

STATE OF MICHIGAN
COUNTY OF WAYNE
CHARTER TOWNSHIP OF PLYMOUTH

ETHICS ORDINANCE
AMENDMENT 19

ORDINANCE NO. 1016_

AN ORDINANCE OF THE CODE OF ORDINANCES OF THE CHARTER TOWNSHIP OF PLYMOUTH PROVIDING FOR TITLE; PROVIDING FOR SCOPE, PURPOSE AND INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR STANDARDS OF CONDUCT; PROVIDING FOR STANDARDS REGARDING: PERSONAL OPINIONS, PUBLIC RESOURCES, PERSONAL PROFIT, INCOMPATIBILITY AND CONFLICTS OF INTEREST, AND PERSONAL AND FINANCIAL INTERESTS; PROVIDING FOR REFERENCE TO THE STATE CONFLICT OF INTEREST ACT, THE VALIDITY OF CONTRACTS, OF CONTRACTS, AND VOTING ON, MAKING, OR PARTICIPATING IN GOVERNMENTAL DECISIONS; PROVIDING FOR ANTI-NEPOTISM STANDARDS; PROVIDING FOR STANDARDS REGARDIN REPRESENTATION BEFORE GOVERNMENTAL BODY; PROVIDING FOR TRANSACTIONAL DISCLOSURE AND ANNUAL DISCLOSURE STATEMENTS; PROVIDING FOR FILING AND DISPOSITION OF COMPLAINTS; PROVIDING FOR PROVIDING FOR REPEAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR SAVINGS CLAUSE; AND PROVIDING FOR PUBLICATION AND EFFECTIVE DATE.

THE CHARTER TOWNSHIP OF PLYMOUTH ORDAINS:

Ordinance No. 1016, Amendment 19, the Ethics Ordinance, is hereby adopted to read as follows:

SECTION I. TITLE.

This ordinance shall be known and may be referred to as the Charter Township of Plymouth Ethics Ordinance. This Ordinance shall be placed in Chapter II of the Code of Ordinances for the Charter Township of Plymouth.

SECTION II. ETHICS ORDINANCE.

1. Scope, purpose and intent.

The purpose of this ordinance is to set forth standards of conduct for the elected and appointed officials of the Charter Township of Plymouth and, to the extent not otherwise governed by applicable collective bargaining agreements or the personnel manual, its employees. The citizens of the Charter Township of Plymouth are entitled to fair, ethical, and accountable local government that affords them full confidence in its integrity. Furthermore, the effective functioning of democratic government requires that public officials comply with both the letter and the spirit of the laws and policies affecting the operations of government, that public officials be independent, impartial, and fair in their judgment and actions, that public office be used only for public good and not for personal gain, and that public deliberations and processes be conducted openly, unless such deliberations and processes are lawfully closed to the public, in an atmosphere of respect and civility.

The ordinance also provides references to certain state statutes that regulate the conduct of officers and employees of local government.

2. Definitions

For purposes of this ordinance, the following words are defined as follows:

EMPLOYEE. A person employed by the Township, whether on a full-time or part-time basis.

GIFT. 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. A contract in which the Charter Township of Plymouth 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 Charter Township of Plymouth.

GOVERNMENTAL DECISION. A determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, ordinance, or measure on which a vote by an officer or official is required and by which a public entity formulates or effectuates public policy.

IMMEDIATE FAMILY. A person and a person's spouse and the person's children and step-children, by blood or adoption.

OFFICER OR OFFICIAL. A person who holds office, by election or appointment, within the Charter Township of Plymouth, regardless of whether the officer is compensated for service in his or her official capacity.

OFFICIAL ACTION. A decision, recommendation, approval, disapproval, or other action or failure to act which involves the use of discretionary authority.

PROHIBITED SOURCE. 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.

3. Standards of Conduct

(A) Except as permitted by this ordinance, no officer or official of the Charter Township of Plymouth shall intentionally solicit or accept any gift from any prohibited source or which is otherwise prohibited by law or ordinance.

(B) Subdivision (A) 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 official 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 \$50 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 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 official 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 official from another officer, official, or employee of the Charter Township of Plymouth, and "inter-governmental gift" means any gift given to an officer or official by an officer, official, 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.

Each of the exceptions listed in this Subdivision is mutually exclusive and independent of every other.

