

CITY OF NEVADA – GOVERNING BODY RULES OF PROCEDURE

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AUTHORITY

Iowa Code Section 372.13(5) requires that "the council shall determine its own rules." The following rules shall be in effect upon their adoption by the Council and until such time as they are amended or new rules adopted.

CHAPTER 1

1.01 COUNCIL MEETING LOCATION

All regular meetings of the Nevada City Council shall be held in the Council Chambers at the Nevada City Hall, 1209 6th Street, Nevada, Iowa, unless determined by Council motion to hold a meeting at another location.

1.02 COUNCIL MEETING DATES AND TIME

Regular meetings of the Nevada City Council shall be held at 6:00 p.m. on the second and fourth Mondays of each month commencing with the April, 2010 meeting following approval of this New Council Rule by Resolution of the Council. If a regular Council meeting day falls on a legal holiday, the meeting shall be held on the next succeeding day that is not a legal holiday at the same hour unless a different day or time is determined by the Council.

1.03 ALL CITY MEETINGS AND RECORDS OPEN TO THE PUBLIC

A. All regular and special meetings of the Nevada City Council and all regular and special meetings of the City's Permanent Boards, Commissions, Standing Committees and all temporary, advisory and *ad hoc* committees (hereafter collectively referred to as "meetings") shall comply with Iowa Code Chapter 21, The Iowa Open Meetings Law and Chapter 22, The Iowa Open Records Law.

B. All Meeting Notices and all Meeting Agendas shall be timely posted on the official city bulletin board located at the entrance to the Nevada City Hall, 1209 6th Street, Nevada, Iowa, and shall be timely furnished to those media enterprises that have filed a written request for notice with the City.

C. Minutes of all meetings shall be maintained by the City Clerk for the time required by Iowa law and shall be available for viewing by any member of the public during normal City Hall business hours.

1.04 PRESIDING OFFICER

A. The Mayor shall preside at all meetings of the Council and shall be recognized as the chief political officer of the City for all ceremonial purposes. In case of the Mayor's absence or temporary disability, the Mayor Pro Tempore shall act as Mayor during the Mayor's absence. In the event the Mayor resigns, the Mayor Pro Tempore shall temporarily act as the Presiding Officer. In case of the absence or temporary disability of the Mayor and the Mayor Pro Tempore, a Mayor Pro Tempore selected by members of the Council shall act as Mayor Pro Tempore during the joint absence or disability of both. Both the Mayor and

Mayor Pro Tempore are referred to as the "Presiding Officer" from time-to-time in these Rules of Procedure.

B. A council member, while serving as Mayor Pro Tempore, shall retain all the powers of a council member, including the power to debate and vote on measures. Their presence shall be counted as a council member when determining whether or not a quorum of the council exists.

C. The Mayor Pro Tempore shall exercise all of the Mayor's executive powers and perform all mayoral duties during the Mayor's absence, including the duty to affix their signature on documents that require the Mayor's signature. With regard to measures passed by the council, the Mayor Pro Tempore may sign the measure or may take no action as provided by Iowa Code Section 380.6(3), in which case the measure becomes effective pursuant to Section 380.6(3). However, the Mayor Pro Tempore shall not have the power to veto a measure. In the event the Mayor Pro Tem takes no action on a measure and the Mayor resumes their office within fourteen days of the measure's passage by the council, the Mayor may sign or veto the measure within the fourteen day period.

D. The Presiding Officer shall preserve order and decorum, prevent attacks on personalities and the impugning of members' motives, confine members in deliberation and debate to the question under discussion and decide all questions of order. Their decision shall be final unless an appeal shall at once be raised. Such appeal shall then be decided by majority vote of the Council.

1.05. QUORUM

At all Council sessions, four Council members who are present and eligible to vote shall constitute a quorum for the transaction of business. If a quorum is not present, the names of those in attendance shall be recorded and they shall adjourn to a later time or date.

1.06. COUNCIL MEMBER'S NON-ATTENDANCE

Members of the Council who are unable to attend shall contact the Presiding Officer prior to the meeting and state their reason for their inability to attend the meeting verbally or in writing to the City Clerk. If the member is unable to contact the Presiding Officer, the member shall contact the City Administrator or City Clerk who shall convey the message to the Presiding Officer. Following roll call, the Presiding Officer shall inform the Council of the member's absence and state the reason for such absence, and whether or not the absence is excused.

1.07 COUNCIL MEMBERS' TELEPHONIC PARTICIPATION

A council member who is physically unable to attend a council session may participate by telephone for all or a part of the Council session provided all of the following requirements are met:

A. The absent member has a legitimate reason for not attending. Mere convenience is not a legitimate reason. The Presiding Officer shall rule on the "legitimate reason" issue prior to allowing telephonic participation;

B. The absent member is not counted as "present" for purposes of determining whether or not a quorum exists; however, the absent member may vote on a measure that was considered during the time the absent member was connected by phone;

C. A telephone speaker phone system is installed in the council chambers that will permit all council members and others in attendance to hear the comments and vote of the absent member; and

D. The absent member can clearly hear the deliberations, comments and vote of the council members present in the chambers as well as comments of others who may speak during the session.

1.08 SPECIAL COUNCIL MEETINGS

Special meetings shall be held upon the written or oral call of the Mayor or upon the written request of a majority of the members of the Council submitted to the Clerk. Notice of a special meeting shall specify the date, time, place and subject of the meeting and such notice shall be given personally or left at the usual place of residence of each member of the Council, Mayor, City Administrator and the business office of each local newspaper, radio and television station which has on file a written request for notice of special meetings. Unless an emergency meeting is required such notice must be delivered at least twenty-four (24) hours prior to the meeting.

