

ORDINANCE NO. 169 ETHICS POLICY ORDINANCE

(CODE OF ETHICS FOR PUBLIC SERVANTS OF THE CITY OF NEW BUFFALO)

CITY OF NEW BUFFALO

BERRIEN COUNTY, MICHIGAN

AN ORDINANCE TO ESTABLISH A CODE OF ETHICS FOR PUBLIC SERVANTS OF THE CITY OF NEW BUFFALO THAT IS APPLICABLE TO ALL PERSONS UNLESS IN CONFLICT WITH ANY UNION OR EMPLOYMENT CONTRACT OR CIVIL SERVICE ORDINANCE, IN THE MUNICIPAL SERVICE OF THE CITY, WHETHER COMPENSATED OR NOT. IT IS INTENDED TO ENCOURAGE SUCH PERSONS TO PLACE THE PUBLIC INTEREST ABOVE SELF-INTEREST.

THE PROVISIONS OF THIS ORDINANCE ARE NOT INTENDED TO BE THE EXCLUSIVE STATEMENT OF GOVERNING LAW REGARDING ETHICS IN THE MUNICIPAL SERVICE. CERTAIN OTHER ETHICAL MATTERS MAY BE PREEMPTED BY STATUTE, BY THE CHARTER OF THE CITY OF NEW BUFFALO, BY CIVIL SERVICE ORDINANCE OR CONTRACT. THIS ORDINANCE PROVIDES CERTAIN DEFINITIONS, CERTAIN PROHIBITED CONDUCT OF PUBLIC SERVANTS, CERTAIN DISCLOSURE AND RECORD REQUIREMENTS, AND PRESCRIBES PENALTIES FOR VIOLATIONS.

THE CITY OF NEW BUFFALO ORDAINS:

SECTION I. Chapter 2 Entitled "Administration" of the Code of Ordinances of the City of New Buffalo is hereby amended by adding Article VIII.

ARTICLE VIII. CODE OF ETHICS

Section 2-46. Title.

This ordinance shall be known as the "Code of Ethics for Public Servants of the City of New Buffalo" ("the Code").

Section 2-47. Definitions.

Whenever in this ordinance the following terms are used, they shall have the meanings described to them in this section:

"Business entity": A business entity includes a corporation, a partnership, sole proprietorship, joint venture, unincorporated association, trust, or other business form.

"City": The City of New Buffalo, a Michigan municipal corporation.

"Interest": Any right, title or share in something, either personal, financial, legal or equitable, which is owned, held or controlled, in whole or in part, directly or indirectly, by a public servant.

"Public Servant": The Mayor, Member of the City Council, Officers, and any person elected or appointed to any public body of the City.

"Public Body": The City Council, and any board, authority, commission, committee, department, office or other agency of the City, and includes the City.

Section 2-48. Intent and Purpose.

The citizens of New Buffalo are entitled to have fair, ethical and accountable local government that has earned the public's full confidence for integrity.

Furthermore, the effective functioning of democratic government request that public officials and employees comply with both the letter and spirit of the laws and policies affecting the operations of government; public officials shall be independent, impartial and fair in their judgment and actions; public office shall be used for the public good, not for personal gain; and public deliberations and processes shall be conducted openly, unless excepted by the Open Meetings Act, in an atmosphere of respect and civility.

It is the intent of this Code that a public servant, regardless of whether specifically prohibited by this Code, shall avoid any action which might result in or create the appearance of:

- (1) Using public office or employment for private gain;
- (2) Giving improper preferential treatment to any person or organization;
- (3) Impeding government operations;
- (4) Making a government decision outside of official channels as defined in the Open Meetings Act, Public Act 267 of 1976 (MCL 15.261, et. seq.);
- (5) Adversely affecting the confidence of the public in the integrity of the City.

It is not the intent of this Code to in any way limit the right or ability of any public servant to exercise his or her discretion in making legitimate policy decisions which are within their discretion so long as such action does not provide a special benefit to that person, relieve the public servant of a particular duty, or treat that person differently than other similarly situated City residents.

