

CHAPTER 5 – OPERATING PROCEDURES

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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 or as provided in Code of Iowa, Sections 63.3 and 63.4.

(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 Wahpeton 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 office:
 - 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 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.

5.06 MEETINGS.

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:

(Code of Iowa, Sec. 21.4)

1. NOTICE OF MEETING (PUBLIC NOTICE) Except as provided in subsection 3, a governmental body shall give notice of the time, date, and place of each meeting including a reconvened meeting of the governmental body, and the tentative agenda of the meeting, in a manner reasonably calculated to apprise the public of that information. Reasonable notice shall include advising the news media who have filed a request for notice with the governmental body and posting the notice on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting, or if no such office exists, at the building in which the meeting is to be held.

(Code of Iowa, Sec. 21.4)

- 2.a. TWENTY-FOUR HOUR NOTICE. Notice conforming with all of the requirements of subsection 1 of this section shall be given at least twenty-four hours prior to the commencement of any meeting of a governmental body unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible shall be given. Each meeting shall be held at a place reasonably accessible to the public, and at a time reasonably convenient to the public, unless for good cause such a place or time is impossible or impractical. Special access to the meeting may be granted to persons with disabilities.
- b. When it is necessary to hold a meeting on less than twenty-four hours' notice, or at a place that is not reasonably accessible to the public, or at a time that is not reasonably convenient to the public, the nature of the good cause justifying that departure from the normal requirements shall be stated in the minutes.
3. Subsection 1 does not apply to any of the following:
 - a. A meeting reconvened within four hours of the start of its recess, where an announcement of the time, date, and place of the reconvened meeting is made at the original meeting in open session and recorded in the minutes of the meeting and there is no change in the agenda.
 - b. A meeting held by a formally constituted subunit of a parent governmental body during a lawful meeting of the parent governmental body or during a recess in that meeting of up to four hours, or a meeting of that subunit immediately following the meeting of the parent governmental body, if the meeting of that subunit is publicly announced in open session at the parent meeting and the subject of the meeting reasonably coincides with the subjects discussed or acted upon by the parent governmental body.
4. If another section of the Code requires a manner of giving specific notice of a meeting, hearing, or an intent to take action by a governmental body, compliance with that section shall constitute compliance with the notice requirements of this section.
5. 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)

6. 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)

7. 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. A governmental body may hold a closed session only to the extent a closed session is necessary for any of the following reasons:

(Code of Iowa, Sec. 21.5)

- a. To 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. To 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.
- c. To discuss the contents of a licensing examination or whether to initiate licensee disciplinary investigations or proceedings if the governmental body is a licensing or examining board.
- d. To 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.
- e. To 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 requirements imposed by law.
- f. To 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.
- g. To discuss the purchase of particular real estate only where premature disclosure could be reasonably expected to increase the price the governmental body would have to pay for that property. The minutes and the tape recording of a session closed under this paragraph shall be available for public examination when the transaction discussed is completed.
- h. Information concerning security procedures or emergency preparedness information developed and maintained by a government body for the protection of governmental employees, visitors to the government body, persons in the care, custody, or under the control of the government body, or property under the jurisdiction of the government body, if disclosure could reasonably be expected to jeopardize such employees, visitors, persons, or property.
 - 1. Such information includes but is not limited to information directly related to vulnerability assessments; information contained in records relating to security measures such as security and response plans, security codes and combinations, passwords, restricted area passes, keys, and security or response procedures; emergency response protocols; and information contained in records that if disclosed would significantly increase the vulnerability of critical physical systems or infrastructures of a government body to attack.
 - 2. This section shall only apply to information held by a government body that has adopted a rule or policy identifying the specific records or class of records to which this section applies and which is contained in such a record.
- i. The vote of each member on the question of holding the closed session and the reason for holding the closed session by reference to a specific exemption under this section shall be announced publicly at the open session and entered in the minutes. A governmental body shall not discuss any business during a closed session which does not directly relate to the specific reason announced as justification for the closed session.

- j. Final action by any governmental body on any matter shall be taken in an open session unless some other provision of the Code expressly permits such actions to be taken in closed session.
- k. A governmental body shall keep detailed minutes of all discussion, persons present, and action occurring at a closed session, and shall also tape record all of the closed session. The detailed minutes and tape recording of a closed session shall be sealed and shall not be public records open to public inspection. However, upon order of the court in an action to enforce this chapter, the detailed minutes and tape recording shall be unsealed and examined by the court in camera. The court shall then determine what part, if any, of the minutes should be disclosed to the party seeking enforcement of this chapter for use in that enforcement proceeding. In determining whether any portion of the minutes or recording shall be disclosed to such a party for this purpose, the court shall weigh the prejudicial effects to the public interest of the disclosure of any portion of the minutes or recording in question, against its probative value as evidence in an enforcement proceeding. After such a determination, the court may permit inspection and use of all or portions of the detailed minutes and tape recording by the party seeking enforcement of this chapter. A governmental body shall keep the detailed minutes and tape recording of any closed session for a period of at least one year from the date of that meeting.
- l. Nothing in this section requires a governmental body to hold a closed session to discuss or act upon any matter.

