AGENDA

Friday March 6, 2020 at 2:00 PM

Board of Ethics Meeting

Commission Room
1st Floor ~ City Hall
224 West Ninth Street
Sioux Falls, South Dakota

1. CALL TO ORDER

2. NOMINATIONS AND ELECTION OF CHAIR AND VICE CHAIR FOR 2020

3. APPROVAL OF MINUTES FROM DECEMBER 19, 2019 MEETING

4. APPROVAL OF 2019 ANNUAL REPORT

5. ANY BUSINESS OR PENDING ISSUES TO BE BROUGHT BEFORE THE BOARD

   A. REQUEST FOR ADVISORY OPINION (20-1) FILED FEBRUARY 12, 2020

6. PUBLIC INPUT

7. ADJOURNMENT

BOARD OF ETHICS MEMBERS: CITY STAFF:
Jack Marsh, Chair Stacy Kooistra, City Attorney
Wanda Harris Cari Hanzel, Paralegal/Board Liaison
Greg LaFollette Bonnie Woolam, Paralegal/Board Liaison
Sue Roust
Dan Fritz

If an ADA accommodation is needed, please contact the Human Relations Office at 367-8745 or humanrelations@siouxfalls.org at least 12 hours in advance of the meeting.
MINUTES
Thursday, December 19, 2019 at 12:00 p.m.

Board of Ethics Meeting
Commission Room
1st Floor ~ City Hall
224 West Ninth Street
Sioux Falls, South Dakota

BOARD MEMBERS PRESENT: Dan Fritz, Jeff Gednalske, Jack Marsh, Wanda Harris (by phone) and Sue Roust

BOARD MEMBERS ABSENT: Greg LaFollette

STAFF PRESENT: Stacy Kooistra, City Attorney, and Cari Hanzel and Bonnie Woolam, Recording Clerks

CALL TO ORDER
A quorum being present, the meeting was called to order by Board Chair Jack Marsh at 12:00 p.m.

APPROVAL OF MINUTES
A motion was made by Sue Roust and seconded by Jeff Gednalske to approve the minutes from the meeting on September 19, 2019, which included Advisory Opinion 19-5 previously approved and signed by the Board Chair on behalf of the Board. Vote to approve: 4 Yeses. Motion passed.

BUSINESS OR PENDING ISSUES BROUGHT BEFORE THE BOARD

A. INTRODUCTION OF NEW BOARD MEMBER – DANIEL FRITZ

The Board welcomed incoming Board Member Dan Fritz. Fritz shared his background and work experience and further expressed appreciation for the opportunity to serve the City of Sioux Falls.
B. RECOGNITION OF BOARD SERVICE – JEFFREY GEDNALSKE

The Board recognized Jeff Gednalske’s service on the Board of Ethics for the past 7 years and expressed appreciation on behalf of the Board and the citizens of Sioux Falls for his service. Gednalske thanked the Board for the recognition and for its careful and consistent guidance to the people that come before it.

C. CHANGE IN BOARD CLERK

Bonnie Woolam, a Paralegal in the City Attorney’s Office, was introduced to the Board to replace Cari Hanzel as the Board’s Clerk.

PUBLIC INPUT

None.

NEXT MEETING

No specific date for the next meeting was scheduled.

ADJOURNMENT

Meeting adjourned at 12:12 p.m.

Respectfully submitted,

Cari Hanzel
Recording Clerk
DATE: March 6, 2020

TO: Mayor Paul TenHaken
    City Council Members

FROM: Sioux Falls Board of Ethics
      Daniel Fritz
      Wanda Harris
      Gregory LaFollette
      Jack Marsh
      Sue Roust

SUBJECT: Board of Ethics Annual Report for 2019

The Board of Ethics met six times in 2019. No complaints were filed with the Board. Five requests for advisory opinions were received by the Board. Of those requests, one was withdrawn and four resulted in advisory opinions being issued.

Jack Marsh was reappointed to a second term on the Board in May, 2019. Dan Fritz was appointed in November, 2019 to fill the vacancy left by Board member Jeff Gednalske whose term expired in August, 2019.

