

CITY OF NEW BUFFALO
ORDINANCE NO. 214

AN ORDINANCE TO AMEND THE CODE FOR THE CITY OF NEW BUFFALO GENERAL ORDINANCES BY REPEAL AND REPLACEMENT OF ARTICLE VIII OF THE CODE OF ORDINANCES AND ADOPTION OF A NEW ARTICLE VIII ENTITLED “CODE OF ETHICS FOR PUBLIC OFFICIALS OF THE CITY ON NEW BUFFALO”

THE CITY OF NEW BUFFALO ORDAINS:

ARTICLE VIII. CODE OF ETHICS

Section 2-46. Title. [Ord. 214, 10/20/15]

This ordinance shall be known as the “Code of Ethics for Public Officials of City of New Buffalo (“Ethics Code”).

Section 2-47. Intent and Purpose. [Ord. 214, 10/20/15]

The purpose of this Article is to establish standards of conduct for all elected, employed and appointed City officials, and it shall be construed so as to avoid even the appearance of impropriety by these officials.

Section 2-48. Definitions. [Ord. 214, 10/20/15]

As used in this Article VIII, the words or phrases below shall have the following meanings:

“Appointee”

An individual holding either a compensated or uncompensated position who is appointed by the Mayor and/or City Council, not as an employee of the City, to serve as a member of City boards, commissions, committees, municipal corporations, and any such bodies that have State-granted judicial, legislative, or policymaking authority.

“Business Entity”

Any corporation, company, partnership, sole proprietorship, joint venture, unincorporated entity or association, social organization, or any other form of commercial or business entity.

“City”

The City of New Buffalo, a municipal corporation organized and operated under the laws of the State of Michigan.

“Confidential Information”

Any information that has been obtained by or is in the possession of a public official in the course of his or her duties as a public official, which is exempt from disclosure to the public pursuant to the Michigan Freedom of Information Act, MCLA § 15.231 et seq., as amended, or pursuant to other law, regulation, or policy, and that the public official is not authorized in writing by a superior to disclose.

“Decision”

A determination, action, advice, vote, or other disposition upon a motion, proposal, recommendation, resolution, an ordinance or Charter provision, or any other City action taken by any Public Official.

“Domestic Partner”

One of two adults who:

- A. Have a common residence;
- B. Agree to be jointly responsible for each other's basic living expenses incurred during the domestic partnership;
- C. Are not married under Michigan law or are not a member of another domestic partnership;
- D. Are at least 18 years of age;
- E. Are capable of consenting to the domestic partnership.

"Gift"

Except as otherwise provided in this Article, any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having any monetary value including, but not limited to, cash, food and drink, travel, lodging, and honoraria for speaking engagements, any of which are related to or attributable to an individual's status as a public official.

“Immediate Family”

- A. A public official's spouse or domestic partner;
- B. A public official's relatives by marriage or otherwise, lineal descent, or adoption, including but not limited to grandparents, parents, aunts, uncles, siblings, children, step-children, grandchildren, and cousins.
- C. An individual claimed by a public official or the public official's spouse or domestic partner as a dependent under on any tax return filed under federal or state tax law.

“Ownership Interest”

A financial or pecuniary interest that a public official has in the affairs of:

- A. Any business entity in which the official, a member of his or her immediate family, or a relative is an officer, director, member, or employee;

- B. Any business entity in which the public official, a member of his or her immediate family, or a relative controls, or directly or indirectly owns, in excess of 5% of the total stock or an interest totaling \$50,000 or more in value; or
- C. Any person or business entity with which the public official has an oral or written contract or commercial relationship.

