



BOARD OF ETHICS

Thursday, May 25, 2017

Mason City Hall, Second Floor Conference Room, 5:30 pm

201 West Ash Street, Mason MI

AGENDA

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **PUBLIC COMMENT**
4. **APPROVAL OF MINUTES** (April 27, 2017)
5. **UNFINISHED BUSINESS**
 - A. Motion: Approval of Meeting Time
 - B. Discussion: Ethics Ordinance Potential Amendments (attachment)
6. **NEW BUSINESS**
7. **LIAISON REPORT**
8. **ADJOURN**

**CITY OF MASON
REGULAR BOARD OF ETHICS MEETING
MINUTES OF APRIL 27, 2017**

Meeting was called to order at 12:00 p.m. in the Administrator's conference room at 201 W. Ash Street, Mason, Michigan.

Present: Kathy Dean, William Noud, Harry Warner
Absent: Patrick Price, Margo Burrage
Also Present: Deborah Stuart, City Administrator

PEOPLE FROM THE FLOOR

None.

ANNOUNCEMENTS

None.

APPROVAL OF MINUTES

The Minutes of March 23, 2017 were approved.

UNFINISHED BUSINESS

Motion: Approval of the Established Future Meeting Times

By consensus, the Board determined that it would meet on May 25, 2017 at 5:30 pm. At that time, the next meeting date and time will be determined.

Discussion: Ethics Potential Amendments

The Committee reviewed the sample language and reached consensus on what items they would like to be further discussed. Stuart will update the ordinance with tracked changes for their consideration at the next meeting.

REGULAR BUSINESS

None.

ADJOURNMENT

The meeting adjourned at 1:01 pm.

Introduced:
First Reading:
Second Reading:
Adopted:
Effective:

**CITY OF MASON
ORDINANCE NO. XXX**

**AN ORDINANCE TO AMEND CHAPTER 2, ARTICLE III, DIVISION 3 –
CODE OF ETHICS**

THE CITY OF MASON ORDAINS;

Division 3 of Article III of Chapter 2 of the Mason City Code to hereby amended to read as follows:

Sec. 2-101. Purpose

Public officials, by virtue of their positions, are trustees of the public, chargeable with honesty, integrity, and openness in their handling of public affairs. When conduct inconsistent with this expectation occurs public suspicion is heightened and, therefore, public confidence is jeopardized. Where government is founded upon the consent of the governed, it is critical that each citizen have complete confidence in the integrity of the government. Each public official must endeavor to earn and honor the public trust in the conduct of all official duties and actions. The purpose of this division is to define standards of ethical conduct that are clearly established and uniformly applied. These standards will provide the public, as well as public officials, with guidance about ethical expectations for trustees of the public.

Sec. 2-102. Policy.

It is the public policy of this city that all city officials shall construe and implement ethical standards and guidelines with sincerity, integrity and commitment so as to advance the spirit of this division in accordance with the following guiding principles:

- (1) *Public interest:* City officials are delegated power from the public and are obliged to exercise that power as trustees of the public. The power and resources of government service therefore shall be used only to advance the public interest.
- (2) *Objective judgment:* Loyalty to the public interest requires that all matters shall be decided with independent, objective judgment, free from avoidable conflicts of interest, improper influences, and competing loyalties.
- (3) *Accountability:* Government affairs shall be conducted in an open, efficient, fair and honorable manner, which enables citizens to make informed judgments and to hold officials accountable.
- (4) *Democratic leadership:* All city officials shall honor and respect the spirit and principles of representative democracy and will scrupulously observe the spirit as well as the letter of the law.
- (5) *Respectfulness:* All city officials shall safeguard public confidence by being honest, fair, impartial, and respectful toward all persons and property with whom they have contact in an official capacity and by avoiding conduct which may tend to undermine respect for city officials and for the city as an institution.

Sec. 2-103. Definition.

In this article "city official" means a person elected to the city council or appointed to the planning commission, zoning board of appeals, historic district commission, building code board of appeals, downtown development authority, local development finance authority, ~~or~~ board of review, or any other board appointed by the City Council or Mayor. City official shall not include city administrator or city clerk.