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

(Code of Iowa, Sec. 21.7)

9. 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)

10. Cancellation or Postponement. The mayor of the city of Wahpeton shall have the authority to cancel, or postpone and reschedule a city council meeting, when necessary, due to adverse weather, lack of a quorum, or other emergency circumstances. The Mayor shall notify the city clerk/administrator of any cancellation or postponement of a council meeting. The clerk/administrator shall then promptly notify all council members by electronic mail, telephone or fax of the cancellation or postponement and shall post a notice of the cancellation or postponement where agendas are normally posted.

(Ord. 162 March 2020 Supp.)

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.

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 (\$2500.00) 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 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. The appointment shall be made within sixty (60) days after the vacancy occurs and shall be for the period until the next regular City election unless there is an intervening special election for the City, in which event the election for the office shall be placed on the ballot at such special election. If the Council chooses to proceed under this subsection, the Council shall publish notice of the appointment in accordance with Section 372.13 of the *Code of Iowa*. 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. Special 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])

5.11 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.

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

5.12 RIGHT TO EXAMINE PUBLIC RECORDS — EXCEPTIONS.

1. Every person shall have the right to examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in a public record. Unless otherwise provided for by law, the right to examine a public record shall include the right to examine a public record without charge while the public record is in the physical possession of the custodian of the public record. The right to copy a public record shall include the right to make photographs or photographic copies while the public record is in the possession of the custodian of the public record. All rights under this section are in addition to the right to obtain a certified copy of a public record under Code of Iowa, section 622.46.
2. A government body shall not prevent the examination or copying of a public record by contracting with a nongovernment body to perform any of its duties or functions.
3. However, notwithstanding subsections 1 and 2, a government body is not required to permit access to or use of the following:
 - a. A geographic computer database by any person except upon terms and conditions acceptable to the governing body. The governing body shall establish reasonable rates and procedures for the retrieval of specified records, which are not confidential records, stored in the database upon the request of any person.
 - b. Data processing software developed by the government body, as provided in Code of Iowa, section 22.3A.

(Code of Iowa Sec, 22.2)

4. The City will not release confidential records as listed and described in Code of Iowa, Chapter 22.7.

5.13 SUPERVISION — FEES.

1. The examination and copying of public records shall be done under the supervision of the lawful custodian of the records or the custodian's authorized designee. The lawful custodian shall not require the physical presence of a person requesting or receiving a copy of a public record and shall fulfill requests for a copy of a public record received in writing, by telephone, or by electronic means. Fulfillment of a request for a copy of a public record may be contingent upon receipt of payment of expenses to be incurred in fulfilling the request and such estimated expenses shall be communicated to the requester upon receipt of the request. The lawful custodian may adopt and enforce reasonable rules regarding the examination and copying of the records and the protection of the records against damage or disorganization. The lawful custodian shall provide a suitable place for the examination and copying of the records, but if it is impracticable to do the examination and copying of the records in the office of the lawful custodian, the person desiring to examine or copy shall pay any necessary expenses of providing a place for the examination and copying.
2. All expenses of the examination and copying shall be paid by the person desiring to examine or copy. The lawful custodian may charge a reasonable fee for the services of the lawful custodian or the custodian's authorized designee in supervising the examination and copying of the records. If copy equipment is available at the office of the lawful custodian of any public records, the lawful custodian shall provide any person a reasonable number of copies of any public record in the custody of the office upon the payment of a fee. The fee for the copying service as determined by the lawful custodian shall not exceed the actual cost of providing the service. Actual costs shall include only those expenses directly attributable to supervising the examination of and making and providing copies of public records. Actual costs shall not include charges for ordinary expenses or costs such as employment benefits, depreciation, maintenance, electricity, or insurance associated with the administration of the office of the lawful custodian.

(Code of Iowa, Sec. 22.3)

5.14 HOURS WHEN AVAILABLE.

The rights of persons under this chapter may be exercised at any time during the customary office hours of the lawful custodian of the records. However, if the lawful custodian does not have customary office hours of at least thirty hours per week, such right may be exercised at any time from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m. Monday through Friday, excluding legal holidays, unless the person exercising such right and the lawful custodian agree on a different time.

(Code of Iowa, Sec. 22.4)

5.15 UNLAWFUL USE OF CITY PROPERTY.

No person shall use or permit any other person to use City property owned or leased by the City for any private purpose and for personal gain, to the detriment of the City.

(Code of Iowa, Sec. 721.2(5))