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MEMORANDUM

Date: October 3, 2013

To: Town Council

From: Tim Wright, Town Attorney 

Re: Resolution 2743 (amending Section 1.2.7 of the Town's Personnel Policy Manual)

The amended version of Section 1.2.7 proposed by Resolution 2743 is set forth below. Following each section in *italics* are comments re the proposed changes.

1.2.7 – IMPROPER POLITICAL ACTIVITY

A) Purpose – The purpose of this section is to protect employees' Constitutional rights as participants in the political process, while balancing competing factors such as State Law restrictions (e.g., A.R.S. 9-500.14), other employee's rights to be free from undue influence, incompatibility of office issues, and the public's confidence in Town elections.

This is an entirely new section that sets forth the purpose of the section and acknowledges the tension that exists between employee's political rights and the Town's interest that required some regulation of such rights.

B) No employee may use Town resources to influence an election as prohibited in A.R.S. 9-500.14.

This new section addresses/acknowledges the provisions of A.R.S. 9-500.14. A memo detailing the amended provisions of A.R.S. 9-500.14 was sent to all employees.

C) No employee or elected officer of the Town may solicit or assist in soliciting any assessment, subscription, or contribution for a political party, candidate, or political purpose from a Town employee.

No change.

D) Any solicitations not prohibited by subsection(C) shall be made outside of an employee's work hours and shall not be done under the authority or pretense of authority of the employee as a Town employee.

The last phrase addressing Town authority has been added to ensure that Town employees do not use their position or authority as a Town employee to solicit funds from citizens.

E) No employee shall use his/her authority to influence the vote or political activities of any subordinate employee.

No change.

F) No employee shall (1) make, solicit, or receive any contributions to the campaign funds of any candidate for the Town Council or any campaign supporting or opposing a Town ballot measure; or (2) take part in the management, affairs, or political campaign of a candidate for Town Council or a campaign supporting or opposing a Town ballot measure. Employees may exercise all other rights of Town electors.

No change.

G) An employee choosing to run for the Town Council shall, prior to filing signed nomination petitions with the Clerk, resign his/her employment with the Town.

This provision has been rewritten to clarify that it only applies to running for Town Council. The current provision reads as follows: "An employee choosing to run for an elected office must resign their employment position with the Town before they request their election paperwork." This provision was added in 2012 and was not in the 1986, 2008, or 2009 Manuals. If the Town Attorney's Office was asked for an opinion today about the meaning of the current language, it would opine that the current provision (although unclear on its face) only applies to persons running for Town Council (and not other elected positions) primarily for 4 reasons:

(1) The order of the current section. The first two provisions address political activity in general. The third provision specifically references Town elections, and this provision follows the restrictions related to Town elections.

(2) Constitutionally, the Town has a limited ability to regulate the political activities of its employees. Any such regulations are subject to 'strict scrutiny.' Prohibiting an employee from running for Council is legal, appropriate, and would survive strict scrutiny because such a run would be (a) running for office against someone who sets current policy that the employee is required to carry out, and (b) running for an office that he/she cannot hold while being an employee, i.e., incompatibility of offices. Conversely, it is doubtful that prohibiting an employee from running for another unrelated office would survive such strict scrutiny.

(3) The Town historically has allowed employees to run for and serve in non Town Council elected positions. Currently, there are employees serving on both the school board and the sanitary district board.

(4) This interpretation is consistent with other municipalities. For example, Peoria (by Rule) and Scottsdale (by Ordinance) both limit their employees from running for Council, but not other offices.