

CHAPTER 5

OPERATING PROCEDURES

5.01 Oaths	5.07 Conflict of Interest
5.02 Bonds	5.08 Resignations
5.03 Duties: General	5.09 Removal of Appointed Officers and Employees
5.04 Books and Records	5.10 Removal of Elected Officers
5.05 Transfer to Successor	5.11 Vacancies
5.06 Meetings	5.12 Gifts

5.01 OATHS. The oath of office shall be required and administered in accordance with the following:

1. **Qualify for Office.** Each elected or appointed officer shall qualify for office by taking the prescribed oath and by giving, when required, a bond. The oath shall be taken, and bond provided, after being certified as elected but not later than noon of the first day which is not a Sunday or a legal holiday in January of the first year of the term for which the officer was elected.

(Code of Iowa, Sec. 63.1)

2. **Prescribed Oath.** The prescribed oath is: “I, (name), do solemnly swear that I 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 duties of the office of (name of office) in Asbury as now or hereafter required by law.”

(Code of Iowa, Sec. 63.10)

3. **Officers Empowered to Administer Oaths.** The following are empowered to administer oaths and to take affirmations in any matter pertaining to the business of their respective offices:

- A. Mayor
- B. City Clerk
- C. Members of all boards, commissions or bodies created by law.

(Code of Iowa, Sec. 63A.2)

5.02 BONDS. Surety bonds are provided in accordance with the following:

1. **Required.** The Council shall provide by resolution for a surety bond or blanket position bond running to the City and covering the Mayor, Clerk, Treasurer and such other officers and employees as may be necessary and advisable.

(Code of Iowa, Sec. 64.13)

2. Bonds Approved. Bonds shall be approved by the Council.
(Code of Iowa, Sec. 64.19)
3. Bonds Filed. All bonds, after approval and proper record, shall be filed with the Clerk.
(Code of Iowa, Sec. 64.23[6])
4. Record. The Clerk shall keep a book, to be known as the “Record of Official Bonds” in which shall be recorded the official bonds of all City officers, elective or appointive.
(Code of Iowa, Sec. 64.24[3])

5.03 DUTIES: GENERAL. Each municipal officer shall exercise the powers and perform the duties prescribed by law and this Code of Ordinances, or as otherwise directed by the Council unless contrary to State law or City charter.

(Code of Iowa, Sec. 372.13[4])

5.04 BOOKS AND RECORDS. All books and records required to be kept by law or ordinance shall be open to examination by the public upon request, unless some other provisions of law expressly limit such right or require such records to be kept confidential. Access to public records which are combined with data processing software shall be in accordance with policies and procedures established by the City.

(Code of Iowa, Sec. 22.2 & 22.3A)

5.05 TRANSFER TO SUCCESSOR. Each officer shall transfer to his or her successor in office all books, papers, records, documents and property in the officer’s custody and appertaining to that office.

(Code of Iowa, Sec. 372.13[4])

5.06 MEETINGS. All meetings of the Council, any board or commission, or any multi-membered body formally and directly created by any of the foregoing bodies shall be held in accordance with the following:

1. Notice of Meetings. Reasonable notice, as defined by State law, of the time, date and place of each meeting, and its tentative agenda shall be given.

(Code of Iowa, Sec. 21.4)

2. Meetings Open. All meetings shall be held in open session unless closed sessions are held as expressly permitted by State law.

(Code of Iowa, Sec. 21.3)

3. Minutes. Minutes shall be kept of all meetings showing the date, time and place, the members present, and the action taken at each meeting. The minutes shall show the results of each vote taken and

information sufficient to indicate the vote of each member present. The vote of each member present shall be made public at the open session. The minutes shall be public records open to public inspection.

(Code of Iowa, Sec. 21.3)

4. Closed Session. A closed session may be held only by affirmative vote of either two-thirds of the body or all of the members present at the meeting and in accordance with Chapter 21 of the Code of Iowa.

(Code of Iowa, Sec. 21.5)

5. Cameras and Recorders. The public may use cameras or recording devices at any open session.

(Code of Iowa, Sec. 21.7)

6. Electronic Meetings. A meeting may be conducted by electronic means only in circumstances where such a meeting in person is impossible or impractical and then only in compliance with the provisions of Chapter 21 of the Code of Iowa.

