


ROBERT CHARLES DAVIS
City of Marine City Attorney

MEMORANDUM

TO: City of Marine City
FROM: Robert Charles Davis 
RE: Election Workers
DATE: September 26, 2022

I. INTRODUCTION

The purpose of this Memorandum is to outline the employment status of an election worker and the right of the City to terminate an election worker under the controlling law.

II. DISCUSSION

The City maintains a “City Clerk Job Description” (Exhibit 1). That attached description was provided to the current Clerk as part of the hiring process. At number 5, under “Essential Job Functions” on Page 2, the following language applies:

“Recruits, trains and supervises election workers according to City Charter and State Election Law”.

The City provides express guidance to the Clerk on the role of the Clerk with respect to an election worker. That relationship is to be governed by the Charter and by the controlling State Election Law.

Under the law, an election worker is considered to be an employee. This is confirmed by various IRS Opinions and is also confirmed by the City Auditor/Accountant.

The City maintains “Personnel Policies and Procedures” (Exhibit 2). As stated at Page 1, “employment at the City of Marine City is at-will and either the employee or the City may terminate

employment at any time with or without cause or reason” (Exhibit 2, Page 1). This applies to all employees.

The Charter, at Section 3.7 (Exhibit 3), is also instructive and states, in relevant part, the following:

“The head of each department shall have the power to hire and discharge the employees of such department without confirmation by the Commission. Any employee who has been discharged may within ten days thereafter petition the Commission to hear the facts regarding such discharge, and in any such case the Commission may, in its sole discretion, hold a hearing and inquire into such facts and may make such recommendations in the matter as it considers proper.”

Based on the Charter, as read in conjunction with the Clerk’s Job Description, the Clerk has and maintains authority to discharge an employee of that department without confirmation by the Commission. This includes an election worker.

The last issue is consistency with State Election Law. As revised in June of 2022, the State of Michigan Bureau of Election issued a short document titled “Authority of City and Township Clerks Over Election Inspectors” (Exhibit 4). That document is consistent with the State Election Law and states, in relevant part, the following:

“As with any employment relationship, a clerk may require election inspectors to take particular actions or complete tasks in a specified manner, and the clerk may also require election inspectors to refrain from taking certain actions or behaving in certain ways. An election inspector who fails to follow the directions of the clerk of the city or township in which the election inspector is serving, or who violates any of the duties imposed on election inspectors by the Michigan Election Law, may be dismissed by the clerk.”

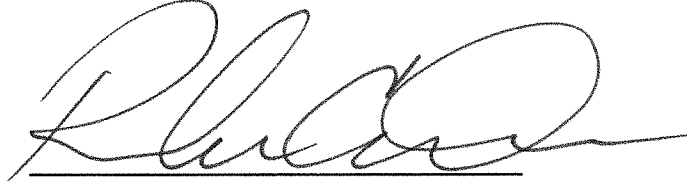
“A dismissed election inspector may be replaced by the clerk if the clerk determines that a replacement election inspector is necessary to ensure the smooth operation of the election process. Once the replacement election inspector has taken the oath and, if applicable, signed the poll book, the replacement election inspector may perform all the tasks and is bound by all the duties of a regular election inspector”.

Section 3.7 of the Charter does allow a discharged employee to petition the Commission, within ten (10) days, to “hear facts regarding such discharge”. The Commission then has the right, but not the obligation, to hold a hearing and inquire into such facts. The Commission may issue any recommendations in the matter it considers to be “proper”. Under the Charter, the process is available only to the discharged employee and it must be initiated within ten (10) days of the discharge date.

III. CONCLUSIONS / RECOMMENDATIONS

The City Clerk is a department head. Election workers are employees of the City and are governed by the Clerk. According to the controlling documents, employees of the City are at will. The City Clerk, according to the Charter and State Election Law guidance, may terminate an election worker without cause. The Commission has no role in the termination process as set forth in the Charter. Any discharged employee may “petition” the Commission to be heard on the facts of the discharge within 10 days of the termination date. The Commission may agree to hear the issues and the Commission may make recommendations on the issues as determined by the Commission to be “proper”. The Commission also has the right to reject the need for a hearing process.

Attached as Exhibit 5 is a State proposed Code of Conduct for election workers.



Robert Charles Davis

EXHIBIT 1

City Clerk Job Description

Position Summary: The City Clerk is an Administrative Officer of the City and is responsible for the Office of the City Clerk. The City Clerk serves as the Clerk of the City Commission and official custodian of the City seal and all City records, documents, ordinances, resolutions and regulations. The City Clerk registers voters and conducts national, state, and local elections.

