

ORDINANCE NO. 2019 – 002

The City of Clare ordains:

Chapter 2, Article I, of the Clare City Code is hereby stated as follows:

ETHICS ORDINANCE

Section One. Purpose and Definitions:

Purpose. The purpose of this ordinance is to set forth standards of conduct for the officers and employees of the City of Clare. The ordinance also provides references to certain state statutes that regulate the conduct of officers and employees of local government. The City Commission shall be empowered to hear complaints against officer and employees of the City of Clare and, when there is a reasonable basis to believe that the respondent has violated Section 2 of this ordinance, to refer those complaints for prosecution and/or a disciplinary hearing by the appointing authority. The ordinance provides for penalties for violations of this ordinance.

Definitions.

“Employee” means a person employed by the City of Clare, whether on a full-time or part-time basis.

“Gift” means any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, travel, lodging, and honoraria for speaking engagements related to or attributable to government employment or the official position of an officer or employee.

“Government contract” means a contract in which the City of Clare acquires goods or services, or both, from another person or entity, but the term does not include a contract pursuant to which a person serves as an employee or appointed officer of the City of Clare.

“Governmental decision” means a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, ordinance, or measure on which a vote by the members of a legislative or governing body of a public entity is required and by which a public entity formulates or effectuates public policy.

"Immediate family" means a person and a person's spouse and the person's children and step-children, by blood or adoption, who reside with that person.

"Officer or Official" means a person who holds office, by election or appointment within the City of Clare regardless of whether the officer is compensated for service in his or her official capacity.

"Official action" means a decision, recommendation, approval, disapproval or other action or failure to act which involves the use of discretionary authority.

"Prohibited source" means any person or entity who:

- (1) is seeking official action (i) by an officer or (ii) by an employee, or by the officer or another employee directing that employee;
- (2) does business or seeks to do business (i) with the officer or (ii) with an employee, or with the officer or another employee directing that employee;
- (3) conducts activities regulated (i) by the officer or (ii) by an employee, or by the officer or another employee directing that employee; or
- (4) has interests that may be substantially affected by the performance or nonperformance of the official duties of the officer or employee.

Section Two. Standards of Conduct:

Gift Ban. Except as permitted by this ordinance, no officer or employee of the City of Clare shall intentionally solicit or accept any gift from any prohibited source or which is otherwise prohibited by law or ordinance.

Exceptions. Gift Ban is not applicable to the following:

- (1) Opportunities, benefits, and services that are available on the same conditions as for the general public.
- (2) Anything for which the officer 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 as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, and including the father, mother, grandfather, or grandmother of an individual's spouse and the individual's fiancé or fiancée.

(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. In determining whether a gift is provided on the basis of personal friendship, the recipient shall consider the circumstances under which the gift was offered, such as: (i) the history of the relationship between the individual giving the gift and the recipient of the gift, including any previous exchange of gifts between those individuals; (ii) whether to the actual knowledge of the recipient the individual who gave the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and (iii) whether to the actual knowledge of the recipient the individual who gave the gift also at the same time gave the same or similar gifts to other officers or employees.

(6) Food or refreshments not exceeding \$25.00 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.

(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 officer or employee), if the benefits have not been offered or enhanced because of the official position or employment of the officer or employee, and are customarily provided to others in similar circumstances.

(8) Intra-governmental and inter-governmental gifts. For the purpose of this ordinance, "intra-governmental gift" means any gift given to an officer or employee from another officer or employee of the City of Clare, and "inter-governmental gift" means any gift given to an officer or employee by an officer or employee of another governmental entity.

(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 \$50.00. Each of the exceptions listed in this Section is mutually exclusive and independent of every other.

Disposition of gifts. An officer or employee does not violate this ordinance if he or she promptly takes reasonable action to return a gift from a prohibited source.

Confidential Information. A public officer or employee shall not divulge to an unauthorized person, confidential information acquired in the course of employment in advance of the time prescribed by the City of Clare for its authorized release to the public.

See: Freedom of Information Act (FOIA), 1976 PA 442, MCL 15.231 *et seq.* - Suppression of or refusal to provide public records of the City of Clare is governed by the FOIA, the Records Retention Schedule of the local unit as approved by the State Archivist, and MCL 750.491 (Public records; removal, mutilation or destruction; penalty).

Personal Opinion. An officer or employee shall not represent his or her personal opinion as that of the City of Clare.

Public Resources. An officer or employee shall use personnel resources, property, and funds under the officer's or employee's official care and control judiciously and solely in accordance with prescribed constitutional, statutory, and regulatory procedures and not for personal gain or benefit.