Sec. 2-104. Prohibited conduct.

- (a) ~~Gifts, favors, loans: A city official shall not, directly or indirectly, solicit or accept a gift that could influence the manner in which they perform their official duties.~~
- ~~(1) Opportunities, benefits and services available on the same conditions as for the general public or to participants at any national, state or local conference or trade association meeting.~~
 - ~~(2) Anything for which the official or employee pays the fair market value.~~
 - ~~(3) Any contribution that is lawfully made under the Campaign Finance Laws of the State of Michigan.~~
 - ~~(4) A gift from a relative, meaning those people related to the individual by blood or marriage.~~
 - ~~(4)(5) Anything provided by an individual on the basis of a personal friendship unless the recipient has reason to believe that, under the circumstances, the gift was provided because of the official position or employment of the recipient and not because of the personal friendship.~~
 - ~~(2)(6) Food or refreshments not exceeding One Hundred (\$100.00) Dollars per person in value on a single calendar day; provided that the food or refreshments are: (i) consumed on the premises from which they were purchased or prepared; or (ii) catered. For the purposes of this section, "catered" means food or refreshments that are purchased ready to consume which are delivered by any means.~~
 - ~~(3)(7) Food, refreshments, lodging, transportation and other benefits resulting from outside business or employment activities (or outside activities that are not connected to the official duties of an official or employee), if the benefits have not been offered or enhanced because of the official position or employment of the official or employee, and are customarily provided to others in similar circumstances.~~
 - ~~(4)(8) Intra-governmental and inter-governmental gifts. For the purpose of this section, "intra-governmental gift" means any gift given to an official or employee from another official or employee of the City, and "intergovernmental gift" means any gift given to an official or employee by an official or employee of another governmental entity.~~
 - ~~(5)(9) Bequests, inheritances and other transfers at death.~~
 - ~~(10) Any item or items from any one prohibited source during any calendar year having a cumulative total value of less than One Hundred (\$100.00) Dollars.~~
- (b) *Preferential treatment:* A city official shall not use his official position to unreasonably secure, request, or grant any privileges, exemptions, advantages, contracts, or preferential treatment for himself, his immediate family, or others.
- (c) *Use of information:* A city official who acquires information in the course of his official duties, which by law or policy is confidential, shall not prematurely divulge that information to an unauthorized person. Information which is deemed exempt from disclosure under the Michigan Freedom of Information Act, (MCL 15.231 et seq.) or which is the subject of a duly called closed meeting held in accordance with the Michigan Open Meetings Act, (MCL 15.261 et seq.) is confidential. A city official shall not suppress or refuse to provide city reports or other information which is publicly available.
- (d) *Conflicts of interest:*