“Private Gain”

A public official's use of any City resource, including but not limited to the City's time, equipment, facilities, supplies, or staff, which results in or is intended to result in private gain to the official. Also, any benefit which is accepted or received by a public official, or is reasonably perceived to be accepted by a public official, as remuneration or a reward for the purpose of influencing a public official's decision in a specific manner or for refraining from the performance of an official action in a specific manner, or as an inducement for the public official to act in favor of some interest other than the public interest. Unless this standard is violated, the following types of benefits, monetary payments or reimbursements, gifts, or awards may be received by a public official:

- A. Payment of salary, compensation, or benefits to the public official by the City, or the payment of salary, compensation, or benefits to the public official by an employer or business other than the City pursuant to a contract where the payment is unrelated to the public official's position with the City;
- B. Authorized reimbursement by the City to the public official for actual and necessary expenses incurred by the official;
- C. Fees, expenses, or income, including those resulting from outside employment, which are permitted to be earned by, or reimbursed to, the public official in accordance with the Michigan law or City Ordinance, policies, rules, and/or regulations;
- D. Campaign or political contributions which are made and reported by a public official in accordance with Michigan law;
- E. Admission or registration fees, travel expenses, entertainment, meals, or refreshments that are furnished to a public official by the sponsor of an event, appearance, or ceremony which is related to official City business in connection with such an event, appearance, or ceremony and to which one or more members of the public are invited, or that are furnished to a public official in connection with a speaking engagement, teaching, or the provision of assistance to an organization or another governmental entity as long as the City does not compensate the official for admission or registration fees, travel expenses, entertainment, meals or refreshments for the same activity;
- F. Admission, regardless of value, to a charitable or civic event to which a public official is invited in his or her official capacity where any admission required of all persons attending the event is waived or paid for by a party other than the City or the public official;
- G. An award publicly presented to the public official by an individual or a nongovernmental entity or organization in recognition of public service, acts of heroism, or crime solving;
- H. An award, gift, or other token of recognition presented to the public official by representatives of a governmental body or political subdivision who are acting in their official capacities;
- I. A gift received from a public official's relative or immediate family member, provided that the relative or immediate family member is not acting as a third party's intermediary or an agent in an attempt to circumvent this Article;

J. A registration fee for a seminar or other informational conference that a public official attends in a capacity other than as a speaker, panelist, or moderator, where such registration fee that is charged for the public official's attendance is waived or paid for by a party other than the City or the official;

K. Expenses or gratuities, including but not limited to admission fees, lodging, meals, or transportation, that are paid for the public official and are related to the official's participation at a seminar, conference, speaking engagement, or presentation in his or her official capacity as a speaker, panelist, or moderator where such expenses are waived or paid for by a party other than the City or the official, provided that, within five business days after the conclusion of the seminar, conference, speaking engagement, or presentation, the public official files with the City Clerk a statement which contains the following information for each expense that is paid for or waived or for each gratuity that is provided:

(1) A description of the expense or the gratuity;

(2) The amount of the expense or the gratuity;

(3) The date that the expense was incurred, or that the gratuity was received;

(4) The date that the expense was paid or waived, or that the gratuity was received; and

(5) The name and address of the party who paid or waived the expense or provided the gratuity;

L. Meals or beverages provided to a public official by an individual or a nongovernmental organization during a meeting related to official City business;

M. Anything of any value presented to or received by a public official on behalf of the City where the thing of value is offered to, and accepted by, the City;

N. Complimentary single copies of trade publications, books, reports, pamphlets, calendars, periodicals, or other informational materials that are received by a public official;

O. Compensation paid to a public official for a published work which did not involve the use of the City's time, equipment, facilities, supplies, staff, or other resources and where the payment is arranged or paid for by the publisher of the work;

P. Receipt of a devise, bequest, or inheritance by a public official.

“Public Official”

The Mayor, a City Councilmember, any Administrative Officer under Article 4 of the City Charter or any employee, member, agent or contractor of any City department, agency, authority, board, commission, or any individual appointed to a City commission, board, or committee that is established pursuant to State law, City Charter, or City Ordinance.

“Relative”

A person who is related to the public official as spouse or as any of the following, whether by marriage, blood, or adoption: parent, child, brother, sister, uncle, aunt, nephew, niece, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, brother-in-law, or sister-in-law.

Section 2-49. Standards of Conduct. [Ord. 214, 10/20/15]

A. Gift Ban.

Except as permitted by this Ordinance, no public official shall intentionally solicit or accept any gift from any individual or business entity that: (1) is seeking official action by a public official or by a public official directing the work another public official; (2) does business or seeks to do business with the City; (3) conducts activities regulated by a public official or by a public official directing the regulatory work of another public official or City employee; or (4) has interests that may be substantially affected by the performance or nonperformance of the official duties of the public official.

