



Council Retreat

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Milwaukie City Council

COUNCIL RETREAT

Zoom Video Conference
www.milwaukieoregon.gov

AGENDA

JANUARY 9, 2021

Video Meeting: due to the governor's "Stay Home, Stay Healthy" order, the City Council will hold this meeting through Zoom video meetings. The public is invited to watch live by joining the Zoom webinar (visit <https://www.milwaukieoregon.gov/citycouncil/city-council-retreat-9> for details). Council will not take public comment. **This meeting will not be recorded.**

Note: agenda item times are estimates and are subject to change.

1. **The Year in Review - Report (10:00 a.m.)**
Staff: Ann Ober, City Manager
2. **Administrative and Legal Overview - Discussion (10:30 a.m.)**
Staff: Justin Gericke, City Attorney
- Lunch Break (12:30 p.m.)**
3. **Communication Agreement - Discussion (1:00 p.m.)**
Staff: Ann Ober, City Manager
4. **Review of City Council Goals - Discussion (1:30 p.m.)**
Staff: Ann Ober, City Manager
5. **Adjourn (2:30 p.m.)**

Meeting Accessibility Services and Americans with Disabilities Act (ADA) Notice

The city is committed to providing equal access to public meetings. To request listening and mobility assistance services contact the Office of the City Recorder at least 48 hours before the meeting by email at ocr@milwaukieoregon.gov or phone at 503-786-7502. To request Spanish language translation services email espanol@milwaukieoregon.gov at least 48 hours before the meeting. Staff will do their best to respond in a timely manner and to accommodate requests. Most Council meetings are broadcast live on the [city's YouTube channel](#) and Comcast Channel 30 in city limits.

Servicios de Accesibilidad para Reuniones y Aviso de la Ley de Estadounidenses con Discapacidades (ADA)

La ciudad se compromete a proporcionar igualdad de acceso para reuniones públicas. Para solicitar servicios de asistencia auditiva y de movilidad, favor de comunicarse a la Oficina del Registro de la Ciudad con un mínimo de 48 horas antes de la reunión por correo electrónico a ocr@milwaukieoregon.gov o llame al 503-786-7502. Para solicitar servicios de traducción al español, envíe un correo electrónico a espanol@milwaukieoregon.gov al menos 48 horas antes de la reunión. El personal hará todo lo posible para responder de manera oportuna y atender las solicitudes. La mayoría de las reuniones del Consejo de la Ciudad se transmiten en vivo en el [canal de YouTube de la ciudad](#) y el Canal 30 de Comcast dentro de los límites de la ciudad.

Executive Sessions

The City Council may meet in executive session pursuant to Oregon Revised Statute (ORS) 192.660(2); all discussions are confidential; news media representatives may attend but may not disclose any information discussed. Final decisions and actions may not be taken in executive sessions.

**COUNCIL RETREAT**

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MINUTES

JANUARY 9, 2021

Council Present: Council President Angel Falconer; Councilors Lisa Batey, Desi Nicodemus, Kathy Hyzy, and Mayor Mark Gamba

Staff Present: Assistant City Manager Kelly Brooks City Manager Ann Ober
City Attorney Justin Gericke City Recorder Scott Stauffer

Mayor Mark Gamba called the meeting to order at 10:03 a.m.

The group discussed the events of the last week.

Mayor Gamba recessed the meeting at 10:15 a.m. and reconvened at 10:31 a.m.

The group continued to discuss recent events and participated in several discussions related to city projects and programs, administrative and legal procedures.

Mayor Gamba recessed the meeting at 12:33 p.m. and reconvened at 12:45 p.m.

The group discussed the Mayor/Council Communication Agreement and the status of Council's goals.

Adjourn

Mayor Gamba adjourned the meeting at 1:22 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott Stauffer", written over a horizontal line.

Scott Stauffer, City Recorder

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Council Powers

January 9, 2021

Council Retreat

Justin Gericke, City Attorney

Council Powers

- **City Charter, Chapter III, Section 6. DISTRIBUTION OF POWERS.**
All powers of the city are vested in the council except as otherwise specifically provided in this charter. In all instances deemed appropriate by the council, the council may cause an investigation of the administration of any department through a formal hearing or otherwise.