- (1) No person may be employed as a sworn police officer if such person and/or his spouse has an interest, directly or indirectly, in any business possessing any license issued by the Michigan Liquor Control Commission and operated within the jurisdiction of the Mason Police Department.
 - (2) The city building official shall not do any work for hire or have any interest, directly or indirectly, in any business doing work for hire within the city which requires a permit pursuant to the state construction code.
 - (3) The city assessor shall not assess for city record keeping purposes his own property.
 - (4) No city official shall engage in employment, render services, or engage in any business, transaction or activity which is in direct conflict of interest with his official duties.
 - (5) No city official may use any confidential information obtained in the exercise of his official duties for personal gain or for the gain of others.
 - (6) No city official shall intentionally take or refrain from taking any official action, or induce or attempt to induce any other city official or employee to take or refrain from taking any official action, on any matter before the city which would result in a financial benefit for any of the following:
 - a. The city official.
 - b. An immediate family member.
 - c. An outside employer.
 - d. Any business in which the city official or any immediate family member of the city official has a financial interest of the type described in subsection [2-105\(b\)\(1\)](#).
 - e. Any business with which the city official or any immediate family member of the city official is negotiating or seeking prospective employment or other business or professional relationship.
 - (7) An appointed city official shall not discuss any matter pending before the body on which the appointed city official serves with the applicant or any person to whom written notice of the matter pending is required to be sent by city ordinance or other law except during duly called public meetings of the body. In the case of an inadvertent discussion between the appointed city official and the applicant or any person to whom written notice is required to be sent as described, such discussion shall be disclosed as a transaction in accordance with subsection [2-105\(e\)](#).
 - (8) Except as otherwise permitted herein, no city official or any immediate family member of a city official shall be a party, directly or indirectly, to any contract with the city except for collective bargaining agreements. The foregoing shall not apply if the contract is awarded after public notice and competitive bidding, provided that the city official shall not have participated in establishing contract specifications or awarding the contract, shall not manage contract performance after the contract is awarded, and shall disclose the interest of the city official or any immediate family member in the contract in accordance with section [2-105\(e\)](#).
 - (9) A city official shall not engage in a business transaction with the city except as permitted by Public Act No. 317 of 1968 (MCL 15.231 et seq.). Compliance with the requirements of said Act shall constitute compliance with subsection [2-104\(d\)](#).
- (e) *Use of city property or personnel:* A city official shall not, directly or indirectly, use or permit any other person to use any city property or personnel for personal gain or economic benefit. City employees may use city property for personal use as a convenience if first approved by the city administrator or authorized by city policy.
- (f) *Political activity:* No city official shall use any city time or property for his own political benefit or for the political benefit of any other person seeking elective office, provided that the foregoing shall not prohibit the use of property or facilities available to the general public on an equal basis for due consideration paid.
- (g) *Nepotism:* The spouse of any elected city official, or of the city administrator, shall be disqualified from holding any appointive office. The immediate family members of any elected city official, or of the city administrator, and the spouses of any such family members shall be disqualified from holding full-time or permanent part-time employment exceeding ten hours per week with the city during the term served by said elected official or during the tenure of the

city administrator. This section shall in no way disqualify such relatives or their spouses who are bona fide appointed officers or employees of the city at the time of the election of said elected official or appointment of said city administrator.

- (h) *Retaliation:* No person making a complaint or requesting an advisory opinion, or participating in any proceeding of the board of ethics, shall be discharged, threatened, or otherwise discriminated against regarding compensation, terms, conditions, location, or privileges of employment or contract because of such action or participation.

Sec. 2-105. Disclosure.

- (a) *Disclosure statement; who shall file.* ~~The following All City Officials~~ shall file an annual disclosure statement:
~~(1) The mayor;~~
~~(2) Members of the city council;~~
- (b) *Disclosure statement; content.*
- (1) The annual disclosure statement shall disclose the following financial interest of the city official or of the immediate family members of the city official with any person, business or other entity that has contracted with the city or which has received a license from the city in the two calendar years prior to the filing of the statement:
 - a. Any interest as a director, officer, partner, member, or employee in or for a corporation, partnership, limited liability company, or other unincorporated association;
 - b. Any interest as a landlord or tenant or property owner;
 - c. Any interest as a beneficiary or trustee in a trust;
 - d. Legal or beneficial ownership of one percent or more of the total outstanding stock of a company which is doing business with the city and which is not listed on a stock exchange;
 - e. Legal or beneficial ownership of stock with a market value in excess of \$25,000.00 in a company which is doing business with the city and which is listed on a national or regional stock exchange.
 - (2) If there is no reportable financial interest or transaction applicable to the city official or to the immediate family members of the city official, the annual disclosure statement shall contain a certification as to that fact.
- (c) *Disclosure statement; when and where filed.* One original executed disclosure statement and one copy shall be filed with the board of ethics within 30 days of appointment to position and annually on or before April 15 of each year following. The eCity eClerk shall examine all disclosure statements filed pursuant to this article and report irregularities immediately to the person filing the statement, to the eCity eAdministrator, and the eCity eAttorney. Acceptance of a statement by the clerk shall not constitute approval of the statement. The clerk shall provide all disclosure statements to the Board of Ethics and maintain a current list of all disclosure statements required to be available for public disclosure. The eClerk shall preserve all disclosure statements for at least three years after the date on which they are filed. The eClerk shall make available to the public all statements that are required to be available for inspection during regular business hours.
- (d) *Disclosure forms.* All disclosures shall be made on forms provided for that purpose by the board of ethics and shall become public documents.
- (e) *Transactional disclosure.* A city official shall not participate, in the course of official duties, in any transaction which subsequently would be required to be disclosed in an annual disclosure statement or which would constitute a conflict of interest under subsection 2-104(d) without disclosing the interest in the transaction prior to participating in the transaction. If the official is a member of a decision-making or advising body, the disclosure must be made to the chair and other members and made part of the official record of the body. A council, board, or commission member who absents himself from a vote shall disclose the reason to the entire body.

