



TENTATIVE AGENDA  
OTTUMWA CITY COUNCIL

SPECIAL MEETING NO. 19  
Bridge View Center, 102 Church St.

June 22, 2021  
5:30 O'Clock P.M.

PLEDGE OF ALLEGIANCE

ROLL CALL: Council Member Roe, Stevens, Meyers, Berg, Dalbey and Mayor Lazio.

APPROVAL OF AGENDA

IDENTIFICATION OF CITIZENS DESIRING TO COMMENT ON AGENDA ITEMS:

(When called upon by the Mayor, step to the microphone; state their name, address and agenda item to be addressed. The Mayor will invite you to address the Council when that topic is being discussed. Remarks will be limited to **three minutes or less**. The City Clerk shall keep the time and notify the Mayor when the allotted time limit has been reached. Comments are to be directly germane to the agenda item being discussed; if not directly germane as determined by the Mayor will be ruled out of order.)

***All items on this agenda are subject to discussion and/or action.***

1. Beer and/or liquor applications for: Hy-Vee Ottumwa Area Chamber of Commerce, temporary outdoor service area at Jimmy Jones Shelter 6/29 - 7/4/21.

RECOMMENDATION: Approve liquor application for Hy-Vee Ottumwa Chamber of Commerce, temporary outdoor service area at Jimmy Jones Shelter 6/29-7/4/2021.

2. Ordinance No. 3183-2021, amending Chapters 9 and 26 of the Code of Ordinances (Municipal Code of the City of Ottumwa, Iowa) to create regulations for the safe operation of e-scooters in Ottumwa.

RECOMMENDATION: A. Pass the Second Consideration of Ordinance No. 3183-2021.  
B. Waive the Third Consideration, pass and adopt Ordinance No. 3183-2021.

3. Presentation on City Board and Commissions: Open meetings, ethics and other topics, facilitated by City Attorney, Kristine Stone.

RECOMMENDATION: Receive Presentation.

PUBLIC FORUM:

The Mayor will request comments from the public on topics of city business or operations other than those listed on this agenda. Comments shall not be personalized and limited to three minutes or less. Comments not directly applicable to operations, inappropriate, or an improper utilization of meeting time, as determined by the Mayor, will be ruled out of order. When called upon by the Mayor, step to the microphone; give your name, address and topic on which to address the Council. The Council is not likely to take any action on your comments due to requirements of the Open Meetings Law. Pertinent questions, comments or suggestions may be referred to the appropriate department, city administrator or legal counsel for response, if relevant.

ADJOURNMENT

**\*\*\* It is the goal of the City of Ottumwa that all City Council public meetings are accessible to people with disabilities. If you need assistance in participating in City Council meetings due to a disability as defined under the ADA, please call the City Clerk's Office at (641) 683-0621 at least one (1) business day prior to the scheduled meeting to request an accommodation. \*\*\***



[ CITY OF ]  
O T T U M W A

**FAX COVER SHEET**

City of Ottumwa

DATE: 6/18/21 TIME: 7:30 AM NO. OF PAGES 2  
(Including Cover Sheet)

TO: News Media CO: \_\_\_\_\_

FAX NO: \_\_\_\_\_

FROM: Christina Reinhard

FAX NO: 641-683-0613 PHONE NO: 641-683-0620

MEMO: Tentative Agenda for the Special City Council Meeting #19 to be held on 6/22/2021 at Bridge View Center starting at 5:30 P.M.

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\*\*\* FAX MULTI TX REPORT \*\*\*  
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JOB NO. 3640  
DEPT. ID 4717  
PGS. 2  
TX INCOMPLETE -----  
TRANSACTION OK 96847834  
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96823269  
ERROR 96828482

Ottumwa Courier  
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\*\*\* TX REPORT \*\*\*  
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ERROR 96828482

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June 17, 2021

Toi whom this may concern,

The 5<sup>th</sup> annual Greater Ottumwa Rodeo is Happening July 1-3. We are partnering with Hy-Vee's of Ottumwa to serve Alcohol during this event July 1-3. Please reach out to me if there are any questions. Thank you for your time.