Supervised by: City Manager

Supervises: Deputy Clerk, Election workers/volunteers and coordinates the work of others assigned to assist with Clerk Department functions.

Work Schedule: 7:30 am to 6:00 pm Monday – Thursday. This position also requires the ability to attend meetings scheduled at times other than normal business hours.

ESSENTIAL JOB FUNCTIONS:

An employee in this position is required to perform the following essential functions with or without reasonable accommodation. These examples are not an exhaustive list of the duties that the employee may be expected to perform:

- 1) Oversees front office activities related to the Clerk function. Responds to telephone inquiries, assists customers at the counter, and provides general administrative and clerical support to the City Manager and other departments, as requested.
- 2) Serves as Clerk of the City Commission and subsidiary boards and commissions. Prepares and posts meeting schedule and maintains membership and terms of office information for all boards and commissions. Prepares meeting agenda packets, proclamations, posts & publishes public hearing notices (in accordance with the City Charter and Michigan law), and attends regular and special meetings, including those held outside of normal business hours; records and transcribes minutes and records all ordinances and resolutions of the City Commission.
- 3) Serves as the official custodian of all City records, papers and documents. Codifies ordinances, files and maintains a comprehensive record keeping system for all official City documents. Provides ample notice to the appropriate departments and officials regarding the expiration or termination of any franchise, contract, or agreement.

4) Acts as official custodian of the City seal; certifies ordinances, resolutions, and other documents requiring a City seal; administers oaths of office.

5) Registers voters and conducts elections. Maintains related computer and paper files, and issues voter identification cards. In coordination with the Election Commission, prepares legal notices, establishes voting precincts, issues and certifies petitions, issues absentee ballots, and prepares voting equipment.

✗ Recruits, trains and supervises election workers according to City Charter and State Election law. Reports total of election returns to County Clerk. Serves as ✗
secretary of Election Commission.

6) Regularly apprises elected officials, City Manager and City Attorney of changes, updates, or modifications to election laws.

7) Issues Business Licenses and other authorized licenses or permits, such as Special Event Permits and Peddler's Permits, according to established code, procedure and policy. Gathers associated documentation, arranges for inspections, obtains requisite approvals and maintains related records. Maintains annual registration of existing businesses and notifies Assessor of new businesses for addition to the personal property roll; and, also notifies Assessor of closure of businesses for deletion per the personal property roll.

8) Coordinates cemetery sales, issues deeds and maintains related cemetery records, including computerized data management system. Arranges grave openings and closings, foundations, and other activities related to burials, as needed.

9) Responds to general inquiries and freedom of information requests according to established procedures and associated laws. Coordinates with the City Manager and legal counsel, and refers items to other City departments as necessary.

10) Prepares departmental budgets for City Clerk, Elections, and Water & Sewer.

11) Ensures a proper inventory of office supplies and departmental forms. Coordinates service activity related to voting equipment and computer systems to effectively meet operational demands.

12) Assists in purchasing activities, including preparation of bid notices and processing bid openings.

- 13) Maintains public and confidential files related to OSHA/MIOSHA reports, Worker's Compensation records, and general liability claims and incidents.
- 14) Maintains Code of Ordinances. Updates code books.
- 15) Administers application process for Industrial Facilities Tax Exemption Certification (IFTEC).
- 16) Maintains and updates the City's website and Facebook page, as necessary.

ADDITIONAL JOB FUNCTIONS

- Responsible for supervision of all utility billing functions.

MINIMUM QUALIFICATIONS AND REQUIRED KNOWLEDGE, SKILLS AND ABILITIES

The requirements listed below are representative of the minimum qualifications, knowledge, skills and abilities required to successfully perform the essential functions of the position.

- A high school diploma or the equivalent, with additional training in office administration, is required. An Associate's Degree, or the equivalent in business administration, or a related field is preferred.
- Four or more years of experience in an administrative or clerical support position are required. Previous supervisory experience and work experience in a municipal Clerk's department or other municipal office setting is preferred.
- Certification as a Michigan Municipal Clerk, or the ability to become certified, is required. Additional ongoing participation in State, County or other related training programs is required.
- Knowledge of the City Charter, local ordinances, state and federal laws, and regulations pertaining to records management, public information, elections, voter registration and other topical areas pertinent to the City Clerk function.
- Knowledge of the principles and practices of general business administration and professional office management.
- Knowledge of City services, organizational structure and general operations, to effectively direct and assist the public.

