

ORDINANCE NO. 1478

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON relating to administration and personnel; establishing a standard of behavior policy for public officials, board members, commissioners, and City personnel; adding a new chapter to Title 2 DMMC entitled "Code of Ethics"; codifying a new chapter in Title 2 DMMC; and providing for disciplinary action.

WHEREAS, at its April 24, 2008 meeting, Council directed staff to establish a standard of behavior policy for public officials, board members, commissioners, and City personnel, and

WHEREAS, Des Moines City Council wishes to adopt this ordinance establishing a Code of Ethics policy for elected officials, board members, commissioners, and City personnel; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:

Sec. 1. Policy--Declared.

(1) The purpose of this ordinance is to acknowledge that all public officials, board members, commissioners, and City personnel hold a public trust and are expected to adhere to a standard of behavior that does not violate, provide an opportunity to violate, or appear to violate that trust, and that shall not present apparent or actual conflicts of interest between the public trust and private interests. In addition, it is declared to be the policy of the City that no employee shall use his or her public employment for the private financial gain of that employee, or to secure special privileges for the public official or employee or any other person.

(2) The City of Des Moines is committed to conducting its business in a fair, open, efficient, and accountable manner. Public officials, board members, commissioners, and City personnel shall conduct their public and private actions and financial dealings in a manner consistent with this policy. Public officials, board members, commissioners, and City personnel are assumed and expected to act in accordance with all laws and codes of ethics that may apply to his or her position, as well as striving to avoid even an appearance of impropriety in the conduct of his or her office or business. Each employee should be informed of this Code of Ethics and meet its requirements.

Sec. 2. Definitions.

(1) **Use of words and phrases.** As used in this ordinance, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings. To the extent that the meanings of words and/or phrases require clarification, the City shall consider the definitions and content contained in chapter 42.52 RCW.

(2) **Board member.** "Board member" includes members of City Boards, Commissions, Committees, or other multi-member bodies appointed by the City Council or by the City Manager.

(3) **City Council.** "City Council" or "Councilmember" includes elected members of the City Council of the City of Des Moines, and members of the City Council appointed to fill unexpired terms of vacant positions on the City Council.

(4) **Employee.** "Employee" of the City of Des Moines, includes all full-time, part-time, temporary, and permanent employees of the City, and all volunteers of the City. The term also includes the City Manager except where the context indicates otherwise. For the purposes hereof, the terms "City employee" and "employee" are synonymous.

(5) **Family.** "Family" includes spouse, parent, child, sibling, aunt, uncle, niece, nephew, cousin, grandchild, grandparent or any parent-in-law, son-or daughter-in-law, or brother-or sister-in-law. For the purposes hereof, "Immediate Family" means spouse and dependent children.

(6) **Financial interest.** "Financial interest" means direct or indirect monetary or material benefit accruing to a Councilmember or employee as a result of a transaction or contract which is, or may be, the subject of an official act or action by or with the City, except for such transactions or contracts which confer similar benefits upon all other persons and/or property similarly situated. For purposes of this ordinance, a Councilmember or employee shall be deemed to have a financial interest in the affairs of:

(a) Any close family member of the Councilmember or employee, or any person with whom the Councilmember or employee has a close or on-going business relationship;

(b) Any business entity, company, corporation, partnership, joint venture in which the Councilmember or employee is an officer, director, agent, consultant or employee;

(c) Any corporation in which the Councilmember or employee holds the legal, equitable or beneficial ownership of more than one percent (1%) of the outstanding stock, directly or indirectly;

(d) Any person or business entity with whom/which the Councilmember or employee has a contractual relationship; provided, that a contractual obligation of less than five hundred dollars (\$500.00), a commercially reasonable loan made in the ordinary course of business, or a contract for a commercial retail sale shall not create an interest in violation of the Code of Ethics.

(7) **Exceptions.** Notwithstanding the provisions of section 2(7)(a), (b), and (c) of this ordinance, a financial interest shall not be deemed to exist in any component investment within any fund or plan where an owner of an interest in a mutual or other pooled investment fund or in any employee or retirement benefit plan (including without limitation, pension plans, profit sharing plans and deferred compensation plans) when a public official, board member, commissioner, or City employee:

(a) has no right to control or influence the selection of component investments;

(b) has not influenced the selection of component investments; and,

(c) has not created or used the fund or plan to subvert the intent of this ordinance.