Pursuant to Sec. 35.011(b) of the Code of Ordinances of Sioux Falls, SD, it should be noted that the only cost associated with the Board’s activities in 2019 was $75 for a recognition award.

Attachment
City Of Sioux Falls
Board of Ethics
Opinions and Complaints, 2010-2019
City of Sioux Falls
Board of Ethics
Request for Advisory Opinion

Name of Individual Requesting Opinion: Councilor Janet Brekke
Address: 5008 S. Pennbrook Ave., Sioux Falls, SD
Telephone Number: (605) 369-7467
Email Address: jbrekke@siouxfalls.org

Statement of the situation giving rise to the request for an advisory opinion. Include names of individuals, locations, and dates, as applicable.

See Attached

Please be advised that the Board of Ethics may hear and discuss requests for advisory opinions in executive session only to the extent allowed by law. Even if an executive session is allowed, the Board must take any final action on the matter in a public meeting, where they must reveal your name and the general substance of your inquiry. If you have any pertinent and sensitive details to your inquiry that you wish to remain confidential, please share them with the Board during a possible executive session rather than placing them on this form or stating them in an open meeting of the Board.

I request that this information be kept confidential: Yes [ ] No [✓]

The information provided is true to the best of my knowledge and belief.

Signature: [Signature]
Date: 2/12/20

Received by: [Received by]
Date: 2/12/2020

Please return completed form to the City Attorney’s Office.
Pursuant to Sioux Falls City Ordinance 35.057, I am requesting an advisory opinion from the Board of Ethics to guide my own conduct as a Sioux Falls City Councilmember.

1. Can I create a PAC whose funds will be utilized to support candidates in city elections?
2. Can I host fundraisers for candidates in city elections using my title and position as a Sioux Falls City Councilmember?
3. Can I use my title as a Sioux Falls City Councilmember to assist candidates in city elections by appearing in a postcard supporting their candidacy?

Past conduct Ordinance 35.057 “A request for an advisory opinion may include the request to review conduct that has occurred that has not been the subject of a complaint to the board....”

4. Did I violate the Sioux Falls Code of Ethics and/or Conflict of Interest Ordinance when as a candidate for city councilmember in 2018, I accepted the following:

   1. A $300.00 donation from Theresa Stehly as an individual.
   2. A robo call supporting my candidacy from Theresa Stehly in her individual capacity.
   3. Accepted misc. independent contributions from friends of Councilmember Theresa Stehly.

Can I engage activities 1, 2, 3 above as a seated Sioux Falls City Councilmember on behalf of declared candidates during the 2020 election?

The conduct above described is occurring during this and past election cycles. (see attachments) I am seeking a binding advisory opinion as to whether or not as a Sioux Falls City Councilmember I can engage in the aforementioned activities. Charter 7.01 (b) Board of Ethics... the City Council shall authorize the board to issue binding advisory opinions, conduct investigations, on its own initiative... hire independent counsel.

    Charter 7.01 (a) Conflict of Interest; board of ethics.

The use of public office for private gain is prohibited. The City Council shall implement this prohibition by ordinance. Regulations to this end shall include but not be limited to (lists conflicts that must be addressed)... 

The appearance of impropriety shall be avoided. Municipal officials shall be at a minimum, restricted from conflicts of interest to the same extent that state public officials are bound by state law; provided however, that the City Council may adopt an ordinance setting a stricter standard.

In response to Sioux Falls City Charter 7.01 recited above, the City of Sioux Falls created a Board of Ethics and established the board's powers and authority. A model code of professional conduct was adopted by the City which included Canons of Ethics and a Conflicts of Interest and Standards of Conduct ordinance regulating the ethical behavior of city employees and elected officials.

Generally, there are three types of Ethics: 1) professional ethics (doctors/lawyers), 2) government/business ethics, and 3) personal ethics. In government, ethic laws or ordinances generally regulate the following three areas: 1) Financial disclosure, AKA: campaign finance laws, 2)
conflicts of interest (voting, appearance of impropriety, use of office or position, etc.) and 3) gifts and honoraria (undue influence).