1.09 CLERK OF THE COUNCIL

The City Clerk shall be the Clerk of the Council, shall keep minutes and shall perform such other and further duties in the meeting as may be required by the Council, Presiding Officer or City Administrator. In the absence of the City Clerk, the Deputy City Clerk shall act as Clerk of the Council. If neither is able to attend the meeting, the City Administrator shall appoint another qualified staff member to act as Clerk of the Council.

1.10 COUNCIL MEETING AGENDA

The Clerk of the Council, under direction of the City Administrator, shall arrange a list of such matters according to the order of business and prepare an Agenda for the Council. Any item the Mayor, a Council member or other City Officer may wish to place on the Agenda must be presented to the City Administrator by 12:00 noon of the Wednesday prior to the Council meeting. A copy of the Agenda and supporting materials shall be distributed to the Council members, the Mayor, the City Administrator, and the press. The Council shall have the option of deleting any item from the Agenda or deferring an item on the Agenda to a subsequent Council meeting.

1.11 WORK SESSIONS

Special Council sessions may be designated as work sessions where no official action is allowed. Work sessions may be conducted informally so long as such informality is not in conflict with these rules. The City Administrator may arrange a Council Work Session

Agenda for the meeting. After the proposed Council Work Session Agenda has been prepared, all such materials shall be distributed to the Mayor, Council members, City Administrator and the press. During the Council Work Session the Presiding Officer may: (1) introduce the subject and give background information; (2) identify the eventual goal of the study or work session; (3) act as facilitator to keep the meeting discussion focused to the subject; and (4) alert the Council when it is appropriate to move to another topic or issue.

1.12 EMERGENCY CANCELLATIONS AND ADJOURNED MEETINGS

A. All meetings cancelled by reason of inclement weather or other *bona fide* emergency shall automatically be rescheduled to the next business day or evening at the same time and location as the original meeting, without the necessity of posting a new agenda and without formal Mayor, Council or Chairperson action. As soon as practicable following the cancellation, notice of the cancellation and the rescheduled time and date shall be posted on the bulletin board at City Hall and given to all media who have filed a written request for notice with the City Clerk.

B. Any meeting may be adjourned to a later date and time, provided that no adjournment shall be for a longer period than until the next regular or special meeting.

1.13 CITY ADMINISTRATOR

The City Administrator is appointed by the City Council to enforce its laws, to direct the daily operations of City government, to prepare and monitor the budget, and to implement the policies and programs initiated by the City Council. The City Administrator is responsible to the Mayor and City Council rather than to individual Council members, and directs and coordinates the various departments.

The City Administrator or their designee shall attend all meetings of the City Council unless excused by the Presiding Officer or Council. The City Administrator may participate in the Council's discussion on all matters on the Agenda and other matters concerning the welfare of the City. In the event that the City Administrator is unable to attend a Council meeting, the City Administrator shall appoint another qualified staff member to attend the meeting on their behalf.

As in any professional relationship, it is important that the City Administrator keep the City Council informed. The City Administrator respects and is sensitive to the political responsibility of the City Council and acknowledges that the final responsibility for establishing the policy direction of the City is held by the City Council. The City Administrator communicates with City Council in various ways. In addition to the formal Council meetings, the Administrator sends email communication to the Council to keep them informed on topics. Communication must be undertaken in such a way that all Council members are treated similarly and kept equally informed. It is equally important that the Council provide ongoing feedback, information and perceptions to the City Administrator including some response to written communication requesting feedback.

1.14 COUNCIL-MAYOR COMMUNICATIONS WITH CITY STAFF AND EMPLOYEES

A. The City of Nevada has implemented a Mayor-Council form of government, in which it is the City Council's role to establish City policy and priorities, and the appointed City Administrator is directed to implement this policy and undertake the administration of the organization. The City Council is the legislative branch of the City and its staff is the executive/administration branch.

B. In order to uphold the integrity of the Mayor-Council form of government, and to provide proper checks and balances, members of the City Council shall refrain from becoming directly involved in the administration activities of the City. Council members may make inquiries of staff members or employees, in the limited, legitimate purpose of informing themselves regarding important affairs of an immediate and urgent nature. The City Administrator may choose to establish formal procedure for Council-staff interaction and staff support of Council committees. In addition, Council can fully and freely discuss with the City Administrator in open session anything pertaining to appointments, removals of City officers and employees, and City affairs.

C. City Council should avoid situations that can result in City staff being directed, intentionally or unintentionally, by one or more members of the City Council. While Council member interaction with the City's employees is unavoidable, giving advice and direction in regards to other city employees, duties, working conditions, supervisors, etc. is discouraged. If an employee or staff member voices such a complaint with them, Council members may listen to such concerns and complaints, and are then instructed to refer any such complaints back to the City Administrator, or if the City Administrator is involved, to the Mayor, for follow up and action if needed.

Council members may remind the City's employees that they have a number of resources at their disposal to address employment issues if needed, including following the grievance procedure set forth in Section X of the Employee Personnel Manual or their collective bargaining agreement in the case of a union employee. This section shall not be construed as prohibiting or discouraging employees from reporting actual criminal acts or serious acts of personal misconduct directly contrary to the Employee Personnel Manual. However, the "whistleblower" should nonetheless be initially referred to the City Administrator, or if the City Administrator is involved, to the Mayor.

D. In situations in which an employee approaches a council member and the communication does not involve a complaint or concern with regard to other city employees, duties, working conditions, supervisors or other terms of employment, Council members may freely speak with the employee.

E. If Council members wish to communicate with the City's contracted service providers (i.e. engineers and legal council), the general course of conduct is to send such communication or requests to the City Administrator or Mayor, who will promptly forward the communication to the proper service provider. In situations that are immediate and urgent in nature, Council members may communicate directly with the service provider.