(8) Gift. "Gift" means a rendering of money, property, services, discount, loan forgiveness, payment of indebtedness, reimbursements from or payments by persons, other than the City of Des Moines for travel or lodging or anything else of value in return for which legal consideration of equal or greater value is not given and received, EXCLUDING:

(a) Things of minimal value;

(b) Any contribution under chapter 42.17 RCW (Disclosure - Campaign Finances - Lobbying - Records);

(c) Any informational material transferred for the purpose of informing the recipient about matters pertaining to official City business, and that is not intended to financially benefit that recipient;

(d) Any symbolic presentation not intended to financially benefit the recipient;

(e) Things of value not used and that, within thirty (30) days after receipt, are returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes;

(f) Things of value received in the normal course of private business or social interaction or from family that are not related to public policy decisions or City actions;

(g) The acceptance of a gift on behalf of the City pursuant to City Council rules regarding acceptance to gifts.

(9) Manager. "Manager" means the individual who has been appointed the City Manager of the City of Des Moines by the Des Moines City Council. For the purposes hereof, the terms "City Manager" and "Manager" are synonymous/

(10) Public official. "Public official" includes, except where the context indicates otherwise, Councilmembers board members, and commissioners.

(11) Remote interest. A remote interest may be deemed to exist where an individual is:

(a) An unpaid officer, board member, or other person who functions in a decision-making capacity which can influence policy or funding of a corporation, partnership, joint venture or other entity;

(b) A landlord or tenant of an entity contracting with the City of Des Moines; or,

(c) A holder of less than one percent (1%) of the shares of, or ownership interest in, a business entity contracting with the City; provided, no interest shall be deemed to be remote where a Councilmember influences or attempts to influence any other Councilmember or employee to take any action which financially benefits the Councilmember by or through the interest.

Sec. 3. Use of City property. No Councilmember, board member, commissioner, or employee shall request, or permit, the use of City vehicles, equipment, materials or property for personal use, personal convenience or profit. The use of all City property shall be restricted to that consistent with City policy. Councilmembers, board members, commissioners, and employees shall take care to properly use, maintain and avoid damage of City property and shall be held accountable and responsible for all items of personal property assigned to them during their term or employment.

Sec. 4. Personal gain or profit.

(1) A Councilmember, board member, commissioner or employee shall not knowingly use his or her office or position for personal or family gain or profit.

(2) A Councilmember, board member, commissioner or employee shall not use City-owned property or City services for personal or family gain or profit.

(3) A Councilmember, board member, commissioner, or employee shall not use information acquired in confidence from the City customer, supplier, lessee or contractor for other than City purposes.

Sec. 5. Conflict of interest.

(1) No Councilmember, board member, commissioner, or employee shall engage in any act which is in conflict with, or creates an appearance of conflict with, the performance of official duties. A Councilmember, board member, commissioner, or employee is deemed to have a conflict of interest if the Councilmember, board member, commissioner, or employee engages in any of, but not limited to, the following acts:

(a) Employs or uses any person, property, or money under the Councilmember's, board member's, commissioner's or employee's official control, or in the Councilmember's, board member's, commissioner's, or employee's official custody, for the private benefit or gain of that Councilmember, board member, commissioner, or employee or any person or entity other than the City;

(b) Uses, or attempts to use, his or her official position to secure privileges or exemptions for that

Councilmember, board member, commissioner, or employee or any other person or entity;

(c) Accepts, agrees to accept, or solicits any gift, favor, reward, gratuity, or anything of economic value based upon an implicit or explicit understanding that the official services of the Councilmember, board member, commissioner, or employee will be provided, or official actions of the Councilmember, board member, commissioner, or employee would be influenced, thereby;

(d) Influences the selection or non-selection of or the conduct of business between the City and any entity when the Councilmember, board member, commissioner, or employee has a financial interest.

(e) Solicits for himself or herself or for another, a gift or any other thing of value from the City or from any person or entity having dealings with the City; provided, however, that no conflict of interest for the Councilmember, board member, commissioner, or employee shall be deemed to exist with respect to solicitation for campaign contributions required to be reported under chapter 42.17 RCW or for charitable contributions.

(f) Accepts any retainer, compensation, gift or other thing of value which is contingent upon a specific action or non-action by the City Council, a board or commission of the City or any employee or employees of the City.

(g) Accepts a gift in any manner other than as provided in section 7 (Acceptance of Gifts) of this ordinance.

(h) Intentionally uses or discloses information not available to the general public and acquired by reason of his or her official position which financially benefits himself or herself, family, friends or others.

(i) Accepts, agrees to accept, or solicits any gift, favor, reward, gratuity, or anything of economic value from any person, corporation, or entity involved in a transaction or contract which is, or may be, the subject of official action by the City; provided, that the prohibition against such acceptance shall not apply to:

(A) Attendance at a hosted reception or meal when provided in conjunction with a meeting directly related to the conduct of City business or where official attendance by the Councilmember, board member, commissioner, or employee as a staff representative is appropriate;

(B) An award publicly presented in recognition of public service; or

(C) Any gift which would have been offered or given to the Councilmember, board member, commissioner, or employee.

