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January 4, 2024

Brett Toresdahl
Deputy Director
Iowa Public Information Board
Wallace Building, 3<sup>rd</sup> Floor
502 E. 9<sup>th</sup> St.
Des Moines, Iowa 50319

Re: Complaint No. 23FC:0137—Adam Callanan DELIVERY BY EMAIL ONLY: Brett.Toresdahl@iowa.gov

Dear Deputy Director Toresdahl:

The City of Des Moines is in receipt of your email dated December 26, 2023 in which you notified the City Manager of the complaint of Adam Callanan ("Complainant") regarding an alleged breach of Iowa Code Chapter 21.

The complaint has been forwarded to me for response; please address all further communications on the matter to my attention at the address listed at the bottom of this page or at cjmoser@dmgov.org.

There has been no violation of Iowa Code Chapter 21 and the information provided to you in the complaint is inaccurate. That complaint alleged, in pertinent part, that:

"On 12/20/23, a majority of Des Moines City Council (at least 4/7) met and handled city business (at a minimum, regarding the naming of a city building) without proper public notice. I do not know all that was discussed or all who was present because I was not there, but pictures from the event show at least 4 members of the council. You can see it is not listed on the City's website where they announce public council meetings

https://www.dsm.city/government/council\_meetings\_and\_agendas/index.php). If this meeting is somehow exempt, or if they announced the meeting somewhere separate from their usual announcements, I am unaware."

There was no "meeting" held within the meaning of Iowa Code and nothing was "handled" by the City Council. Iowa Code Section 21.1 defines a meeting as a gathering of the majority of the members of a governmental body during which deliberation or action is taken regarding a governmental matter. There was no "deliberation or action upon any matter within the scope of the governmental body's policy-making duties" conducted at the meeting and in fact, there was comment at this purely social gathering that Council Member Coleman would ask for a roll call to be placed on the January 8, 2024 Council Meeting to consider naming the building for the outgoing Mayor. Not only was no deliberation or action taken, it was announced that the naming would be

deferred to the Council's first meeting in 2024 to actually deliberate and take action at that public meeting. Contrary to the Complainant's allegations that "(at least 4/7) met and handled city business (at a minimum, regarding the naming of a city building) without proper public notice" there was no city business handled, the City did not name the building and it was publicly communicated by Council Member Coleman that the "meeting and handling" of that city business—namely the suggested naming of a city building—would be at a future public meeting of the City Council.

Yet more evidence that no action was taken—and that none *could* be taken—is supported by existing Council policy adopted on May 4, 2009, by Roll Call No. 09-801. In that roll call, the City Council adopted a policy for the naming and renaming of City streets, facilities, and parkland in the City of Des Moines, which policy provides, in part, that the Mayor, Council Member, or Council as a whole may sponsor a request for naming or renaming *on the Council agenda* and that Council *action to approve a name change* may be expedited and the policy waived if deemed appropriate by the Council. That action has not been taken, no action has been taken to expedite the name change by the Council and a determination of name change has yet to be made and won't be made until the January Council meeting, consistent with the adopted governance policy.

Far from the implied improper secret meeting the complaint conjects, this was a public social event honoring a five-term incumbent Mayor at which all Des Moines television stations and the Des Moines Register had reporters present. All four media outlets reported on this purely social event, including some reporting live from the reception. Additionally, notice of the reception was sent to the following entities and/or their representatives in Mr. Coleman's email about the event (which email was itself posted to the City's notice bulletin board in City Hall, where Council meeting notices are normally posted):

#### Local Media Outlets

Iowa Public Radio

WHO TV

Other Media

KCCI	CBS News
Des Moines Radio Group	NBC News
La Reina Radio	Associated Press
Axios	KWQC
Black Iowa News	Clear Channel Radio
KCWI (Channel 23)	New York Times
Des Moines Register	Fox News

This was no secret meeting—this was no meeting at all under Chapter 21. Iowa law is clear that the majority of a governmental body's members may meet for a purely ministerial function, or in a social setting, without being required to follow provisions of open meetings law, so long as there is no discussion of policy and no intent to avoid purposes of the act. *Telegraph Herald, Inc. v. City of Dubuque*, 297 N.W.2d 529 (Iowa 1980). As has been noted, there was no discussion of policy—only the mention that the policy would be discussed at a future meeting—and clearly no intent to avoid the purposes of the act where every television station and Iowa's largest newspaper was present and reporting live during the social event and more than a dozen news organizations had been notified of the reception. There was no "policy-making" within the definition of the statute. At most, Council Member Coleman's suggestion that Council consider the item at its January 8, 2024 Council meeting was nothing more than a suggestion for *future* action. Such a suggestion is not a

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policy making activity and does not lead to a meeting.<sup>ii</sup> As there was no meeting, there can be no violation of open meetings law. *Gavin v. City of Cascade*, 500 N.W.2d 729 (Iowa C. App. 1993).