(C) An officer or official does not violate this ordinance if he or she promptly takes reasonable action to return a gift from a prohibited source.

(D) An officer or official shall not divulge to an unauthorized person confidential information acquired in the course of service as the officer or official in advance of the time prescribed by the Charter Township of Plymouth for its authorized release to the public. Suppression of or refusal to provide public records of the Charter Township of Plymouth is governed by the FOIA, the Records Retention Schedule of the Charter Township of Plymouth as approved by the State Archivist, and MCL 750.491 (Public records; removal, mutilation or destruction; penalty).

4. Personal Opinion

An officer or official shall not represent his or her personal opinion as that of the Charter Township of Plymouth.

5. Public Resources

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

6. Personal Profit

An officer or official shall not engage in a business transaction in which the officer or official may profit from his or her official position or authority or benefit financially from confidential information which the officer or official 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 section 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 Charter Township of Plymouth.

7. Incompatibility and Conflicts of Interest

Except as otherwise provided in Const 1963, statute, or in Subsection 9, an officer or official 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's or official'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.

8. Personal and financial interests

Except as provided in Subsection 9, an officer or official 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 official has a financial or personal interest.

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

Section 2 of the State Ethics Act, 1973 PA 196, MCL 15.342, sets forth the standards listed in Subsections 3 to 8 of this Ordinance. However, no sanctions are imposed for violation of these standards by officers and officials of local units of government. Hence there is no need for this ordinance to impose sanctions for the violation of these standards of conduct.

9. 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 officials of the Charter Township of Plymouth and preempts all local regulation of such conduct.

(2) This ordinance is intended as a code of ethics for the Charter Township of Plymouth's officers and officials. A contract in respect to which a public officer or official 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 subdivision (4), Subsections 7 and 8 shall not apply, and an officer or official 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 Charter Township of Plymouth to which the officer or official has been elected or appointed is not available because the participation of the officer or official in the official action would otherwise violate Subsections 7 and 8.

(b) The officer or official is not paid for working more than 25 hours per week for the Charter Township of Plymouth.

(c) The officer or official 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, Subsections 7 and 8 shall not apply, and an officer or official 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 subdivision (3) are fulfilled.

(b) The officer or official 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 officer or official files a sworn affidavit containing the information described in subdivision (4)(b) with the Charter Township of Plymouth making the governmental decision.

(d) The affidavit required by subdivision (4)(c) is made a part of the public record of the official action on the governmental decision.

10. Political Activities of Public Employee or Public Officer or Official

(1) Employees of local units of government running for office, political campaigning by employees, and limitations on officers and officials 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 pursuant to 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 provided herein.

(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.

11. Anti-nepotism

Unless the Charter Township of Plymouth 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 Charter Township of Plymouth 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 or official are disqualified from holding any appointed office or employment during the term for which said elected or appointed officer or official 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, officials, or employees of the Charter Township of Plymouth at the time of the election or appointment of said officer or official to elective Charter Township of Plymouth office.

12. Representation Before Governmental Body

An officer or official of the Charter Township of Plymouth shall not represent any other person in any matter that the person has before the Charter Township of Plymouth when the officer or official appoints or otherwise supervises the board, commission, officer, official, or employee responsible for handling the matter.

13. Transactional Disclosure

Whenever an officer or official is required to recuse himself or herself under 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 Township Clerk of the Charter Township of Plymouth a signed Affidavit of Disclosure disclosing the reason for recusal. The Township Clerk shall send copies of the Affidavit of Disclosure to all of the members of the governing body of the Charter Township of Plymouth, and the Affidavit of Disclosure shall be attached to the minutes of its next meeting.

The Clerk shall create and make available to officers and/or officials an Affidavit of Disclosure – Transactional Form.

14. Annual Disclosure Statement

The following elected and appointed officers and officials shall file an annual disclosure statement: members of the Board of Trustees; members of the Board of Review, the Brownfield Redevelopment Authority, the Civil Service Commission, the Downtown Development Authority, the Planning Commission, the Zoning Board of Appeals, and any board or commission created by the Board of Trustees after the adoption of this ordinance. The annual disclosure statement shall disclose the following financial interest of the officer or official or his or her immediate family in any company, business, or entity that has contracted with the Charter Township of Plymouth or which has sought licensure or approvals from the Charter Township of Plymouth 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, or as a member employee, or contractor for a limited liability company; and

(d) Legal or beneficial ownership of 1% or more of the total outstanding stock of a corporation.