Section 2-49. Fair and Equal Treatment.

No public servant shall request, use or permit the use of any consideration, treatment, advantage or favor beyond that which is the general practice to grant or make available to the public at large. All public servants shall treat all citizens of the City with courtesy, impartiality, fairness and equality under the law.

Section 2-50. Use of Public Property.

No public servant shall request, use or permit the use of any publicly owned or publicly supported property, vehicle, equipment, material, labor or service, or money, for the personal convenience or the private advantage of self or of any other person. This requirement shall not be deemed to prevent any public servant from requesting, using or permitting the use of such publicly owned or publicly supplied property, vehicle, equipment, material, labor or service which is made available by general practice, to the public at large, or which is provided, as a matter of public policy for the use of public servants in the conduct of official business, as approved consideration for their services to the City.

Section 2-51. Matters Requiring Disclosure of Conflicts of Interest, Actual and Potential.

The following disclosure requirements are established to avoid both actual and potential conflict between the private self-interest and the public interest of public servants:

- (1) **Self Interest:** No public servant, either on his or her behalf or on behalf of any other person, shall have an interest in any business transaction with any public body of the City, unless the person shall first make full public disclosure of the nature of such interest;
- (2) **Disclosure and Disqualification:** Whenever the Performance of official duties shall require a public servant to deliberate and vote on any matter involving his or her financial or personal interest, that person shall publicly disclose the nature and extent of such interest and is disqualified from participating in the deliberations and voting on the matter;
- (3) **Dual Employment:** No public servant shall engage in employment with, or render services for, any person or entity, which has business transactions with any public body of the City, without first making full public disclosure of the nature and extent of the employment or services;
- (4) **Dual Representation:** A public servant shall make full public disclosure of business involving the City when attempting to use his or her official position to secure special privileges or exemptions for self or others.

Section 2-52. Prohibited Conduct.

All public servants are prohibited from engaging in the following conduct:

- (1) Divulging confidential information to any person not authorized to obtain such information;
- (2) Benefiting financially from confidential information;
- (3) Representing his or her individual opinion as that of the City;
- (4) Misusing City personnel resources, property, funds or assets for personal gain;
- (5) Soliciting or accepting a gift or loan of money, goods, services or other things of value which tend to influence the manner in which the public servant performs his or her official duties;
- (6) Engaging in any transaction which may cause the public servant to derive a personal profit or gain directly or indirectly as a result of his or her official position;
- (7) Engaging in employment or rendering services that are incompatible or in conflict with the discharge of his or her official duties or that tend to impair his or her independence of judgment;
- (8) Participating in contracts, loans, grants, rate-fixing, or issuing permits involving a business entity in which he or she has a substantial interest; however this provision shall not apply in the following circumstances:
 - (a) contracting with the City where:
 - (i) the contract is awarded pursuant to sealed bids;
 - (ii) the public servant is not involved directly or indirectly or otherwise refrains from participation in the decision on the award of the contract; and,

- (iii) the City Council, after reviewing the circumstances, determines the award of the contract would be in the best interest of the City.
- (b) Where the interest of the public servant in the business entity involves the holding of less than one percent of the securities in a publicly traded business or less than five percent of any privately or closely held business and where the public servant will not have any involvement in the transaction on behalf of the contracting business entity.

Section 2-53. Public Disclosure, Contents.

Whenever a public disclosure is required by this ordinance, it may be made orally on the record at a meeting of the public body involved, or in a writing filed with the Clerk, in which case it shall be made a part of the record of a regular City Council meeting, and in either event shall include:

- (1) The identity of all persons involved in the interest;
- (2) The source and amount of income derived from the interest that may be considered as resulting from employment, investment or gift. The person required to file a disclosure statement in accordance with the provisions of this ordinance must verify, in writing, under penalty of perjury, the information in the statement is true and complete as far as he or she knows.