Mr. Coleman timely noted that consideration of the naming would come at the January 8, 2024 meeting. When the Council does finally consider the suggested renaming, it will be communicated to the Des Moines City Council and the public consistent with the requirements of Iowa Code Chapter 21 and meet all notice requirements before deliberations or action is taken.

Supporting documents are included for the Board's information including the roll call action from 2009; the relevant policy, the press release announcing naming action to be proposed on January 8, 2024, and those in the media and others who were notified of the reception.

In the instant matter, there has not been a meeting of a governmental body nor has there been *any* policy-making action taken in any form; the legislature as confirmed by the Iowa Supreme Court has not intended for the open meetings law to apply in a strictly social setting. There has been no violation of Chapter 21. The complaint lacks merit both factually and legally and should be closed for lack of probable cause.

Respectfully submitted,

Carol J. Moser

Deputy City Attorney

<sup>&</sup>lt;sup>1</sup> Purely ministerial gathering does not constitute a "meeting" under open meetings law, if members of a body assemble simply to receive information without discussing policy or intending to avoid the purposes of the open meetings law. *Hutchison v. Shull*, 878 N.W.2d 221 (Iowa 2016); Activities of a governmental body's individual members to secure information to be reported and acted upon at later open meeting ordinarily do not violate the statute. *Gavin v. City of Cascade*, 500 N.W.2d 729, 732 (Iowa Ct. App. 1993) citing *Telegraph Herald, Inc. v. City of Dubuque*, 297 N.W.2d 529, 534 (Iowa 1980).

ii See Mason v. Vision Iowa Bd., 700 N.W.2d 349 (Iowa 2005) noting that recommending a course of action is not "policy-making" within the statute: "In contrast, to recommend a course of action is merely to suggest favorably a particular plan of action. See Webster's Third New International Dictionary 1897 (defining "recommend" as "offer or suggest as favored by oneself"). Thus, "policy-making" is more than recommending or advising what should be done. "Policy-making" is deciding with authority a course of action." Mason v. Vision Iowa Bd., 700 N.W.2d 349, 354.

Roll Call Number			
Nate	May 4 2009		

Agenda Item Number

Adoption of a policy for the naming/renaming of streets, facilities, park facilities and park land in the City of Des Moines.

(Council Communication No. 09-245 attached)

leman

\_to adopt.the policy as amended.

APPROVED AS TO FORM:

Glenna Frank

**Assistant City Attorney** 

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	1		]	
COLEMAN	V			
HENSLEY	~			
KIERNAN	~			
MAHAFFEY	~			
MEYER	V			
VLASSIS	V			
TOTAL	7			
MONION OLDDER	ADDOVED			

7. M. franklin Course Mayor

#### **CERTIFICATE**

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

Diane Farch City Cler



Office of the City Manager

Date

May 4, 2009

Agenda Item No. Roll Call No.

Communication No. 09-295

Submitted by: Richard A. Clark, City Manager

#### AGENDA HEADING:

Adoption of a policy for the naming/renaming of streets, facilities, park facilities and park land in the City of Des Moines.

#### SYNOPSIS:

Recommend approval of the attached policy for the City Council to retain the exclusive rights to name and rename city streets, facilities, park facilities and park land in the City of Des Moines.

FISCAL IMPACT: NONE

Amount: N/A

Funding Source: N/A

#### ADDITIONAL INFORMATION:

At the Council meeting of January 26, 2009, by roll call 09-138, Council directed staff to research issues related to the naming/renaming of city buildings, streets and public property and at the Council meeting of March 9, 2009 by roll call 09-405 directed staff to draft a naming policy for such property.

Staff conducted research of other city's naming policies throughout the state and country and have drafted a policy which includes the following:

- A procedure to follow which includes public-initiated requests, council initiated requests, staff verification and review, city boards/commission evaluation and council review, public participation and installing or replacing signage
- Consideration and criteria for naming/renaming
- Exceptions to the policy

#### PREVIOUS COUNCIL ACTION(S):

Date: January 26, 2009

Roll Call No.: 09-138

Action: Request from Council Member Brian Meyer to discuss creation of a process to name City Buildings. Moved by Meyer to refer to the City Manager and Legal for review and recommendation. Motion Carried 7-0.