(Code of Iowa, Sec. 21.8)

5.07 CONFLICT OF INTEREST. A City officer or employee shall not have an interest, direct or indirect, in any contract or job of work or material or the profits thereof or services to be furnished or performed for the City, unless expressly permitted by law. A contract entered into in violation of this section is void. The provisions of this section do not apply to:

(Code of Iowa, Sec. 362.5)

1. Compensation of Officers. The payment of lawful compensation of a City officer or employee holding more than one City office or position, the holding of which is not incompatible with another public office or is not prohibited by law.

(Code of Iowa, Sec. 362.5[1])

2. Investment of Funds. The designation of a bank or trust company as a depository, paying agent, or for investment of funds.

(Code of Iowa, Sec. 362.5[2])

3. City Treasurer. An employee of a bank or trust company, who serves as Treasurer of the City.

(Code of Iowa, Sec. 362.5[3])

4. Stock Interests. Contracts in which a City officer or employee has an interest solely by reason of employment, or a stock interest of the kind described in subsection 8 of this section, or both, if the contracts are made by competitive bid in writing, publicly invited and opened, or if the remuneration of employment will not be directly affected as a result

of the contract and the duties of employment do not directly involve the procurement or preparation of any part of the contract. The competitive bid qualification of this subsection does not apply to a contract for professional services not customarily awarded by competitive bid.

(Code of Iowa, Sec. 362.5[5])

5. Newspaper. The designation of an official newspaper.

(Code of Iowa, Sec. 362.5[6])

6. Existing Contracts. A contract in which a City officer or employee has an interest if the contract was made before the time the officer or employee was elected or appointed, but the contract may not be renewed.

(Code of Iowa, Sec. 362.5[7])

7. Volunteers. Contracts with volunteer fire fighters or civil defense volunteers.

(Code of Iowa, Sec. 362.5[8])

8. Corporations. A contract with a corporation in which a City officer or employee has an interest by reason of stock holdings when less than five percent (5%) of the outstanding stock of the corporation is owned or controlled directly or indirectly by the officer or employee or the spouse or immediate family of such officer or employee.

(Code of Iowa, Sec. 362.5[9])

9. Contracts. Contracts made by the City upon competitive bid in writing, publicly invited and opened.

(Code of Iowa, Sec. 362.5[4])

10. Cumulative Purchases. Contracts not otherwise permitted by this section, for the purchase of goods or services which benefit a City officer or employee, if the purchases benefiting that officer or employee do not exceed a cumulative total purchase price of twenty-five hundred dollars (\$2,500.00) in a fiscal year.

(Code of Iowa, Sec. 362.5[11])

11. Franchise Agreements. Franchise agreements between the City and a utility and contracts entered into by the City for the provision of essential City utility services.

(Code of Iowa, Sec. 362.5[12])

12. Third Party Contracts. A contract that is a bond, note or other obligation of the City and the contract is not acquired directly from the

City but is acquired in a transaction with a third party who may or may not be the original underwriter, purchaser or obligee of the contract.

(Code of Iowa, Sec. 362.5[13])

5.08 RESIGNATIONS. An elected officer who wishes to resign may do so by submitting a resignation in writing to the Clerk so that it shall be properly recorded and considered. A person who resigns from an elective office is not eligible for appointment to the same office during the time for which the person was elected, if during that time the compensation of the office has been increased.

(Code of Iowa, Sec. 372.13[9])

5.09 REMOVAL OF APPOINTED OFFICERS AND EMPLOYEES.

Except as otherwise provided by State or City law, all persons appointed to City office or employment may be removed by the officer or body making the appointment, but every such removal shall be by written order. The order shall give the reasons, be filed in the office of the Clerk, and a copy shall be sent by certified mail to the person removed, who, upon request filed with the Clerk within thirty (30) days after the date of mailing the copy, shall be granted a public hearing before the Council on all issues connected with the removal. The hearing shall be held within thirty (30) days after the date the request is filed, unless the person removed requests a later date.

(Code of Iowa, Sec. 372.15)

5.10 REMOVAL OF ELECTED OFFICERS.

1. Elected officers may be removed from office involuntarily for any of the following reasons:

A. Failure to meet the qualifications for office or to be elected to office.

B. Breach of the public trust, whether either willful or habitual neglect or refusal to perform the duties of the office or using the position, powers or privileges of office, or any public property, to serve a private interest rather than the public interest.

