

From: Matthew Brick mbrick@me.com
Subject: Citizen Conduct on City Property
Date: January 18, 2018 at 9:26 AM
To: Gregg Mandsager gmandsager@muscataineiowa.gov



Gregg,

In response to several questions that have been asked and the recent incident at the Council meeting in December, the purpose of this email is to provide feedback regarding who has the authority, under the City Code and the Council Rules, to declare individuals out of order on City property and, more specifically, during Council meetings.

The Mayor's authority to maintain and decide questions of order at council meetings is part and parcel of the Mayor's role as presiding officer of Council. See Council Rule § 1.4, Council Rule § 7.4; see also, City Code § 1-7-2 (stating that Mayor shall preside over council meetings and preserve order thereat). If the Council disagrees with the ruling of the Mayor on a question of order, the City Council has the right to appeal questions of order to the Council as a whole, and the Mayor's ruling may be nullified by a majority vote of Councilmembers present. See Roberts Rules § 21; see Council Rules § 6.2. If a majority of Councilmembers present do not vote in favor of overruling the Mayor, the Mayor's ruling on order stands.

The Chief of Police, as the Sergeant of Arms, has similar authority to maintain order during council meetings, and the Chief's independent authority to maintain order could also be overruled by an order of the Mayor or of the City Council. See Council Rule § 8.2 (stating it shall be duty of the Sergeant-at-Arms to enforce any written order of the Council or the presiding officer."); see also, City Code § 6-1-4 (stating chief shall promptly serve all notices or orders required of him or her by the Mayor or Council.). The Chief's attempt to maintain order could be overruled by the Mayor or Council, unless the behavior also constituted a violation of law, such as disorderly conduct, or because exigent circumstances necessitated his intervention due to the presence of an emergency or other safety concerns. In such cases, the Chief has an independent duty to enforce the laws of the City, and neither the Mayor nor the Council have the lawful authority to interfere with the Chief's enforcement in this regard.

Ultimately, if an individual is out of order, the Mayor calls that individual to order. If the Mayor does not call that individual to order, any member of Council can call for point of order. After a call for point of order has been made, the Mayor, as the presiding officer, has the initial obligation to determine whether an individual is out of order and, if so, to call that individual to order. While the Mayor makes the initial determination as to whether an individual is out of order, the Mayor's determination is subject to an appeal of Council, and the Council can overrule the Mayor's determination of order by a majority vote of the Councilmembers present. If the Mayor refuses to call that individual to order despite Council's ruling on the topic, the Council can instruct the Chief of Police, as the Sergeant of Arms, to maintain order.

Thus, if an individual is out of order and that individual is not independently called to order by the Mayor or the Chief of Police, a member of Council should call for point of order and ask the Mayor to rule the individual out of order. If a member of Council disagrees with the Mayor's ruling, there can be an appeal of that decision, and, if a majority of those present vote otherwise, the Mayor's decision is overruled. The Mayor, at that point, should enforce the ruling of the Council and call the individual to order. If the Mayor does not call that individual out of Order, the Council should call upon the Chief to maintain order.

If the Chief of Police independently determined an individual to be out of order, he could attempt to call that person to order, by removal or otherwise, but either the Council or the Mayor could overrule his determination that an individual was out of order, unless the Chief is enforcing independent law violations, which may include, but is not limited to, such things as disorderly conduct.

If the Mayor overrules the Chief's determination, the Council would have the right to appeal the Mayor's determination on order to the Council as a whole, and could nullify the Mayor's order by a majority vote as mentioned above. If the Council does not overrule the Mayor's determination by a majority vote of Councilmembers present, the Mayor's determination of order is final, unless the actions at issue separately amounted to a law violation which warranted the Chief's intervention in his law enforcement capacity, rather than in his capacity as the sergeant of arms, such as in the case of disorderly conduct.