Best Regards,

Shea Greiner

VP, Engagement & Organizational Advancement

217 E. MAIN STREET | OTTUMWA, IOWA 52501

[O] 641 814 5901 | [C] 641 226 3465 | [F] 641 682 3466

[SHEA@OTTUMWAIOWA.COM](mailto:SHEA@OTTUMWAIOWA.COM)

[www.gopip.org](http://www.gopip.org)

## Chris Reinhard

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**From:** noreply@salesforce.com on behalf of IOWA ABD Licensing Support  
<elaps@iowaabd.com>  
**Sent:** Wednesday, June 16, 2021 2:21 PM  
**To:** Chris Reinhard; Sherrie Jones  
**Cc:** licensingnotification@iowaabd.com  
**Subject:** Application App-142758 Ready for Review

Hello,

Application Number App-142758 has been set to "Submitted to Local Authority" status and is currently ready for your review.

Corp Name: HY-VEE, INC.

DBA: Hy-Vee Ottumwa Chamber of Commerce Rodeo

License Number:

Application Number: App-142758

Tentative Effective Date: 6/29/2021

License Type: Class C Liquor License (LC)

Thank you.

**CITY OF OTTUMWA**  
**Staff Summary**

**\*\* ACTION ITEM \*\***

Council Meeting of : Jun 22, 2021

Planning & Development  
Department

Zach Simonson  
Prepared By  
Zach Simonson  
Department Head

  
\_\_\_\_\_  
City Administrator Approval

AGENDA TITLE: **ORDINANCE NO. 3183-2021 - AN ORDINANCE AMENDING THE CITY CODE TO PROVIDE REGULATIONS FOR ELECTRIC SCOOTERS WITHIN THE CITY OF OTTUMWA, IOWA**

\*\*\*\*\*

\*\*Public hearing required if this box is checked.\*\*

RECOMMENDATION: **Pass second consideration of Ordinance No. 3183-2021. Waive third consideration, pass and adopt Ordinance No. 3183-2021.**

DISCUSSION: The City is considering a memorandum of understanding that will permit Bird to operate an app-based e-scooter rental program in Ottumwa. Whether that program happens or not, e-scooters are growing in popularity nationwide with models available for private purchase in addition to rental. This ordinance amends Chapters 9 and 26 of the Municipal Code to create regulations for the safe operation of e-scooters in Ottumwa.

Source of Funds:

Budgeted Item:  Budget Amendment Needed:

The ordinance includes:

- Anyone operating an e-scooter must obey all traffic rules.
- No more than one rider on e-scooters designed for one rider.
- No one should operate carrying any package or article that prevents using the handlebars.
- Persons should not operate more than two abreast.
- Operators should ride in a prudent and careful manner.
- Any person operating on a sidewalk must yield to any pedestrian and give audible notice when passing.
- All e-scooters must have a front lamp and red taillight after sunset.
- Electric scooters may be operated on the trails with a maximum speed of 10mph.



ORDINANCE NO. 3183-2021

AN ORDINANCE AMENDING THE CITY CODE TO PROVIDE REGULATIONS FOR ELECTRIC SCOOTERS WITHIN THE CITY OF OTTUMWA, IOWA

WHEREAS, the City of Ottumwa has been approached by a company that would like to provide shared electric scooters within the City; and

WHEREAS, the City Code currently does not address the operation of electric scooters on public streets, sidewalks or other public areas; and

WHEREAS, the City Council now desires to adopt electric scooter regulations.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OTTUMWA, IOWA THAT:

Section 1. The Code of Ordinances of the City of Ottumwa, Iowa, is hereby amended by adopting the following new Chapter 9, Article IV:

ARTICLE IV. – ELECTRIC SCOOTERS

Sec. 9-47. – Operation of Electric Scooters.

A. Observation Of Traffic Rules:

1. While travelling in the street, any person riding an electric scooter shall have all of the rights and all of the duties applicable to the driver of a motor vehicle as provided by law except as to the provisions which by their very nature can have no application.

2. All persons riding electric scooters upon any street or sidewalk within the City shall observe all ordinances and rules as to traffic limits and shall make full and complete stops at official stop signs.

