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7/29/13

To City County Observer,

ATTACHED IS THE ORDINANCE,  
EMAILS, STATE STATUTES, MCGLADREY REPORT,  
ETC. I AM NOT REQUESTING THAT  
YOU KEEP CONFIDENTIAL THE FURNISHING  
OF THE ENCLOSED DOCUMENTS BY ME.

SD

Mary Schmidt

**From:** Scott A. Danks [scott@danks-danks.com]  
**Sent:** Friday, February 15, 2013 11:49 AM  
**To:** 'Ted Ziemer'  
**Cc:** Al Lindsey (aklindsey23@att.net); c.odaniel@insightbb.com; Connie Robinson (connie@hmrdistribution.com); Dan Adams (drhda501@aol.com); Dan McGinn (danmcginn@wowway.com); John Friend (jfriend@johnfriendandco.com); Jonathan Weaver (wxweav@hotmail.com); Missy Mosby (call453misy@yahoo.com); Stephanie Brinkerhoff Riley (ssbrinkerhoff@yahoo.com)  
**Subject:** Council's Access to Information/Records

## DANKS & DANKS

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Dear Ted:

I am sure that you will agree that there has been a tremendous amount of time wasted on what information/records the Council can receive from the administration and the confidentiality of the requested information/records. We all have more important things to do than engage in this continued bickering over information/records and, therefore, I am revisiting this issue.

I.C. 36-4-5-3(3) provides that the Mayor shall "provide any information regarding City affairs that the legislative body requests." Likewise, Evansville Municipal Code 2.05.010(F) provides that "the Mayor shall provide any information regarding City affairs that the legislative body requests." (emphasis added). Thus, there are no ifs, buts or maybes about it. If the Council requests information/records from the administration the information/records must be provided to the Council period.

Pursuant to State statute, information/records fall into one of three categories: 1) confidential, 2) discretionary, and 3) not protected. Regardless of the classification of the information/records it must be furnished to the Council upon request.

Confidential records are very few and are contained in I.C. 5-14-3-4(a). When requested, the information/records must be provided to the Council upon request. Upon receiving information/records identified as confidential, the Council must maintain the confidentiality of the information/records pursuant to I.C. 5-14-3-6.5. Failure to maintain the confidentiality is a Class A Infraction pursuant to I.C. 5-14-3-10.

Pursuant to I.C. 5-14-3-4(b), certain information/records are exempted from disclosure at the discretion of the agency in possession thereof. The "discretionary" information/records are the ones that seem to cause disputes between the Council and the Administration. Again, discretionary information/records must be provided to the Council upon request without any redactions. Once these records are received by the Council IT IS THE COUNCIL NOT THE ADMINISTRATION THAT HAS THE DISCRETION TO DETERMINE WHETHER THE INFORMATION/RECORDS WILL REMAIN CONFIDENTIAL.

On several occasions, the Council has received discretionary information/records stamped "confidential" with instructions that the information/records must remain confidential. The City has no legal authority to do this.

When providing discretionary information/records to the Council, the City may request that the Council keep all or part of it confidential. It would be very helpful to provide an explanation as to why the information/records should remain confidential. But, again, whether they remain confidential will be at the SOLE DISCRETION of the Council. If you can find any legal authority to the contrary, please advise.

I discussed my legal analysis with Mr. Joseph Hoage, Indiana Public Access Counselor, and he concurs 100%. Attorney Hoage provided me with an analogy that I think is helpful: a sheriff's department conducting an investigation can exercise its discretion to keep its investigatory files confidential. However, once these files are turned over to the prosecutor's office, the prosecutor then has the sole discretion on whether or not to maintain the confidentiality of those records.

Recently, discretionary records have been provided to the Council but marked confidential. In effect, the administration is putting a gag order on the Council.

As you know, all Council business must be conducted in a public forum and it becomes problematic for them to discuss various issues that the administration has deemed to be confidential. Most Members of the Council are of the opinion that rather than attempting to find ways to keep information/records confidential that the efforts should be redirected in finding ways to make records public. Transparency is very important to the Council as the lack thereof causes undue suspicion on members of the public as well as the news media.

The Council realizes that many governmental entities do not appreciate others meddling and many times do not welcome scrutiny. The Council is of the opinion that transparency and scrutiny makes for better government.

Therefore, in the future discretionary information/records will be made public by the Council unless in doing so it would be injurious to the City of Evansville, its employees or the public.

As always, your cooperation in this matter is very much appreciated.

Sincerely,

Scott A. Danks, Attorney at Law  
for the  
Common Council of the City of Evansville

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**Information Maintained by the Office of Code Revision Indiana Legislative Services Agency**  
**IC 36-4-5**

**Chapter 5. City Executive**

**IC 36-4-5-1**

**Application of chapter**

Sec. 1. This chapter applies to second and third class cities.