With respect to the Mayor, the Mayor can order the removal of an individual from City Council chambers due to his or her conduct at a particular Council meeting. However, the Mayor's authority to order the removal of an individual from any City property is likely confined to removing an individual from a particular council meeting as necessary to preserve order thereat. Specifically, the Mayor's powers and duties – as set forth in State Code, see Iowa Code § 372.14 City Code, see City Code § 1-7-2, and the Council Rules – indicate that the Mayor's power to maintain and address questions of order are limited to conduct occurring at a particular council meeting. There does not appear to be any separate independent authority to ban individuals from City property outside of the context of the Mayor's power to maintain order at a specific council meeting, given that all other supervisory powers of the City have been delegated to the City Administrator in Muscatine's case. Correspondingly, and as a result of the absence of such authority, the Mayor does not appear to possess any separate authority to overturn a decision of Council, the Police Chief, or the City Administrator, as it relates to their decision(s) to ban an individual from City Council chambers, City Hall, or other City Property on a prospective basis.

With respect to the City Council, all powers of the City are vested in the City Council unless such powers have been delegated elsewhere. See Iowa Code § 364.2. The power to ban individuals from council chambers, City Hall, or other City property for a period of time based on that individual's conduct has not been delegated away from City Council. Since the power to ban an individual from Council chambers for conduct occurring at Council meetings has not been delegated away from the City Council, the City Council can exercise such power, notwithstanding the Mayor's power to maintain order at a specific council meeting. The Council can exercise this power directly by passing a motion banning an individual from Council chambers, City hall, or any other City property, or, alternatively, could by motion instruct the City Administrator or Chief of Police to do the same. As there is no mayoral authority to veto motions,

there would be no opportunity to shorten the time frames passed by Council.

Regarding the City Administrator's powers, the City Administrator's powers and duties are set forth in City Code § 1-10-2(E), which provide as follows: (a) enforcement of all City laws and regulations as directed by the Council; (b) administration of Council policies and directives; (c) continuous study of the City government's operating procedures, organization, and facilities and to recommend fiscal and other policies to the Council whenever necessary; (d) preparation and administration of the City's annual operating budget; (e) supervision of the City's administrative policies and procedures, including personnel; (f) keeping the Council informed on the progress of its programs and the status of its policies; (g) coordinating and directing all City services provided through the various departments; (h) appointment and removal of City employees in accordance with City policies regarding this activity; (i) study possible joint arrangements with City boards such as, but not limited to, the Board of Water, Electric, and Communications Trustees or any other independent board and make recommendations for such arrangements as are mutually acceptable; (j) assist the Mayor in any of his or her duties, as requested by him or her and approved by the Council; (k) review and revise imposition of penalties, costs, fees, bond, and insurance requirements as set out in the Appendices to this Code of Ordinances; and (l) oversee daily operations of City and staff. In addition to the above, the City Administrator's job duties include, among other things, serving as custodian of all City property.

As a result of the above-mentioned powers and duties, and consistent with the City's past practices, the City Administrator has the inherent and implied authority to ban individuals from City property, including City Hall, Council chambers, or other City property, in the normal performance of his duties. Consistent with past practice, however, the City Administrator's authority to order the removal of an individual does not apply during a particular council meeting as a mechanism to maintain order thereat. Such power is vested solely with the Mayor, the City Council, and the Chief of Police. While the City Administrator cannot order the removal of an individual while a council meeting is ongoing, depending on the nature of the conduct at issue, the City Administrator may in the exercise of his discretion ban that individual from certain City property for a fixed period of time. The ban can apply to Council chambers, City Hall, or other City property, as the circumstances warrant. This ban would not apply to the council meeting at which the conduct occurred, but, rather, would be prospective in application. Any ban issued by the City Administrator can be rescinded, shortened, or lengthened by majority vote of Council—unless the ban involves a criminal or civil matter.

Finally, with respect to the Police Chief, the Chief of Police can remove an individual from a particular council meeting if he determines doing so is necessary to maintain order, unless the Chief's decision that an individual is out of order is overturned by the Mayor or action of Council. As mentioned previously, the Chief's decision as to order/removal is generally subject to be overturned by action of the Mayor or Council, unless the Chief is removing an individual in his law enforcement capacity because the nature of the conduct amounted to an independent law violation, such as disorderly conduct, or because exigent circumstances necessitated his intervention due to the presence of an emergency or other safety concerns. Similarly, if any City official feels there is a violation of the criminal code or that a safety issues exists, they can immediately summon the Chief of Police.

Let me know if you have any questions or comments about the attached information.

Thanks,

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