(j) Accepts employment or engages in any business or professional activity which reasonably could conflict with performance of the Councilmember's, board member's, commissioner's, or employee's official responsibilities, or which reasonably could require the disclosure of confidential information acquired by reason of public employment;

(k) Engages in, accepts private employment from, or renders services for private interests when such employment or services are incompatible with the proper discharge of official duties, or would tend to impair independence of judgment or action in the performance of official duties.

(2) A Councilmember, board member, or commissioner shall not take part in any Council, Board, or Commission action, as that term is defined in chapter 42.30 RCW, concerning any contract, property, or other matter of any kind, in which the Councilmember, board member, or commissioner, or his or her immediate family, has a financial interest, or which otherwise creates a conflict of interest.

(3) A Councilmember, board member, or commissioner shall disclose the fact and extent of a remote interest for the official minutes of the City Council or Board or Commission prior to taking any action related to the interest and, thereafter, all action taken by the City Council, or Board or Commission related to such interest shall be by a vote sufficient for the purpose without counting the vote of the Councilmember or Board Member having the remote interest.

(4) Restrictions after leaving City.

(a) For one (1) year after leaving the City, a Councilmember, board member, commissioner, or employee may not hold or acquire a financial interest, direct or indirect, personally or through their family, in any contract made by, through, or under their supervision, or accept, directly or indirectly, any compensation, gratuity, or reward from any person interested in such a contract or transaction.

(b) For one (1) year after leaving the City, a Councilmember, board member, commissioner, or employee may not (i) assist anyone in proceedings involving the City where such Councilmember, board member, commissioner, or employee worked on a matter in which they were officially involved in the course of their duties; (ii) represent any private person as an advocate on a matter in which they were involved; or (iii) compete for a City contract when they were involved in determining the scope of work or the selection process. A Councilmember, board member, commissioner, or employee may never disclose or use the City's privileged or proprietary information except to perform official duties.

Sec. 6. Conflict of interest-Contracts. No Councilmember, board member, commissioner, or employee shall be beneficially interested, directly or indirectly, in any contract, sale, lease, or purchase which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of that Councilmember,

board member, commissioner, or employee, and no Councilmember, board member, commissioner, or employee shall accept, directly or indirectly, any compensation, gratuity, or reward from any other person or entity beneficially interested therein, except as permitted by state law, RCW 42.23.030 and 42.23.040.

Sec. 7. Acceptance of gifts. Except as provided in section 2(8) and/or section 5(1)(i)(A), (B) and (C), a Councilmember, board member, commissioner, or employee may not accept gifts of cash in any amount, nor any personal gifts.

Sec. 8. Campaign/political activities. Councilmembers, board members, commissioners, and employees shall have the right to vote and to express their opinions on all political subjects and candidates and to hold any political office or participate in the management of a partisan, political campaign. Councilmembers, board members, commissioners, and employees shall further have the right to participate fully in campaigns relating to constitutional amendments, referendums, initiatives, and issues of a similar character, and for nonpartisan offices. However, the said rights shall be reasonably restricted as follows:

(1) No Councilmember, board member, commissioner, or employee shall use, or authorize the use of, any public facilities for the purpose of assisting the campaign of a candidate or the promotion or opposition of a ballot proposition;

(2) No employee who may reasonably be expected to come into contact with the public shall wear or display any campaign buttons or campaign literature during City business hours;

(3) No employee shall, directly or indirectly, campaign or assist any campaign during City work hours;

(4) Any Councilmember, board member, commissioner, or employee hosting or participating in fund raising activities, and other campaign activities, shall make clear that the Councilmember, board member, commissioner, or employee does not represent the City, and that the City does not endorse any particular candidate or position, unless the City has lawfully taken action of endorsement;

(5) No Councilmember, board member, commissioner, or employee shall attempt to obtain political contributions from any employees by promise of, or threat of, disciplinary action, unusual treatment or preferential treatment.

Employees may participate in the political process only on their own time, and only outside of the workplace by working on campaigns for the elections of any person to any office, or for the promotion of or the opposition to any ballot proposition, and shall not use or authorize the use of the facilities of the City for such purposes except as may be authorized by law under the provisions of RCW 42.17.130.

Sec. 9. Disclosure of information records. Councilmembers, board members, commissioners, and employees

shall not disclose to any unauthorized person any confidential City information. No Councilmember, board member, commissioner, or employee shall disclose or use confidential City information for direct or indirect personal gain or benefit. Although records and documents maintained by the City are generally public records available for public inspection and copying, the following are exempt from public inspection and copying and shall not be disclosed or provided by any Councilmember, board member, commissioner, or employee:

(1) Personal information and any files maintained for persons in custody.

