

**EDINBURGH TOWN COUNCIL**

**ORDINANCE NO. 2012-9**

**AN ORDINANCE ADOPTING AND IMPLEMENTING  
A NEPOTISM & CONTRACTING WITH UNIT POLICY**

WHEREAS, in 2012 the Indiana Legislature passed, and the Governor signed, HEA 1005 entitled Nepotism; Conflict of Interest;

WHEREAS, IC 36-1-20.2, as added by P.L. 135-2012, SECTION 7, requires the Town of Edinburgh to establish a policy concerning nepotism;

WHEREAS, IC 36-1-21, as added by P.L. 135-2012, SECTION 8, requires the Town of Edinburgh to establish a policy concerning contracting with relatives of elected officials;

WHEREAS, these two new chapters, IC 36-1-20.2 Nepotism and IC 36-1-21 Contracting with a Unit, respectively, are effective July 1, 2012;

WHEREAS, in both of the new Indiana Code chapters, the municipal legislative bodies are mandated to adopt a policy that includes, as a minimum, the requirements set forth in those new chapters;

WHEREAS, after thoughtful consideration and in order to comply with the two new chapters of the Indiana Code mentioned above, the Edinburgh Town Council ("Council") believes it is in the best interests of the Town of Edinburgh ("Town") and 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 ORDAINED BY THE EDINBURGH TOWN  
COUNCIL, AS FOLLOWS:**

**I. SECTION 1. DEFINITIONS**

- a. For purposes of this ordinance, "relative" shall be defined as spouse, parent, stepparent, child (natural or adopted), stepchild, brother, half-brother, sister, half-sister, stepbrother, stepsister, niece, nephew, aunt, uncle, daughter-in-law or son-in-law.

## II. SECTION 2. ADOPTION OF POLICY

- a. On July 1, 2012 the Town shall have a Nepotism and a Contracting with a Unit policy that complies with the minimum requirements of IC 36-1-20.2 (hereinafter "Nepotism Policy") and IC 36-1-21 (hereinafter "Contracting with a Unit by a Relative Policy") and implementation will begin.
- b. The Town's Nepotism Policy is hereby established effective July 1, 2012 by adopting the minimum requirements provisions of IC 36-1-20.2, and including all future supplements and amendments thereto which become law from time to time, and making them a part hereof as if fully set out herein.
- c. The Town's Contracting with a Unit by a Relative Policy is hereby established effective July 1, 2012 by adopting the minimum requirements provisions of IC 36-1-21, and including all future supplements and amendments thereto which become law from time to time, and making them a part hereof as if fully set out herein.
- d. The Council finds that both IC 36-1-20.2 and IC 36-1-21 specifically allow a unit to adopt requirements that are "more stringent or detailed" and that more detailed are necessary.
- e. The Council further finds that a single member of the Council cannot act for the entire Council to make work assignments, compensation, grievances, advancement or a performance evaluation without prior authority of a majority of the Council and therefore without such authority by the majority he/she will not be in the direct line of supervision.
- f. The Council finds that a single member of governing bodies with authority over employees in the Town cannot act for the governing body to make work assignments, compensation, grievances, advancement or a performance evaluation without prior authority of a majority of the body, when a statute provides that a majority is needed to act, and therefore, without such authority by the majority the single member will not be in the direct line of supervision.
- g. All elected and appointed officials and employees of the Town are hereby directed to cooperate fully in the implementation of the policies created by this Ordinance and demonstrating compliance with these same policies.

h. The policies created by this Ordinance are hereby directed to be implemented

by any of the following actions: a) posting a copy of this Ordinance in its entirety in at least one of the locations in the Town where it posts employer posters or other notices to its employees; b) providing a copy of this Ordinance to its employees and elected and appointed officials; c) providing or posting a notice of the adoption of this Ordinance; or d) any such other action or actions that would communicate the policies established by this Resolution to its employees and elected and appointed officials. Upon the taking of any of these actions the policies are deemed implemented by the Town.

i. A copy of the provisions of IC 36-1-20.2 and IC 36-1-21 effective July 1, 2012 are attached hereto and incorporated herein as Exhibit "A".

j. Two (2) copies of IC 36-1-20.2 and IC 36-1-21, and as supplemented or amended, are on file in the office of the Clerk or Clerk-Treasurer for the Town of Edinburgh for public inspection as maybe required by IC 36-1-5-4.