Date: March 9, 2009

Roll Call No.: 09-405

Action: Request from Council Members Brian Meyer and Christine Hensley to refer renaming of Archie Brooks Community Center to the City Manager and to the Parks and Recreation Board for review and recommendation. Moved by Meyer to refer to the City Manager and the Parks and Recreation Board the issue of renaming the Archie Brooks Community Center for review and recommendation, and to return to Council with a recommendation for the Community Center in conjunction with a recommended naming policy. Motion Carried 6-0. Council Member Vlassis declares a conflict of interest and abstains from voting.

### **BOARD/COMMISSION ACTION(S):**

Date: March 24, 2009

Roll Call No .: 09-028

Action: Park and Recreation Board received and filed the process of renaming a community center and requested to delay board recommendation on community center naming until the City Council adopts a naming policy.

### ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE

For more information on this and other agenda items, please call the City Clerk's Office at 515-283-4209 or visit the Clerk's Office on the second floor of City Hall, 400 Robert D. Ray Drive. Council agendas are available to the public at the City Clerk's Office on Thursday afternoon preceding Monday's Council meeting. Citizens can also request to receive meeting notices and agendas by email by calling the Clerk's Office or sending their request via email to cityclerk@dmgov.org.

# POLICY FOR NAMING OF STREETS, FACILITIES AND PARK LAND IN THE CITY OF DES MOINES

#### I. GENERAL

The Des Moines City Council retains the exclusive right to name and rename City streets, facilities, park land and park facilities within the City of Des Moines, in accordance with this policy.

#### II. PROCEDURE

Consideration of a proposal for the naming or renaming of a City street, facility, park land or park facility shall be submitted and reviewed as follows:

a. Public-Initiated Requests: Letter of Request (and/or Petition)

A letter of request (and/or petition) must first be submitted to the City Council. The letter of request (and/or petition) shall state the reason for the request and supply specific information regarding the proposed name(s), site location, and other relevant information. The letter of request (and/or petition) shall include a brief explanation or biography of the person(s) or event to be honored and a justification of why the City street, facility, park land or park facility is being recommended for specific naming or renaming. Upon receipt of the letter of request (and/or petition) the matter will be placed on the subsequent Council agenda, in accordance with Rule 16 of the Procedural Rules of the Des Moines City Council, in order for Council to initially consider the request and either deny the request. or refer the request to the City Manager's Office or to the appropriate Board/Commission for further review and recommendation, or set a date for public hearing and final consideration and approval or denial of the request for the next scheduled Council meeting.

#### b. Council-Initiated Requests

The Mayor, Council Member or Council as a whole may place or sponsor a request for naming or renaming on the Council agenda, in accordance with the Procedural Rules of the Des Moines City Council, in order for Council to consider the request and either deny the request, or refer the request to the City Manager's Office or to the further review Board/Commission for appropriate recommendation, or set a date for public hearing and final consideration and approval or denial of the request for the next Referrals shall supply specific scheduled Council meeting. information regarding the proposed name(s), site location, and other relevant information, and shall include a brief explanation or biography of the person(s) or event to be honored and a justification of why the City street, facility, park land or park facility is being recommended for specific naming or renaming.

### c. Staff Verification and Review

Within thirty (30) days of Council referral, staff from the applicable department, as designated by City Council or by the City Manager, will research and verify all information submitted in the request in accordance with the naming considerations and criteria set forth below in Section III. Staff will also request a review by: Legal, Police, Fire, IT, Engineering, and the Historic Commission; and in addition, for City street requests, by the local utility service providers and the post office. City staff will then forward their findings and recommendation to the appropriate Board/Commission,

## d. City Boards/Commissions Evaluation and Council Review

Within ninety (90) days of Council referral, the applicable Board/Commission will consider staff findings and the extent of public support for, and public opposition to, the proposed name, and will make a recommendation regarding the request. The appropriate Board/Commission will then present its recommendation to the City Council via the Council agenda at a regularly scheduled Council meeting for final Council consideration and approval or denial of the request.