B. Method Of Riding:

1. No rider of an electric scooter intended for one person shall carry a second person on any part of the scooter.

2. No person riding an electric scooter shall carry any package, bundle or article which would prevent the rider from keeping both hands on the handlebars.

C. Riding On Roadways: Persons riding electric scooters on the roadway shall not ride more than two (2) abreast and, on laned roadways, shall ride within a single

lane. No person riding an electric scooter shall ride so as to impede the normal and reasonable movement of traffic.

D. Careful Riding: No person shall ride or propel an electric scooter upon any sidewalk or roadway except in a prudent and careful manner.

E. Riding On Sidewalk: Whenever any person is riding an electric scooter upon a sidewalk, such person shall yield the right-of-way to any pedestrian and shall give audible signal before overtaking and passing such pedestrian.

F. A person who operates an electric scooter shall exercise caution to avoid colliding with any pedestrian, shall yield the right of way to any pedestrian, and shall not operate it in such manner as to indicate a willful or wanton disregard for the safety of persons.

G. All electric scooters used during the hours from sunset to sunrise shall display or their drivers shall wear a lamp on the front part of the device, and the lamp shall emit a white light visible from a distance of at least three hundred feet (300') from the front of the device and a red visible light from a distance of at least three hundred feet (300') from the back of the device.

9-48. – Parking.

No person shall park an electric stand up scooter upon a street or alley in such a manner as to obstruct pedestrian or motor vehicle travel, or a curb ramp, building entrance, or fire hydrant.

Section 2. The Code of Ordinances of the City of Ottumwa, Iowa, is hereby amended by adopting the following new Sec. 26-20(d):

26-20. – Vehicles.

...

(d) Notwithstanding the foregoing, electric scooters may be operated on the Ottumwa Trail System at a speed that does not exceed 10 miles per hour.

Section 3. All ordinances or portions of ordinances in conflict with the provisions of this Ordinance are hereby repealed, and if any section, provision, or part of this Ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the Ordinance as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

Section 4. This Ordinance shall be in effect after its final passage, approval, and publication as provided by law.

PASSED AND APPROVED this 22 day of June, 2021.

  
Tom X. Lazio, Mayor

ATTEST:

  
Chris Reinhard, City Clerk

Read First Time: June 15, 2021

Read Second Time: June 22, 2021

Read Third Time: Waived, 2021

I, Chris Reinhard, City Clerk of the City of Ottumwa, Iowa, do hereby certify that the foregoing ordinance was passed and approved by the City Council of the City of Ottumwa on the 22 day of June, 2021 and was published in the Ottumwa Courier, a newspaper of general circulation in the said City of Ottumwa on the 24 day of June, 2021.

  
Chris Reinhard, City Clerk



AHLERS COONEY  
ATTORNEYS

# City Council & Boards/ Commissions Training

Kristine Stone

Ahlers & Cooney, P.C.

June 22, 2021

# Disclaimer

*Please note that this presentation is intended for informational and educational purposes and to provide general statements from federal law, state law, and agency guidance. Federal and state law may differ on particularized areas and this outline does not include all legal considerations. Each situation varies based on the individualized facts and the law is constantly evolving.*

*Please consult with your attorney for specific legal information, advice, or individualized inquiries.*

# Topics to be covered

The Big Picture & Your Role

Open Meetings

Conflicts of Interest/Ethics

Questions

# The Big Picture

- “A power of a city is vested in the city council except as otherwise provided by a state law.” Iowa Code Sec. 364.2
- Iowa statutes do not vest any power in individual council members.
- Exception to this is for mayors as they have specific powers under Iowa law and city ordinance. Council members, however, do not.

# The Big Picture

- Same concept applies to boards and commissions
- Zoning commission established by Iowa Code Sec. 414.6
  - Refers to **“the commission”**
- Board of adjustment established by Iowa Code Sec. 414.7 & 414.12
  - Refers to **“the board”**
- Library board established by Iowa Code Sec. 392.5
  - Refers to **“the board of trustees”**
- Utility board established by Iowa Code Sec. 388.4
  - Refers to **“the board”**



# The Big Picture

- Your authority and powers come from actions taken by the council/board/commission of which you are a member, not your actions as an individual.
- This framework comes from both state and local law.



