

**WITHERED BURNS, LLP**

*Memorandum*

**To:** All Elected Officers of the City of West Lafayette

**From:** City Attorney's Office

**Date:** 11/5/12

**RE:** Nepotism Packet

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Dear Elected Officer:

Enclosed, you will find a packet of several documents concerning Indiana's new anti-nepotism laws that took effect on July 1, 2012. The following documents are contained within this packet:

- 1) A memo that briefly explains the new laws and their requirements for elected officers in general;
- 2) Indiana Code Chapter 36-1-20.2 which covers nepotism in City employment (Appendix A);
- 3) Indiana Code Chapter 36-1-21 which covers nepotism in City contracts (Appendix B);
- 4) Annual certification form required for 36-1-20.2 (Appendix C); and
- 5) Annual certification form required for 36-1-21 (Appendix D).

Please review the same and take note of the annual requirements that are now placed upon all elected officers within Indiana.

**WITHERED BURNS, LLP**

*Memorandum*

**To:** All Elected Officers of the City of West Lafayette

**From:** City Attorney's Office

**Date:** 11/1/12

**RE:** Nepotism, and Annual Certification Forms

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Dear Elected Officers,

As of July 1, 2012, the Indiana Legislature has enacted two (2) new Chapters of statutory law that will affect every elected officer in the state. Both statutes pertain to Nepotism (favoritism granted to relatives regardless of merit) in the scope of local government. The first chapter applies to the hiring and employment of individuals within the City, and the second chapter pertains to contracts entered into by the City with private individuals who are related to elected officers.

**Nepotism and Hiring Ind. Code 36-1-20.2**

The above chapter of the Indiana Code now prohibits any scenario where an individual inside the City (and its various departments) will be employed in the **direct line of supervision of a relative**.

The term "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.

"Direct line of supervision" 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.

Please note that the term relative is extremely broad and includes daughter/son-in-law, adopted children, half-blood siblings, step-parent/child, niece, nephew, etc.

While the City must take all necessary steps to make certain that this new statute is not violated, all elected officers must take additional steps. **Each elected officer must annually certify in writing that you have not violated the terms of this chapter.** The City has created a

form that will need to be signed each year by every elected officer of the City. This form must be signed and submitted to the Mayor **before December 31<sup>st</sup>** of every year.

Finally, please note that there are several **exceptions** to this chapter. For example, individuals employed before the law took effect on July 1, 2012 that would now violate the terms of the article are not subject to the chapter as long as they continue their employment without a break; there are also special rules that will apply if an employee is promoted and it would create a violation of the chapter.

Regardless of whether or not an exception may apply, the **general rule should be that no relatives are allowed to work with one relative in the direct supervision of another relative**. If you become aware of a possible violation, please contact the City Attorney as soon as possible for a determination of whether or not the situation will actually cause a violation.

A copy of the entire chapter code is attached to this memo for your review, as well as the Annual Certification form that will need to be signed and delivered to the Mayor's office every year going forward.

### **Ind. Code 36-1-21 Contracting and Nepotism**

The second major change effective July 1, 2012, involves City contracts. This chapter adds additional requirements for the City to enter into or renew a contract for goods, services or public works with

- 1) any individual who is a relative of an elected official, OR**
- 2) any business entity that is wholly or partially owned by the relative of an elected official.**

\*\*\*For purposes of this statute only, "elected official" means the mayor and council members. It does not include the clerk treasurer.

If either of the above scenarios apply, the City may still enter into or renew the contract, but only if the following requirements are followed:

1. The elected official must file with the City a full disclosure which has the following requirements:
  - A. Be in writing;
  - B. Describe the contract or purchase to be made by the City;
  - 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 City and be accepted in a public meeting of the City prior to final action on a contract;
  - F. Be filed not later than fifteen (15) days after the final action on the contract or purchase with the State Board of Accounts and the Clerk of

the Circuit Court in the county where the City takes final action on the contract.

2. The appropriate agency of the City must:
  - A. Make a certified statement that the contract amount or purchase price was the lowest amount or price bid; or
  - B. Make a certified statement of the reasons why the vendor or contract was selected.
3. The City must satisfy all other statutory requirements under the rules for public purchasing and public works projects.

In addition, just like the anti-nepotism laws for hiring, every elected officer (including clerk-treasurer) of the City must annually submit a certified form indicating that they are in compliance with the above chapter regarding nepotism in contracts.

In summary, it is important as elected officers, that if you become aware of any possible situations involving contracts or employment that may violate the new nepotism law, you should immediately notify the City Attorney so that the proper procedures can be followed. Furthermore, it is important that each elected officer sign the annual certification form for both statutes and submit them to the Mayor's Office before the end of the year.

**IC 36-1-20.2**  
**Chapter 20.2. Nepotism**

**IC 36-1-20.2-1**

**Applicability**

Sec. 1. This chapter applies to all units.

*As added by P.L.135-2012, SEC.7.*

**IC 36-1-20.2-2**

**Individuals employed on July 1, 2012**

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.