- Skill in recruiting/training volunteer staff and effectively coordinating their activities.
- Skill in maintaining complex record keeping and document retention systems.
- Skill in the use of voting and office equipment, including computers and related software.
- Ability to coordinate multiple tasks and maintain attention to detail.
- Ability to attend meetings scheduled at times other than normal business hours.
- Ability to establish and maintain effective working relationships and use good judgment, initiative, and resourcefulness when dealing with other employees, professional contacts, the media, elected officials, and the public.

WORKING CONDITIONS AND PHYSICAL DEMANDS

The physical demands and work environment described here are representative of those an employee encounters while performing the essential functions of the job.

An employee in this position spends the majority of their time in an office setting with a controlled climate where they sit and work on a computer for extended periods of time; communicate with others in person or by phone; and, move around the office to assist customers, file and complete other administrative duties.

EXHIBIT 2

PERSONNEL POLICIES AND PROCEDURES
CITY OF MARINE CITY

Revised: November 7, 2019
Created: 2-7-1991



I. INTRODUCTION

The purpose of this Manual is to provide information about the employment policies and practices of the City of Marine System. We expect each employee to read this Manual carefully, as it is a valuable reference for understanding various aspects of your job and certain employment policies and procedures. Additionally, to insure the most effective and efficient delivery of services to the citizens of Marine City, it is necessary to adopt and maintain a reasonable system for administration of all personnel matters.

Should you have any questions or concerns regarding a policy or provision of this Manual, please feel free to contact your Supervisor or the City Manager. The City Manager shall be responsible for administration of the policies and procedures contained herein and can recommend amendments to this Manual, which shall be reviewed by the City Commission prior to becoming effective. The City of Marine City is firmly committed to the principles of fairness and merit in personnel administration, and seeks to insure that all personnel practices shall be impartial and universally applied.

Please note to the extent that any provision of this Manual conflicts in any way with a current labor contract ("collective bargaining agreement") in effect between certified labor organizations and the City, the issue shall be controlled by the applicable collective bargaining agreement.

Subject to any limitations pursuant to an applicable Collective Bargaining Agreement, employment at with the City of Marine City is at-will and either the employee or the City may terminate employment at any time, with or without cause or reason. No supervisor or manager or other representative of the City (except the City Manager, in an Agreement signed in writing and with appropriate approval) has the authority to enter into any agreement, on an individual or collective basis, for employment for any specified period of time or to make any agreement contrary to the above. Furthermore, nothing in this Manual is intended to interfere with, restrain, or prevent concerted activity as protected by the National Labor Relations Act. Such activity includes employee communications regarding wages, hours, or other terms or conditions of employment. City of Marine City employees have the right to engage in or refrain from such activities.

PERSONNEL POLICIES AND PROCEDURES
CITY OF MARINE CITY



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Definitions

1. Probationary - A new employee being evaluated for a specified period of time prior to achieving permanent status.
2. Permanent - An employee who has successfully completed the specified probationary period (and has been retained in the appointed position). Please note that while considered a permanent employee, all employees are "at-will" as explained further above, unless subject to a specific contractual agreement (on an individual basis or pursuant to a Collective Bargaining Agreement).
3. Temporary - An employee who has been appointed for a limited and specified period of time, either full or part time.
4. Conditional - An employee on temporary status, with transition to permanent status conditional upon another employee's return.
5. Full Time - An employee who works the normal 40 hour work week.
6. Part Time - An employee who is employed regularly for less than the normal number of working hours, but on a fixed schedule.
7. **Contractual** - An individual who contracts with the City for a specific service without fixed hours.

Probationary Period: City Service Positions

The initial probationary period shall be six months for all new employees or as specified in the specific union or personal contracts.

All promotions, transfers and reappointments will be subject to a six (6) month probationary period. During this type of probationary period employees will continue to be considered permanent employees, will accrue seniority and shall be entitled to all other protections afforded to similarly-situated permanent employees (such as applicable protections provided under a Collective Bargaining Agreement).

Permanent Status

When an employee first receives permanent status, the employee shall be advanced to the pay step in the employee's pay range. This is discussed at time of hire.

PERSONNEL POLICIES AND PROCEDURES
CITY OF MARINE CITY



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2. Resignation

If circumstances make it necessary for an employee to resign, a written resignation should be submitted to the Department Head/City Manager. This should state the reason for resigning and give at least 30 working days' notice or as provided in specific union contract.

3. Bargaining Unit Dismissal

Employees who are members of a bargaining unit should consult the applicable collective bargaining agreement for information regarding dismissal/termination of their employment.

4. Termination of Non-Union Employees and Severance Pay

Nothing contained herein changes the at-will nature of employment with the City. Unless otherwise provided for by written contract or collective bargaining agreement, City employees do not have any right to severance pay and can be terminated at any time, with or without reason and with or without cause.