Section 2-54. Duties of the Clerk.

The Clerk shall examine all disclosure statements filed pursuant to this ordinance and report irregularities immediately to the person filing the statement, to the City Manager, and the City Attorney. Acceptance of a statement by the Clerk shall not constitute approval of the statement.

The Clerk shall maintain a current list of all disclosure statements required to be available for public disclosure. The Clerk shall preserve all disclosure statements for at least four (4) years after the date on which they are filed. The Clerk shall make available to the public all statements that are required to be available for inspection during regular business hours.

Section 2-55. Advisory Opinions.

Preserving the integrity of the City of New Buffalo is important to all officers and officials of the City. Fairness, honesty, evenhandedness, and sincerity, a kind that transcends both the law and the values of individuals are achieved by observing an overriding set of ethical standards. Integrity is also preserved by recognizing, at times, complaints of questionable actions of City officers and officials and others need to be handled with the same fairness, honesty, evenhandedness and sincerity. A City's reputation and its overall success are securely linked. The City of New Buffalo's reputation, obviously, is based on more than the collective reputations of its employees and officials. The City's reputation depends on how people perceive that the city, whatever the issue or set of circumstances, will act with integrity. Preserving the integrity of the City may result in official action to enforce and punish violations of the Ethical Standards of Conduct.

1. Controlling Authorities

All matters concerning the Code of Conduct shall be directed to one of two controlling authorities depending upon employment status of the person or group involved. The request may be made by the individual or any City candidate, officers, or officials. There are two different controlling authorities depending upon whose request, act or action the controlling authority is reviewing.

- A) Requests to investigate or take action to enforce the Code of Conduct regarding elected and appointed City officers and officials or candidates for elective or appointive office shall go to the Mayor, City Council and City Attorney.
 - i) Should the request involve a member of the City Council, that member shall not be a part of the controlling authority.
- B) Requests to investigate or take action to enforce the Code of Conduct regarding employees of the City shall go to the City Manager and City Attorney.
 - i) Should the request involve the City Manager or the City Attorney, the Council shall name a replacement to serve on the controlling authority for that request.

2. Authority to Render Advisory Opinions

The above listed authorities may issue written advisory opinions, when deemed appropriate, interpreting the Code of Conduct ordinances as set forth herein. Any City officer or official may seek guidance from the controlling authority upon written request on questions directly relating to the propriety of their conduct as officers and officials. Each written request and advisory opinion shall be confidential unless released by the requester.

3. Authority to Punish Violations

The above listed authorities shall take appropriate action upon any complaint, request for information, or otherwise resolve matters concerning the Code of Conduct ordinance for the City of New Buffalo. Except for direct references provided by City Charter or labor agreements controlling any action either authority above make take or except as either may establish an action that either authority may take, both authorities are herein empowered to take and enforce actions, as they deem appropriate. The appropriate action to be taken in any individual case shall be at the sole discretion of the controlling authority involved which may include but is not necessarily limited to any of the following:

- A) Referral of the matter to a higher authority.
- B) Pursuing further investigation by the controlling authority.
- C) Deeming no action to be required.
- D) Pursuing such other course of action which is reasonable, just and appropriate under the circumstances.
- E) Taking appropriate disciplinary action, including declaring a forfeiture of office and removal from office, appointed position or employment whether or not the removal of office is directly referenced by City Charter or by labor agreement but is referenced by this ordinance.
 - i) If the violation is for an offense also contained in the City Charter and is one which the Charter determines is punished by removal, the process for removal is the same as contained in the City Charter.
 - ii) If the violation is for an offense also contained in labor agreements between the City and its employees, then the process for removal is the same as contained in the labor agreements.
 - iii) If the violation is for an offense contained in this ordinance and for which the controlling authority recommends the forfeiture and removal from office, whether elective or appointive or from a position as an employee, then the process contained herein is the process that is followed.

Section 2-56. Delivery of Copies of Ethics Code to Public Servants.