# The Big Picture

- Individual council/board/commission members do not have the authority or power to implement policy changes individually by going directly to city departments or staff members
  - This creates confusion
  - Mixed messages
  - Can create liability for the city or for yourself!



# The Big Picture

- Individual council/board/commission members do not have the authority to bind the city.
- “If an officer acts in bad faith or knowingly exceeds his authority, he may be held personally liable for damages.” *Elview Const. Co., Inc. v. North Scott Community School Dist.*, 373 NW2d 138, 145 (Iowa 1985).

# The Big Picture

## How to work effectively...

- 1 Council/board/commission must take action as a body
- 2 Work together to achieve common objectives
- 3 Identify a shared direction and set of goals
- 4 Allow the city's professional staff to implement your council/board/commission's priorities
- 5 Recognize and value the expertise and experience that the staff provide

# The Big Picture

## How to work effectively...

If you have specific concerns, share them with the City Administrator or the department head who staffs your meetings

Recognize that each member of the council/board/commission is entitled to their own opinion and an opportunity to express that opinion

Disagreements are normal, inevitable and can be very productive

Remain civil, you need to work together to accomplish your goals/objectives

# Questions on The Big Picture?

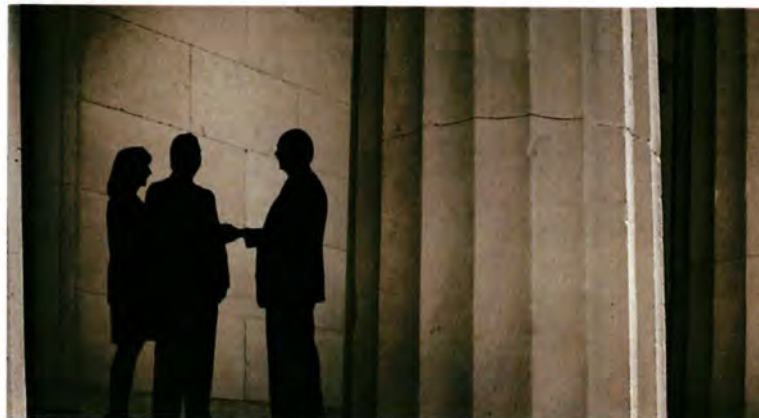


# Open Meetings

- 21.1 Intent
- This chapter seeks to assure, through a requirement of open meetings of governmental bodies, that the basis and rationale of governmental decisions, as well as those decisions themselves, are easily accessible to the people
- Ambiguity in the construction or application of this chapter should be resolved in favor of openness

# Open Meetings

- The law is to be liberally construed
- Its purpose is to prohibit secret meetings and to require such meetings to be open and to allow the public to be present
- *Donahue v. State* Iowa Supreme Court 1991





# What is a meeting?

- A gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body's policy-making duties
- Meetings shall not include a gathering of members of a governmental body for purely ministerial or social purposes when there is no discussion of policy or no intent to avoid the purposes of this chapter

# Review

## Is there a meeting?

- A gathering . . .of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body's policy-making duties

## Is there a governmental body?

- A board, council, commission, or other governing body of a political subdivision ... in this state

# Review

- Where both answers are yes, must follow open meetings requirements



# Meetings of Governmental Bodies

- Shall be preceded by public notice and shall be held in open session unless closed sessions are expressly permitted by law
- All actions and discussions shall be conducted and executed in open session
- Each governmental body shall keep minutes of all its meetings

# Notice Requirements

- Govt. body shall give notice of time, date and place of each meeting and the tentative agenda of the meeting
- In a manner reasonably calculated to apprise the public of that information
- Notice shall be posted on bulletin board or other prominent place which is easily accessible to the public
- Notice must be provided to news media who have requested such information

# Notice Requirements

- Shall be given at least 24 hours in advance of the start of the meeting
- Unless for good cause such notice is impossible or impractical
- As much notice as is reasonably possible shall be given



# Closed Session

- Meetings must be held in open session unless closed session is permitted
- 21.5 lists 12 possible reasons for going into closed session
- Nothing in the law requires a closed session; can always choose to remain in open session
- Final actions must be taken in open session
- Can enter closed session by affirmative vote of 2/3 of members of the body or by all members present at the meeting