- (f) *Disclosure of gifts.* Any gift received by a city official which could influence the manner in which they enact their official duties should be reported immediately to the board of ethics. Such gifts should be returned to the donor, or donated to a charity, with the explanation to the donor that city policy will not permit the acceptance of the gift.
- (g) *Doing business with the eCity.* No eCity official or employee shall engage in business with the eCity, directly or indirectly, without first filing a complete written disclosure statement for each business activity having an economic interest. Such disclosure shall be made on an annual basis or prior to any business activity or decision affecting an interest not previously disclosed by an annual disclosure.
- (h) *Appearance of impropriety.* An "appearance of impropriety" shall occur when an official or employee is involved in a decision concerning action of a city body which will affect an immediate family member, even if that official or employee derives no direct or indirect financial benefit from the action. An appearance of impropriety may be fully disclosed on the official record. After such disclosure, the official or employee may participate in the decision. However, failure to disclose does not impact the validity of the decision by that body.

Comment [DS1]: Really struggling with this one.

Sec. 2-106. Board of ethics.

- (a) *Creation.* There is hereby created an independent body called the "board of ethics."
- (b) *Objective.* The objective of the board of ethics is to issue written opinions regarding ethical, not legal, questions and to engage in activities which will promote ethical behavior.
- (c) *Board membership; terms; meetings; rules.*
- (1) The board of ethics shall consist of five members who are city residents appointed by the mayor with the approval of the city council. City officials and the immediate family of city officials shall not be eligible for appointment to the board.
 - (2) Members shall be appointed for terms of three years, except that of those first appointed, two shall serve for three years, two shall serve for two years, and one shall serve for one year. Initial nominations shall be made by the mayor within 90 days of the effective date of this division, and nominations to fill vacancies and subsequent terms shall be made by the mayor within 60 days of occurrence of the vacancy or commencement of the term. The city council shall vote on confirmation within 30 days of receipt of nominations from the mayor. If nominations are not made within the periods specified, the city council shall appoint the member(s). If the city council shall not vote on confirmation within the period specified, the mayor's nominations shall be deemed confirmed and the member(s) shall be appointed.
 - (3) The affirmative vote of three members of the board of ethics shall be necessary for any action.
 - (4) The city clerk shall serve on an ex officio basis as secretary to the board without the right to vote.
 - (5) The board of ethics shall meet as frequently as necessary to promptly perform appointed duties. Meetings of the board shall be subject to the Michigan Open Meetings Act (MCL 15.26 et seq.).
 - (6) The board of ethics may adopt interpretative rules and procedures relating to the requirements and application of this division.
 - (7) The board of ethics shall conduct meetings in accordance with the rules of order adopted by the city council.
- (d) *Powers and duties.* The board of ethics shall have the power to:
- (1) Receive requests for advisory opinions from city officials.
 - (2) Receive complaints concerning alleged unethical conduct by a city official from any person or entity.
 - (3) Receive and retain on file copies of advisory opinions, disclosure statements, and other materials required to be filed under this division.
 - a. Advisory opinions shall be retained indefinitely.
 - b. Disclosure statements shall be retained throughout the tenure of the city official plus two years after the completion of said tenure.
 - c. Other materials required to be filed under this division shall be retained for ten years.