### e. Public Participation

Public notice will be given and a public hearing will be held on the naming or renaming proposal at the scheduled Board/Commission meeting and Council meeting. Notice of said hearings will be provided a minimum of ten (10) days prior to each hearing to affected parties by the method deemed appropriate by the Board/Commission or by Council, respectively. In the event of renaming an existing City facility or park facility, notice of the public hearing shall also be posted in a conspicuous place on or within the facility. In the event of renaming (rather than honorary designation of) a City street, notice of the public hearing shall also be provided via regular mail to all property owners potentially affected by approval of the name change.

## f. Approval; Installing or Replacing Signage.

If the naming or renaming request is approved, the cost of producing, installing, maintaining and replacing City signs with the

new name may be required to be paid for by the person or organization requesting the name change prior to such work being undertaken by the City. If required, the maintenance funding shall be provided by donation to the City of a maintenance fund in an amount established by appropriate City staff to be necessary for maintaining said sign for at least 10 years. All signage is subject to City Council approval.

## III. NAMING OPTIONS; CONSIDERATIONS AND CRITERIA FOR NAMING

The naming or renaming of City streets, facilities, park lands or park facilities may be, but is not limited to, in honor of individuals, living or deceased, who have made significant and outstanding contributions of services, land, funds, or goods to the City, State, nation or world; neighborhoods, geographic or common usage identifications, participations, places, or events of historical or cultural significance. Naming recognition is subject to future change/reconsideration by the City in the event that the recognition becomes damaging to the City's reputation, or contradictory to applicable law, as determined by the City. When evaluating naming or renaming requests, consideration should be given to the following criteria:

- 1. Overall benefit to the City of Des Moines
- 2. Positive reflection on the City
- 3. Purpose and Mission of the City
- 4. Proposed name is well known to all citizens and/or acknowledged by other national, state or local community organizations for lasting significance
- 5. Citizen input and support for name change/commemoration
- 6. No duplication of names or repeated recognition of a specific person or group

In addition, in the event of naming or renaming requests related to significant donations of funds, services or land, a written gift and naming agreement shall be entered into between the City and honored donor, or person or entity providing the donation, prior to or upon approval of the naming request. Such agreement shall state that naming recognition is subject to future change/reconsideration by the City in the event that the recognition becomes damaging to the City's reputation, or contradictory to applicable law, as determined by the City. The written agreement may also include an appropriate time limitation on the honorary donor naming, and may set minimum contribution amount guidelines for naming purposes.

#### IV. EXCEPTIONS

a. Exceptions to the procedure set forth in Section II of this policy may be made by City Council or by recommendation to the City Council

by City staff and/or Boards/Commissions, upon finding appropriate circumstances to consider or expedite the naming or renaming of a City street, facility, park land or park facility. Specifically, City Council may take action to approve a name change without staff or Board/Commission review and recommendation, and/or without the public hearing process, if deemed appropriate by Council.

- b. City streets, facilities, park lands or park facilities shall not be named or renamed in honor of any City employee, Mayor, or Council, Commission or Board Member until at least two years following the end of their term/employment with the City.
- c. This policy of naming or renaming City streets, facilities, park land and park facilities shall not preclude the appropriate acknowledgment of assistance, financial or otherwise, from organizations or individuals in the construction, operation, or maintenance of City streets, facilities, park lands and park facilities, such as placing plaques or signs identifying the organization or individual who made a donation to the project or naming a minor component of a structure, for example, one room of a facility, or a non-fixture component of a facility, for example, a bench, tree, or playground slide, etc..
- City Streets: Streets being named as part of an annexation, d. subdivision or platting procedure are not subject to this policy. In addition, due to the confusion, expense and inconvenience to the public, street renaming should be avoided unless needed to eliminate duplication or reflect new street patterns, and preference will be given to commemorative or honorary designation of a current street or portion of a current street. Any such request shall follow the procedures set forth herein. If the request for commemorative designation is approved, the street or portion of the street affected shall retain its original name and shall also have an additional sign reflecting the commemoration, with the cost of producing, installing, maintaining and replacing such commemorative sign to be paid for by the person or organization requesting the commemoration prior to such work being undertaken by the City if so required by the City. If required, the maintenance funding shall be provided by donation to the City of a maintenance fund in an amount established by appropriate City staff to be necessary for maintaining said sign for at least 10 years. All signage is subject to City Council approval.
- f. <u>Criteria for RenNaming:</u> Preference will be given to naming of City streets, facilities, park land and park facilities that have not previously been named to honor a specific person or event.