Chapter 34 Ethics and Chapter 35 Conflict of Interest of Officers and Employees and Ethics Board do address the three areas: financial disclosure, conflict of interest and gifts and honoraria.

The practices that I have requested advice on are primarily concerned with conflicts of interest regarding appearances of impropriety and use of the position or office.

I believe the relevant sections of the charter and city ordinance are as follows:

34.002 PREAMBLE. The stability and proper operation of democratic representative government depends upon the continuing consent of the governed, upon the public confidence in the integrity of the government and upon responsible exercise of the trust conferred by the people. Government decisions and policy must be made and implemented through proper channels and processes of the governmental structure. The purpose of this code is to establish guidelines for ethical standards of conduct for city council members. City council members must act in a manner that maintains their integrity and independence, yet is responsive to the interests and needs of those they represent. City council members must act in a fair and impartial manner. City council members must be aware of their obligation to conform their behavior to standards of ethical conduct that warrant the trust of their constituents.

3. CHARTER 7.02 PROHIBITIONS. No city employee shall directly or indirectly contribute money, or anything of value to or render services on behalf of any candidate for nomination or election to any city office.

Elected officials...acting on their own behalf are exempt from this prohibition. The expression of private or personal views concerning candidates for political office is not prohibited hereby.

4. § 34.004 CANON TWO.

(a) A city council member should uphold the integrity and independence of his or her office.

(b) City council members should demonstrate the highest standards of personal integrity, truthfulness, honesty and fortitude in all their public activities in order to inspire public confidence and trust in city government. City council members should participate in establishing, maintaining and enforcing, and should themselves observe, high standards of conduct so that the integrity and independence of their office may be preserved. The provisions of this Code should be construed and applied to further these objectives.

5. 34.005 CANON THREE

(a) A city councilmember should avoid the appearance of impropriety in all his or her activities.

6. § 34.008 CANON SIX.

(a) A city council member should limit his or her extra-governmental activities to minimize the risk of conflict with his or her official duties.

6. 34.009 CANON SEVEN
(a) A city councilmember should refrain from political activity inappropriate to his or her office.

SUMMARY

The Canons of Ethics and Conflict of Interest ordinances were designed to set the bar high for the ethical conduct of Sioux Falls elected officials. It is important to understand the difference between ethics and law. Law sets the minimum standards for behavior. Ethics sets a higher standard. The Canons of Ethics are designed to "inspire public confidence and trust in city government." § 34.004 CANON TWO.

In addition, "City Council members must be aware of their obligation to conform their behavior to standards of ethical conduct that warrant the trust of their constituents." §34.002

It is important for the public to appear before a body they believe is going to be impartial, fair, objective, and make a decision based on the merits. The purpose of restrictions on participation, conflicts of interest, use of office to secure advantages for themselves or others, and undue influence, are designed to achieve these objectives.

The questions I have raised request advice on anticipated activities designed to influence the outcome of city elections. I understand that legitimate political contributions are not gifts "§ 35.053 (1) and financial disclosure laws must be scrupulously complied with § 34.009 (c) (1). While receipt of lawful campaign contributions by an elected official is permitted under the undue influence/gifts portion of ordinance the conduct associated with the gifting is still subject to the conflict of interest portions of the ordinance which regulates the conduct/behavior of the elected official and must also be strictly complied with.

My focus is on Conflicts of Interest which also must be scrupulously complied with §34.008 (b) and that "a city councilmember should limit his or her extra governmental activities to minimize the risk of conflict with his or her official duties. §34.008 (a) Conduct associated with my efforts to influence the outcomes of city elections by donating, fundraising, soliciting, endorsing, using my title as Sioux Falls City Councilmember per attachments A, B & C may subject me to ethical scrutiny under Canons 2-7 and Conflicts of Interest ordinances §35.054 (d) and (e) .

Specifically, I am requesting advice on the following:

1. Whether participating in the above stated activities per attachments A, B and C creates an "appearance of impropriety" pursuant to §34.005 Canon Three (a): A City Council member should avoid impropriety and the appearance of impropriety in his or her activities.