Personal Profit. A public officer or employee shall not engage in a business transaction in which the public officer or employee may profit from his or her official position or authority or benefit financially from confidential information which the public officer or employee has obtained or may obtain by reason of that position or authority. Instruction which is not done during regularly scheduled working hours except for annual leave or vacation time shall not be considered a business transaction pursuant to this subsection if the instructor does not have any direct dealing with or influence on the employing or contracting facility associated with his or her course of employment with the City of Clare.

Incompatibility and Conflicts of Interest. Except as otherwise provided in Const 1963, statute, or in Section 2 - 10, an officer or employee shall not engage in or accept employment or render services for a private or public interest when that employment or service is incompatible or in conflict with the discharge of the officer or employee's official duties or when that employment may tend to impair his or her independence of judgment or action in the performance of official duties. The simultaneous holding of more than one public position under certain circumstances is contrary to the requirements of the Incompatible Public Offices Act, MCL 15.181 *et seq.* However, the simultaneous holding of certain public positions is specifically authorized by the Michigan Constitution of 1963 or state statute.

See: Incompatible Public Offices Act, 1978 PA 566, MCL 15.181 *et seq.*

See: Const 1963, Article 7, Section 28. Local officials are specifically authorized to serve on the governing bodies of intergovernmental entities.

Personal and financial interests. Except as provided in Section 2-10, an officer or employee shall not participate in the negotiation or execution of contracts, making of loans, granting of subsidies, fixing of rates, issuance of permits or certificates, or other regulation or supervision relating to a business entity in which the officer or employee has a financial or personal interest.

See: Conflict of Interest Act, 1968 PA 317, MCL 15.321 et seq. This Act governs the solicitation by and participation in government contracts by officers and employees of the City of Clare and preempts all local regulations of such conduct. However, the Conflict of Interest Act does not apply to contracts between the City of Clare and its officers and employees which are based on the City of Clare's powers to appoint officers and hire employees.

See: State Ethics Act, 1973 PA 196, MCL 15.341 et seq. Section 2 of this Act, MCL 15.342, set forth the standards listed in Sections 2 - 4 to 2 - 9 of this ordinance. However, no sanctions are imposed for violation of these standards by officers and employees of local units of government. Hence, the need for this ordinance to impose sanctions for the violation of these standards of conduct.

State Conflict of Interest Act, Validity of Contracts, and Voting on, Making, or Participating in Governmental Decisions.

(1) This ordinance shall not in any manner vary or change the requirements of 1968 PA 317, being sections 15.321 to 15.330 of the Michigan Compiled Laws which governs the solicitation by and participation in government contracts by officers and employees of the City of Clare and preempts all local regulation of such conduct.

(2) This ordinance is intended as a code of ethics for the City of Clare's officers and employees. A contract in respect to which a public officer or employee acts in violation of this ordinance, shall not be considered to be void or voidable unless the contract is a violation of a statute which specifically provides for the remedy.

(3) Subject to subsection (4), sections Incompatibility and Conflicts of Interest and Personal and Financial Interests shall not apply and an officer shall be permitted to vote on, make, or participate in making a governmental decision if all of the following occur:

(a) The requisite quorum necessary for official action on the governmental decision by the City of Clare to which the officer has been elected or appointed is not available because the participation of the officer in the official action would otherwise violate sections Incompatibility and Conflicts of Interest and Personal and Financial Interests.

(b) The officer is not paid for working more than 25 hours per week for the City of Clare.

(c) The officer promptly discloses any personal, contractual, financial, business, or employment interest he or she may have in the governmental decision and the disclosure is made part of the public record of the official action on the governmental decision.

(4) If a governmental decision involves the awarding of a contract, Sections Incompatibility and Conflicts of Interest and Personal and Financial Interests shall not apply and a public officer shall be permitted to vote on, make, or participate in making the governmental decision if all of the following occur:

(a) All of the conditions of subsection (3) are fulfilled.

(b) The public officer will directly benefit from the contract in an amount less than \$250.00 or less than 5% of the public cost of the contract, whichever is less.

(c) The public officer files a sworn affidavit containing the information described in subdivision (b) with the City of Clare making the governmental decision.

(d) The affidavit required by subsection (c) is made a part of the public record of the official action on the governmental decision. Section

Political Activities of Public Employee or Public Officer.