IV. SCHEDULING, PAY AND EXPENSE POLICIES

Work Schedule

Every employee shall perform such services as may be directed by the City Manager or their respective Department Head even though the work may be of a different nature or in a different department from that in which the employee is normally engaged.

1. Work Week

Generally, the work week shall consist of five consecutive eight hour days, Monday through Friday. This may be altered by the Department Head with the approval of the City Manager, but will always consist of a 40 hour shift scheduled during a seven (7) day calendar period.

2. Work Day

Generally, the work day shall consist of eight working hours (8:30 a.m. - 5:00 p.m.) within the 24 hour period beginning at midnight (will vary department to department). This may be altered by the Department Head with the permission of the City Manager. Also, see specific union contracts as applicable.

EXHIBIT 3

Section 3.4. Election of mayor and mayor pro tem.

The Commission shall, at its first meeting following each regular City election, after the newly elected members take office, elect one of its members to serve as Mayor Pro Tem who shall serve during the term of the Mayor.

(Amended 8-8-72)

Section 3.5. Duties of mayor.

(a) Insofar as required by statute and for all ceremonial purposes, the Mayor shall be the executive head of the city. He shall be considered to be a Commissioner for all purposes but shall have no veto power. He shall be the presiding officer of the Commission.

(b) He shall be a conservator of the peace and may exercise within the city the powers conferred upon sheriffs to suppress riot and disorder, and shall have the power to command the assistance of all able-bodied citizens to aid in the enforcement of the ordinances of the city and to suppress riot and disorder.

(c) He shall authenticate by his signature such instruments as the Commission, this charter or the laws of the State of Michigan or of the United States shall require.

(d) He shall exercise only such powers as statute, this charter or the Commission shall specifically confer upon or require of him.

Statutory reference:

Provision for duties of officers mandatory, see M.C.L.A. § 117.3(d)

Section 3.6. Duties of mayor pro tem.

The Mayor Pro Tem, shall perform the duties of the Mayor when, because of absence from the city, disability, or otherwise, the Mayor is temporarily unable to perform the duties of his office.

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Section 3.7. Administrative service.

The administrative officers of the city shall be the City Manager, Assessor, Attorney, Clerk, Treasurer, Chief of Police (who shall also serve as Harbor Master without additional compensation), Fire Chief, Superintendent of Public Works, Librarian, and if the Commission deems necessary a Health Officer and an Engineer. The Commission may by ordinance create additional administrative offices and may by resolution combine any administrative offices in any manner it deems necessary or advisable for the proper and efficient operation of the city, but the Commission may not diminish the duties or responsibilities of the office of City Manager.

The City Manager and Attorney shall be appointed by the Commission for an indefinite period, shall be responsible to and serve at the pleasure of the Commission and shall have their compensation fixed by the Commission. All administrative officers of the city except the City Manager and Attorney shall be appointed or selected by the City Manager with the approval of the Commission for an indefinite period and shall be responsible to the City Manager.

The City Manager shall have the power to discharge without the confirmation of the Commission such administrative officers as he appoints. Any administrative officer who has been discharged may within ten days thereafter petition the Commission to hear the facts regarding such discharge, and in any such case the commission shall hold a hearing and inquire into such facts and may make the final determination regarding the discharge.

The compensation of administrative officers appointed by the City Manager shall be fixed by the City Manager in accordance with budget appropriations and any pay plan adopted by the Commission.

Except as may be otherwise required by statute or this charter, the Commission may establish by ordinance such departments of the city as it deems necessary or advisable and shall prescribe therein the functions of each department and the duties, authorities and responsibilities of the officers of each department. The City Manager may prescribe such duties and responsibilities of the officers of those departments responsible to him which are not inconsistent with this charter or with any ordinance or resolution.

X { All personnel employed by the city who are not elected officers of the city or declared to be administrative officers or deputies by, or under the authority of this charter or who are not otherwise declared by this charter to be officers, shall be deemed to be employees of the city. The head of each department shall have the power to hire and discharge the employees of such department without confirmation by the Commission. Any employee who has been discharged may within ten days thereafter petition the Commission to hear the facts regarding such discharge, and in any such case the Commission may, in its sole discretion, hold a hearing and inquire into such facts and may make such recommendations in the matter as it considers proper.

(Amended 8-5-80)

Section 3.8. City manager: Appointment and qualifications.