City Manager Powers

- **City Charter, Chapter VII, Section 27 (c) POWERS AND DUTIES.**

(1) shall devote the entire work time to the discharge of official duties and shall attend all meetings of the Council, unless excused therefrom by three councilors or by the mayor, and keep the council advised at all times of the affairs and needs of the city and shall make annual reports, or more frequent if requested by the council, of all the affairs and departments thereof;

(2) shall see that all ordinances are enforced and that the provisions of all franchises, leases, contracts, permits, and privileges granted by the city are fully observed;



City Manager Powers

- **City Charter, Chapter VII, Section 27 (c) POWERS AND DUTIES.**
(3) shall appoint all city officers and employees and remove them, except as otherwise provided by this charter, and have general supervision and control over them and their work with power to transfer an employee from one department to another and shall exercise supervision and control over the departments to the end of obtaining the utmost efficiency in each of said departments, provided that the city manager shall have no control over the council or the municipal judge regarding judicial functions, and shall be subject to and abide by all of the sections of this charter and the duly enacted ordinances and rules enacted thereunder;



City Manager Powers

- **City Charter, Chapter VII, Section 27 (c) POWERS AND DUTIES.**
 - (4) shall act as purchasing agent for all departments of the city, all purchases to be made by requisition signed by the manager;
 - (5) shall be responsible for the preparation and submission to the budget committee of the general budget estimate and such reports as may be required by that body;



City Manager Powers

- **City Charter, Chapter VII, Section 27 (c) POWERS AND DUTIES.**
 - (6) shall have control, subject to such ordinances as may from time to time be adopted, of all public utilities owned and operated by the city, and shall have general supervision over all city property; and
 - (7) shall perform such other duties as may be required by this charter or as the council may require of the city manager within the provisions of this charter.



City Manager Powers

- **Charter, Ch. VII, Sec. 27 (f) INTERFERENCE IN ADMINISTRATION.**
No member of the council shall directly or indirectly, by suggestion or otherwise, attempt to influence or coerce the manager in the making of any appointment or removal of any officer or employee or in the purchase of supplies; or attempt to extract any promise relative to any appointment from any candidate for manager; or discuss directly or indirectly with him the matter of specific appointments to any city office or employment. Nothing in this section shall be construed, however, as prohibiting the council from fully and freely discussing with or suggesting to the manager anything pertaining to city affairs or the best interests of the city.





Ethics

January 9, 2021

Council Retreat

Justin Gericke, City Attorney

Ethics

- **Oregon Revised Statute (ORS) 244.025 Gift Limit**

(1) During a calendar year, a public official, a candidate or a relative or member of the household of the public official or candidate may not solicit or receive, directly or indirectly, any gift or gifts with an aggregate value in excess of \$50 from any single source that could reasonably be known to have a legislative or administrative interest.

(2) During a calendar year, a person who has a legislative or administrative interest may not offer to the public official or a relative or member of the household of the public official any gift or gifts with an aggregate value in excess of \$50.

(3) During a calendar year, a person who has a legislative or administrative interest may not offer to the candidate or a relative or member of the household of the candidate any gift or gifts with an aggregate value in excess of \$50.

(4) This section does not apply to public officials subject to the Oregon Code of Judicial Conduct.



Ethics (cont.)

- **ORS 244.040 Prohibited Use of Official Position or Office**

Unlike gifts, which come from outside sources, ORS 244.040(1) focuses on the public official's own actions. ORS 244.040(1) prohibits the use or attempted use of the position held by the public official to obtain benefits that are only available because of that position.

Does not apply to a list of specific benefits enumerated in the statute, i.e., honoraria, certain gifts, expense reimbursement, professional awards, etc.



Ethics (cont.)

- **ORS 244.020 Definitions**

(1) “Actual conflict of interest” means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which WOULD be to the private pecuniary benefit or detriment of the person or the person’s relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of circumstances described in subsection (13) of this section.



Ethics (cont.)

- **ORS 244.020 Definitions**

(13) “Potential conflict of interest” means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which COULD be to the private pecuniary benefit or detriment of the person or the person’s relative, or a business with which the person or the person’s relative is associated, unless the pecuniary benefit or detriment arises out of the following ...

What to do if you have a conflict...