E. CHAPTER 2

2.01 SEATING ARRANGEMENT DURING COUNCIL SESSIONS

Council members shall occupy the respective seats in the Council Chambers assigned to them by the Mayor.

2.02 CONFLICT OF INTEREST DOCTRINE

Public meetings and formal action during those meetings are occurrences where *appearances* are as important as *substance*. The test of whether the appearance of a Conflict of Interest has been violated is as follows: **"Would a disinterested person, having been apprised of the totality of a Council member's personal interest in a matter being acted upon, be reasonably justified in thinking that partiality may exist?"**

2.03 CONFLICT OF INTEREST PROTESTS.

Anyone seeking to disqualify a Council member from participating in a decision on the basis of a violation of the Conflict of Interest Doctrine must raise the challenge as soon as the basis for disqualification is made known or reasonably should have been made known prior to the issuance of the decision.

2.04 RULES OF ORDER

Rules of order not specified by statute, ordinance or resolution shall be governed by the most current edition of Robert's Rules of Order, Revised.

2.05 AFFIRMATIVE MOTIONS ONLY

All ordinances, resolutions, contracts, routine motions and items of business that require Council approval for the expenditure of funds or any type of city action shall be in the form of an affirmative motion to enact, adopt, approve or other appropriate language. The Council members who move and second the motion are not required to vote in favor of the same during the roll call vote.

2.06 ORDER OF BUSINESS AT COUNCIL SESSIONS

The business of all regular Council meetings shall be transacted as follows; provided, however, that the Presiding Officer may, during a Council meeting, re-arrange items on the agenda for the purpose of conducting business more expeditiously or to accommodate out of town guests who are on the agenda.

The order of the agenda shall be as follows:

- A. Call to Order by the Presiding Officer
- B. Roll Call
- C. Approval of the Agenda
- D. Public Hearings and Miscellaneous Hearings
- E. Approval of the Consent Agenda

- F. Public Forum, when applicable and on the agenda
- G. Old Business
- H. New Business
- I. Reports and Requests of the City Administrator
- J. Mayor and Council Member Comments
- K. Department Head Comments
- L. Closed Executive Session, if required
- M. Appropriate Follow-up, if any
- N. Adjournment

No meeting shall continue beyond three hours without approval of a majority of the Council members who are present and eligible to vote. A new time limit must be established before taking a Council vote to extend the meeting. In the event that a meeting has not been closed or continued by Council vote prior to the three hour limit, the items not acted on shall be deferred to the next regular Council meeting, unless the Council, by majority vote of members present, determines otherwise.

2.07 PREPARATION OF THE AGENDA AND CONSENT AGENDA

A. The City Administrator, in consultation with the Presiding Officer, shall place matters on the Consent Agenda which have been (a) previously discussed by the Council, (b) based on information delivered to members of the Council by administration that can be reviewed by a Council member without further explanation, (c) are routine or technical in nature that passage is likely, or (d) as directed by the City Council.

B. The published agenda shall list all items, including the titles of any ordinances or resolutions contained therein.

C. The motion to approve the consent agenda has the effect of moving to adopt all items on the Consent Agenda. It is assumed that all items listed on the Consent Agenda will be approved without dissent; however, any member of the Council shall have the right to remove any item from the Consent Agenda for separate consideration.

D. Prior to voting on the motion to adopt the Consent Agenda, the Presiding Officer shall inquire if any Council member desires to have an item withdrawn from the Consent Agenda. If any matter is withdrawn, the Presiding Officer shall place the item at an appropriate place on the agenda or direct that it be placed on the agenda of a future meeting.

2.08 CITIZEN PROCEDURES FOR ADDRESSING THE COUNCIL—AGENDA AND NON-AGENDA ITEMS

All persons who desire to address the Council on *either* an Agenda or Non-agenda item must first fill-out out a "Request to be Recognized" card. These cards are located by the attendance sign-in sheet at the entrance to the council chambers. The Card shall be handed to the Presiding Officer or the City Clerk *prior* to speaking.

A. Public Forum—Non Agenda items. Members of the public in attendance at a council meeting who desire to address matters not on the current agenda may request time

to address the Council during the Public Forum portion of the agenda, when provided. After being recognized by the Presiding Officer, the speaker must address the council from the podium. The speaker shall begin by first stating their name, address and the general subject of their presentation. The Presiding Officer may then allow the comments subject to such time limitations as the Officer deems reasonable and appropriate, generally five (5) minutes. Following the citizen comments, the Presiding Officer may place the matter on a future agenda, refer the matter to the City Administrator for further investigation and report or may make no further comment or disposition of the matter.

B. Current Agenda Items. *After* a pending agenda item has been moved and seconded, but *prior* to council discussion and deliberation, the Presiding Officer may recognize citizens who have filled-out and turned-in a "Request to be Recognized" card, requesting permission to speak on a pending Agenda measure. The Presiding Officer shall first rule on the relevancy and appropriateness of the proposed public comments prior to recognizing the speaker. If deemed relevant and appropriate, the Presiding Officer shall recognize the speaker. All verbal presentations shall be made at the podium. The speaker shall begin by first stating their name, address and the general subject of their presentation. The Presiding Officer may change the order of speakers so that comments are heard in the most logical format, e.g., proponents, opponents, adjacent property owners, vested interests, etc. The Presiding Officer may allow the comments subject to such time limitations as the Officer deems necessary, generally five (5) minutes per speaker.

C. Any ruling by the Presiding Officer relative to the proceeding two subsections may be overruled by a vote of a majority of Council members present. No comments shall be made from any location other than the podium and anyone making "out of order" comments may be subject to removal. There shall be no demonstrations, applause, "boos", or cheers during or at the conclusion of a speaker's presentation. These rules are intended to promote an orderly and dignified system of conducting a public meeting, to give every interested citizen an opportunity to be heard and to ensure that no individual is embarrassed by exercising their right of free speech or their right to petition their government.

