability of provisions of said Code of Ethics before such advisory opinion is made.
- (b) Until amended or revoked, any advisory opinion shall be binding on the City, the City Council and the City Attorney in any subsequent actions concerning the councilor, board member, officer or employee who sought the opinion and acted on it in good faith, unless material facts were omitted or misstated in the request for the advisory opinion. Such opinion shall not be binding in any action initiated by any private citizen.

Sec. 1.007 Reporting of Ethics violation.

- (a) The City Council shall have the primary responsibility for the enforcement of this Code of Ethics. Said Council may direct the City Attorney to investigate or prosecute any apparent violation of this Code or it may employ or appoint any qualified attorney to investigate or prosecute any violation or series of violations of this Code by one or more persons. At the direction of the City Council, the attorney shall have the power to investigate any complaint, to initiate any suit and to prosecute any action on behalf of the City where such action is appropriate.

- (b) Any person who believes that a violation of any portion of the Code of Ethics has occurred, may file a complaint with the City Council who may then proceed as provided in subsection (a) above however; nothing in this Code shall be construed to prevent complainants from instituting direct legal action through the appropriate judicial authority.

Sec. 1.008 Penalties, Forfeited Position, Exemptions; Injunctions.

- (a) Except where otherwise provide by State law, it is not the intent of this Code of Ethics that violations therefore be subject to criminal penalties.
- (b) Whenever the City Council has determined that any councilor, board member, officer or employee has violated any provision of said Code of Ethics, such councilor, board member, officer or employee shall be subject to discipline.
- (c) The City Council may apply levels of discipline to the councilor, board member, officer or employee ranging from private consultation, admonishment, censure and reprimand. The Council may also choose to have the board member or officer forfeit their seat however; this level of discipline cannot be used on elected Council members.
- (d) The City Council may exempt from provisions of this Code of Ethics any conduct found to constitute a violation by a councilor, board member, officer or employee if it finds that the enforcement of this Code with respect to such conduct is not in the public interest.
- (e) Any contract or transaction which was the subject of an official act or action of the City in which there is an interest prohibited by this Code or which involved the violation of a provision of this Code, shall be voidable at the option of the City Council.

Sec. 1.12.009 Distribution of Code of Ethics.

The City Administrator shall cause a copy of this Code of Ethics to be distributed to every councilor, board member, officer and employee of the City within thirty (30) days after the enactment of said Code. Each councilor, board member, officer and employee thereafter elected or appointed shall be furnished a copy of said Code of Ethics before entering upon the duties of his/her office or position and shall sign a written statement acknowledging receipt of the copy of the Code of Ethics.

THE CITY OF MUSCATINE, IOWA

RESOLUTION NO. _____

A RESOLUTION ADOPTING A CODE OF ETHICS FOR THE CITY OF MUSCATINE,
IOWA

WHEREAS, the citizens of the City of Muscatine, Iowa are entitled to have fair, ethical and accountable local government which has earned the public's full confidence; and

WHEREAS, in keeping with the City's commitment to excellence, all employees and public officials, both elected and appointed, must comply with both the letter and spirit of the laws and policies affecting the operation of government; and

WHEREAS, all employees and public officials, both elected and appointed, are required to be impartial and fair in their judgment and actions and ensure that public office is used for the public good; and

WHEREAS, the City of Muscatine has determined that the adoption of a Code of Ethics for its members and the members of all city-appointed boards, committees and commissions will assist in achieving these ends.

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

1. That the Code of Ethics attached hereto as Exhibit A be, and the same is hereby, adopted.
2. That the Code of Ethics will be reviewed by Council and City staff periodically.
3. That the Code of Ethics shall be included in the Council's Rules of Procedure as an Appendix.

PASSED AND APPROVED THIS __ DAY OF _____ 2014.

DeWayne Hopkins, Mayor

Attest:

Gregg Mandsager, City Clerk

RESOLUTION NO. 22824

A RESOLUTION TO ADOPT A CODE OF ETHICS FOR MEMBERS OF THE MARION,
IOWA CITY COUNCIL

WHEREAS, the City Council, of the City of Marion, Iowa deems it advisable to adopt a Code of Ethics for Members of the Marion City Council and Appointed Board and Commission Members; and

WHEREAS, The citizens and businesses of Marion are entitled to have fair, ethical and accountable local government, which has earned the public's full confidence for integrity.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Marion follows:

Section 1. That the Code of Ethics set forth in Exhibit "A" attached hereto and made a part hereof, be in full force and effect immediately upon its adoption and approval, as provided by law.

Section 2. All resolutions or parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Passed and approved this 1st day of November, 2012.