*As added by P.L.135-2012, SEC.7.*

**IC 36-1-20.2-3**

**Precinct election officers and volunteer firefighters not subject to chapter**

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.

*As added by P.L.135-2012, SEC.7.*

**IC 36-1-20.2-4**

**"Direct line of supervision"**

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.

*As added by P.L.135-2012, SEC.7.*

**IC 36-1-20.2-5**

**"Employed"**

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.

*As added by P.L.135-2012, SEC.7.*

### **IC 36-1-20.2-6**

#### **"Member of the fire department"**

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

*As added by P.L.135-2012, SEC.7.*

### **IC 36-1-20.2-7**

#### **"Member of the police 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.

*As added by P.L.135-2012, SEC.7.*

### **IC 36-1-20.2-8**

#### **"Relative"**

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.

*As added by P.L.135-2012, SEC.7.*

### **IC 36-1-20.2-9**

#### **Adoption of more stringent or detailed requirements**

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.

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*As added by P.L.135-2012, SEC.7.*

### **IC 36-1-20.2-10**

#### **Employment of relatives in direct line of supervision prohibited**

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.  
*As added by P.L.135-2012, SEC.7.*

### **IC 36-1-20.2-11**

#### **Employee not in violation if relative assumes elected office; promotions**

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.

*As added by P.L.135-2012, SEC.7.*

### **IC 36-1-20.2-12**

#### **Employment contract not abrogated**

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.

*As added by P.L.135-2012, SEC.7.*

### **IC 36-1-20.2-13**

#### **Sheriff's employment of spouse as prison matron allowed**

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.

*As added by P.L.135-2012, SEC.7.*

### **IC 36-1-20.2-14**

#### **Employment of former coroner allowed**

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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.

*As added by P.L.135-2012, SEC.7.*

**IC 36-1-20.2-15**

**Township trustee; hiring of relative to work in office located in residence permitted; salary limit**

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.

*As added by P.L.135-2012, SEC.7.*

**IC 36-1-20.2-16**

**Annual certification by elected officer**

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.

*As added by P.L.135-2012, SEC.7.*

**IC 36-1-20.2-17**

**Noncompliance reported to the department of local government finance**

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.

*As added by P.L.135-2012, SEC.7.*

**IC 36-1-20.2-18**

**Budget or additional appropriations may not be approved**

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.

*As added by P.L.135-2012, SEC.7.*

**IC 36-1-21**  
**Chapter 21. Contracting With a Unit**

**IC 36-1-21-1**

**Applicability**

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

*As added by P.L.135-2012, SEC.8.*

**IC 36-1-21-2**

**"Elected official"**

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.

*As added by P.L.135-2012, SEC.8.*

**IC 36-1-21-3**

**"Relative"**

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.

*As added by P.L.135-2012, SEC.8.*

**IC 36-1-21-4**

**Adoption of more stringent or detailed requirements**

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.

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*As added by P.L.135-2012, SEC.8.*

### **IC 36-1-21-5**

#### **Contract disclosure requirements**

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.

*As added by P.L.135-2012, SEC.8.*

### **IC 36-1-21-6**

#### **Annual certification by officer**

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.

*As added by P.L.135-2012, SEC.8.*

**IC 36-1-21-7****Noncompliance reported to the department of local government finance**

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.

*As added by P.L.135-2012, SEC.8.*

**IC 36-1-21-8****Budget or additional appropriations may not be approved**

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.

*As added by P.L.135-2012, SEC.8.*

**CITY OF WEST LAFAYETTE:**

**ANNUAL CERTIFIED STATEMENT OF COMPLIANCE  
WITH INDIANA CODE CHAPTER 36-1-20.2 (NEPOTISM)  
FOR THE YEAR OF \_\_\_\_\_**

STATE OF INDIANA            )  
  )        SS:  
COUNTY OF TIPPECANOE )

The undersigned elected officer of the City of West Lafayette, hereby certifies in writing, under the penalties of perjury, that he or she has not violated any provision of the Indiana Code Chapter pertaining to Nepotism, I.C. 36-1-20.2.

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

Pursuant to Indiana Code § 36-1-20.2-16, this written certification shall be submitted to the Mayor of the City of West Lafayette prior to December 31.

**CITY OF WEST LAFAYETTE:**  
**ANNUAL CERTIFIED STATEMENT OF COMPLIANCE**  
**WITH INDIANA CODE CHAPTER 36-1-21 (CONTRACTING WITH A UNIT)**  
**FOR THE YEAR OF \_\_\_\_\_**

STATE OF INDIANA            )  
  )        SS:  
COUNTY OF TIPPECANOE )

The undersigned elected officer of the City of West Lafayette, hereby certifies in writing, under the penalties of perjury, that he or she is in compliance with the Indiana Code Chapter pertaining to contract disclosure requirements, I.C. 36-1-21.

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

Pursuant to Indiana Code § 36-1-21-6, this written certification shall be submitted to the Mayor of the City of West Lafayette prior to December 31.