

Question 1

You are the legal advisor for a city or town with a Council of 7 members. A properly called, regular meeting has 5 Council members in attendance, 1 member excused for illness, and 1 member who did not appear or explain. There are 10 items on the agenda, and the Council properly disposed of 6. However, the 7th item is a controversial piece of proposed legislation. After any comments from the public (if allowed by your jurisdiction), a detailed and hotly disputed debate between the various Councilors in attendance, and a total of some 4 hours of discussion, the Councilors want to recess and reconvene tomorrow evening. A) Please describe what needs to be done in order to recess the current meeting and reconvene tomorrow. B) Describe the notice and agenda requirements needed to make the regular meeting lawful and contrast these with the notice and agenda requirements (if any) of the reconvened meeting. C) What legal issues may arise if the missing Councilors attend and participate in the reconvened meeting, but two of the Councilors at the first meeting fail to attend the reconvened meeting. D) What limitations (if any) are in effect on the agenda of the reconvened meeting. E) What is needed to adopt the legislation?

2023 Fellows Exam

Question 2

Both husband Gene and wife Samantha Rodriguez currently work full time for the City of Clarksville, (“Clarksville”; “City”). Clarksville is a large city with a population of approximately 750,000 residents. The City itself employs 3,500 full and part time employees. Samantha has worked for the City of Clarksville’s Engineering Department for 8 years as a Planner. Clarksville has great retirement and benefit systems so Samantha encouraged her husband, Gene, to get a job there. In fact, in addition to potential pension benefits, the City offers its full time employees 8 hours of vacation and 8 hours of sick leave per month to start. Gene finally applied and was hired by the City about 14 months ago. He works in the Clarksville’s Property Standards Division. Both are good and dependable employees. Until Samantha became pregnant, they had not taken any sick leave and only took 2 weeks of vacation six months ago to visit their parents in New York. For their sick leave balance, Samantha currently has 720 hours and Gene has 112 hours.

Gene and Samantha have been married for 7 years and since both have just turned 38 a couple of months ago, they have been anxious to start a family. After repeated attempts, Samantha and Gene found out that she was pregnant 5 months ago. From the initial doctor’s visit, her doctor cautioned her to watch her weight in light of her many underlying health conditions and the potential for her to develop gestational diabetes while pregnant.

Last week, Samantha came into Human Resources to inquire about the available leave she would have after she delivers the baby. She also asked what kind of leave is available to her husband, Gene, as he needs to take time off to help her with the baby as well.

She also added that Gene has been coming home very stressed lately because of the constant teasing and harassment in his office. Samantha shared that Gene said that his supervisor and co-workers are teasing him about being tied down with baby obligations. They said he will be a “kept” man, so unlike the other “cool” Hispanic men that can go out at any time with their buddies. Samantha asked Human Resources what can be done to stop the harassment from his boss and co-workers, who happen to be White males. She said Gene, a Marine who retired from the service 5 years ago when he was diagnosed with post-traumatic stress disorder (“PTSD”), shared he has been feeling more anxiety going to work. Gene also told Samantha what makes him even more infuriated is that another Property Standards Specialist was recently hired and was offered \$2.48 per hour than his hourly pay, when she just came out of college and had much less experience.

Samantha said the stress from Gene’s work situation has caused her to feel more anxious about the pregnancy. At the last doctor’s appointment, her doctor advised her that her blood pressure was again elevated and she would need to get back on medication.

Samantha then admitted that her high blood pressure is not just because of Gene’s workplace issues, but also the stresses she is feeling from her office. At their weekly update meeting last

2023 Fellows Exam

week, her boss, Bill Erickson, said he was very concerned about how much time Samantha will need for maternity leave. He said within the last 2 months, Samantha's monthly visits to the doctor have greatly disrupted the office. He said her co-workers has had to step in several times to take calls concerning her files from developers checking on their application status. Samantha said her co-workers are whispering behind her back, have not invited her to this month's birthday lunch or last week's "happy hour" after work.

What is your response as a city attorney when the HR representative presents you with this situation for evaluation and guidance?

2023 Fellows Exam

Question 3.

Your city planning director calls you with some questions. She explains that a developer wants to build a mid-rise multifamily housing development called Housing for Everyone on some property that is currently zoned for single-family residential. The city's comprehensive plan was adopted over a decade ago and caps multifamily development in the city at 500 dwelling units. Your city now has a population of over 300K, with most of the population moving to your city in the last five years. The same comprehensive plan has a provision stating that the city lacks work force housing for families, and that work force housing should be encouraged. The city already has in existence 500 multifamily dwelling units. The developer submitted an application for a zoning amendment to allow the construction of Housing for Everyone.

Over the past ten years the city has sought and received grant money from HUD for low income housing and as part of the grant has promised to affirmatively further fair housing.