Ethics (cont.)

- **ORS 244.120**

(2) An elected public official, other than a member of the Legislative Assembly, or an appointed public official serving on a board or commission, shall:

(a) When met with a potential conflict of interest, announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official; or



Ethics (cont.)

- **ORS 244.120 (cont.)**

(b) When met with an actual conflict of interest, announce publicly the nature of the actual conflict and:

(A) Except as provided in subparagraph (B) of this paragraph, refrain from participating as a public official in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue.

(B) If any public official's vote is necessary to meet a requirement of a minimum number of votes to take official action, be eligible to vote, but not to participate as a public official in any discussion or debate on the issue out of which the actual conflict arises.



Ethics (cont.)

What does the process look like?

- **ORS 244.260**
 - Anyone can file a complaint alleging a violation or the Commission can act on its own motion.
 - If there is reason to believe that there has been a violation of laws within the jurisdiction of the Commission, an investigation will be initiated.



Ethics (cont.)

What does the process look like?

- **ORS 244.260 (cont.)**
 - You will be notified of any complaint filed within 2 business days.
 - 30-day Preliminary Review Phase – confidential.
 - Investigatory Phase – public.
 - Dismissal, continued investigation, contested case, or settlement.
 - Maximum civil penalty for any Government Ethics violation is \$5,000, except for “willful” violation of ORS 244.040 (the “prohibited use of position or office” provision) where the maximum is increased to \$10,000.
 - Removal from office and potential criminal liability.





Administrative Support, Records & Elections

January 9, 2021

Council Retreat

Scott Stauffer, City Recorder,
and

Justin Gericke, City Attorney

Administrative Support

- Clerk of the City Council
 - Agendas, Packets, Videos
 - Letters, Mileage, Receipts
 - Boards/Committees
 - City Heritage
 - Dogwood Day & Vietnam 50th



Records Management

- RM 101 in brief...
 - **Definition:** “Public record” includes any writing containing information relating to the conduct of the public’s business, including but not limited to court records, mortgages, and deed records prepared, owned, used or retained by a public body regardless of physical form or characteristics.
ORS 192.311(5)(a)
 - Determining if something is a public record, or not...
 - Content, not format!



Records Management

- Life cycle of a record...
 - Born and used in service to Milwaukie.
 - Retained per state administrative rules (OAR 166-200), a minimum amount of time a record is to be kept.
 - Once retention has been met – and the city has determined the record has no business, legal, historical reason to keep it – the destruction process is followed.
 - Documented for electronic or paper records
 - Departments approve or initiate the process



Records Management

- A good RM program...
 - promotes efficiency and productivity,
 - saves money and ensures compliance with the law,
 - protects from litigation and supports disaster recovery,
 - preserves institutional memory.
- Public Records Requests
(not scary if you have a good RM program)



Elections

- City Elections Officer
 - Council Elections
 - Bond Measures, Initiatives
 - Recently... ballot boxes!



Elections

- **Charter, Ch. X, Sec. 37. INITIATIVE, REFERENDUM, AND RECALL.**

There is hereby reserved to the electors the power of initiative and referendum, and of recall of elective officers. The provisions of the Constitution of Oregon and the general laws of the State of Oregon, as the same now exist or hereinafter may be amended, governing initiative and referendum, and recall of elective officers, shall apply in the City of Milwaukie.



Council Referrals

A referral is a resolution prepared by the governing body to place a question on the ballot for electors to decide.

The city governing body is the City Council. Referrals are filed with the city elections officer (city recorder).

The governing body must refer all changes to adopted charters, so voters may adopt or reject the amendment.