B. Conflicts of interest. Conflicts of Interest and the actions to be taken by a public official shall be as follows:

(1) A public official shall not intentionally take or refrain from taking any decision, or induce or attempt to induce any other public official to take or refrain from making any decision on any matter pending before the City which would result in a private gain or financial benefit not shared with a substantial segment of the public for any of the following:

- (a) The public official;
- (b) A member of the public official's immediate family;
- (c) A relative of the public official;
- (d) The public official's employer;
- (e) Any business entity in which the public official, a member of the official's immediate family, or a relative of the public official has a financial, equity or ownership interest; or
- (f) Any business entity with which the public official, the public official's relative or immediate family is negotiating for or seeking employment or any other business or professional relationship.

(2) Public Officials must inform themselves of any interest or investment in any City customer, vendor, supplier or competitor which could create a conflict of interest. Public Officials must avoid personal interest and investments that would influence the objectivity and independence of their judgment or conduct in carrying out their duties and responsibilities. Public Officials must consult with the City Manager or Mayor and disqualify themselves from making decisions or acting on behalf of the City regarding such transactions.

(3) Public officials who deal with City vendors, suppliers, banks, finance companies, or other financial institutions or service providers in the course of performing any duties on behalf of the City must not use their positions to influence the terms on which they transact personal business from such vendors, suppliers, banks, financial institutions or service providers.

(4) A public official who is aware or reasonably should be aware that he or she has a conflict of interest under this Article shall disclose the conflict on the public record, abstain from voting or making any decision on a related matter, and refrain from making statements which may influence the vote on the matter.

C. Disclosure.

Within 30 calendar days of the effective date of this Article, all public officers shall complete and file a disclosure form with the City Manager reporting any Conflict of Interest as defined in this Ordinance. After the effective date of this Ordinance, all public officials shall report a Conflict of Interest by filing a disclosure form with the City Manager within 30 calendar days of election, employment or appointment and within 30 calendar days after a Conflict of Interest.

D. Impartiality.

A public official shall treat all members of the public with professional courtesy, impartiality, fairness, and equality.

E. Improper use of position.

A public official shall not use or attempt to use his or her position to secure, request, or grant any privilege, exemption, advantage, or preferential treatment for himself or herself, or any other person. A public official shall not act as an agent, attorney, or representative for another person or business entity in any matter pending before the City.

F. Incompatible employment.

A public official shall not engage in or accept employment, or render services, for a public or private interest where such employment or service is incompatible or in conflict with the proper discharge or performance of the official's duties and responsibilities, or where such employment or service can be reasonably expected to impair the official's independence of judgment or action in the discharge of his or her official duties and responsibilities.

G. Nepotism.

A public official shall not cause the employment or any favorable employment action as to any member of the public official's immediate family or relative, nor participate in any employment decision regarding a member of his or her immediate family or relative. This section shall not prohibit a public official from approving a budget that includes compensation for an immediate family member or relative.

H. Political activity.

A public official shall not use any City time, equipment, facilities, supplies, or staff for his or her own political benefit, or for the political benefit of any other person seeking elective office, other than the use of property or facilities made available to the general public on an equal basis for due consideration.

I. Public information.

(1) A public official shall not knowingly use confidential information for actual or anticipated personal gain, nor for the actual or anticipated personal gain of any other person.

(2) A public official shall not knowingly disclose to any person or business entity any confidential information that is acquired in the course of his or her position with the City, including but not limited to personnel file or medical information or information provided, obtained, or discussed in a closed session of a public body.

J. Public property and personnel.

Except as provided by law, a public official shall not, directly or indirectly, use, attempt to use, or permit another to use any City time, equipment, facilities, supplies, or staff for private gain or commercial gain.

Section 2-50. Validity of Decisions; Recovery of Value. [Ord. 214, 10/20/15]

A. A violation of the Article shall not constitute a basis to challenge the validity of any decision of the City Council.

B. The value of anything transferred or received in breach of the standards set forth in this Article may be recovered by and on behalf of the City.

Section 2-51. Collective Bargaining Agreements. [Ord. 214, 10/20/15]

Nothing in this Article shall be construed to diminish or impair the rights of any employee under any provision of an applicable collective bargaining agreement or the City's obligation to comply with any collective bargaining agreement.

Section 2-52. Notification. [Ord. 214, 10/20/15]

A. The City Clerk shall deliver, by mail or otherwise, a copy of this Article to any newly elected and appointed public officials prior to the time that those officials take office.

B. Any time that this Article is amended, the City Clerk shall deliver, by mail or otherwise, a copy of the amended Article to all current public officials prior to the effective date of the amendment.

Section 2-53. Hearings. [Ord. 2014, 10/20/15]

A. Upon acquiring reasonable suspicion of a violation of this Article by a Council Member, the City Manager or any individual appointed to a City commission, board, or committee that is established pursuant to State law, City Charter, or City Ordinance, the Mayor or any two members of City Council may call for hearings to be held at a regular or special meeting of the City Council to determine whether or not a violation of this Article occurred, and if so, what penalties shall be imposed for the violation.

B. Upon acquiring reasonable suspicion of a violation of this Article by any City employee or administrative officer described in Chapter 4 of the City Charter, the City Manager may call and hold hearings to determine whether or not a violation of this Article occurred, and if so, what penalties shall be imposed for the violation.

C. Hearings under Subsection A or B above may be held upon the City's receipt of a detailed, signed, notarized complaint filed against a public official by a citizen or other third party.

D. City Council or the City Manager conducting a hearing under this Section shall have the authority to issue subpoenas, enforceable by the Circuit Court, to compel the attendance of witnesses at hearings and the production of books and records from any person, business entity or other party prior to any hearings.

E. All public officials subject to hearing proceedings under this Article shall be afforded due process of law, including notice of charges, an opportunity to respond and be heard regarding the charges, and the right to representation of their choice before, during and after any hearings.

Section 2-54. Sanctions for Violations. [Ord. 214, 10/20/15]

A. City Council may impose sanctions on members of City Council for violations of this Article. Sanctions may include reprimand, formal censure, removal from committee assignment, restrictions on budget or travel, and removal from office by the Governor of the State in the manner and for the causes provided by Michigan law.

B. City Council may impose sanctions on any individual appointed to a City commission, board, or committee that is established pursuant to State law, City Charter, or City Ordinance for violations of this Article. Sanctions may include reprimand, formal censure, or removal from commission, board or committee assignment in the manner and for the causes provided by Michigan law.

C. The City Manager may impose sanctions on any City employee or administrative officer described in Chapter 4 of the City Charter for violations of this Article. Sanctions may include reprimand, discipline, or removal from office, subject to any provisions of the City Charter or applicable collective bargaining agreement.

D. Any sanctions imposed under this Article shall not be construed to limit, diminish or impair the rights of the City to enforce any and all other laws and seek any penalties, fines, restitution, or forfeitures available under any applicable Ordinance or State law.

E. City Council or the City Manager may refer a matter arising under this Article for further action by a higher State, County or local authority or agency.

Section 2-55. Repeal. [Ord. 214, 10/20/2015]

This ordinance repeals in its entirety Ordinance No. 169 of September 8, 2009 and all other ordinances, and/or parts of ordinances in conflict with the provisions of this ordinance, except as herein provided, only to the extent necessary to give this ordinance full force and effect.

Section 2-56. Severability. [Ord. 214, 10/20/2015]

If any Section, subsection, clause, phrase, or portion of this ordinance, or any application thereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such Section, subsection, clause, phrase, or portion of this ordinance, or application thereof, shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining Sections, subsections, clauses, phrases, or portions of this ordinance, or any application thereof.

Section 2-57. Savings Clause. [Ord. 214, 10/20/2015]

The repeal or amendment herein shall not abrogate or affect any offense or act committed or done, or any penalty or forfeiture incurred, or any pending litigation or prosecution of any right established or occurring prior to the effective date of this Ordinance, as amended.

Section 2-58. Effective Date. [Ord. 214, 10/20/2015]

This ordinance shall take full force and effect on November 9, 2015.

Sections 2-59 through 2-61. Reserved.

Pete Weber, Mayor

Allyson Holm, City Clerk