

Chapter 1: General Provisions

- 1.1 Home Rule Authority.** Municipal corporations are granted home rule power and authority, not inconsistent with the laws of the General Assembly, to determine their local affairs and government, except that they shall not have power to levy any tax unless expressly authorized by the General Assembly. The rule or proposition of law that a municipal corporation possesses and can exercise only those powers granted in express words is not a part of the law of this state. (Iowa Const. art III, § 38A.)
- 1.2 Title.** This code of ordinances shall be known and may be cited as the “2014 Avoca City Code”. Legal and official citations to the 2014 Avoca City Code shall be made in the following format:
- A.** Avoca City Code, Chapter X.XX (2014)
- 1.3 Form of Government.** The City of Avoca has adopted the Mayor-Council form of government, with an appointed City Manager.
- 1.4 Incorporated Territory.** The boundaries of the City of Avoca are set out and maintained in the records of Pottawattamie County, Iowa and the State of Iowa.
- 1.5 Exercise of Home Rule.** The City may, unless expressly limited by the Constitution, and if not otherwise inconsistent with State Law, exercise home rule authority.
- A.** Each and every provision of the Code that is not expressly authorized or limited by the Constitution or State Law shall be deemed to be an exercise of Home Rule Authority. Home Rule Authority is exercised for the following purposes:
- 1.** To protect and preserve the rights, privileges, and property of the City and of its residents; and
 - 2.** To preserve and improve the peace, safety, health, welfare, comfort and convenience of its residents.
- B.** The Code may not set standards and requirements which are lower or less stringent than those imposed by State Law, but may set standards and requirements which are higher or more stringent than those imposed by State Law, unless a State Law provides otherwise.
- 1.6 Construction of Terms.** In the construction of the Code the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the Council or repugnant to the context of the provisions.
- A. Verb Tense and Plurals.** Words used in the present tense include the future, the singular number includes the plural, and the plural number includes the singular.
- B. May.** The word “may” confers a discretionary power.
- C. Must.** The word “must” is used to state a requirement.
- D. Shall.** The word “shall” imposes a duty.
- E. Preceding and Following.** “Preceding” and “following” mean next before and next after, respectively.

- F. **Interpretation.** All general provisions, terms, phrases, and expressions contained in the Code shall be liberally construed in order that the true intent and meaning of the Council may be fully carried out.
 - G. **Extension of Authority.** Whenever an officer or employee is required or authorized to do an act by a provision of the Code, the provision shall be construed as authorizing performance by a regular assistant, subordinate, or a duly authorized designee of said officer or employee.
- 1.7 **City Seal.** The City Seal shall be a seal circular in form, the center of which shall be the words, "City Seal", and the same is declared to be the city seal. The City Seal shall be in the custody of the Clerk and attached by him or her to all transcripts, orders, certificates, or measures which it may be necessary and proper to authenticate.
- 1.8 **Run-Off Election Method.** City elections shall be conducted by the run-off method. The following regulations apply to the run-off method of City elections:
- A. The run-off method of elections provided for in Code of Iowa 376.9, as amended, is hereby adopted in lieu of the primary election method of elections.
 - B. A run-off election shall be held for positions unfilled because of failure of a sufficient number of candidates to receive a majority vote in the regular city election.
 - C. A simple majority is needed to be declared elected. A simple majority is at least one vote more than 50% of the total votes cast. If no candidate receives a majority in this type of race, a runoff must be held between the two highest vote getters. For example, a runoff for the office of Mayor will have two candidates on the runoff ballot.
 - D. If necessary, the city runoff election is always held four weeks after the regular city election. Once nominated at the regular city election, candidates cannot withdraw before the city runoff election. If a city runoff election occurs, it is the final election.
 - E. The candidate(s) in the run-off election who receive the highest number of votes cast for the office for which they have filed shall be deemed to be elected to the extent necessary to fill the positions for which they have filed.
- 1.9 **Fiscal Management.** The structure and procedures for the fiscal management of the City shall be governed by resolution of the Council, unless specifically provided for otherwise in another portion of the Code.
- 1.10 **Operating Procedures.** Operating procedures for departments and services of the City shall be governed by resolution of the Council, unless specifically provided for otherwise in another portion of the Code.
- 1.11 **Procedure for Administrative Hearing.** Administrative hearings are conducted by an officer or body of the City, subject to regulations as may be prescribed by various sections of this Code. The matter involved in the hearing may be an appeal to an order or a request subject to the approval of the officer or body of the City. All administrative hearings conducted by an officer or body of the City shall be conducted according to the following rules.
- A. **Public Notice.** A notice providing the date, time, place, and subject matter of the hearing shall be published in a newspaper, having a general circulation in the City of Avoca, not less than four (4) days and not more than twenty (20) days from the day of the hearing, unless provided for otherwise in another portion of the Code.