sos.oregon.gov/elections/Pages/referral.aspx



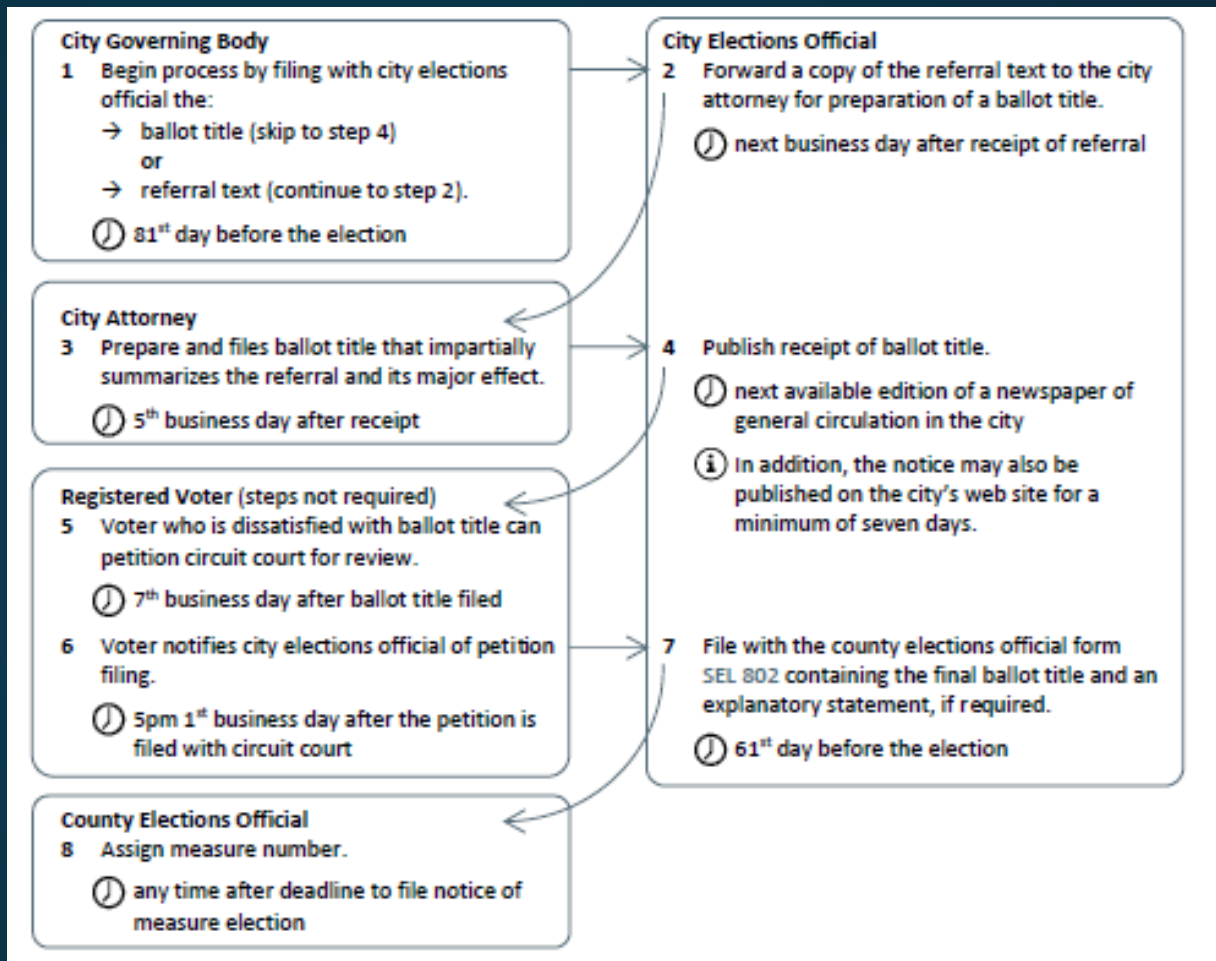
Council Referrals

- Authority:
 - Oregon Constitution, Article XI, Section 2
“The legal voters of every city and town are hereby granted power to enact and amend their municipal charter...”
 - City Charter
 - Chapter II (adopts powers granted by state)
 - Chapter X (adopts initiative and referendum)








The Referral Process...

per the state's
*County City District
Referral Manual*



The Referral Process...

Dates to keep in mind...