Staff is considering recommending against the rezoning application because of the cap on multifamily in the comprehensive plan, but staff would be willing to recommend in favor if the developer would construct and dedicate to the city a large regional park on the property, in addition to Housing for Everyone, because it would serve the broader community and be a great amenity for the city. The Developer has emphatically opposed constructing and donating the park to the city.

What advice do you give to your Planning Director:

1. Do you have legal concerns if the city staff recommends denial of the request for Housing for Everyone? Do you have legal concerns if the council follows staff's recommendation? What advice do you have for the city officials who will be holding the public hearing to decide on this zoning application?
2. Do you have legal concerns about the request for the developer to construct and dedicate the regional park?
3. What other legal concerns do you think arise from this scenario, if any?

2023 Fellows Exam

Question 4.

A sports team wants to relocate its team operations to your city and build a big new beautiful arena for its fans. Your elected officials are excited about the possibility of the relocation of the sports team. Your Economic Development Manager has been discussing the framework for a deal and has identified a large parcel of land that could be used by the sports team to build a practice facility and arena. The appraised value of the land is \$10,000,000 dollars and is owned by the city. The Economic Development Manager would like your legal guidance.

The team has suggested three alternatives for the city to consider: 1. Donate the land to the team; 2. Lease the land to the team at \$1 a year for 30 years, or 3. Sell the land to the team for about half its appraised value.

Advise on the specific authority for the city to move forward on each alternative, any requirements that must attach to each and any suggestions for accomplishing the goal of bringing the team to town. The Economic Development Manager would like you to consider any other ideas you may have to make this project work recognizing the team is on a short time schedule and is actively working with two other communities.

In addition to the provision of property, the sports team would like the city to pay for all street improvements necessary to serve the new arena, including a new interstate interchange as well as private streets within the arena complex. What advice do you give on whether and how the city can accomplish this?

2023 Fellows Exam

Question 5.

The City of Blueberry adopted and enforces the 2015 International Building Codes. The City's Chief Building Official wants to change to the 2021 International Building Codes. The Building Official has told the City Manager the 2021 Building Codes are mandated by state law and he has the authority to make changes as the Chief Building Official without City Council input. The City Manager has come to you to research the matter to decide on what is required. Specifically, the City Manager wants to know the following:

- Does the State mandate adoption of a building code, if so, which code; and are there state imposed requirements for adopting a building code, if none, are there any requirements for adopting a building code by reference.
- Can the City make amendments to the International Building Codes or state mandated code?
- If the City can make amendments, what procedures are required?

2023 Fellows Exam

Question 6,

At 8:00 p.m. on October 1, 2022, a resident at Village Apartment called 9-1-1 alerting the dispatchers to the collapse of a set of exterior stairs serving several units in the complex. This set of exterior stairs allowed eight units to reach the ground floor. Five of the eight units were occupied at the time of the incident. Three of the five units were on the second floor and the remaining two units were on the third floor.

Happytown's 9-1-1 dispatched the fire department (FD), emergency medical services (EMS), and police department (PD) who arrived within minutes of the 9-1-1 call. Subsequently, the property management company, the media, and other on-lookers arrived. Police officers directed traffic and secured the site, which prevented the property management company, tenants, members of the media, and other on-lookers from entering the property.

The collapse injured one individual and prevented 10 tenants from being able to exit their apartments. The injured individual was treated by EMS and taken to a local hospital. Firefighters assisted tenants with exiting their units. A couple of police officers assisted firefighters by checking all impacted units to determine whether the units were occupied.

While assisting tenants, firefighters and police officers entered some of the units and saw a variety of unsafe conditions such as holes in ceilings and walls. Subsequently, firefighters called code enforcement personnel (code officers) to inspect the complex's other exterior stairways and the conditions inside several of the units the firefighters observed.

Code officers entered the property. Some code officers began inspecting the complex's exterior stairs. They were assisted by employees from Happytown's permitting department. Additionally, code officers entered six of the units with the assistance of firefighters. Before entering three of the units, code officers received permission from those tenants. However, code officers did not receive permission to enter the unoccupied unit. Moreover, the code officers did not obtain a search warrant or other similar approval to enter any of the units.

Based on the inspection, code officers issued notices of violation for the set of stairs that collapsed and for three other sets of stairs serving other units within the complex. Additionally, code officers issued notices of violations for conditions within the inspected units. Lastly, code officers posted several warnings about conditions at the property.

Three days later, code officers returned to the apartment complex to determine whether repairs had been made. The collapsed set of stairs was partially reconstructed and accessible to individuals, but not code compliant. Code officers procured fencing and installed it around the stairs to prevent access. No other repairs appeared to have been made.