(1) Employees of local units of government running for office, political campaigning by employees, and limitations on officers and employees seeking support from other employees for those campaigning for public office and for or against ballot proposals are regulated by the Political Activities by Public Employees Act, MCL 15.401 et seq. Complaints may be filed with the Michigan Department of Energy, Labor and Economic Growth. MCL 15.406. Violation of the provisions of this Act by employees and appointed officers are subject to appropriate disciplinary action, up to and including termination by the appointing authority. Violations of the ordinance are also subject to the sanctions listed in Section Four.

(2) Michigan Campaign Finance Act, MCL 169.201 et seq. Complaints regarding compliance with this Act may be filed with the Michigan Department of State.

See: Political Activities by Public Employees Act, 1976 PA 169, MCL 15.401 et seq.

See: Michigan Campaign Finance Act, MCL 169.201 et seq.

Anti-nepotism. Unless the City of Clare shall by a two thirds (2/3) vote, which shall be recorded as part of its official proceedings, determine that the best interests of the City of Clare shall be served and the individual considered by such a vote has met the qualifications for appointive office or employment, the following relatives of any elected or appointed officer are disqualified from holding any appointed office or employment during the term for which said elected or appointed officer was elected or appointed: spouse, child, parent, grandchild, grandparent, brother, sister, half-brother, half-sister, or the spouse of any of them. This Section shall in no way disqualify such relatives or their spouses who are bona fide appointed officers or employees of the City of Clare at the time of the election or appointment of said officer to elective City of Clare office.

Representation Before Governmental Body. An official or employee of the City of Clare shall not represent any other person in any matter that the person has before the City of Clare when the officer or employee appoints or otherwise supervises the board, commission, officer or employee responsible for handling the matter.

Transactional Disclosure. Whenever an officer or employee is required to recuse himself or herself under Section Two of this ordinance, he or she:

- (a) shall immediately refrain from participating further in the matter,
- (b) shall promptly inform his or her superior, if any, and
- (c) shall promptly file with the City Clerk a signed Affidavit of Disclosure, disclosing the reason for recusal. The Clerk shall send copies of the Affidavit of Disclosure to all of the members of the governing body of the City of Clare City Commission and the Affidavit shall be attached to the minutes of its next meeting.

Annual Disclosure Statement.

The following elected and appointed officers and employees shall file an annual disclosure statement: [list should include members of the unit's governing body, other elected and appointed officers and employees, such as the directors and deputy directors of administrative departments, members of the zoning board of appeals and planning commission, and those who regularly exercise significant discretion over the solicitation, negotiation, approval, awarding, amendment, performance, or renewal of government contracts].

The annual disclosure statement shall disclose the following financial interest of the officer or employee or his or her immediate family in any company, business, or entity that has contracted with the City of Clare or which has sought licensure or approvals from the City of Clare in the two calendar years prior to the filing of the statement:

- (a) Any interest as a partner, member, employee or contractor in or for a co-partnership or other unincorporated association;
- (b) Any interest as a beneficiary or trustee in a trust;
- (c) Any interest as a director, officer, employee or contractor in or for a corporation; and
- (d) Legal or beneficial ownership of ten percent (10%) or more of the total outstanding stock of a corporation.

The annual disclosure statement shall include a summary listing each business transaction with the City of Clare involving a financial interest described in this section of the City of Clare officer or employee and/or the immediate family of the officer or employee.

If there is no reportable financial interest or transaction applicable to the officer or employee and/or the immediate family of the officer or employee, the annual disclosure statement shall contain a certification to that effect.

Section Three. Filing and Disposition of Complaints:

As deemed appropriate in its discretion, the City of Clare shall:

- (1) Upon receipt of a signed, notarized, written complaint against an officer or employee, investigate, conduct hearings and deliberations, conduct or issue referrals for disciplinary hearings and refer violations of Section Two of this ordinance or state or federal criminal statutes to the attention of the appropriate attorney with a request for the filing of the appropriate criminal prosecution or civil infraction enforcement.
- (2) Receive information from the public pertaining to its investigations and seek additional information and documents from officers and employees of the City of Clare.
- (3) Request the attendance of witnesses and the production of books and papers pertinent to an investigation. It is the obligation of all officers and employees of the City of Clare to cooperate with the City of Clare during the course of its investigations. Failure or refusal to cooperate with requests by the

City of Clare shall constitute grounds for discipline or discharge of appointed officers and employees of the City of Clare.

See: Model Ethics Complaint Form

(a) Complaints alleging a violation of this ordinance shall be filed with the Clerk of the City of Clare.