 District Measures	March 9	May 18	September 21	November 2
Last Day for County Elections Official to Publish → notice of district board election (ORS 255.075)	December 1	February 9	June 8	July 27
Last Day for County or City Governing Body to File with Local Elections Official → ballot title for publication of notice or → referral text for drafting of ballot title	December 18	February 26	July 2	August 13
Last Day for Local Governing Body to File with County Elections Official → Form SEL 801 Notice of Measure Election - County  Form may only be filed upon completion of the ballot title challenge process.	January 7	March 18	July 22	September 2
→ Form SEL 802 Notice of Measure Election - City  Form may only be filed upon completion of the ballot title challenge process.	January 7	March 18	July 22	September 2
→ Form SEL 803 Notice of Measure Election – District  Form may not be filed until after the deadline for the immediately preceding election has passed and only upon completion of the ballot title challenge process.	January 7	March 18	July 22	September 2
Last Day to File with County Elections Official → arguments for inclusion in county voters' pamphlet	January 11	March 22	July 26	September 7
 For resubmitted measures the deadline is the 47 th day before the election; the measure argument filing deadline is the 2 nd business day after the deadline to resubmit the measure, if the county includes the resubmitted measure in the county voters' pamphlet.				



Questions?

Justin Gericke

City Attorney

gerickej@milwaukieoregon.gov

Scott Stauffer

City Recorder

stauffers@milwaukieoregon.gov



COUNCIL RESOLUTION No. 8-2019

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,
ADOPTING THE MAYOR/COUNCIL COMMUNICATION AGREEMENT.**

WHEREAS, open, direct, and positive communication among the Mayor and Councilors and between them, staff, and the public is critical to ensuring clear and easily understood public information; and

WHEREAS, open, direct, and positive communication among the Mayor and Councilors and between them, staff, and the public is essential to a healthy community-wide debate on issues; and

WHEREAS, the Mayor/Council Communication Agreement as proposed is intended to ensure open public processes that lead to closure.

Now, Therefore, be it Resolved by the City Council of the City of Milwaukie, Oregon, that:

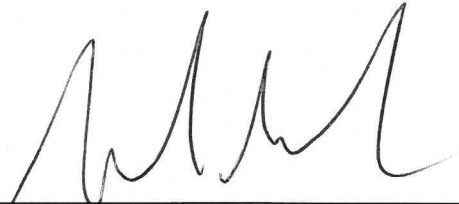
Section 1: The Mayor/Council Communication Agreement (Exhibit A) is adopted.

Section 2: Resolution 64-2018 adopted August 7, 2018, is repealed.

Section 3: This resolution is effective immediately upon adoption.

Introduced and adopted by the City Council on **February 5, 2019.**

This resolution is effective immediately.

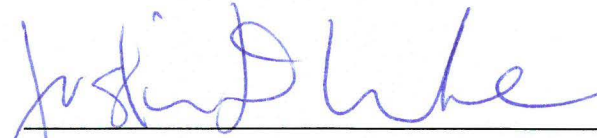


Mark F. Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:



Scott S. Stauffer, City Recorder

Justin D. Gericke, City Attorney

MAYOR/COUNCIL COMMUNICATION AGREEMENT

Guaranteed access to clear and easily understood information is a value of the City of Milwaukie. This agreement is intended to foster conduct that realizes that value and ensures a healthy debate about competing ideas. Finally, it seeks closure and a community that moves forward together, secure in the knowledge that decisions were made openly and fairly.

This agreement has one common behavioral thread—mutual respect. Thus, if the list does not anticipate a situation, a response that is respectful of all concerned should suffice.

1. In all City business, in my role as a member of Council, I will:
 - a) demonstrate respect for all who are involved;
 - b) respect all thoughts and ideas and avoid denigrating others;
 - c) clarify facts and opinions to ensure understanding;
 - d) clearly state my own opinion as being mine;
 - e) look for ways to praise worthwhile efforts and accomplishments; and
 - f) stay focused and participate.
2. In working with the Mayor and other Councilors, I will:
 - a) provide prompt notice of items requiring Council action I am introducing at meetings;
 - b) always represent the City's position before other jurisdictions unless none has been adopted, in which case I will inform the Mayor and Council in a timely manner of the position(s) I have taken;
 - c) work toward consensus;
 - d) not publicly (including all internet and written content) criticize Council, individual members of Council, or Council decisions, but may respectfully disagree with a decision; and
 - e) first address a concern about either a violation of these agreements or any other matter in a direct, appropriate, private, and timely manner.
3. In working to seek broad-based community support, I will:
 - a) communicate with the community openly and freely to exchange information and ideas;
 - b) engage the community in a shared dialogue; and
 - c) listen and respond to well-founded and constructive criticism made to, or by, Council or City staff, or citizens.
4. In working with staff, I will:
 - a) provide direction through the City Manager with the concurrence of the Mayor and Council and with respect given to the City's chain of command;
 - b) refrain from contacting line staff (non-management) with requests or inquiries. This does not apply to questions stemming from Council packets when in preparation for the upcoming meeting.