*As added by Acts 1980, P.L.212, SEC.3. Amended by Acts 1981, P.L.44, SEC.41.*

**IC 36-4-5-2**

**Mayor; election; eligibility; term of office**

Sec. 2. (a) A mayor, who is the city executive, shall be elected under IC 3-10-6 by the voters of each city.

(b) A person is eligible to be a city executive only if the person meets the qualifications prescribed by IC 3-8-1-26.

(c) Residency in territory that is annexed by the city before the election is considered residency for the purposes of subsection (b), even if the annexation takes effect less than one (1) year before the election.

(d) The city executive must reside within the city as provided in Article 6, Section 6 of the Constitution of the State of Indiana. The executive forfeits office if the executive ceases to be a resident of the city.

(e) The term of office of a city executive is four (4) years, beginning at noon on January 1 after election and continuing until a successor is elected and qualified.

*As added by Acts 1980, P.L.212, SEC.3. Amended by P.L.5-1986, SEC.48; P.L.3-1987, SEC.556.*

**IC 36-4-5-3**

**Powers and duties**

Sec. 3. The executive shall:

- (1) enforce the ordinances of the city and the statutes of the state;
- (2) provide a statement of the finances and general condition of the city to the city legislative body at least once a year;
- (3) provide any information regarding city affairs that the legislative body requests;
- (4) recommend, in writing, to the legislative body actions that the executive considers proper;
- (5) call special meetings of the legislative body when necessary;
- (6) supervise subordinate officers;
- (7) insure efficient government of the city;
- (8) fill vacancies in city offices when required by IC 3-13-8;
- (9) sign all bonds, deeds, and contracts of the city and all licenses issued by the city; and
- (10) approve or veto ordinances, orders, and resolutions of the legislative body under IC 36-4-6-15.

*As added by Acts 1980, P.L.212, SEC.3. Amended by P.L.5-1986, SEC.49.*

#### **IC 36-4-5-4**

##### **Appointments**

Sec. 4. The executive shall make the appointments prescribed by IC 36-4-9 and IC 36-4-11-2.  
*As added by Acts 1980, P.L.212, SEC.3.*

#### **IC 36-4-5-5**

##### **Power to hear complaints against person issued license; proceedings; findings and determination; violation, revocation, or suspension**

Sec. 5. On reasonable notice of at least three (3) days to the person complained of, the executive shall hear any complaint against a person to whom the city has issued a license, and may issue subpoenas to compel the attendance of witnesses, administer oaths to those witnesses, and require them to testify. To the extent they can be applied, the Indiana rules of procedure, including the right to appear by counsel and to compel the attendance of witnesses for or against persons complained of, apply to proceedings under this section. If the executive finds that the person complained of has wilfully violated a term or condition of his license, or has wilfully done or permitted to be done an act in violation of a statute or city ordinance relating to the business licensed, the executive shall revoke or suspend the license. He shall file a copy of his findings and determination with the city fiscal officer within twenty-four (24) hours after it is made.

*As added by Acts 1980, P.L.212, SEC.3.*

#### **IC 36-4-5-6**

##### **Meetings with officers in charge of city departments; record**

Sec. 6. At least once a month, the executive shall meet with the officers in charge of the city departments:

- (1) for consultation on the affairs of the city;
- (2) to adopt rules and regulations for the administration of the affairs of city departments; and
- (3) to adopt rules and regulations prescribing a merit system for selecting, appointing, or promoting city officers and employees.

A record of meetings under this section shall be kept.

*As added by Acts 1980, P.L.212, SEC.3.*

#### **IC 36-4-5-7**

##### **Appointment of persons to examine or investigate city accounts and property**

Sec. 7. The executive may appoint three (3) competent persons to examine, without notice, the city accounts and property in the possession or custody of a city department, officer, or employee, and to report the results of their investigation.

*As added by Acts 1980, P.L.212, SEC.3.*

#### **IC 36-4-5-8**

##### **Absence or inability of executive; designation and service of acting**

##### **executive**

Sec. 8. (a) Whenever the executive is absent or going to be absent from the city, ill, or injured, he may designate:

- (1) the deputy mayor, if that position has been established under IC 36-4-9-7; or
  - (2) a member of the city legislative body;
- as acting executive, with all the powers of the office. The executive may exercise this power for a

maximum of fifteen (15) days in any sixty (60) day period.

(b) A designation under subsection (a) shall be certified to the president or president pro tempore and clerk of the city legislative body. In addition, when the executive resumes his duties, he shall certify to those officers the expiration of the designation.

(c) Whenever the president or president pro tempore of the city legislative body files with the circuit court of the county in which the city is located a written statement suggesting that the executive is unable to discharge the powers and duties of his office, the circuit court shall convene within forty-eight (48) hours to decide that question. After that, when the executive files with the circuit court his written declaration that no inability exists, the circuit court shall convene within forty-eight (48) hours to decide whether that is the case. Upon a decision that no inability exists, the executive shall resume the powers and duties of his office.