D. Citizen written correspondence that is submitted for entry into the record pertaining to Agenda *and* Non-agenda items shall be received by the City Clerk no later than noon on the Wednesday prior to the following Monday evening's Council session. This will allow sufficient time for copies to be placed in the Council packets. No less than 10 copies of the Citizen's letter or other documents and any attachments must be delivered to the Clerk. City staff will insert the materials into the Council packets which are delivered on Thursdays, prior to the next Council session. This allows the council to review the written documents and formulate their opinion as to how they would like to address or utilize the written communication. Written materials that are received on an Agenda item will be placed with all the information in the council packet pertaining to that particular subject and used in the decision making process.

E. Written Citizen communications on subjects that are not on the agenda shall be addressed as follows: (1) the Presiding Officer may place the matter on a future agenda for formal action, (2) refer the matter to the City Administrator for investigation and report with directions to bring it back as an agenda item at a later date or, (3) accepted and filed. Council

may compel the Presiding Officer to perform one of the three options by a majority vote of council that is present.

F. Once a written communication is placed in the Council packets it becomes a public record and that item is available upon request by any private person or the public media.

G. It is not necessary for the Presiding Officer to read the letter or other written communication aloud at a Council meeting.

2.09 VOTING

Voting during Council Sessions shall be transacted as follows:

A. Unless otherwise provided for by statute, ordinance or resolution, all votes shall be taken by voice roll call vote or the installed electronic polling system. In the event of a voice roll call vote, the order of the roll call vote shall be (1) the Council member making the motion, (2) the Council member that seconded the motion and (3) the remaining Council members in a clockwise direction. In the event of using the electronic polling system, all council members shall vote simultaneously through the provided polling equipment.

B. The Mayor may vote to break a tie vote on motions *not* involving ordinances, resolutions or appointments made by the council alone.

C. Every member who is in the Council Chambers when roll is called shall give their vote unless the member has stated they have a Conflict of Interest, as stated in the Conflict of Interest Doctrine.

D. In case any Council member refuses to vote “aye” or “nay” when not excused, their vote shall be counted and recorded as an “aye” vote. Since voting on Council matters is generally regarded as an essential and primary duty of a Council Member and the willful or habitual neglect or refusal to perform the duties of the office constitute potential grounds for removal from office, it is imperative that every Council member in attendance participate in voting unless excused due to the Conflict of Interest Doctrine.

E. The passage of any ordinance or any resolution pertaining to personnel actions or discipline shall require the affirmative vote of a majority of the entire membership of the Council.

F. The passage of any motion or resolution not subject to the provisions of State or local law or these rules shall require the affirmative vote of at least a majority of the membership of the Council who are present and eligible to vote.

2.10 TEMPORARY ADVISORY COMMITTEES

A. Special *ad hoc* citizen advisory committees and study committees, hereafter referred to as “temporary committees,” may be created by the Mayor for a particular purpose. Committee members and a temporary presiding officer shall be appointed by the Mayor, with the advice and consent of the Council. The presiding officer shall appoint a Chairperson of

the temporary committee. All such temporary committees shall sunset at the end of their mission, but no later than the end of each calendar year unless specifically continued by the Council for a specified time period. One Council member and one alternate Council member *may* be appointed as a member and liaison of a temporary committee.

B. Committees shall make recommendations to the Council on proposed programs, services, ordinances and resolutions within their area of responsibility before action is taken by the Council. The Committee Chair may present the recommendations of the committee to the Council during Council's discussion of the item.

C. Employees shall staff the various temporary committees as directed by the City Administrator, but no staff person shall serve as a voting member of a temporary committee.

D. All temporary committees shall comply with Council Rule 1.03 and shall post a Notice of Meeting and an Agenda on the City Hall Bulletin Board, shall give notice to any media establishment that has filed a written request for the same and shall take minutes during the course of the meeting and file them with the City Clerk within ten calendar days of the meeting.

E. Temporary committee members may be removed from the committee and a replacement member selected in the event such member misses two or more committee meetings.

2.11 MEASURES--ORDINANCES, RESOLUTIONS AND MOTIONS; MAYOR'S VETO POWERS; EFFECTIVE DATE OF MEASURES

A. An enacted ordinance is a legislative act prescribing a general, uniform, and permanent rule of conduct relating to the corporate affairs of the municipality. Council action shall be taken by ordinance when required by law or to prescribe permanent rules of conduct which continue in force until repealed, or where such conduct is enforced by penalty. Once an ordinance is duly enacted and published, it becomes law and the Council shall not grant any "special exceptions" or "one time exemptions" from the law. However, the Council is always free to amend any ordinance it may deem appropriate, at any time.

B. An enacted resolution is an internal legislative act which is a formal statement of policy concerning matters of special or temporary character. Council action shall be taken by resolution when required by law and in those instances where an expression of policy more formal than a motion is desired, or where a more complete written record is appropriate.

C. A motion is a measure passed by the Council directing that a specific action be taken on behalf of the municipality. A motion, once approved and entered into the record, is the equivalent of a resolution in those instances where a resolution is not required by law.

D. The Mayor may sign, veto, or take no action on an ordinance, amendment or resolution passed by the council.

E. An ordinance or amendment signed by the Mayor becomes effective when the ordinance or a summary of the ordinance is published, unless a subsequent effective date is

provided within the ordinance or amendment. A resolution signed by the Mayor becomes effective immediately upon signing. A motion becomes effective immediately upon passage of the motion by the Council.