(b) Within fifteen business days after the receipt by the Clerk of a complaint, the Clerk shall send by certified mail, return receipt requested, a notice to the respondent that a complaint has been filed against him or her together with a copy of the complaint. Within fifteen business days after receipt by the Clerk of a complaint, the Clerk shall send by certified mail, return receipt requested, a notice of confirmation of receipt of the complaint together with a copy of the complaint to the complainant. The notices sent to the respondent and the complainant shall also advise them of the date, time, and place of the City of Clare's hearing to determine the sufficiency of the complaint and to establish whether probable cause exists that the respondent named in the complaint violated Section Two of this ordinance. The Clerk shall also concurrently send copies of the foregoing complaint and notices to the members of the City of Clare City Commission.

(c) The City of Clare shall conduct a hearing to review the sufficiency of the complaint and, if the complaint is deemed sufficient to allege a violation of Section Two of this ordinance, to determine whether there is a reasonable basis to believe that the respondent has violated Section Two of this ordinance based on the evidence presented by the complainant and any additional evidence provided to the City of Clare at the hearing pursuant to its investigatory powers. The complainant and respondent may be represented by counsel at the hearing. Within a reasonable period of time after the completion of the hearing which may be conducted in one or more sessions at the discretion of the City of Clare, the City of Clare shall issue notice to the complainant and the respondent of the City of Clare's ruling on the sufficiency of the complaint and, if necessary, as to whether they find that there is a reasonable basis to believe that the respondent has violated Section Two of this ordinance.

If the complaint is deemed sufficient to allege a violation of Section Two of this ordinance and the City of Clare finds that there is a reasonable basis to believe that the respondent has violated Section Two of this ordinance, then the Clerk shall notify in writing the attorney designated by the City of Clare and shall transmit to the attorney the complaint and all additional documents in the custody of the City of Clare concerning the alleged violation, with the City of Clare's request for the filing of appropriate criminal or civil proceedings. The Clerk shall also provide these documents to the respondent's appointing authority within the City of Clare with the City of Clare's request for the commencement of appropriate disciplinary action consistent with any

applicable collective bargaining agreement, civil service commission rules or employment regulations of the City of Clare.

(d) Sections 2b - 2e of the State Ethics Act, MCL 15.341 et seq, set forth protections for officers and employees who act as whistleblowers regarding the conduct of the City of Clare officers and employees. Additional whistleblower protections are set forth in the Whistleblowers' Protection Act, 1980 PA 469, MCL 15.361 et seq.

(e) Any person who files a complaint alleging a violation of this ordinance knowing that material information provided therein is not true or that information provided therein was made in reckless disregard for the truth may be subject to a fine of up to \$500 as well as the reasonable costs incurred by the City of Clare in investigating the complaint and the reasonable costs incurred by the Respondent in responding to the complaint.

(f) A complaint must be filed with the Clerk within eighteen (18) months of the date the offense is alleged to have occurred.

Section Four. Sanctions:

Sanctions shall not be construed to diminish or impair the rights of an officer or employee under any collective bargaining agreement, nor the City of Clare's obligation to comply with such collective bargaining agreements.

State statutes cited in this ordinance contain criminal penalties and civil remedies that apply, as provided in those statutes, to the conduct regulated by those statutes.

A violation of this ordinance may be punished as a civil infraction by a fine of up to \$2,500.00.

In addition to any other penalty, whether criminal or civil, an employee or officer who intentionally violates this ordinance may be subject to disciplinary action including censure, reprimand, removal, dismissal or discharge.

In addition, the common law offense of misconduct in office (misfeasance, malfeasance and nonfeasance) constitutes a felony as provided in the Michigan Penal Code, MCL 750.505 and willful neglect of duty constitutes a misdemeanor as provided in MCL 750.478.

Passed by the City Commission of the CITY OF CLARE on April 1, 2019, at its regular meeting with five commissioners in attendance, five voting aye, zero nay. Adopted by the City Commission of the City of Clare this 1st day of April, 2019.

Signed: Pat Humphrey, Mayor

I hereby certify that the foregoing was duly adopted by the CITY COMMISSION of CITY OF CLARE, Michigan, at its regular meeting on the 1st day of April, 2019, that of five members of the City Commission, five were in attendance and five voted for the adoption of the Ordinance. I further certify that the above and foregoing ordinance is recorded in Ordinances for the CITY OF CLARE.

Effective Date: May 4th, 2019.

This Ordinance shall take effect thirty (30) days following date of publication as required by law. All Ordinances or part Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

Diane Lyon, Clerk