

RESOLUTION 12-106

A RESOLUTION OF THE CITY OF WESTFIELD ADOPTING CONFLICT OF INTEREST AND NEPOTISM POLICY

WHEREAS, in 2012 the Indiana Legislature passed, and the Governor signed, HEA 1005 entitled Nepotism; Conflict of Interest requiring the City of Westfield to establish a policy in compliance thereof; and,

WHEREAS, changes to Indiana Law created two new chapters, IC 36-1-20.2 Nepotism and IC 36-1-21 Contracting with a Unit, respectively, which are effective July 1, 2012, mandating the adoption of this policy;

WHEREAS, after thoughtful consideration and in order to comply with the two new chapters of the Indiana Code mentioned above, the City of Westfield believes it is in the best interests of its citizens to adopt as its policies the minimum requirements of IC 36- 1-20.2 Nepotism and IC 36-1-21 Contracting with a Unit as stated in the said new chapters of the Indiana Code; and

NOW, THEREFORE, BE IT RESOLVED by the Westfield City Common Council meeting in session as follows:

Section 1. That the Council hereby adopts the policies attached as Exhibit "A" and incorporated by reference herein.

Section 2. That the Human Resources Department of the City shall incorporate these changes to the Policy and Procedures of the City immediately.

Section 3. This Resolution shall be in full force and effect immediately and remain in effect until further action by the Council.

ALL OF WHICH IS RESOLVED THIS _____ DAY OF _____ 2012.

WESTFIELD CITY COUNCIL

Voting For

Voting Against

Abstain

Jim Ake

Jim Ake

Jim Ake

John Dippel

John Dippel

John Dippel

Steven Hoover

Steven Hoover

Steven Hoover

Robert L. Horkay

Robert L. Horkay

Robert L. Horkay

Cindy Spoljaric

Cindy Spoljaric

Cindy Spoljaric

Robert J. Smith

Robert J. Smith

Robert J. Smith

Robert W. Stokes

Robert W. Stokes

Robert W. Stokes

ATTEST:

Cindy J. Gossard, Clerk Treasurer

I hereby certify that RESOLUTION 12-106 was delivered to the Mayor of Westfield
on the _____ day of _____, 2012, at _____ m.

Cindy J. Gossard, Clerk Treasurer

I hereby APPROVE RESOLUTION 12-106
this _____ day of _____, 2012.

I hereby VETO RESOLUTION 12-106
this _____ day of _____, 2012.

J. Andrew Cook, Mayor

J. Andrew Cook, Mayor

ATTEST:

Cindy J. Gossard, Clerk Treasurer

This document prepared by
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KRIEG DEVAULT, LLP
(317) 238-6266

EXHIBIT A

~~2.08~~ ~~Employing Relatives/Romantic Relationships~~

~~The City of Westfield recognizes that members of the same family may desire to pursue similar careers. The City must be sensitive, however, to the potential for favoritism, or the appearance of favoritism, in employment decisions and to the necessity of maintaining professional work relationships. The City does not discourage employment of relatives nor does it actively encourage it. It is in the City's best interest to hire the most capable persons available that meet the job requirements for current openings.~~

~~Members of an immediate family (spouse, parent, child, or sibling) as well as those involved in a romantic relationship may not, however, be employed in situations where one member is in a position of direct supervision or direct reporting to the other. An employee shall not be hired, promoted or transferred to a position that violates this policy. Employees will have three (3) months from the date they become married, become related, or begin a romantic relationship to rectify any violation of this policy. The City will work with those affected employees to identify potential transfers, but the City cannot guarantee employment for such individuals. If a transfer is not possible, it will be up to the affected employees to determine which one will resign. If no decision is made by the employees, the City may terminate one of the employees based on seniority and job performance at the end of the 3 months. In addition, employees of the City shall not engage in romantic, dating, and/or physical relationships with any subordinate.~~

~~This policy applies to all full-time, part-time or temporary employees. Any exception to this policy, because of extraordinary circumstances, must be approved by the Mayor on a case-by-case basis.~~

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2.08 Anti-Nepotism Policy Regarding Employment of Relatives

Section 7 of HEA 1005 created a new statute at IC 36-1-20.2 that establishes requirements regarding the employment of relatives by the City.

Employment of Relatives

Below are guidelines and a summary of requirements prescribed by IC 36-1-20.2:

- A. All new hires must be made in compliance with the nepotism policy under IC 36-1-20.2. Under IC36-1-20.2, individuals who are relatives may not be employed by the City in a position that results in one relative being in direct line supervision of the other relative (see below for definition of "relative").
- B. All new or renewed contracts for goods, services or public works must be made in compliance with the contracting with the City policy. Under IC36-1-21, the City through any of its Boards, Commissions, purchasing agencies or agents may not enter into a contract or renew a contract for public works or procurement of goods and services with a relative or a business entity that is wholly or partially owned by a relative of the City or member of the legislative (or fiscal) body of the City unless the requirements of the statute are met. Requirements include full written disclosure and filing with the State Board of Accounts within 15 days after final action on the contract or purchase.
- C. Relative is defined as spouse, parent or stepparent, child or stepchild, bother, sister, stepbrother, stepsister, niece, nephew, aunt, uncle, daughter-in-law or son-in-law (including half-brothers and sisters and adopted children) for both A and B above.
- D. On July 1, 2012, "Grandfathering" will be in effect for current elected officials or employees with family relationships that would otherwise be in violation of this policy unless there is a break in the office holding or in employment. Employees hired after July 1, 2012 who in later years have relatives elected that are in the direct line of supervision will have no promotion possibilities unless the promotion is within the merit ranks for the police and fire departments.
- E. Each elected official (City Council, Mayor and Clerk Treasurer) of the City must annually certify in writing, subject to the penalties for perjury, that the official has not violated the nepotism law and submit the certification to the Clerk Treasurer of the City no later than December 31 of each year.