F. The Mayor may veto an ordinance, amendment or resolution within fourteen days after passage. The mayor shall explain the reasons for the veto in a written message to the council at the time of the veto. Within thirty days after the Mayor's veto, the Council may pass the measure again by a vote of not less than two-thirds of all of the members of the Council. If the Mayor vetoes an ordinance, amendment, or resolution and the Council re-passes the measure after the Mayor's veto, a resolution becomes effective immediately upon re-passage, and an ordinance or amendment becomes a law when the ordinance or a summary of the ordinance is published, unless a subsequent effective date is provided within the ordinance or amendment.

G. If the Mayor takes no action on an ordinance, amendment or resolution, a resolution becomes effective fourteen days after the date of passage and an ordinance or amendment becomes a law when the ordinance or a summary of the ordinance is published, but not sooner than fourteen days after the date of passage, unless a subsequent effective date is provided within the ordinance or amendment.

2.12 RESOLUTIONS

Except for franchise resolutions, a resolution may be put to its final passage on the same day on which it was introduced. The title of each resolution shall in all cases be read prior to its passage; provided, should a majority of the Council members present request that the entire resolution or certain of its sections be read, such requests shall be granted. Printed copies shall be made available upon request to any person attending a Council meeting.

2.13 ORDINANCES

The procedure for enacting an ordinance is as follows:

A. The title of each ordinance shall in all cases be read prior to its passage; however, should a majority of the Council members present request that the entire ordinance or certain of its sections be read, such request shall be granted. Printed copies shall be made available upon request to any person attending a Council meeting.

B. Required Readings. All ordinances require three readings prior to adoption. The second reading must be at least five days after the first reading unless waived. Upon a majority vote of the entire Council, the rule requiring the second and third readings of an ordinance may be suspended thus allowing the governing body to proceed with final adoption of the ordinance following its first reading. It is recommended that the second and third readings not be waived, except for ordinances involving only procedural matters that have little, if any, effect on the substantive rights of the citizenry. (*Code of Iowa, Sec. 380.3*)

C. A Council member may, in open session, move that the Presiding Officer direct staff to study the wisdom of enacting a particular ordinance and to report their findings to the

Council at a later date. Such a motion shall require the affirmative vote of the quorum present.

D. If a motion to enact an ordinance or resolution fails at any stage of its adoption, the ordinance or resolution shall be considered defeated and shall not be reconsidered for a minimum of 12 months from its failure unless a majority of the Council reintroduces the ordinance or resolution, or as the result of a bona fide emergency as determined by staff and council, which emergency must be addressed by the city immediately.

E. Any ordinance amending or repealing any portion of the Code of Ordinances shall also amend or repeal the respective portions of any underlying ordinance(s).

2.14 RECONSIDERATION OF A MEASURE

Subject to Sub-section 2.13(D) above, any action of the Council, including final action on applications for changes in land use status, but excluding a reconsideration of any action previously reconsidered, motions to adjourn, motions to suspend the rules, an affirmative vote to lay on the table or to take from the table, or a vote electing to office one who is present and does not decline shall be subject to a motion to reconsider. Such motions can only be made by a member of the prevailing side on the original action. A motion to reconsider may be made at the same meeting and in any event must be made no later than the next succeeding regular Council meeting. A motion to reconsider is debatable only if the action being reconsidered is debatable. Upon passage of a motion to reconsider, the subject matter is returned to the table anew at the next regular Council meeting for any action the Council deems advisable.

2.15 COUNCIL RELATIONS WITH BOARDS, COMMISSIONS AND ADVISORY COMMITTEES

All statutory boards, commissions and Council citizen advisory bodies shall provide the Council with copies of any minutes of meetings if requested by the City Administrator, Mayor or a Council member. Communications from such boards, commissions and bodies to the City Council shall be recorded in the minutes and the City Administrator may place such communication on the consent agenda of a regular Council meeting. Should a member of the Council determine that such communication be officially responded to by the Council, the Presiding Officer shall add the matter to the regular portion of the agenda or defer it to a subsequent meeting agenda.

2.16 CITIZEN COMPLAINTS, GRIEVANCES AND RECOMMENDATIONS TO COUNCIL

Citizen input regarding the affairs of the City should always be welcomed. Moreover, all citizens have a First Amendment Right to Petition Government for a Redress of Grievances. However, the City must also conduct its business in an orderly fashion. In an effort to accommodate citizens who wish to bring important matters to the attention of the City, the following three alternatives are established for purposes of accommodating citizens while maintaining order and efficiency:

First, a citizen may speak directly to a councilperson, preferably their individual ward representative, and state their concerns. The councilperson may then present the issue directly to the full council during the "Mayor and Council Member Comments" portion of the next meeting, Section 2.06(J) of these Rules. If a majority of the council or the mayor is of the opinion that the issue should receive further attention, either may direct the City Administrator to investigate the issue further and report back to the council at the next meeting. If it appears that the issue should be formally addressed and action taken, the Council or Mayor may direct that the issue in the form of a measure be placed on the formal Agenda during the next Council session.

Second, a citizen may always appear at the Public Forum portion of the Agenda and orally present their issue before the entire Council. If the citizen desires to present written materials in addition to their oral presentation, they should deliver ten copies of those materials to the City Clerk by noon on the Wednesday prior to the next Monday evening Council Session. If, after the citizen's oral presentation, a majority of the Council or the Mayor is of the opinion that the issue should receive further attention, they may either direct the City Administrator to investigate the issue further and report back to the Council at the next meeting or if it then appears that the issue should be formally addressed and action taken, the Council or Mayor may direct that the issue in the form of a measure be placed on the formal Agenda during the next Council session.