### **III. SECTION 3. VIOLATION – PENALTIES**

a. Failure to abide by or cooperate with the implementation, compliance and certifications connected with the Nepotism Policy is a violation and may result in the discipline, including termination, of an employee or a transfer from the direct line of supervision or other curative action. An elected or appointed official of the Town who fails to abide by or cooperate with the implementation, with the compliance and with mandated certifications of the Nepotism Policy may be subject to action allowed by law.

b. Failure to abide by or cooperate with the implementation, compliance and certifications connected with the Contracting with Unit by a Relative Policy is a violation and may result in the discipline, including termination, of an employee or a curative action. An elected or appointed official of the Town who fails to abide by or cooperate with the implementation, with the compliance and with mandated certifications of the Contracting with Unit by a Relative Policy may be subject to action allowed by law.

IV. **SECTION 4. PUBLIC BENEFIT**

- a. That the Council finds that this ordinance will be in the best interest of the Town and for the benefit of the public and residents of the Town.

V. **SECTION 5. REPEALER**

- a. All ordinances or parts of ordinances in conflict with provisions of this ordinance are hereby repealed.

VI. **SECTION 6. SEVERABILITY**

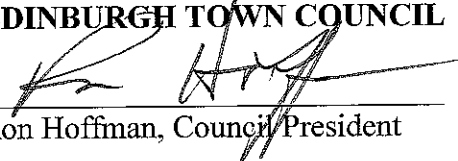
- a. Should any section or provision of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any part thereof, other than the part declared to be unconstitutional or invalid.

VII. **SECTION 7. EFFECTIVE DATE**

- a. This ordinance shall be in full force and effect from and after its passage, approval and publication according to law.

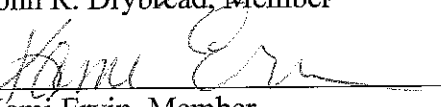
ADOPTED this 25<sup>th</sup> day of June, 2012.

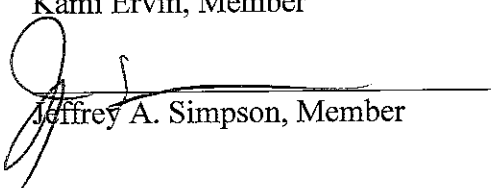
**EDINBURGH TOWN COUNCIL**

  
Ron Hoffman, Council President

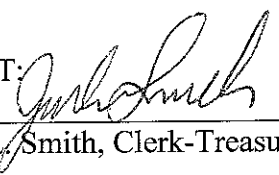
Curtis Rooks, Vice President

  
John R. Drybread, Member

  
Kami Ervin, Member

  
Jeffrey A. Simpson, Member

ATTEST:

  
Jackie L. Smith, Clerk-Treasurer

## **Exhibit "A"**

### **Chapter 20.2. Nepotism**

Sec. 1. This chapter applies to all units.

Sec. 2. An individual who is employed by a unit on July 1, 2012, is not subject to this chapter unless the individual has a break in employment with the unit. The following are not considered a break in employment with the unit:

- (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 unit is terminated followed by immediate reemployment by the unit, without loss of payroll time.

Sec. 3. For purposes of this chapter, the performance of the duties of:

- (1) a precinct election officer (as defined in IC 3-5-2-40.1) that are imposed by IC 3; or
- (2) a volunteer firefighter;

is not considered employment by a unit.

Sec. 4. As used in this chapter, "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.

Sec. 5. As used in this chapter, "employed" means an individual who is employed by a unit on a full-time, part-time, temporary, intermittent, or hourly basis. The term does not include an individual who holds only an elected office. The term includes an individual who is a party to an employment contract with the unit.

Sec. 6. As used in this chapter, "member of the fire department" means the fire chief or a firefighter appointed to the department.

Sec. 7. As used in this chapter, "member of the police department" means the police chief or a police officer appointed to the department.

Sec. 8. (a) As used in this chapter, "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.
- (7) A daughter-in-law or son-in-law.

(b) For purposes of this section, an adopted child of an individual is treated as a natural child of the individual.

(c) For purposes of this section, the terms "brother" and "sister" include a brother or sister by the half blood.

Sec. 9. (a) This chapter establishes minimum requirements regarding employment of relatives. The legislative body of the unit shall adopt a policy that includes, at a minimum, the requirements set forth in this chapter. However, the policy may:

- (1) include requirements that are more stringent or detailed than any provision in this chapter; and
- (2) apply to individuals who are exempted or excluded from the application of this chapter.

The unit may prohibit the employment of a relative that is not otherwise prohibited by this chapter.

(b) The annual report filed by a unit with the state board of accounts under IC 5-11-13-1 must include a statement by the executive of the unit stating whether the unit has implemented a policy under this chapter.

Sec. 10. Individuals who are relatives may not be employed by a unit in a position that results in one (1) relative being in the direct line of supervision of the other relative.