The City Clerk shall deliver a copy of this ordinance to each public servant as soon as practicable after the enactment of this ordinance, and to each new public servant at the time of employment or taking office. Each such person shall sign and return an acknowledgement of receipt of a copy of this ordinance.

Section 2-57. Violations.

1. Determination to Proceed

Should a violation be found, the controlling authority shall make a determination to proceed. In addition, any City candidate, officers or officials of the City of New Buffalo may request that the controlling authority review, investigate and recommend action regarding alleged violations of the City of New Buffalo Code of Ethics. Such requests shall be in writing. The controlling authority may decide to review, investigate and recommend action regarding alleged violations of the City of New Buffalo Code of Ethics on their own determination or at the request of other persons. All decisions to review, investigate and recommend action shall first be made in writing.

2. Duty of Due Care

The controlling authority shall be entitled to proceed as it deems necessary and appropriate. The controlling authority shall conduct itself in a manner so as to be thorough, complete and proceed in a reasonable and prudent manner protecting the rights of individuals and the City.

3. Disciplinary Procedures for Violations

Any candidate, officers or officials, for whom the controlling authority recommends disciplinary action, shall be entitled to a hearing before the controlling authority as set forth below.

- A) The controlling authority shall notify, in writing, the affected candidate, officers or officials of the charges that the controlling authority is basing its recommendation of disciplinary action.
- B) The candidate, officers or officials shall have the opportunity to a hearing before the controlling authority.
- C) The candidate, officers or officials shall notify the controlling authority, in writing, that it wishes to be present at a hearing and whether or not legal counsel will attend as well as any witnesses the candidate, officers or officials plans to call.
- D) The hearing shall be scheduled within 30 days of the notification of the recommendation for disciplinary action. The hearing shall be open to the public unless the candidate, officers or officials requests to have the hearing closed to the public.
- E) Transcripts or Minutes of the hearing shall be kept and held by the City Attorney for at least 12 months after which they may be destroyed.
- F) Following the hearing, the controlling authority shall decide to:
 - 1) Hold the recommendation for further review and investigation,
 - 2) Amend its previous recommendation and determine disciplinary action,
 - 3) Reject its previous recommendation altogether and take new action or determine to take no punitive action, or

- 4) Proceed with its previous recommendation and take punitive action.
- G) Any punitive action recommended by the controlling authority shall be forwarded to the City Council which shall vote on the recommendation for punitive action at its next regularly scheduled meeting of the City Council. At that meeting the City Council, less any member for whom the punitive action is recommended, a majority of those members remaining shall vote to accept, to reject or to send the recommendation back to the controlling authority.
- H) If the recommendation of either the controlling authority or the City Council is to result in further review and investigation of the controlling authority, the process described above shall begin anew.
- I) If the recommendation of the controlling authority is accepted by the City Council, its effect is binding and immediate and the candidate, officers or officials has been cleared of the charges, or has been deemed guilty of a violation of the Code of Ethics offending all persons, the City Council, boards and commissions of the City of New Buffalo.
- J) If a violation of the Code of Ethics is found by the City Council, the Council may recommend an appropriate penalty ranging from a written admonishment, dismissal from office, or employment or a misdemeanor punishable by a fine of not more than Five Hundred Dollars (\$500.00), in the discretion of the Court. The penalty or penalties imposed are not exclusive remedies under this ordinance and any and all statutory and Charter penalties or forfeitures may also be enforced, as well as referral of the matter to the Berrien County Prosecutor or Michigan Attorney General. Any person convicted under the provisions of this ordinance shall be deemed guilty of misconduct.

Section 2-58. Validity.

The invalidity of any section, sentence, clause or other part, or parts, of this ordinance shall not affect the validity of any other part of this ordinance which can be given effect without such invalid part or parts.

SECTION II. This ordinance was adopted by the New Buffalo City Council at its regular meeting held eighteenth day of August, 2009, and shall be effective eighth day of September, 2009, 2009 following publication.