Third, a citizen may present a formal written petition which may be signed by any number of citizens, clearly identifying a perceived problem or issue, recommending a specific solution and asking for specific action by the council. This written Petition shall be delivered to the City Clerk who will place the same in the council packets for the next meeting, if received by noon on the Wednesday prior to the following Monday council session. It is recommended that the Petitioner also appear at the Public Forum and speak in support of their Petition. If, after reviewing the written Petition and hearing the Petitioner's oral presentation, the Mayor or a majority of the council may either direct the City Administrator to investigate the issue further and report to the Council at the next session, or may direct the City Administrator to immediately place the issue on the formal Agenda for the next Council session for full consideration and appropriate follow-up by the Council.

In all three of the above alternatives, if neither the Mayor nor a majority of the Council directs the City Administrator to make an investigation and report, nor give direction to place the issue on the formal Agenda at a future meeting, the issue shall be deemed "inactive" and shall not be presented to the Council for 12 months following its initial presentation unless the Council passes a motion to reconsider the same prior to the expiration of 12 months.

2.17 FILLING COUNCIL VACANCIES

If a vacancy occurs in the office of Mayor or Council member, the Council will follow the procedures outlined in the Code of Iowa. If the Council pursues the appointment process to fill the vacancy, and in order to appoint the most qualified person available until an election is held, the Council shall widely distribute and publish a notice of the vacancy, the procedure and any application form required. The Council shall draft an application form that contains relevant questions to answer as posed by the Council. The application forms will be used in

conjunction with an interview of each candidate to aid the Council's selection of the new Council member or Mayor.

2.18 PHOTOGRAPHS, MOTION PICTURES, VIDEO TAPE – PERMISSION REQUIRED FOR ARTIFICIAL ILLUMINATION

No photographs, motion pictures, or video tapes that require the use of flash bulbs, electronic flashes, flood lights, or similar artificial illumination shall be made at City Council meetings without the consent of the Presiding Officer or a majority of the Council.

All Council meetings shall be video recorded by the City Clerk with the tapes archived for a period of three years unless certain meeting tapes need to be held longer due to legal proceedings.

2.19 COUNCIL TRAVEL

The Council may appropriate funds for Council travel in the Mayor and Council portion of the annual budget. Any Council member who desires to expend Council travel funds for the cost of such travel, lodging and meals shall have the request placed on the agenda to be considered by the Council. The Presiding Officer shall bring the item to the floor under new business and the Council shall act to by motion to approve, disapprove or modify the request.

2.20 SUSPENSION OF RULES OF PROCEDURE

All provisions of these rules not governed by the Iowa Code or the City Code may be temporarily suspended by a majority vote of the entire Council.

2.21 AMENDMENT TO RULES OF PROCEDURE

These Rules of Procedure may be amended, or new rules adopted, by a majority vote of all members of the Council, provided that the proposed amendments or new rules shall have been introduced into the record at a prior meeting.

2.22 CODE OF ETHICS

City elected and appointed officials must create public confidence where it is lacking and maintain it at all times by demonstrating a sincere adherence to the highest ethical standards. Local officials should consider it their duty to initiate open discussion on issues upon which they will act, rather than only responding to questions. A brief, non-comprehensive outline of the ethical duties and responsibilities incumbent upon all city officials is set-forth in the following paragraphs.

- A. Ensure the safety of public funds and spend them wisely and responsibly.

- B. Work efficiently, effectively and courteously with other public agencies.
- C. Ensure public disclosure of potential conflicts.
- D. Report corruption in public officials.
- E. Balance openness in government with an individual's right to privacy.
- F. Avoid favoritism in public decision-making.
- G. Consider *all* sides of an issue before voting on that issue.
- H. Avoid nepotism in appointments.
- I. Respect all individuals and demonstrate courtesy to everyone.
- J. Avoid discrimination and bias.
- K. Follow principles of merit employment. Individuals are to be appointed to city positions based on their professional qualifications.
- L. Be dedicated to the highest standards of honor and integrity in public service.
- M. Exercise independent judgment in decision-making.
- N. Abstain from the use of alcohol and non-prescription drugs before and during council sessions and official functions. You should also refrain from misuse of these substances outside of your official capacities due to your high level of visibility in the community.
- O. Avoid conflicting employment.
- P. Provide the highest quality services to the public in a cost effective manner.
- Q. Avoid the improper influence of other public officials.
- R. Avoid using your public office to gain an improper advantage or personal benefit. Avoid using for private gain, any information you may have obtained solely by virtue of holding public office.
- S. Be nonpartisan when exercising public official duties.
- T. Do not allow coercion for political contributions or for charitable fundraising.
- U. A City elected official shall not, within two years after leaving public office, act as a lobbyist for others before the governmental entity in which the public official held office.

V. An elected official shall not, after leaving office, lobby on particular matters in which they personally participated while in office.

W. Become familiar with and comply with Iowa's Gift Law, Section 68B.22 of the Iowa Code. An excellent discussion of the law, in lay person's terms, can be found in the November 2008 issue of *Cityscape* at page twelve. Any specific questions concerning the interpretation of the Gift Law should be directed to the City Attorney.

CHAPTER 3

3.01 LEGAL CONCERNS

Elected officials, like employees, may be held liable for what they both say and do, either individually or collectively. There may be case law or statutory responsibility for certain behaviors on the part of elected officials. The following is a description of the most common legal areas of concern.

Conflicts of Interest. There are a number of prohibitions commonly outlined in the statutes. Whether legally mandated or not, the following guidelines make sense, from a political, ethical and liability standpoint.

A. Elected officials should not fix their own wages or benefits during their immediate term of office.

B. Officials should not have a financial interest in, or vote on, a matter where the elected official's financial interest is especially affected.

C. An elected official should not have a personal financial interest in contractual matters over which they have any supervisory control.

D. A public officer should not hire his spouse or child as an employee.

When governing bodies hold hearings that affect individual or property rights, known as quasi-judicial proceedings, they should be governed by the same strict fairness rules that apply to cases in court. The rule basically states that hearings must not only be fair, they must also *appear* to be fair.