Ten days later, the Building Safety Board (the Board) held a hearing on whether the violations existed at the time of the collapse and, if so, what penalty should be imposed. The property owner appeared at the hearing but argued that it did not receive notice of the hearing. The Board

2023 Fellows Exam

moved forward with the hearing despite the owner's claimed lack of notice. After receiving evidence and hearing from the property owner and Happytown staff, the Board concluded that the violations existed and imposed a penalty of \$1,000,000.00

The property owner appealed the Board's decision. In addition to appealing, the property owner sued Happytown. The lawsuit alleges that Happytown violated the owner's 4th Amendment rights when firefighters, code officers, and police officers entered the units without the property owner's permission and without a warrant. The lawsuit also alleges that Happytown took its property when police would not allow the property management to enter the property; and violated its right to due process when Happytown failed to provide notice of hearing before the Board. Finally, the lawsuit alleges that the Board's decision to assess a penalty of \$1,000,000 violated the Eighth Amendment. The property owner seeks to have the Board's decision overturned and seeks damages for the constitutional violations.

1. Do the property owner's claims carry any merit? Explain.
2. What, if any, potential defenses can be asserted by Happytown?
3. Discuss the likely outcome that can be expected in defending against the property owner's lawsuit.

2023 Fellows Exam

Question 7.

In March 2017, Patty Barone (“Barone”) began working for the Springfield Police Department (Department) as a Community Service Officer II (CSO II). She focused on victim advocacy, and served as a Department liaison to the City’s minority communities. Throughout her tenure, members of the Latino community complained to Barone about racial profiling by the Department. She relayed these complaints to Department leadership.

These complaints became more frequent beginning in spring 2020. Around that same time, the Department was in the midst of a leadership transition, which led to, among other things, Tim Doney’s appointment as Chief of Police. Chief Doney directed Barone to draft her job description as she perceived it in conjunction with the existing job description and send it to the Chief, which she did. No formal action followed regarding the job description.

In 2021, the Department began investigating Barone in connection with two Department-related incidents. The first incident involved a school tour Barone led through the police station. During the tour, some students took photos of restricted areas, where no photo taking was permitted. Department employees disputed whether Barone had asked for, and received, approval for the students to photograph each area of the station. In the second incident, a Latina notified Barone of a potential crime. Barone was unable to reach a sergeant about this crime, but she left a message with the dispatchers and asked the sergeant to return her call. The sergeant never returned her call because he said he did not know the phone call pertained to a possible crime. The dispatchers disputed whether Barone informed the dispatchers that she wanted to speak to the sergeant about an alleged crime. Other employees had been disciplined for similar conduct. The discipline of the other employees was a written reprimand.

On February 5, 2022, Barone spoke at a City Club of Springfield event headlined “Come Meet Patty Barone from the Springfield Police Department.” The Department paid her to attend the event; she wore her uniform; and her supervisor attended. She understood that she attended and participated in the event as a representative of the Department. A member of the audience at the event asked her whether she was aware of increasing community racial profiling complaints. She said that she “had heard such complaints.” She also said that she “raised these complaints with her superiors and had been ignored.” Finally, she encouraged the audience member to “raise the issue directly with the City Council, since the Police Department isn’t interested in these types of complaints.”

A week later and without any hearing or consulting the law department, Chief Doney placed Barone on administrative leave due to her alleged untruthfulness in connection with investigations into the two pre-2021 occurrences. Almost a month later, the Department found that Barone had violated several sections of the Department’s code of conduct regarding her comments at the City Club of Springfield event, and she remained on administrative leave. The Department’s investigation of the two incidents continued into the summer. In July 2022 and without any hearing or consultation with the law department, the Department suspended

2023 Fellows Exam

Barone for four weeks without pay based on the two incidents, and informed her that she would be required to sign a Last Chance Agreement (the Agreement) when she returned to work. Barone, her union representative, and Chief Doney met to discuss the Agreement on the day that Barone returned to work. At the meeting, Chief Doney provided Barone with a copy of the Agreement, told her to review it, and told her that the Department would terminate her if she did not sign it. A week later, Barone refused to sign the original Agreement because it prohibited her from reporting on racial profiling and discrimination.

At a subsequent meeting, Chief Doney provided Barone with an amended Agreement that addressed her stated concerns with the original Agreement. Paragraph 5(g) of the amended Agreement barred Barone from saying or writing anything negative about the Department, the City, or their employees. However, she could report complaints involving discrimination or profiling by the Department. The amended Agreement also provided that Barone would remain subject to a generally applicable order that barred her from publicly criticizing or ridiculing the Department and barred her from releasing confidential information.

At the second meeting, Barone did not express concern about any particular provision of the amended Agreement. Nevertheless, after speaking with her representative, Barone refused to sign the Agreement as amended. Because Barone refused to sign the amended Agreement, Chief Doney terminated her employment with the Department.

Barone's union representative has reached out to the City Manager and seeks to have Barone reinstated. The City Manager has asked the law department for advice regarding what steps the Manager should take.