(e) Any pending litigation involving the Charter Township of Plymouth.

The annual disclosure statement shall include a summary listing each business transaction with the Charter Township of Plymouth involving a financial interest described in this section of the Charter Township of Plymouth officer or official and/or the immediate family of the officer or official during the two prior calendar years. If there is no reportable financial interest or transaction applicable to the officer or official and/or the immediate family of the officer or official, the annual disclosure statement shall contain a certification to that effect.

The Clerk shall create and make available to the elected and appointed officers and officials an Affidavit of Disclosure – Annual Form.

The Township Clerk shall provide an annual notice to each officer or official stating the requirement and date by which to file the disclosure statement.

15. Filing and Disposition of Complaints

(A) As deemed appropriate in its discretion, the Board of Trustees of the Charter Township of Plymouth shall:

(1) Upon receipt of a signed, notarized, written complaint against an officer or official, investigate, conduct hearings and deliberations, conduct or issue referrals for disciplinary hearings, and refer violations 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, officials, and employees of the Charter Township of Plymouth.

(3) Request the attendance of witnesses and the production of books and papers pertinent to an investigation. It is the obligation of all officers, officials, and employees of the Charter Township of Plymouth to cooperate with the Board of Trustees of the Charter Township of Plymouth during the course of its investigations.

(B) Complaints alleging a violation of this ordinance shall be filed with the Township Clerk of the Charter Township of Plymouth. Within 3 business days after the receipt by the Township Clerk of a complaint, the Township 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 3 business days after receipt by the Township Clerk of a complaint, the Township 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 Board of Trustees of the Charter Township of Plymouth hearing to determine the sufficiency of the complaint and to establish whether probable cause exists that the respondent named in the complaint violated this ordinance. The Township Clerk shall also concurrently send copies of the foregoing complaint and notices to the members of the Board of Trustees of the Charter Township of Plymouth.

(C) (1) The Board of Trustees of the Charter Township of Plymouth shall conduct a hearing to review the sufficiency of the complaint and, if the complaint is deemed sufficient to allege a violation of this ordinance, to determine whether there is a reasonable basis to believe that the respondent has violated this ordinance based on the evidence presented by the complainant and any additional evidence provided to the Board of Trustees of the Charter Township of Plymouth 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 Board of Trustees of the Charter Township of Plymouth, the Board of Trustees of the Charter Township of Plymouth shall issue notice to the complainant and the respondent of the Board of Trustees of the Charter Township of Plymouth'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 this ordinance.

(2) If the complaint is deemed sufficient to allege a violation of this ordinance, and the Board of Trustees of the Charter Township of Plymouth finds that there is a reasonable basis to believe that the respondent has violated this ordinance, then the Board of Trustees may: (a) issue a formal statement of censure for a serious violation or a formal letter of reproof for misconduct that is less serious, or (b) if the case warrants it, refer the matter to the appropriate agency for possible criminal prosecution or civil litigation.

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

(E) A complaint must be filed with the Township Clerk within 2 years of the date the offense is alleged to have occurred.

(F) The Clerk shall create and make available to officers, officials, employees, and the public an ethics complaint form.

SECTION III. REPEAL.

The Ethics Ordinance in effect at the time of the effective date of this Ordinance, which was read by the Township Board for the second time on September 8, 2015 and numbered as Amendment 15 to Ordinance 1016, is hereby repealed in its entirety. All other Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance, except as herein provided, are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

SECTION IV. SEVERABILITY.

If any section, subsection, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portion thereof.

SECTION V. SAVINGS CLAUSE.

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.

SECTION VI. PUBLICATION.

The Clerk for the Charter Township of Plymouth shall cause this Ordinance to be published in the manner required by law.

SECTION VIII. EFFECTIVE DATE.

This Ordinance shall take full force and effect upon publication.

CERTIFICATION

The foregoing Ordinance was duly adopted by the Charter Township of Plymouth Board Trustees at its regular meeting called and held on the 28th day of February, 2017, and was ordered to be given publication in the manner required by law.

Jerry Vorva, Clerk

Introduced: February 14, 2017

Published: March 2, 2017

Adopted: February 28, 2017

Effective upon Publication: March 2, 2017