3.02 USE OF PUBLIC FUNDS, PROPERTY OR CREDIT

No elective officer or employee may use or authorize the use of the facilities, material or equipment of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office, for the promotion of or opposition to any ballot proposition or for any private purpose.

3.03 OPEN PUBLIC MEETINGS

Public agency actions and deliberations should be conducted openly, and all persons must be allowed to attend unless they create a disturbance that tends or may tend to interfere with the orderly conduct of the meeting, or unless otherwise excluded by law, such as closed executive sessions, labor negotiations and social gatherings unless city business is discussed. A meeting is generally defined as any gathering of a majority of governing body members where city business is discussed. All elected and appointed city officials must have a good working knowledge of Iowa Code Chapter 21, Iowa's Open Meetings Law.

Meeting places should not be designed to exclude members of the public and the time and place of a special meeting must be designated. If a meeting is relocated, final action may be taken only on written agenda items.

3.04 CLOSED EXECUTIVE SESSIONS

Closed Executive Sessions are defined as that part of a public meeting from which the public may lawfully be excluded. Executive sessions should be part of a regular or special meeting, are to state the legal purpose for the session, and are generally permissible to:

A. Review or discuss records which are required or authorized by state or federal law to be kept confidential or to be kept confidential as a condition for that governmental body's possession or continued receipt of federal funds;

B. Discuss application for letters of patent;

C. Discuss strategy with counsel in matters that are presently in litigation or where litigation is imminent where its disclosure would be likely to prejudice or disadvantage the position of the governmental body in that litigation;

D. Discuss the contents of a licensing examination or whether to initiate licensee disciplinary investigations or proceedings;

E. Avoid disclosure of specific law enforcement matters, such as current or proposed investigations, inspection or auditing techniques or schedules which if disclosed would enable law violators to avoid detection;

F. Avoid disclosure of specific law enforcement matters, such as allowable tolerances or criteria for the selection, prosecution or settlement of cases, which if disclosed would facilitate disregard of the requirements imposed by law;

G. Evaluate the professional competency of an individual whose appointment, hiring, performance, or discharge is being considered when necessary to prevent needless and irreparable injury to that individual's reputation *and that individual requests a closed session*; and

H. Discuss the purchase of particular real estate only where premature disclosure could be reasonably expected to increase the price the governmental body would be required to pay for the property.

I. Closed session discussions and results shall be confidential and not shared with the public, unless otherwise required by law.

All statutory requirements of the Iowa Open Meetings Law must be followed with proper documentation maintained. Violations of an Open Meetings requirement may result in a number of losses to the city and to the individual Council members.

3.05 FREEDOM OF INFORMATION—IOWA CODE CHAPTER 22, OPEN RECORDS

Various state and federal laws allow liberal access to public records. Public records include any communication, regardless of form, relating to the conduct of agency business.

Records should be made available for public inspection any copying during normal office hours. The City should strive to make copies “promptly” upon request, and should charge those copying fees allowed by the Appendix to the City Code.

Certain records generally may be withheld from public inspection, including but not limited to:

- A. Employee personnel files;
- B. Police investigation files *that are still open and under investigation*;
- C. Employment examinations;
- D. Certain real estate appraisals;
- E. Designs that would result in private gain and public loss;
- F. Preliminary drafts, notes, recommendations and intra-departmental memorandums, unless the communication is publicly cited in connection with a local government action;
- G. Certain library information;
- H. Financial information required in pre-qualifying bidders on public projects; and
- I. Communications between the City Attorney and elected and appointed officials, staff members and employees that is protected by the attorney-client privilege.

3.06 DISCIPLINARY ACTION—DISCHARGE AND REMOVAL FROM OFFICE

A. Appointed Employees. Discipline and discharge of appointed employees must be made in conformity with three governing documents: first, the Employee Personnel Manual, second—in the case of a union employee, the Collective Bargaining Agreement, and third, Iowa Code Section 372.15 (and City Code Section 5.10), which state in part that all persons appointed to city office may be removed by the officer or body (the council) making the appointment. Every removal must be by *written* order which shall state the *reasons* for the removal or discharge. The order must be filed with the City Clerk and a copy sent to the employee by certified mail. Within 30 days from the date a copy of the order is mailed to the employee, the employee *may* file a written request for a *public hearing* before the council on all issues connected with the removal. The *public hearing* must be held within 30 days from the date the request is filed by the employee, unless the employee requests a later date.

B. Elected Officials—The Mayor and Council Members. Iowa Code Chapter 66 sets forth two methods for removing elected city officials. First, an action may be filed in the District Court by five registered voters who are residents of the city, by the State Attorney General or by the local County Attorney. Iowa Code Section 66.3. Secondly, removal may

be accomplished by the City Council, *after* a hearing before the Council which must be initiated by *written charges* filed with the Council. However, the removal requires a two-thirds vote of the *entire* Council, or four votes of the six members. Iowa Code Section 66.29. The procedure for removal of an elected official by the City Council is set forth in Sub-Section 3.07(D) below.