- c) respect the City's "one-hour" guideline, not requesting work product from the City Manager, Assistant City Manager, or responsible City Manager / Director that takes more than an hour to produce without first securing the support of a majority of Council; and
- d) never, in any public way, insult or denigrate any staff member, and if I have an unresolved disagreement concerning a staff member's actions, I will bring it to the City Manager.

5. In working with the City Attorney, I will:

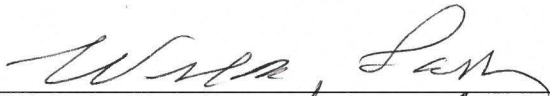
- a) respect that the City Attorney represents the City as a whole, and if the Council's direction to the City Attorney conflicts with the City Attorney's ethical obligations to the City, the City Attorney must resolve this conflict in favor of the City;
- b) remember that information a Council member shares with the City Attorney is not confidential with respect to other Council members, and the information may be disclosed to the entire Council;
- c) contain my requests for information or assistance to items that can be responded to quickly and will work to secure the support of the majority of Council for items taking more than an hour; and
- d) respect that all responses to legal questions will be sent to the entire Council in an effort to protect all parties, keep all City Councilors informed, and ensure there is no perception of favoritism.



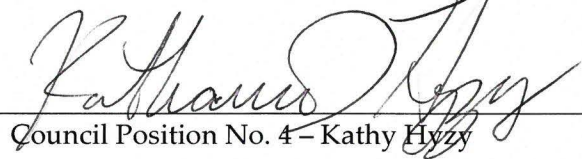
Council Position No. 1 – Angel Falconer



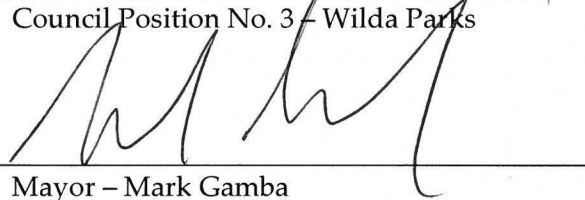
Council Position No. 2 – Lisa Batey



Council Position No. 3 – Wilda Parks



Council Position No. 4 – Kathy Hyzy



Mayor – Mark Gamba

**COUNCIL RESOLUTION No.****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,
ADOPTING THE MAYOR/COUNCIL COMMUNICATION AGREEMENT.**

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Section 1: The Mayor/Council Communication Agreement (Exhibit A) is adopted.

Section 2: Resolution 8-2019 adopted February 5, 2019, is repealed.

Section 3: This resolution is effective immediately upon adoption.

Introduced and adopted by the City Council on _____, 2021.

This resolution is effective immediately.

Mark F. Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:

Scott S. Stauffer, City Recorder

Justin D. Gericke, City Attorney

MAYOR/COUNCIL COMMUNICATION AGREEMENT

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2. In working with the Mayor and other Councilors, I will:
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 - d. never, in any public way, insult or denigrate any staff member, and if I have an unresolved disagreement concerning a staff member's actions, I will bring it to the city manager.
5. In working with the city attorney, I will:
- a. respect that the city attorney represents the city as a whole, and if the Council's direction to the city attorney conflicts with the city attorney's ethical obligations to the city, the city attorney must resolve this conflict in favor of the city;
 - b. remember that information a Council member shares with the city attorney is not confidential with respect to other Council members, and the information may be disclosed to the entire Council;
 - c. contain my requests for information or assistance to items that can be responded to quickly and will work to secure the support of the majority of Council for items taking more than an hour; and
 - d. respect that all responses to legal questions will be sent to the entire Council in an effort to protect all parties, keep all City Councilors informed, and ensure there is no perception of favoritism.

Council Position No. 1 – Angel Falconer

Council Position No. 2 – Lisa Batey

Council Position No. 3 – Desi Nicodemus

Council Position No. 4 – Kathy Hyzy

Mayor – Mark Gamba