The Commission shall appoint a City Manager within ninety days after any vacancy exists in such position. The City Manager shall be chief administrative officer of the city government. He shall be selected on the basis of his executive and administrative qualifications and must have special training in the field or previous experience as a City Manager or as an assistant to a City Manager. The first City Manager shall not be a resident of the city at the time of his appointment. The City Manager shall be selected without regard to his political or religious preferences. No member of the Commission shall be eligible for the position of City Manager from the time of his election to a date two years

EXHIBIT 4



Authority of City and Township Clerks Over Election Inspectors

Election inspectors are employees of the clerk of the city or township in which the election inspector is employed. While the Michigan Election Law requires election inspectors to fulfill certain duties – in particular, to uphold the oath of office taken by each election inspector – each city and township clerk has the authority to issue directions to election inspectors working in their jurisdiction, just as the clerk has the authority to issue directions to any other person employed by the clerk. As with any employment relationship, a clerk may require election inspectors to take particular actions or complete tasks in a specified manner, and the clerk may also require election inspectors to refrain from taking certain actions or behaving in certain ways. An election inspector who fails to follow the directions of the clerk of the city or township in which the election inspector is serving, or who violates any of the duties imposed on election inspectors by the Michigan Election Law, may be dismissed by that clerk.

If an election inspector serving at a polling place is dismissed by the clerk, the election inspector must leave the polling place without disrupting the voting process. An election inspector serving in an absent voter ballot processing facility during the sequestration period who is dismissed by the clerk is still bound by their legal obligation to remain sequestered until the close of polls. To avoid breaching that obligation, the clerk should direct the dismissed election inspector to remain in a room or area of the location containing the absent voter ballot processing facility but which is separated from the area where absent voter ballots are being processed. A dismissed election inspector who breaks sequestration by prematurely leaving the location containing an absent voter ballot processing facility before the close of polls violates the oath they took upon entering the facility. An election inspector serving in an absent voter ballot processing facility who is dismissed by the clerk after the sequestration period ends must leave the facility without disturbing the ballot tallying process.

A dismissed election inspector may be replaced by the clerk if the clerk determines that a replacement election inspector is necessary to ensure the smooth operation of the election process. Once the replacement election inspector has taken the oath and, if applicable, signed the poll book, the replacement election inspector may perform all the tasks and is bound by all the duties of a regular election inspector.

DIRECTIONS PROVIDED BY THE MICHIGAN BUREAU OF ELECTIONS
RICHARD H. AUSTIN BUILDING • 1ST FLOOR • 430 W. ALLEGAN • LANSING, MICHIGAN 48918
(517) 335-3237

Revision Date: June 2022

EXHIBIT 5

POLL WORKER'S CODE OF CONDUCT

Poll workers and election inspectors hold highly visible positions of public trust. They must conduct their business in an environment and in a manner that favorably reflects the values of fairness, accessibility, accountability, effectiveness, and responsiveness. Poll workers and election inspectors should, at all times, uphold and increase the public trust and confidence in Michigan's elections, reflect the highest degree of integrity and demonstrate commitment to each principle of this code.

1. I will not use or attempt to use my position to secure unwarranted privileges for others or myself.
2. I will carry out my responsibilities as a poll worker or election inspector in a timely, diligent, and courteous manner. I will not harass, threaten, retaliate against or disparage other poll workers, election inspectors or clerks, or anyone associated with, or doing business with the local clerk.
3. I will not discriminate on the basis of race, color, religion, national origin, gender, or other protected group.
4. I will provide impartial treatment to all persons with whom I interact during the course of my work as a poll worker or appearing at a precinct.
5. I will not divulge to an unauthorized person, confidential information acquired in the course of my employment in advance of the time prescribed for its authorized release to the public.
6. I will not in any manner make known to anyone the results of the votes as they are being counted until after the polls have closed.
7. I am free to participate in political activities while not serving as a poll worker, but will not use or appear to use my position as a poll worker in connection with such activities.
8. I will not express my personal political opinions to other poll workers, voters, challengers, poll watchers and/or members of the general public while present in the precinct or during the hours of my employment as an election inspector.
9. I shall not represent my personal opinion as that of the local clerk, the jurisdiction where I serve, or any other election official.
10. I will use the resources, property, and funds of the local clerk judiciously and solely in accordance with prescribed procedures.
11. I understand that if I fail to follow this code of conduct or the direction of the clerk of the city or township in which I am serving, or if I violate any duties imposed on me by the Michigan Election law, the clerk or their designee has the authority to dismiss me from my employment.

I do solemnly swear (or affirm) that I will support the constitution of the United States and the constitution of this state, and that I will faithfully discharge the duties of the office of inspector of elections according to the best of my ability.

Date

Signature