Definitions

"Direct line of supervision" means an elected officer or employee who is in a position to affect the terms and conditions of another individual's employment, including making decisions about work assignments, compensation, grievances, advancement, or performance evaluation. The term does not include the responsibilities of the executive, legislative body, or fiscal body of a unit, as provided by law, to make decisions regarding salary ordinances, budgets, or personnel policies of the unit.

"Employed" means an individual who is employed by the City on a full-time, part-time, temporary, intermittent, or hourly basis. The term does not include an individual who holds

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only an elected office. The term includes an individual who is a party to an employment contract with the City.

“Member of the fire department” means the fire chief or a firefighter appointed to the department.

“Member of the police department” means the police chief or a police officer appointed to the department.

“Relative” means any of the following:

- (1) A spouse;
- (2) A parent or stepparent;
- (3) A child or stepchild;
- (4) A brother, sister, stepbrother, or stepsister;
- (5) A niece or nephew;
- (6) An aunt or uncle; or
- (7) A daughter-in-law or son-in-law.

An adopted child of an individual is treated as a natural child of the individual. The terms “brother” and “sister” include a brother or sister by the half blood.

Exclusions

An individual who is employed by a unit on July 1, 2012 is not subject to these policies unless the individual has a break in employment with the unit. Breaks in employment do not include the following:

- (1) The individual is absent from the workplace while on paid or unpaid leave, including vacation, sick, or family medical leave, or worker’s compensation.
- (2) The individual’s employment with the City is terminated followed by immediate reemployment by the City, without loss of payroll time.

These policies do not apply to performance of duties as a

- (1) precinct election officer as defined in IC 3-5-2-40.1; or
- (2) volunteer firefighter.

This statute does not nullify or affect an employment contract with a unit that:

- (1) an individual is a party to; and
- (2) is in effect on the date the individual’s relative begins serving a term of an elected office of the unit.

Anti-Nepotism Policy Regarding Contracting with Relatives

Section 8 of HEA 1005 of IC 36-1-21 establishes requirements regarding contracting with relatives of elected officials of the City.

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Contracting with the City

Indiana Code 36-1-21 establishes requirements regarding contracting with the City. Below are guidelines and a summary of requirements prescribed by IC 36-1-21 regarding contracting with relatives of elected officials of the City. The City may prohibit or restrict an individual from entering into a contract with the City that is not otherwise prohibited or restricted by this statute.

Contracting Practices

- (1) The City may enter into a contract or renew a contract for the procurement of goods and services or a contract for public works with:
an individual who is a relative of an elected official; or
- (2) a business entity that is wholly or partially owned by a relative of an elected official;

only if the requirements below are satisfied and the elected official does not violate IC 35-44-1-3.

The City may enter into a contract or renew a contract with an individual or business entity described above if:

- (1) the elected official files with the unit a full disclosure, which must:
 - a. be in writing;
 - b. describe the contract or purchase to be made by the unit;
 - c. describe the relationship that the elected official has to the individual or business entity that contracts or purchases;
 - d. be affirmed under penalty of perjury;
 - e. be submitted to the legislative body of the unit and be accepted by the legislative body in a public meeting of the unit prior to final action on the contract or purchase; and
 - f. be filed, not later than 15 days after final action on the contract or purchase, with:
 - i. SBOA; and
 - ii. the clerk of the circuit court in the county where the unit takes final action on the contract or purchase;
- (2) the appropriate agency of the City:
 - a. makes a certified statement that the contract amount or purchase price was the lowest amount or price bid or offered; or
 - b. makes a certified statement of the reasons why the vendor or contractor was selected; and
- (3) the City satisfies any other requirements under IC 5-22 or IC 36-1-12.

An elected official must also comply with the disclosure provisions of IC 35-44-1-3, if applicable.

These provisions do not affect the initial term of a contract in existence at the time the term of office of the elected official of the unit begins.

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Definitions

“Elected official” means:

- (1) the executive or a member of the executive body of the unit;
- (2) a member of the legislative body of the unit; or
- (3) a member of the fiscal body of the unit.

“Relative” means any of the following:

- (1) A spouse;
- (2) A parent or stepparent;
- (3) A child or stepchild;
- (4) A brother, sister, stepbrother, or stepsister;
- (5) A niece or nephew;
- (6) An aunt or uncle; or
- (7) A daughter-in-law or son-in-law.

An adopted child of an individual is treated as a natural child of the individual. The terms “brother” and “sister” include a brother or sister by the half blood.

Certification Requirement

Each elected officer of a unit must annually certify in writing, subject to the penalties for perjury, that the officer is in compliance with this statute. An officer must submit the certification to the Clerk Treasurer of the City not later than December 31 of each year.

Failure to Comply

If SBOA finds that a unit has not implemented an anti-nepotism policy in compliance with IC 36-1-21, it must forward the information to the Department and the Department may not approve:

- (1) the City’s budget; or
 - (2) any additional appropriations for the City;
- for the ensuing calendar year until SBOA certifies to the Department that the unit has adopted a policy under this statute.