Allen "Snooks" Bouska, Mayor

Attest:

Wes Nelson, City Clerk

EXHIBIT "A"

CODE OF ETHICS FOR MEMBERS OF THE MARION CITY COUNCIL

Preamble

The citizens and businesses of Marion are entitled to have fair, ethical and accountable local government, which has earned the public's full confidence for integrity. In keeping with the City of Marion's mission, the effective functioning of democratic government therefore requires that:

Public officials, both elected and appointed, comply with both the letter and spirit of the laws and policies affecting the operations of government; public officials be independent, impartial and fair in their judgment and actions; public office be used for the public good, not for personal gain; and public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, the Marion City Council has adopted a Code of Ethics for members of the City Council to assure public confidence in the integrity of local government and its effective and fair operation.

1. Act in the Public Interest

Recognizing that stewardship of the public interest must be their primary concern, members will work for the common good of the people of Marion and not for any private or personal interest, and they will assure fair and equal treatment of all persons, claims and transactions coming before the Marion City Council.

2. Comply with the Law

Members shall comply with the laws of the nation, the State of Iowa and the City of Marion in the performance of their public duties. These laws include, but are not limited to: the United States and Iowa constitutions; laws pertaining to conflicts of interest, election campaigns, financial disclosures, employer responsibilities, and open processes of government; and City ordinances and policies.

3. Conduct of Members

The professional and personal conduct of members must be above reproach and avoid even the appearance of impropriety. Members shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of Council, boards and commissions, the staff or public.

4. Respect for Process

Members shall perform their duties in accordance with the processes and rules of order established by the City Council governing the deliberation of public policy issues, meaningful involvement of the public, and implementation of policy decisions of the City Council by City staff.

5. Conduct of Public Meetings

Members shall prepare themselves for public issues; listen courteously and attentively to all

public discussions before the body; and focus on the business at hand. They shall refrain from interrupting other speakers; making personal comments not germane to the business of the body; or otherwise interfering with the orderly conduct of meetings.

6. Conflict of Interest

To assure their independence and impartiality on behalf of the common good, members shall not use their official positions to influence government decisions in which they have a material financial interest or where they have an organizational responsibility or personal relationship, which may give the appearance of a conflict of interest.

In accordance with the law, no member shall participate in the disposition of any matter in which he or she is interested. For purposes of this section "interested" includes any direct or indirect financial or personal interest held by a member or member of his/her family. Before any matter is heard, a member having an interest shall state it and withdraw from participation, or he/she may disclose the facts involved and request a determination by the Council of whether a conflict of interest exists. Any question of the existence or non-existence of a conflict of interest sufficient to disqualify a member from participating in the disposition of any matter shall be decided by a majority vote of the other members of the Council. In case of a tie, the member shall be disqualified.

7. Gifts and Favors

Members shall not take any special advantage of services or opportunities for personal gain that are not available to the public in general. They shall refrain from accepting any gifts, favors or promises of future benefits, which might compromise their independence of judgment or action or give the appearance of being compromised.

8. Confidential Information

Members shall respect the confidentiality of information concerning the property, personnel or affairs of the City. They shall neither disclose confidential information without proper legal authorization, nor use such information to advance their personal, financial or other private interests.

9. Use of Public Resources

Members shall not use public resources that are not available to the public in general, such as City staff time, equipment, supplies or facilities, for private gain or personal purposes.

10. Representation of Private Interests

In keeping with their role as stewards of the public interest, members of Council shall not appear on behalf of the private interests of third parties before the Council or any board, commission or proceeding of the City.

11. Advocacy

Members shall represent the official policies or positions of the City Council to the best of their ability when designated as delegates for this purpose. When presenting their individual

opinions and positions, members shall explicitly state they do not represent their body or the City of Marion, nor will they allow the inference that they do.

12. Policy Role of Members

Members shall respect and adhere to the mayor-council structure of Marion city government as outlined by the Code of Iowa, City of Marion Charter, and City of Marion Code of Ordinances. In this structure, the City Council determines the policies of the City with the advice, information and analysis provided by the public, boards and commissions, and City staff. The council does not take an active role in day to day operations or administration of the city.

The City Manager shall be directly responsible to the Council for the administration of municipal affairs as directed by that body. All departmental activity requiring the attention of the council shall be brought before the body by the City Manager and all Council involvement in administration initiated by the Council must be coordinated through the City Manager.

13. Independence of Boards and Commissions

Because of the value of the independent advice of boards and commissions to the public decision-making process, members of Council shall refrain from using their position to unduly influence the deliberations or outcomes of board and commission proceedings.