- B. Location.** All administrative hearings shall be conducted at the City Hall, located at 201 N. Elm St.
- C. Order.** The order for the hearing shall be as follows:
1. The hearing officer or chairman of the body shall provide a summary of facts relating to the subject matter of the hearing.
 2. The hearing officer or chairman of the body shall first call upon the appellant to present any relevant evidence on the matter. The time limit for this presentation shall be reasonable and will be set by the hearing officer or the chairman of the body.
 3. The hearing officer or chairman of the body shall then allow any other party, if any, aggrieved by the matter to present any relevant evidence. The hearing officer or the hearing body shall retain its discretion over allowing other parties to participate in the hearing and remotely affected parties will not be allowed to participate. The time limit for these presentations shall be reasonable and will be set by the hearing officer or the chairman of the body.
 4. A representative of the City shall then present any evidence relevant to the subject matter of the request. The time limit for this presentation shall be reasonable and will be set by the hearing officer or the chairman of the body.
 5. The hearing officer or chairman of the body shall then allow the appellant to rebut any evidence presented by any other party. The time limit for this presentation shall be reasonable and will be set by the hearing officer or the chairman of the body.
- D. Relevant Evidence.** Relevant evidence has a tendency to make an assertion of a party more or less probable than it would be without the evidence and relates to a fact that is of consequence in determining the action. The source of relevant evidence may be case law or statutes, surveys, plats, photographs, plans, expert opinion, competent witnesses with personal knowledge of the matter, or any other information whose probative value is not outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the hearing officer or body, undue delay, wasting time, or needlessly presenting cumulative evidence.
- E. Conduct.** The following rules shall also apply to the conduct of an administrative hearing.
1. Each side shall proceed without interruption and all arguments shall be addressed to the hearing officer or body.
 2. No argument between individuals will be permitted.
 3. A party may, upon reasonable request, receive approval from the hearing officer or chairman of the body, to ask questions of witnesses offered by another party.
 4. During the hearing, the hearing officer or members of the body will be given an opportunity to ask questions and to make any appropriate comments.
 5. No party shall cause undue delay or needlessly present cumulative evidence.

6. If an applicant or appellant fails to appear for any appeal, in the hearing officer or body's sole discretion, the hearing officer or body may deny the appellant's request.
7. The hearing officer or body may recess and continue the appeal to another hearing as necessary or defer action on any appeal whenever it concludes that additional evidence is needed or that alternate solutions need further study.
8. The hearing officer or body, as appropriate, shall render a decision on the matter at any time within forty-eight (48) hours from the conclusion of the hearing process. A decision on more than one request within one type of appeal may be by issued at the same time. The concurring vote of a majority of members of a body shall be necessary to take make any decision.
9. A hearing officer or member of the body that has a substantial interest in the outcome of the matter shall recuse himself or herself from participating in the manner. Legal Counsel to the City shall advise the hearing officer or body on any potential conflict of interest that may exist.

1.12 Collection of Debts. The Manager shall be authorized to collect any debt owed to the City through all lawful means, including but not limited to, the imposition of liens, use of debt collection services, small claims court, vehicle licensing restrictions, and the Income Off-Set Program of the State of Iowa.

1.13 Effect of Repeal. If any section of the Code is repealed, the repeal does not revive the ordinance or section of the Code which had been superseded by the repealed section of the Code. Repeal of any section will not affect any rights which have accrued, any duty imposed, any penalty incurred, or any proceedings commenced under or by virtue of the section of this code repealed.

1.14 Severability. If any chapter, section, provision or part of the Code is adjudged invalid or unconstitutional, such adjudication will not affect the validity of the Code as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional