

Southgate, MI Code of Ordinances

CHAPTER 296

Employees Generally

EDITOR'S NOTE: Because of the frequency of change, provisions relating to regular compensation and benefits are not codified. Copies of the latest relevant legislation may be obtained, at cost, from the City Clerk.

296.01 Conflict of interest.

296.02 Standards of conduct for public officers and employees.

296.99 Penalty.

CROSS REFERENCES

Use of City property - see CHTR. § 6

Recall - see CHTR. § 35; M.C.L.A. § 117.4i

Officers and employees generally - see CHTR. Art. 4

Civil service - see CHTR. Art. 16

Municipal Employees' Retirement System - see CHTR. Art. 17; M.C.L.A. §§ 38.601 et seq.; ADM. Ch. 297

Compensation and salaries in home rule cities - see M.C.L.A. §§ 117.3, 117.5, 117.17, 117.19, 117.20, 117.28, 117.32, 117.33

Civil service in home rule cities - see M.C.L.A. § 117.4i

Shortening or extending term of office - see M.C.L.A. § 117.5

Rights in emergencies - see ADM. 248.08

Local Officers Compensation Commission - see ADM. Ch. 284

Resisting or obstructing officers and employees - see GEN. OFF. 602.01

296.01 CONFLICT OF INTEREST.

(a) As used in this section:

(1) "Officer" means the Mayor, the City Clerk, the City Treasurer, a member of Council, a

Judge, the City Attorney, the City Assessor, the City Auditor, the City Administrator, the Administrative Assistant, the City Engineer, the Director of Inspections, the Planning Consultant or any other appointee of the Mayor and/or Council, except a member of a board or commission of the City who serves without compensation.

(2) "Members of the immediate family" means the father, mother, wife, son, daughter, father-in-law, mother-in-law, brother or sister of an officer.

(b) No officer of the City shall represent any customer, client or patron before any board, commission or department of the City, or before Council, wherein the officer as a spokesperson or advocate shall request that such board, commission or department, or that Council, exercise its authority, duties or powers in any particular matter, duly before such board, commission, department or Council. No officer of the City shall, as a part of his or her duties in his or her official capacity, approve, disapprove or in any way pass judgment upon any matter that comes before him or her in which he or she is the promulgator, scrivener, designer, developer, petitioner or advocate.

(c) The prohibitions enumerated in subsection (b) hereof shall extend to associates, business associates, employees, employees of and members of the business firm or association of which such officer is a member or affiliate, and to members of the immediate family of the officer.

(d) Any violation of subsection (b) or (c) hereof shall constitute misconduct in office, in addition to the penal provisions of Section 202.99.

(1974 Code § 1.95(1) to (4))

296.02 STANDARDS OF CONDUCT FOR PUBLIC OFFICERS AND EMPLOYEES.

(a) Definitions.

(1) "City official or employee" is a person elected or appointed, or otherwise serving in any capacity, involving the exercise of a public power or trust.

(2) "Conflict of interest" is either a personal interest or a duty or loyalty to a third party that competes with or is adverse to a City official's or employee's duty to the public interest in the exercise of official duties or official actions.

(3) "Immediate family" is a spouse, child, parent, sister or brother wherever residing, any relative sharing the same household, or a spouse of any of the above mentioned.

(4) "Official duties" or "official actions" are decisions, recommendations, approvals, disapprovals, or other actions which involve the use of discretionary authority.

(5) "Frivolous complaint" means a complaint where it is determined that at least one of the following conditions are met: the primary purpose of initiating the complaint was to harass, embarrass, or injure; there was no reasonable basis to believe that the facts alleged in the complainant were in fact true; the complainant's legal position was devoid of arguable legal merit.

(6) "Gifts" means anything of value, other than perishable commodities, which are given to a

public official or city employee without payment of fair market value.

(b) Conflict of Interest.

(1) No City official or employee shall engage in employment, render services, or engage in any business, transaction or activity which is in direct conflict of interest with his or her official duties. No city official or employee may use any confidential information obtained in the exercise of his or her official duties for personal gain or for the gain of others. See also MCL § 15.342.

(2) No City official or employee 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 the City official or employee, a close business or political associate, an immediate family member, an outside employer, any business in which the City official or employee, or any immediate family member of the City official or employee, has a financial interest, or any business with which the City official or employee or any immediate family member is negotiating or seeking prospective employment or other business or professional relationship. See also MCL § 15.342.

(3) Any City official or employee who is a member of a decision making or advising body shall disclose any conflict of interest to the City Clerk and the chair and other members of that decision making body. Such disclosure shall be made part of the official record of that body prior to discussion or action thereon. A City Council member who absents himself or herself from a vote shall disclose the reason to the entire body. In the case of an employee, the disclosure must be made to his or her immediate supervisor. See also MCL § 15.342b.

(c) Prohibited Conduct.

(1) Gifts. A City official or employee shall not, directly or indirectly, solicit or accept any gifts, favors, gratuities or special consideration with a value of more than one hundred fifty dollars (\$150.00) from anyone currently doing business with the City, seeking to do business with the City, who may be currently negotiating to do business with the City in the future, or who otherwise is or may seek any action or approval by the City, unless specifically allowed by City policy. Specifically, a City official or employee may not solicit or accept, without reimbursement, meals, sporting event tickets, social amenities, or attendance at any event with any organization that does business or seeks to do business with the City with a value of more than one hundred fifty dollars (\$150.00). See also MCL § 169.252. This provision shall not apply to solicitations for charities or political fundraising done in compliance with the Michigan Campaign Finance Act.

(2) Loans. A City official or employee shall not use his or her official position to accept loans of either a personal or business nature from anyone other than a commercial lender at prevailing market rates.

(3) Preferential treatment. A City official or employee shall not use his or her official position to unreasonably secure, request or grant, any privileges, exemptions, advantages, contracts, or preferential treatment for himself or herself or others from the City or any business, individual or other third party.

(4) Use of information. A City official or employee who acquires information in the course of his or her official duties, which by law or policy is confidential, shall not prematurely divulge that information to an unauthorized person nor use the information to further the private interest of the City

official or employee or any third party. Information which is deemed exempt from disclosure under the Michigan Freedom of Information Act, Act 442, Public Acts of Michigan, 1976, or which is the subject of a duly called closed meeting held in accordance with the Michigan Open Meetings Act, Act 267, Public Acts of Michigan, 1976, is confidential. A City official or employee shall not suppress or refuse to provide City reports or other information which is publicly available. See also MCL § 15.342.

(5) Political contributions or support. An officer or employee shall not, directly or indirectly, command or coerce another officer or employee of the City to pay, lend or contribute anything of value to the officer, another person, party or organization for political purposes.

(6) Political activity. Officers or employees may participate in political activity but shall not conduct any political activity during their work hours.

(7) Violation of written administrative policies. No officer or employee shall violate the reasonable and established policies of the City as written and distributed by the office of the City Administrator. An unintentional violation of this term shall constitute unethical conduct which may give rise to appropriate discipline as allowed by law or a collective bargaining agreement. An intentional violation of this term shall constitute a misdemeanor, and may be referred to the City Attorney for prosecution.

(8) Personal opinions. No officer or employee shall represent his or her personal opinion as that of the governmental body of which he or she is a member or employee. This subsection shall not apply to statements by elected officials made in the course of fulfilling the responsibilities of their office or in running for election to office, nor shall it apply to the professional opinions of City officers or employees rendered in the course of performing their duties, provided that such opinions are clearly identified as professional opinions.

(9) Representation before governmental body. No officer or employee shall act as an attorney, agent or representative of a person other than himself or herself, before the governmental body of which such officer or employee is a member or employee. This provision shall not prevent an officer or employee from performing his or her responsibilities as an officer or employee, nor prevent such action as described herein where it is otherwise authorized by law.