C. Commission of any felony, whether or not in the course of performing the duties of office.

2. Elected officers may be removed from office involuntarily by the following procedures:

A. The City Council, upon receipt of any complaint alleging grounds for removal of an elected officer, may direct the City Attorney to investigate and to determine whether a hearing should be held upon specific charges. The City Council may direct the City Police to assist the City Attorney in the investigation. Upon

completion of the investigation, the City Attorney shall make a written recommendation to the City Council whether a hearing should be held upon specific charges.

B. If a hearing is recommended, the City Council may adopt a resolution establishing a time and place for a hearing upon such charges before the City Council.

C. Upon passage of such a resolution, the City Clerk shall serve written notice promptly upon the accused officer, either in person or by regular mail. The notice shall state the time and place of hearing and of the specific charges which will be heard. The accused officer shall make a written response to the charges within twenty (20) days of receipt of written notice. The City Attorney shall promptly, upon request by the accused officer, provide the names of witnesses and the factual bases upon which the specific charges were recommended.

D. Notice of the time and place of the hearing on the removal of said officer shall be published not less than thirty (30) days prior to such hearing, except that the City Council may continue the hearing to a later date in the interests of justice and provide for such notice as the circumstances reasonably allow.

E. At the hearing, the City Attorney shall present the case upon the charges against the accused officer and shall have the burden of proof by clear and convincing evidence. The accused officer shall have a right to be represented by counsel. Both sides may present evidence, cross-examine witnesses and make an argument. The City Council may receive such evidence and argument as it deems relevant and not unduly cumulative, but shall not be bound to the rules of evidence in a court of law. The proceedings shall be open to the public and the City Council may allow the public to be heard. The hearing may be continued from time to time as the case requires.

F. After the hearing, the City Council shall deliberate and render a decision based upon the evidence and arguments. A decision in favor of removal shall require at least a 2/3 majority vote of the entire City Council, not including the accused officer. In the event of special mitigating circumstances, the City Council may impose a lesser discipline than removal. The decision of the City Council shall be final and effective immediately.

G. No elected officer shall be suspended prior to the decision except in the following circumstances: pursuant to the court

procedures of Iowa Code Chapter 66; failure to respond to the charges; for failure to appear at the hearing; or with the agreement of the accused officer. A suspended officer may be replaced temporarily by appointment by the City Council.

3. In the event that the accused or potential accused is a member of the City Council, said member shall recuse himself or herself and shall not participate in the procedures outlined in this section.

4. Every person subject to this section, by accepting or remaining in elected office after the effective date of the ordinance codified in this section[†] shall be deemed to have waived any and all claims existing or thereafter arising for damages against the City, the City Council, officers and employees of the City, the City Attorney, all witnesses, and any and all other persons participating in such proceedings voluntarily or involuntarily, based upon the content or nature of such participation. The extent of such waiver shall accord such persons participating in such proceedings at least the same level of freedom from civil liability for damages as if such proceedings were conducted in a court of law.

5.11 VACANCIES. A vacancy in an elective City office during a term of office shall be filled, at the Council's option, by one of the two following procedures:

(Code of Iowa, Sec. 372.13 [2])

1. Appointment. By appointment following public notice by the remaining members of the Council within forty (40) days after the vacancy occurs, except that if the remaining members do not constitute a quorum of the full membership, or if a petition is filed requesting an election, the Council shall call a special election as provided by law.

(Code of Iowa, Sec. 372.13 [2a])

2. Election. By a special election held to fill the office for the remaining balance of the unexpired term as provided by law.

(Code of Iowa, Sec. 372.13 [2b])

5.12 GIFTS. Except as otherwise provided in Chapter 68B of the Code of Iowa, a public official, public employee or candidate, or that person's immediate family member, shall not, directly or indirectly, accept or receive any gift or series of gifts from a "restricted donor" as defined in Chapter 68B and a restricted donor shall not, directly or indirectly, individually or jointly with one or more other restricted donors, offer or make a gift or a series of gifts to a public official, public employee or candidate.

[†] **EDITOR'S NOTE:** Ordinance No. 1-00 was passed and approved by the Council on January 11, 2000.

(Code of Iowa, Sec. 68B.22)

[The next page is 31