2. Whether the above stated activities per attachments A, B and C are inappropriate political activities pursuant to §34.009 Canon Seven (b): A city council member should refrain from political activity inappropriate to his or her office.

3. Whether the above activities per attachments A, B & C grant special advantage to an individual(s) and/or use my elected position to secure special advantage to others, pursuant to Conflict of Interests §35.054 Standards of Conduct; City Councilmember (d) and/or (e).

   (d) Grant any special consideration, treatment or advantage to any citizen, individual, business organization or group beyond that which is normally available to every other citizen, individual, business organization or group;
(e) Use their elected position to secure special advantages, privileges or exemptions for themselves or others;

4. As to 1, 2 and 3, past conduct, I am requesting an opinion on whether those activities were permitted because they were performed in the office holders’ individual capacity or whether they are subject to Canon Three (a), Canon Seven (b) and §35.054 (d) & (e) stated above.

The level of involvement of city elected officials in this current election cycle is unprecedented. I cannot assume these practices are ethical just because they are occurring now or have occurred in the past. I am requesting a binding advisory opinion to guide my anticipated conduct in this and future elections.
A NIGHT WITH FRIENDS
THURSDAY, SEPTEMBER 19, 2019 | 4:30-6:30 PM
21's Wine, Spirits & Cigars - 300 W. 17th St, Sioux Falls, SD 57104
Suggested Contribution: $30

HOSTS:

Jolene & Math Jensen
Jared & Ryan Jensen
Karin & Cory Brown
Molly & Ryan Bushman
Kendy & Chris Douglas
Councilor Kristen & Tony Erickson
Stace Erickson
Kasey Ferguson
Paul & Bill Jensen

Kris & Jon Krueger
Joyce & Jesse Ketner
Kphot & Rick Knutson
Justine Lack
Marilyn & Scott Lawrence
Bret & Heidi Lawton
Briana & Eric Melton
Mark McElhinney
Karen & Matt Paulson

Doreen & Steve Rykken
Derek & Amy Peters
Lincoln Peterson
Ace & Ryan Pudle
Lucy & Tom Rice
Senator Deb & Jerry Schmitt
Lee & Bob Sullivan
Kristen & Chris Thulaker
Sara & Tony Vanhussa

Paid for by Alex Jensen for Sioux Falls

3 Replies to “Alex Jensen for Sioux Falls City Council fundraiser on September 19”

Matthew Paulson
September 7, 2019 at 11:21 am

Alex and I are playing to win and our fundraising will reflect that in terms of total number of donors and total amount raised.
Friend,

Nearly a year and a half ago, the people of Sioux Falls put their trust in me to lead our great city. During this time, our administration has been working hard to transform City Hall into a place of thinks innovatively and is focused on providing high-quality services for our citizens.

Being your mayor is an honor and I’m proud of the many accomplishments of my first few months in office. Some highlights include::

- Launching the One Sioux Falls framework and collaborating with community leaders.
- Cracking down on drug dealers with more officers like the new Narcotics Crime Unit and a new narcotics sergeant.
- Uniting a community in the aftermath of flooding and tornadoes.
- Focusing on infrastructure investments with the highest percentage of your tax dollars going toward road and bridge projects than previous decades. We’ve also invested in an upgraded sewer system needed for future growth.
- Creating a Department of Innovation and Technology to catch up with other cities and adopt new technology so that Sioux Falls is a national leader in 5G readiness, transit, data-driven solutions, open
data, and more.
- Acting fiscally responsible by paying off millions of dollars of city debt early and eliminating wasteful spending to focus on the core essentials of city government.

We've made some big strides, but we're just getting warmed up. I would appreciate your continued support as we look toward the future of our city.

Would you consider a financial gift to ensure we keep this momentum going?

We live in an incredible community and have much to be thankful for in Sioux Falls. I'm thankful everyday for the honor to serve as your mayor and I'm especially thankful for the support and prayers from friends like you.

In service,
Paul