(10) Nepotism. No City official or employee shall cause the employment or any favorable employment action of an immediate family member. No City official or employee shall hold an appointed office or employment in which that person would work under the immediate supervision of an immediate family member. If a violation of this subsection occurs, one person must either resign, volunteer to be demoted, or volunteer to be reassigned.

(d) Primacy of Collective Bargaining Agreements. Nothing in this chapter shall be read or implied to supersede any provisions of a collective bargaining agreement in effect on the effective date of the ordinance codified in this chapter.

(e) Annual Disclosure by Officials and Employees. All elected and appointed officials shall file an annual report in the City Clerk's office on or before November 30 of each year listing any and all gifts which they have received which exceed the value of fifty dollars (\$50.00).

(f) Board of Ethics.

(1) Creation. There is hereby created an independent body called the "Board of Ethics."

(2) Objective. The objective of the Board of Ethics is to enforce and administer the standards of conduct set out in this section and maintain the public confidence in the integrity of its elected and appointed officials.

(3) Board membership; terms; quorum; meetings; rules.

A. The Board of Ethics shall consist of five members, appointed by the Mayor with the advice and consent of the Council. Current City officials or employees shall not be eligible for appointment to the Board.

B. Members shall be appointed for terms of five years, except that of those first appointed, the initial terms shall be five years for one, four years for one, three years for one, two years for one, and one year for one. The determination of which members shall serve for which terms shall be made by lot. In the event of a vacancy, the Mayor shall appoint a member to fill the vacancy for the remainder of the term, with the advice and consent of the City Council. Initial appointments shall be made within thirty days of enactment of this section. Nominations to fill vacancies shall be made within sixty days of the occurrence of the vacancy.

C. Three members of the Board of Ethics shall constitute a quorum and the affirmative vote of two members shall be necessary for any action. Members of the Board shall serve without compensation.

D. The Board of Ethics shall annually elect a chairperson.

(g) Complaint Process.

(1) Any person may file a written, sworn and signed complaint with the City Attorney alleging a violation by any officer or employee of the standards of conduct set out in this section. If the alleged violation concerns the City Attorney, then the City Administrator, or at his or her option, Special Counsel, shall perform the steps required of the City Attorney under this section. Each complaint shall be based on personal knowledge and shall fully state the facts of the violation.

(2) The City Attorney shall, within fourteen days, review the complaint prior to its being submitted to the Board of Ethics and determine: whether or not the complaint is in the proper form; whether the complaint falls under the scope and authority of the Board; whether the complaint alleges a prima facie violation of the Standard of Conduct Ordinance; render a non-binding recommendation to the Board of Ethics as to what action the Board should take on the complaint. This recommendation could include requesting a hearing, forwarding the complaint to another agency for investigation or dismissal of the complaint.

(3) Upon receipt and review of the complaint and the recommendation of the City Attorney, the Board of Ethics shall decide upon a course of action.

(4) If the Board of Ethics orders a hearing, the date for the hearing shall not be more than thirty days from the date it received the recommendation of the City Attorney. The time limit shall not apply if the matter is referred for investigation under division (h) hereof. Notice of the hearing shall be given to the officer or employee involved, the immediate supervisor, the City Administrator, the Mayor and Council and the City Attorney by personal service or certified mail, return receipt requested. Notice shall be given not less than ten days prior to the hearing.

(5) The Board of Ethics shall issue a report and recommendation within thirty days of the conclusion of the hearing.

(6) The hearing shall be conducted informally. Witnesses shall be sworn by the presiding officer of the Board of Ethics or other official authorized to administer oaths. The officer or employee shall have the right to counsel and the right to present evidence and witnesses and to cross-examine witnesses. The Michigan Rules of Evidence and Civil Procedure shall not apply. Insofar as practical, hearings shall follow the Administrative Procedures Act, Act No. 306 of the Public Acts of Michigan of 1969, being MCL § 24.201, et seq. A written or electronic record shall be kept of the proceedings. The Board of Ethics shall not have subpoena power.