# Closed Session

The reason for holding the closed session by reference to a specific exemption under Iowa Code Section 21.5 shall be announced publicly at the open session and entered in the minutes





# Closed Session

- Most common reasons for closed session
  - To discuss litigation strategy with an attorney where litigation is pending or is imminent and where its disclosure would be likely to prejudice or disadvantage the position of the governmental body in that litigation



# Closed Session

- Most common reasons for closed session
  - To evaluate the professional competency of someone whose appointment, hiring, performance or discharge is being considered when necessary to prevent needless and irreparable injury to that individual's reputation and that individual requests a closed session



# Closed Session

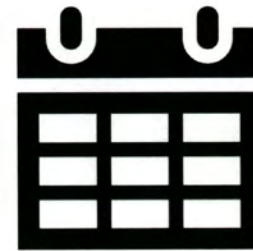
- Most common reasons for closed session
  - To discuss the purchase or sale of particular real estate only where premature disclosure could be reasonably expected to increase the price the governmental body would have to pay for that property or reduce the price the governmental body would receive for that property.



# Closed Session



Must be recorded  
and minutes must  
be taken



Recording and  
minutes must be  
retained for at  
least one year

# Minutes

- 1 Show time, date, place and members present at the meeting
- 2 Show the results of each vote taken
- 3 Include sufficient information to indicate the vote of each member
- 4 All votes shall be made public in open session
- 5 Voting by secret ballot is prohibited

# Open Meetings

- *Hutchison v. Shull* Iowa Supreme Court 2016
  - Possible open meetings violation where County Administrator met with County Supervisors individually to formulate a personnel restructuring plan
  - A meeting may occur where there is less than a majority of the body physically present, but where a majority is being represented by an agent or proxy

# Open Meetings

- These can be referred to as “serial meetings”
- Be very cautious when meeting with individual board/council members, or small groups of board/council members
- Do not share what other board/council members have said or how they plan to vote on an item



# Open Meetings

- Do not text/instant message other council/board/commission members during a meeting
- These communications are likely subject to the open records law
- Public is entitled to hear the discussion and rationale for decisions made by the council/board/commission



# Open Meetings Violations

- 21.6 Penalties for violations
  - Damages may be assessed against all who participated in the meeting unless can claim a valid defense (up to \$2,500 in certain circumstances)
  - Costs and reasonable attorney fees shall be paid either by those who participated in the meeting, or if a valid defense, then by the government itself

# Open Meetings Violations


- 21.6 Penalties for violations
  - Actions taken by the body in violation of the law may be voided
  - Member shall be removed if there has been a prior violation
  - Injunction against further violations of the law
- Ignorance of the law is not a defense

# Rules of Conduct at Meetings

- The public may use cameras or recording devices at open meetings
- Nothing in Chapter 21 prevents a governmental body from making and enforcing reasonable rules for the conduct of its meetings to assure those meetings are orderly, and free from interference or interruption by spectators

# Rules of Conduct at Meetings

Do you have rules that govern your meetings?



Are you following them?



Do they need to be updated?

# Rules of Conduct at Meetings

- It is acceptable to only allow public input during the public forum or public hearing portions of a meeting
- You do not need to allow public input on each and every item
- Where public input is allowed, it is fine to receive the input and not to respond to it
- Where written comments have been received, the board/commission/council should acknowledge the comments in the open meeting

# After the Meeting is Over

- Minutes should be turned in to the city clerk
- Minutes are public records which must be available for public inspection
- City clerk is responsible for maintaining city records

# Questions on Open Meetings?



# Conflicts of Interest

- Defined in:
  - Common Law
  - Iowa Code Chapter 362
  - Iowa Code Chapter 68B
  - City Policies





# Conflicts of Interest – Common Law

The Iowa Supreme Court has stated that conflict of interest rules, “whether common law or statutory, are based on moral principles and public policy. They demand complete loyalty to the public and seek to avoid subjecting a public servant to the difficult, and often insoluble, task of deciding between public duty and private advantage.”

# Conflicts of Interest – Common Law

- “It is not necessary that this advantage be a financial one. Neither is it required that there be a showing the official sought or gained such a result. **It is the potential for conflict of interest that the law desires to avoid.**” *Wilson v. Iowa City*, 165 NW2d 813 (Iowa 1969).