14. Positive Work Place Environment

Members shall support the maintenance of a positive and constructive work place environment for City employees and for citizens and businesses dealing with the City. Members shall recognize their special role in dealings with City employees to in no way create the perception of inappropriate direction to staff.

15. Implementation

As an expression of the standards of conduct for members expected by the City, the Marion Code of Ethics is intended to be self-enforcing. It therefore becomes most effective when members are thoroughly familiar with it and embrace its provisions.

For this reason, ethical standards shall be included in the regular orientations for candidates for City Council and newly elected and appointed officials. Members entering office shall sign a statement affirming they read and understood the City of Marion code of ethics. In addition, the Code of Ethics shall be annually reviewed by the City Council and the City Council shall update it as necessary.

16. Compliance and Enforcement

The Marion Code of Ethics expresses standards of ethical conduct expected for members of the Marion City Council. Members themselves have the primary responsibility to assure that

ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of government.

City Council members who intentionally and repeatedly do not follow proper ethical standards may be reprimanded or formally censured by the Council. It is the responsibility of the Council to initiate action if a Council member's behavior may warrant censure. Council members should point out to the offending Council member infractions of the Code of Ethics or Code of Conduct.

If the offenses continue, then the matter should be referred to the Mayor in private. If the Mayor is the individual whose actions are being challenged, then the matter should be referred to the Mayor Pro-Tem. It is the responsibility of the Mayor to initiate action if a Councilmember's behavior may warrant censure. If no action is taken by the Mayor, the alleged violation(s) can be brought up with the full Council in a public meeting.

If violation of the Code of Ethics or Code of Conduct is outside of the observed behaviors by the Mayor or Council members, the alleged violation should be referred to the Mayor. The Mayor should ask the City Manager and/or the Chief of Police to investigate the allegation and report the findings to the Mayor. It is the Mayor's responsibility to take the next appropriate action. These actions can include, but are not limited to discussing and counseling the individual on the violations or recommending censure to the full Council to consider in a public meeting.

A violation of this Code of Ethics shall not be considered a basis for challenging the validity of a Council decision.

City Council Member Statement

As a member of the Marion City Council, I agree to uphold the Code of Ethics for elected and appointed officials adopted by the City and to conduct myself using the following model of excellence. I will:

- Recognize the worth of individual members and appreciate their individual talents, perspectives and contributions
- Help create an atmosphere of respect and civility where individual members, City staff and the public are free to express their ideas and work to their full potential
- Conduct my personal and public affairs with honesty, integrity, fairness and respect for others
- Respect the dignity and privacy of individuals and organizations
- Keep the common good as my highest purpose and focus on achieving constructive solutions for the public benefit
- Avoid and discourage conduct, which is divisive or harmful to the best interests of

Marion

- **Treat all people with whom I come in contact in the way I wish to be treated**

I affirm that I have read and understood the City of Marion Code of Ethics.

Signature

Date

Printed Name

6.7 Unless specifically otherwise provided in the City Code, or in the laws of the State of Iowa, each Councilmember shall vote on each question before the Council for a determination unless such Councilmember has a direct conflict with the issue, which conflict shall be ruled upon by the City Attorney.

CHAPTER 7

RIGHTS OF PARTICIPATING AUDIENCE

7.1 When any member of the audience has a matter to bring before the Council, he or she shall address himself or herself to the Mayor, giving his or her name and address and present the matter either verbally or in writing. If the matter is presented in writing, the petition or communication shall be filed with the Clerk for the records of the Council.

7.2 No member of the audience shall speak more than once on any question unless every other member of the audience or Council has had the opportunity to speak on such subject, and in no case shall a member of the audience speak more than twice on the same question without the consent of the Council. The total time for speaking by any member of the audience shall be FIVE MINUTES, unless the Mayor extends the time.

7.3 When two or more members of the audience rise at the same time, the Mayor shall name the one to speak first. The other shall be given the opportunity to speak next.

7.4 If any member of the audience speaks or conducts himself or herself in an unbecoming manner, the Mayor shall have the right to call him or her to order and he or she shall immediately thereupon be seated and shall not speak further less he or she conducts himself or herself in an orderly manner.

7.5 Members of the audience shall address all remarks to the Mayor and shall not hold conversations or discussions with other members of the audience.

CHAPTER 8

SERGEANT-AT-ARMS

8.1 The Sergeant-at-Arms shall attend any meeting of the Council upon the request of the presiding officer of the Council or any Councilmember.

8.2 It shall be the duty of the Sergeant-at-Arms to enforce any written order of the Council or the presiding officer.