- (4) Review the request for advisory opinion or the complaint to determine if the board has jurisdiction over the matter and/or persons identified in the request or complaint.
 - (5) If a complaint concerns an employee, the sole power of the board shall be to forward the complaint with no action forthwith to the city administrator. The board of ethics shall have no power or jurisdiction concerning employees except as specifically set forth in subsection [2-106\(d\)\(5\)](#).
 - (6) Inquire into the circumstances surrounding alleged unethical conduct. The board of ethics, upon its own, may initiate an inquiry. The board is hereby authorized to exercise all of the powers granted by Chapter 6, Section 6.9, of the City Charter, except that the board shall not have the power to subpoena witnesses or compel the production of books, papers, and other evidence. The board may seek the assistance and opinion of the city attorney in the investigation of a matter. In the event that the city attorney is the subject of an investigation, the board may, subject to prior approval of a written retainer agreement by the city council, seek outside counsel in the investigation of a matter.
 - (7) Issue advisory opinions in response to complaints and requests and on its own motion. Advisory opinions of the board of ethics shall be maintained in the office of the city clerk and shall be available to the public upon request.
 - (8) Adopt and maintain disclosure forms, which may be revised by the board of ethics from time to time.
 - (9) Report to the mayor and the city council from time to time, but not less often than annually, regarding such matters pertaining to this division as the board deems appropriate, which may include, but not be limited to, the degree to which the policy of this division is being achieved; the numbers and nature of requests for advisory opinions and complaints and the ultimate disposition thereof; the implementation and effectiveness of this division; and any changes in this division recommended to more fully achieve the purposes and policy of this division.
- (e) *Board actions.* Action to be taken in any individual case may include the following:
- (1) Issue a written advisory opinion.
 - (2) Deem no action to be required.
 - (3) Refer the matter to the city attorney to determine whether legal action may be appropriate and what form by which to take such action.
- (f) *Confidentiality and due process.* The board of ethics shall to the fullest extent permitted by law keep all complaints and requests for advisory opinions strictly confidential. All persons alleged to have violated this division shall be notified of said allegations and afforded the opportunity to be heard.
- (g) *Advisory opinions.*
- (1) The board of ethics may issue written advisory opinions interpreting this division and its provisions and relevant provisions of state law applicable to city officials. Advisory opinions shall not disclose the identities of the person or entity making the request for an advisory opinion or the identity of the persons or positions who are the subject of a complaint or inquiry. Advisory opinions shall be issued within 60 days of a request. If additional time is needed, the time may be extended by action of the board.
 - (2) Advisory opinions may include guidance to any city official on questions including, but not limited to:
 - a. Whether an identifiable conflict of interest exists between his personal interests or obligations and his official duties.
 - b. Whether his participation in his official capacity would involve discretionary judgment with significant effect on the disposition of the matter in question.
 - c. Whether the result of the potential conflict of interest is substantial or constitutes a real threat to the independence of his judgment.
 - d. Whether he possesses certain knowledge or skill which the city will require to achieve a sound decision.

- e. What effect his participation under the circumstances would have on the confidence of the people in the impartiality of city officials.
 - f. Whether a disclosure of his personal interests would be advisable and, if so, how such disclosure should be made.
 - g. Whether the public interest would be best served by his withdrawal or abstention.
 - h. Whether undue influence is being exerted on him.
- (3) When the board of ethics issues an advisory opinion regarding ethical questions pursuant to this section, the board shall promptly send a copy of its opinion to:
- a. The individual who requested the opinion;
 - b. The city official affected;
 - c. The mayor;
 - d. The city administrator.
- (4) The board shall publicize summaries of its advisory opinions to all city officials.

Sec. 2-107. Penalties.

This section is intended to encourage and promote the highest standards of ethical conduct and behavior by city officials and is not intended to be a punitive measure. It is anticipated that the issuance by the board of ethics of advisory opinions will conclude all matters originating as requests for advice and substantially all matters originating as complaints. The board of ethics is not an adjudicative body and no finding of the board shall be deemed conclusive nor, in and of itself, subject any city official to penalties.