(h) Advisory Opinions.

(1) Requests. Requests for advisory opinions shall be filed with the City Attorney and state the request in detail. The request shall be in writing and signed. The City Attorney shall examine the request and if in proper form and within the purview of the Board, forward the request to the Board of Ethics for an opinion. The City Attorney shall advise the Board of Ethics in writing of any request not forwarded and the reason for the denial.

(2) Investigation. The Board of Ethics may make such informal investigation of the facts and issues raised by the request, as the Board deems advisable. The Board shall render its opinion with thirty days of receiving the request. The Board of Ethics may reject a request for advisory opinion if the Board, in good faith, believes the request to be in bad faith, made for improper purposes, frivolous, of only minor consequence, or has been effectively ruled on or settled by past actions of the Board of Ethics, a City ordinance, or other law.

(3) If the City officer or employee is the subject of an advisory opinion and has received a copy of the opinion; his or her actions shall be prima facie legal and ethical if he or she conforms to the opinion. This section shall not apply to a criminal act.

(4) Advisory opinions may not be used for any purpose not specifically authorized by this section. Opinions of the Board shall not be binding but shall be advisory only.

(i) Referral for Agency Investigation. The Board of Ethics may refer any alleged violation or incident to the appropriate law enforcement office or agency at any time for investigation. If any matter has been placed with a law enforcement agency for investigation, the Board of Ethics shall not proceed with any hearing concerning the same matter and/or facts until the conclusion of the investigation.

(j) False or Frivolous Complaints. The filing of a willfully false or frivolous complaint shall constitute a misdemeanor, and shall be referred to the City Attorney for criminal prosecution.

(k) Prospective Application. The Board of Ethics shall only investigate or consider conduct or issues which occur after the effective date of this section and the Standard of Conduct Ordinance.

(l) Other Discipline. The report and recommendation issued by the Board of Ethics shall not bind or limit the action that can be taken by the officer's or employee's supervisor. The request for a hearing shall not stay any discipline, suspension or discharge. However, the officer ordering the discipline, suspension or discharge may reconsider that matter after having the benefit of the report of the Board of Ethics. The City Council and any officer or employee shall not be obligated to request action by the Board of Ethics prior to taking any other action allowed by law.

(m) Other Action. The Board of Ethics shall hold any proceedings in abeyance in the event any complainant, party or person involved in a complaint to the Board of Ethics is currently involved in any suit, grievance or case involving the same matter and/or fact until the other proceeding is finally determined including any appeals.

(n) Public Meetings and Records. All meetings and hearings of the Board shall be open to the public and shall be subject to the Open Meetings Act, Act No. 267 of the Public Acts of Michigan of 1967, being MCL § 15.261, et seq. The records of the Ethics Board shall be public documents subject to disclosure under the Freedom of Information Act, Act No. 1442 of the Public Acts of Michigan of 1976, being MCL § 15.231, et seq.

(o) Administrative Assistance.

(1) The City Clerk shall act as Secretary of the Board of Ethics and keep the files and records of the Board of Ethics.

(2) All governmental bodies and departments shall assist the Board of Ethics, the City Attorney's Office and any other law enforcement department or agency in investigating any complaints regarding possible violations of the Standard of Conduct Ordinance by City officers or employees.

(3) The City Attorney shall act as legal advisor to the Board of Ethics.

(p) Annual Report. The Board of Ethics shall file an annual report with the City Clerk in July of each year. The report shall be a public record and shall be delivered to the City Council and all department heads. If requested by the City Council, the Board of Ethics shall appear in person and report to the City Council.

(q) Saving Clause. Nothing in this section shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed pursuant to this section, nor shall any just or legal right or remedy of any character be lost, impaired or affected by this section.

(Ord. 821. Passed 3-8-06; Ord. 885. Passed 4-15-09.)

296.99 PENALTY.

(EDITOR'S NOTE: See Section 202.99 for general Code penalty if no specific penalty is provided.)

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