(d) If the circuit court decides under subsection (c) that the executive is unable to discharge the powers and duties of his office, then:

(1) the deputy mayor, if that position has been established under IC 36-4-9-7; or

(2) the president of the legislative body in a second class city, or the president pro tempore of the legislative body in a third class city, if there is no deputy mayor; shall serve as acting executive, with all the powers of the office. A person may serve as acting executive for a maximum of six (6) months under this subsection. The city legislative body may appropriate funds to compensate a person acting as executive under subsection (d).

*As added by P.L. 349-1983, SEC. 1.*

### **IC 36-4-5-9**

#### **Vacancy in office of executive**

Sec. 9. (a) The office of executive becomes vacant whenever the executive:

(1) dies, resigns, or is removed from office;

(2) ceases to be a resident of the city;

(3) is convicted of a felony, as provided in IC 5-8-1-38; or

(4) is unable to discharge the powers and duties of his office for more than six (6) months.

(b) The vacancy shall be filled under IC 3-13-8.

*As added by P.L. 349-1983, SEC. 2. Amended by P.L. 5-1986, SEC. 50; P.L. 37-2008, SEC. 3.*

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## Chapter 2.05 MAYOR

### Sections:

- 2.05.010 Mayor – Executive duties.
- 2.05.020 Ordinance enforcement.
- 2.05.030 Celebrations and holidays.
- 2.05.040 Secretaries and assistants.
- 2.05.050 Statutory powers and duties.

### **2.05.010 Mayor – Executive duties.**

(A) The Mayor is the chief executive officer of the City.

(B) The Mayor shall set the compensation of each appointive officer, deputy, and other employee of the City as provided by statute, subject to appropriations by the Common Council.

(C) Unless otherwise provided by statute, the Mayor shall appoint the members of all boards and commissions, the department heads, and the officers and employees of the City. Officers and employees of the City whose terms of office are not set by State statute or this code serve at the pleasure of the Mayor.

(D) The Mayor shall supervise the conduct in office of the officers of the City. He shall investigate reasonable complaints against them, and may take action to correct abuses.

(E) The Mayor shall provide a statement of the finances and general condition of the City to the City legislative body at least once a year.

(F) The Mayor shall provide any information regarding City affairs that the legislative body requests.

(G) The Mayor shall recommend, in writing, to the legislative body actions that he considers proper.

(H) The Mayor shall call special meetings of the legislative body when necessary.

(I) The Mayor shall ensure efficient government of the City.

(J) The Mayor shall sign all bonds, deeds, and contracts of the City and all licenses issued by the City.

(K) The Mayor shall approve or veto ordinances, orders, and resolutions of the legislative body as provided by statute.

(L) The Mayor may appoint three competent persons to examine, without notice, the City accounts and property in the possession or custody of a City department, officer, or employee, and to report the results of their investigation. [Ord. G-81-53, passed 12-14-81. 1962 Code, Art. 3, Ch. 3, § 1; 1982 Code § 30.030; 1983 Code § 3.30.030.]

### **2.05.020 Ordinance enforcement.**

The Mayor is responsible for the enforcement of the provisions of this code. When a provision of this code does not designate a person responsible for its enforcement, the Mayor shall enforce the provision or designate a person to do so. [Ord. G-81-53, passed 12-14-81. 1962 Code, Art. 3, Ch. 3, § 2; 1982 Code § 30.031; 1983 Code § 3.30.031.]

**2.05.030 Celebrations and holidays.**

The Mayor may:

(A) Order the display of decorations on property belonging to the City in commemoration of a holiday or celebration;

(B) Specify how national holidays are to be observed by the subdivisions of the City; and

(C) Issue proclamations relative to holidays and celebrations. [Ord. G-81-53, passed 12-14-81. 1962 Code, Art. 3, Ch. 3, § 3; 1982 Code § 30.032; 1983 Code § 3.30.032.]

**2.05.040 Secretaries and assistants.**

The Mayor may appoint assistants and secretaries to aid in the discharge of his duties, and may set their compensation with the approval of the Common Council. [Ord. G-81-53, passed 12-14-81. 1962 Code, Art. 3, Ch. 3, § 4; 1982 Code § 30.033; 1983 Code § 3.30.033.]

**2.05.050 Statutory powers and duties.**

The Mayor shall have the powers and duties of mayors of second-class cities as provided by statute. [Ord. G-81-53, passed 12-14-81. 1962 Code, Art. 3, Ch. 3, § 5; 1982 Code § 30.034; 1983 Code § 3.30.034.]

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**The Evansville Municipal Code is current through Ordinance G-2013-9, passed June 25, 2013.**

Disclaimer: The City Clerk's Office has the official version of the Evansville Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

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