From: City of Des Moines <<u>website@dmgov.org</u>>
Sent: Thursday, December 21, 2023 10:24 AM
To: Schulte, Jen L. <<u>JLSchulte@dmgov.org</u>>

Subject: Press Release: City Council To Honor Legacy of Mayor Cownie With Naming of New City Administration Building

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## EMAIL NOTIFICATION City Press Releases and Media Advisories

12/21/2023

The Press Release "City Council To Honor Legacy of Mayor Cownie With Naming of New City Administration Building" has been published.

It took six words to stun Mayor Frank Cownie last night.

A linen was pulled off an easel and revealed "T.M. Franklin Cownie City Administration Building" as the City Council's planned name for the former Nationwide building in downtown Des Moines. The city's longest-serving mayor says that he was humbled by the surprise recognition.

The name reveal came after the City of Des Moines officially closed on its purchase of the former Nationwide building at 1200 Locust Street Wednesday, over a year after City Council approved a purchase agreement for the building. The name is expected to be made official at the City Council meeting on January 8, 2024.

View This Press Release

DateTime Message generated:12/21/2023 10:22:36 AM

From: McClung, Debbie S. < DSMcClung@dmgov.org>

Sent: Thursday, December 28, 2023 12:14 PM

To: Sanders, Scott E. <<u>SESanders@dmgov.org</u>>; Baumgartner, Laura L. <<u>LLBaumgartner@dmgov.org</u>>; Lester, Jeffrey D.

<JDLester@dmgov.org>

Cc: Schulte, Jen L. < JLSchulte@dmgov.org>

Subject: RE: Iowa Public Information Board complaint 23FC:0137

Thank you Scott – yes, there was a notice sent to media by Councilman Coleman prior to our planned announcement. I've attached the invite and pasted in the actual email including the media list below:

From: Chris Coleman < ccoleman@dm.bbb.org> Date: Thursday, December 14, 2023 at 9:50 AM

To: POL < POL@dmgov.org >, Chin, Betty < BC2@cbsnews.com >, Aaron Franco < aaron.franco@nbcuni.com >, abackstrom@dmreg.com <a href="mailto:abackstrom@dmreg.com">abackstrom@dmreg.com</a>, <a href="mailto:sbeckman3@outlook.com">sbeckman3@outlook.com</a> <a href="mailto:news@myabc5.com">news@myabc5.com</a>, Allie Rasmus Brandon < <a href="mailto:Brandon.Bracelin@polkcountyiowa.gov">Brent Long < <a href="mailto:Brent.Long@polkcountyiowa.gov">Brent.Long@polkcountyiowa.gov</a>, Charles Flesher <cflesher@registermedia.com>, Cynthia Fodor <cfodor@hearst.com>, Cardin, Dana <cdcardin@hearst.com>, Darwin Danielson < info@radioiowa.com >, derek meyer < dmeyer@windsorheights.org >, Grundmeier, Lucas <metroiowa@dmreg.com>, Wiegand, Nicole <online@dmreg.com>, Dykstra, Todd T. <<u>TTDykstra@dmgov.org</u>>, Emma Hogg < ehogg@kwqc.com >, Eryn Realmuto < ERealmuto@hearst.com >, greatday@kcwi23.com < greatday@kcwi23.com >, Greg Willey <gwilley@americansecurityllc.com>, heatherburnside@iheartmedia.com <heatherburnside@iheartmedia.com>, lowa Radio <news@iowapublicradio.org>, Jannay Towne < iannay.towne@whotv.com >, Jason Bryan < ibryan@wdm.iowa.gov >, Jason Pomrenke

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, Evans, Ryan <ra>ryan.evans@polkcountyjowa.gov
, Holly Pickett <a href="mailto:specification-color: blue-tile-color: blu < iowanebraskanaacp@gmail.com >, dana@blackiowanews.com < dana@blackiowanews.com >, McClung Debra <mcclung@dps.state.ia.us>, Chad McCluskey <cmccluskey@windsorheights.org>, alex@iowamag.com <alex@iowamag.com>, Grant Gerlock <ggerlock@iowapublicradio.org>, Richardson, Douglas <<u>Douglas.Richardson@dmschools.org</u>>, <u>radioiowaenlinea@gmail.com</u> <<u>radioiowaenlinea@gmail.com</u>> Subject: Mayor Cownie Farewell Reception Invite

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Please Join us. Mayor Cownie has been a remarkable and historic leader of this great city. Join us as we express our appreciation and honor him for his service to the people of Des Moines.



#### **Chris Coleman**

President

Better Business Bureau Serving Greater Iowa, Quad Cities & Siouxland Region 2625 Beaver Ave