In either of the above cases, the removal must be based on one or more of the following reasons set forth in Iowa Code Section 66.1A:

- A. For willful or habitual neglect or refusal to perform the duties of the office.
- B. For willful misconduct or maladministration in office.
- C. For corruption.
- D. For extortion.
- E. Upon conviction of a felony.
- F. For intoxication, or upon conviction of being intoxicated.
- G. Upon conviction of violating the provisions of chapter 68A. (Iowa's Campaign Finance Law)

3.07 ADDITIONAL REMOVAL CONSIDERATIONS.

A. Elected Officials and Appointed Officers—Willful Misconduct in Office. With regard to an allegation of willful misconduct or maladministration in office, the Council shall consider any or all of the following as conclusive evidence of such conduct:

1. Repeated public criticism of the City or any of its officials or employees, where such criticism has no reasonable basis in fact and the criticism is obviously meant to maliciously harm the reputation of the City or the individual Officer or Official;
2. Repeatedly and intentionally engaging in libelous or slanderous attacks against the City or any of its Officers, Officials or Employees, where such conduct has no reasonable basis in fact;
3. For misuse, abuse, theft or misappropriation of City funds or property; or
4. Any other conduct which reasonably tends to erode or destroy public confidence in the City, its Officers, Officials or Employees, where such conduct has no reasonable basis in fact.

B. Appointed Officers—Removal Procedure. In the event one or more of the grounds for removal as set forth in Iowa Code Section 66.1A applies to an appointed official or officer, or in the event of a violation of these Rules of Procedure by any appointed official or officer, a written complaint *may* be filed with the Mayor by any person aggrieved. The Mayor and Council shall investigate the complaint and if the same is supported by substantial, credible evidence, the Council *may*, by majority vote of the entire Council and by means of a personal, verbal admonition or written memorandum, warn the offending official or officer that the behavior or activities in question are considered improper and caution against any repetition of the same. If the official or officer continues to violate the statutory prohibitions or these

Rules of Procedure, such conduct may be deemed willful misconduct and subject the offending officer or official to removal from office pursuant to the Code of Iowa or the City Code. However, a verbal or written warning shall not be a prerequisite for commencing a removal action before the Council or in District Court.

C. Elected Officials—Neglect of Office. Since a municipality can only operate as such by action and direction of its elected officials, and further, since all actions of a City's elected Council and Mayor must be taken during a regular or special Council Session, consistent attendance at all Council Sessions is the first duty of an elected Mayor or Council Member. Therefore, in determining whether or not sufficient reasons exist for the removal of an elected official pursuant to an allegation of willful or habitual neglect or refusal to perform the duties of the office, the Council shall consider all or any of the following as conclusive evidence of habitual neglect of the duties of the office:

1. Unexcused absences from four or more regular or special council sessions in any consecutive 12 month period;
2. Habitual tardiness in attending regular or special council sessions;
3. Repeated failure to attend or participate in a committee assignment or act as the Council's or Mayor's Appointed Representative or liaison with an ancillary body; or
4. Refusal to vote on any measure, except where a bona fide and legitimate conflict of interest exists and the reason for the conflict is stated at the time of the roll-call vote on the measure.

D. Elected Officials—Removal Procedure. Any aggrieved person may file a written petition with the city council seeking the removal of an elected city official. The petition must allege one or more of the reasons or grounds for removal as set forth in Iowa Code Section 66.1(A) and Section 3.06(B) of these Rules and must be supported by a sworn affidavit alleging personal, first hand knowledge of facts which, if proven by a preponderance of the evidence, would warrant removal.

Provided the City has adopted an ordinance pursuant to Iowa Code Section 66.30 as to the manner of preferring and hearing removal procedures, the following procedure shall be followed:

1. The Petition shall be forwarded by the Council to the Mayor for an initial review to determine whether or not the allegations fall within the ambit of the reasons or grounds for removal set forth in Iowa Code Section 66.1A and Section 3.06(B) of these Rules and, secondly, if the attached affidavit or affidavits contain evidence to support the allegations in the Petition.
2. Within 14 calendar days after the Petition has been forwarded to the Mayor, the Mayor shall submit a written report to the Council stating whether or not the proper allegations have been made and if so, whether or not sufficient credible

evidence exists that may warrant removal. If the report is in the negative, the petition will be dismissed.

3. If the Mayor's report finds that proper grounds have been alleged and that sufficient credible evidence may exist to support the Petition for Removal, the Mayor shall appoint a review board consisting of three council persons and the City Attorney to review the Petition and make a formal recommendation to the council within 14 days. If the Petition for Removal involves a councilperson, or if a councilperson filed the Petition, neither shall serve on the review board. A majority vote of the three council members shall determine whether or not to recommend further proceedings before the full council or dismiss the Petition. The City Attorney shall advise the review board with regard to all legal issues but shall not vote.
4. The review board's recommendation shall be considered by the full council at its next regular session. The council, by a two-thirds majority of the full council, shall vote on whether or not to proceed with the removal hearing or dismiss the Petition. If the Petition is dismissed, the council shall not consider a similar Petition against the same elected official, based on the same or similar facts for a period of 12 months from the date of dismissal. However, pursuant to Iowa Code Section 66.30, such dismissal shall not act as a bar to a proceeding in District Court seeking removal of the same individual.
5. If the council votes to proceed with the removal, a public hearing shall be scheduled within 30 days to determine whether or not to remove the official. For the Petition to succeed, a two-thirds majority of the entire council must vote for removal. The Mayor shall not vote. The council shall hear all relevant evidence supporting the Petition and all relevant rebuttal evidence offered by the elected official. The Mayor or any Notary Public present may administer the oath to the witnesses. The City Attorney shall represent the City and shall present the evidence in support of the Petition.
6. If The Mayor is the subject of the Removal Petition, the Mayor Pro Tempore shall serve as Mayor for all removal proceedings set forth in these Rules.
7. A majority vote of the entire council shall compel the Mayor or Mayor Pro Tempore to appoint the review board and move forward with the proceeding in the event the Mayor refuses to act.
8. If a Removal Order is issued, the removed official may appeal to the District Court of Story County by filing a petition for *writ of certiorari* within the time prescribed by the Iowa Rules of Civil Procedure.
9. Any elected official who is the subject of a Petition for Removal may be represented by counsel at all stages of the proceeding at their own expense.