(2) Personal information in any files maintained for City employees, appointees or elected officials to the extent the disclosure would violate their right to privacy.

(3) References or other information pertaining to the employment of former City employees, other than the fact of employment, job position and term of employment, unless the request for such reference or information be in writing and unless the former employee shall have filed a written consent with the City.

(4) Information required of any taxpayer or City license holder in connection with the assessment or collection of any tax or license fee if the disclosure of the information to other persons would violate the taxpayer or licensee's right to privacy or would result in unfair competitive disadvantage to such taxpayer or licensee.

(5) Specific intelligence information and specific investigative files compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(6) Information revealing the identity of persons who file complaints with investigative, law enforcement, or penology agencies, if disclosure would endanger any person's life, physical safety, or property, or if the complainant has indicated a desire for nondisclosure.

(7) Test questions, scoring keys and other examination data used to administer license, employment or civil service examinations.

(8) Except as provided by chapter 8.25 RCW, the contents of any real estate appraisals made for or by an agency, including the City, relative to the acquisition of property by the City until the property is abandoned or until such time as all of the property has been acquired, but in no event shall disclosure be denied for more than three years after the date of the appraisal.

(9) Valuable formulas, designs, drawings and research data obtained or produced by the City, its officers, public officials and employees and agents within five (5) years of any

request for disclosure thereof, when disclosure would produce private gain and public loss.

(10) Preliminary drafts, notes, recommendations and intra-departmental memorandums in which opinions are expressed or policies formulated or recommended, except that a specific record shall not be exempt when publicly cited by the City in connection with any public action.

(11) Records which are relevant to a controversy to which the City or any of its officers, Councilmembers, board members, commissioners, or employees or agents is a party, but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(12) Lists of individuals requested for commercial purposes.

(13) Any public record access which the King County Superior Court has found would damage any person or vital governmental function.

(14) Residence addresses and telephone numbers of Councilmember, board member, commissioner, or employee, utility customers, and any other person who has, in writing, requested nondisclosure by reason that such disclosure would endanger that person's life, physical safety, or property.

(15) Applications for employment, including the name of applicant, resume, and other related material submitted with respect to an applicant.

(16) Any information which is exempt from the disclosure requirements of state law.

Sec. 10. Consequences of violation.

(1) In the event that an employee, other than the City Manager, violates the terms of this ordinance or engages in conduct inconsistent herewith, the City Manager may take appropriate steps to address the matter including instituting disciplinary proceeding in accordance with City policies and/or applicable legal principles. Such violations may, depending on the severity and circumstances of the violation(s), result in disciplinary action including but not limited to: counseling, verbal reprimands, written reprimands, suspensions, demotions, terminations or other appropriate measures.

(2) In the event that the City Manager violates the terms of this ordinance or engages in conduct inconsistent herewith, the City Council may take appropriate steps to address the matter including instituting disciplinary proceeding in accordance with City policies and/or applicable legal principles.

(3) In the event that a board member or commissioner violates the terms of this ordinance or engages in conduct inconsistent herewith, a majority of the whole City Council may,

depending on the severity and circumstances of the violation(s), impose sanctions or consequences. The sanctions or consequences may include but are not limited to the following: private reprimand, public reprimand, censure, removal from the dais at a meeting or at meetings (during discussion or action on one or more topics or subjects of consideration), or removal from office.

Sec. 11. Codification. Sections 1 through 10 of this ordinance shall be codified as a new chapter in Title 2 DMMC entitled "Code of Ethics."

Sec. 12. Severability - Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.


(2) If the provisions of this ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this ordinance is deemed to control.

Sec. 13. Effective date. This ordinance shall take effect and be in full force thirty (30) days after its passage and approval in accordance with law.

PASSED BY the City Council of the City of Des Moines this 4th day of February, 2010 and signed in authentication thereof this 4th day of February, 2010.


M A Y O R

APPROVED AS TO FORM:



City Attorney

ATTEST:



City Clerk

Published: February 9, 2010

Effective Date: March 9, 2010

LEGAL NOTICE
SUMMARY OF ADOPTED ORDINANCE
CITY OF DES MOINES

ORDINANCE NO. 1478, Adopted February 4, 2010.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This ordinance relates to administration and personnel; establishes a standard of behavior policy for public officials, board members, commissioners, and City personnel; adds a new chapter to Title 2 DMMC entitled "*Code of Ethics*"; codifies a new chapter in Title 2 DMMC; and provides for disciplinary action.

The full text of the ordinance will be mailed without cost upon request.

Sandy Paul, CMC
City Clerk

Published: February 9, 2010