Sec. 11. (a) This section applies to an individual who:

- (1) is employed by a unit on the date the individual's relative begins serving a term of an elected office of the unit; and
- (2) is not exempt from the application of this chapter under section 2 of this chapter.

(b) Unless a policy adopted under section 9 of this chapter provides otherwise, an individual may remain employed by a unit and maintain the individual's position or rank even if the individual's employment would violate section 10 of this chapter.

(c) Unless a policy adopted under section 9 of this chapter provides otherwise, an individual described in subsection (b) may not:

- (1) be promoted to a position; or
- (2) be promoted to a position that is not within the merit ranks, in the case of an individual who is a member of a merit police department or merit fire department;

if the new position would violate section 10 of this chapter.

Sec. 12. This chapter does not abrogate 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.

Sec. 13. Unless the policy adopted under section 9 of this chapter provides otherwise, a sheriff's spouse may be employed as prison matron for the county under IC 36-8-10-5 and the spouse may be in the sheriff's direct line of supervision.

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Sec. 14. Unless the policy adopted under section 9 of this chapter provides otherwise, an individual:

- (1) who served as coroner;
- (2) who is currently ineligible to serve as coroner under Article 6, Section 2(b) of the Constitution of the State of Indiana;
- (3) who, as coroner, received certification under IC 36-2-14-22.3; and
- (4) whose successor in the office of coroner is a relative of the individual; may be hired in the position of deputy coroner and be in the coroner's direct line of supervision.

Sec. 15. If the township trustee's office is located in the township trustee's personal residence, unless the policy adopted under section 9 of this chapter provides otherwise the township trustee may hire only one (1) employee who is a relative. The employee:

- (1) may be hired to work only in the township trustee's office;
- (2) may be in the township trustee's direct line of supervision; and
- (3) may not receive total salary, benefits, and compensation that exceed five thousand dollars (\$5,000) per year.

Sec. 16. Each elected officer of the unit shall annually certify in writing, subject to the penalties for perjury, that the officer has not violated this chapter. An officer shall submit the certification to the executive of the unit not later than December 31 of each year.

Sec. 17. If the state board of accounts finds that a unit has not implemented a policy under this chapter, the state board of accounts shall forward the information to the department of local government finance.

Sec. 18. If a unit has not implemented a policy under this chapter, the department of local government finance may not approve:

- (1) the unit's budget; or
  - (2) any additional appropriations for the unit;
- for the ensuing calendar year until the state board of accounts certifies to the department of local government finance that the unit is in compliance with this chapter.

## **Chapter 21. Contracting With a Unit**

Sec. 1. This chapter applies only to a unit.

Sec. 2. As used in this chapter, "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.

Sec. 3. (a) As used in this chapter, "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.
- (7) A daughter-in-law or son-in-law.

(b) For purposes of this section, an adopted child of an individual is treated as a natural child of the individual.

(c) For purposes of this section, the terms "brother" and "sister" include a brother or sister by the half blood.

Sec. 4. (a) This chapter establishes minimum requirements regarding contracting with a unit. The legislative body of the unit shall adopt a policy that includes, at a minimum, the requirements set forth in this chapter. However, the policy may:

- (1) include requirements that are more stringent or detailed than any provision in this chapter; and
- (2) apply to individuals who are exempted or excluded from the application of this chapter.

The unit may prohibit or restrict an individual from entering into a contract with the unit that is not otherwise prohibited or restricted by this chapter.

(b) The annual report filed by a unit with the state board of accounts under IC 5-11-13-1 must include a statement by the executive of the unit stating whether the unit has implemented a policy under this chapter.

Sec. 5. (a) A unit may enter into a contract or renew a contract for the procurement of goods and services or a contract for public works with:

- (1) 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 of this section are satisfied and the elected official does not violate IC 35-44-1-3.

(b) A unit may enter into a contract or renew a contract with an individual or business entity described in subsection (a) 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 fifteen (15) days after final action on the contract or purchase, with:
    - (i) the state board of accounts; 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 unit:
  - (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 unit satisfies any other requirements under IC 5-22 or IC 36-1-12.

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

(d) This section does 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.

Sec. 6. Each elected officer of the unit shall annually certify in writing, subject to the penalties for perjury, that the officer is in compliance with this chapter. An officer shall submit the certification to the executive of the unit not later than December 31 of each year.

Sec. 7. If the state board of accounts finds that a unit has not implemented a policy under this chapter, the state board of accounts shall forward the information to the department of local government finance.

Sec. 8. If a unit has not implemented a policy under this chapter, the department of local government finance may not approve:

- (1) the unit's budget; or
  - (2) any additional appropriations for the unit;
- for the ensuing calendar year until the state board of accounts certifies to the department of local government finance that the unit has adopted a policy under this chapter.