# Conflicts of Interest – Common Law

- “It is generally improper and illegal for a member of a municipal council or a similar body to vote on any question in which he is personally interested or where his personal rights will be affected.” *Security Nat. Bank of Mason City v. Bagley*, 210 NW 947 (Iowa 1926).

# Conflicts of Interest – Common Law

- Under the common law, a conflict of interest may also be found where a policy maker “has an unalterably closed mind on matters critical to the disposition of the proceeding.” Policymakers “are required to consider in good faith, and to objectively evaluate, arguments presented to them,” but are not expected to be “subjectively impartial.” *Iowa Farm Bureau Federation v. Environmental Protection Commission*, 850 NW2d 403, 416 (Iowa 2014).

# Conflicts of Interest – Common Law

- Council/board/commission members must therefore remain willing to consider opposing views on items which will come to them for consideration.
- Be aware of potential conflicts and identify/disclose them in advance.
- Seek guidance early. Rarely are these issues black and white.
- Consult with city administrator or city attorney.

# Conflicts of Interest – Iowa Code Chapter 362

- Iowa Code Section 362.5 says that a city officer shall not have an interest, direct or indirect, in any contract or job of work or material or the profits thereof or services to be furnished or performed for the officer's city. A contract entered into in violation of this section is void.
- This can be referred to as a self-dealing conflict.
- You are all city officers!

# Conflicts of Interest – Iowa Code Chapter 362

## Exceptions:

Contracts that are publicly bid

Contracts that predate the election of the officer, but the contract cannot be renewed

Contracts with a corporation in which a city officer has an interest by reason of stockholdings when less than five percent of the outstanding stock of the corporation is owned or controlled directly or indirectly by the officer or the spouse or immediate family of such officer

# Conflicts of Interest – Iowa Code Chapter 362

- Iowa Code Section 721.11 makes it a serious misdemeanor to have a direct or indirect interest in “any contract to furnish anything of value to the” city.
- Serious misdemeanors are punishable by fine and imprisonment of up to one year.



# Conflicts of Interest – Iowa Code Chapter 362

- Iowa Code Section 362.6 gives members the ability to determine whether a conflict exists for themselves, and this determination will be considered “conclusive.”
- The council/board/commission’s action will not be considered invalid due to a conflict of interest of a voting member, unless that vote is decisive to the passage of the measure.
- But remember, a contract will be considered void where a member has a prohibited interest in that contract.

# Conflicts of Interest – Iowa Code Chapter 68B

Members are prohibited from engaging in any of the following conduct:

1. Outside employment or activities that involve the use of the government's time or resources to give the person an advantage or benefit not available to the general public.
2. Outside employment or activities that involve the receipt of consideration by the government official from someone other than the government for performing work that is a part of the duties and responsibilities of the person in their official role.
3. Outside employment or activities that are subject to the official enforcement or control of the person, during the performance of their official government duties.

# Conflicts of Interest – Iowa Code Chapter 68B

## Examples:

- Using your city-provided iPad to run an online retail store (using government resources to give yourself an advantage not available to the public)
- Accepting payment from a home builder each time you approve a residential subdivision plat (receipt of consideration from someone other than the government for work that is part of your official duties)
- Owning and managing a bar that is within the city limits (employment that is subject to the official control of the city council in the liquor license context)

# Conflicts of Interest – Iowa Code Chapter 68B

- For conflicts 1 & 2, you must immediately stop the outside employment or activity
- For conflict 3, you must either stop the outside employment or activity, or publicly disclose the conflict and avoid taking action that would detrimentally affect or create a benefit for the outside employment or activity



# Conflicts of Interest – Iowa Code Chapter 68B

- Iowa Code **Chapter 68B** extends certain conflicts of elected officials to their “immediate family” members. However, for conflicts purposes, an immediate family member is defined as “the spouse and dependent children of a public official or public employee.”
- If you are prohibited from doing something, so are your spouse and dependent children.

# Questions about Conflicts of Interest?



# Questions?



Kristine Stone  
kstone@ahlerslaw.com  
Ahlers & Cooney, P.C.