

CITY OF MOUNT PLEASANT
Isabella County, Michigan

ETHICS POLICY

1. Approval. The City Commission adopted this policy for immediate effect at its regular meeting on January 24, 2011.

2. Purpose. Mount Pleasant's city leaders are to advance common interests rather than their own interests and are to be wholly accountable to the people. This policy does not comprehensively define ethical behavior but instead defines minimal, enforceable ethical standards for City leaders.

3. Applicability. This policy applies to City Commissioners and to members of boards, commissions and other bodies appointed by the Mayor or City Commission¹ and the Housing Commission.²

4. Definitions. The following definitions shall apply to terms used in this policy.

Anyone means any person or entity.

City means the City of Mount Pleasant, Isabella County, Michigan.

City attorney means the general legal counsel for the City as designated by the City Commission.

City Commission means the City Commission of the City.

Clerk means the duly appointed City Clerk of the City and the Clerk's designee.

Confidential information means information in whatever form³ obtained by an official during the course of his or her service to the City that is not available to or may be exempted from disclosure to members of the general public under the FOIA or another applicable law, rule, regulation, or court order. (An official may disclose to anyone how to make a FOIA request or how to challenge a denial of a FOIA request.)

Conflict of interest means one or more of the following situations:

A. A decision to be made by the City body on which the official serves or, in the case of a City Commissioner, a decision to be made by any City body, could result in private gain for the official, a member of the official's household, or a member of the official's immediate family residing outside the official's household.

B. A decision to be made by the City body on which the official serves could result in private gain for (i) anyone the official represents as an attorney, accountant, or other professional, (ii) an entity for which the official serves as an officer, director or, for a limited liability company or partnership, as a member, or (iii) unless the interest is held in a manner so that the official does not directly control the number of shares, portion of the ownership interest, or its value, an entity in which the official either owns more than 10% of the total stock or other ownership interest in the entity, or has an interest totaling \$50,000 or more in value.⁴ Subsection (i) does not apply to an attorney, accountant, or other professional whose client is only a lender on a project.

¹ Currently, this includes the Airport Advisory Board, Board of Review, Brownfield Redevelopment Authority Board of Directors, Building Authority Board, Building, Fire and Sanitary Sewer Board of Appeals, Downtown Development Authority Board of Directors, Downtown Development Board, Economic Development Corporation Board of Directors, Fire and Police Retirement Board, Historic District Commission, Local Development Finance Authority Board of Directors, Local Officials Compensation Commission, Parks and Recreation Commission, Planning Commission, Tax Increment Finance Authority Board of Directors, and Zoning Board of Appeals.

² The City Manager appoints the Housing Commissioners, City Code §32.02, but the City Commission may remove them upon the recommendation of the City Manager, MCL 125.654(3).

³ For example, written, verbal, electronic, pictorial, symbolic, coded or other form.

⁴ For example, in a mutual fund, blind trust, or other arrangement where the official has no control over the purchase or sale of individual stocks, the make-up of the portfolio, etc.

Entity means an association, business corporation, general partnership, governmental agency or unit, limited liability company, limited partnership, non-profit corporation, individual's assumed name, or any other legal person or identity other than an individual.

FOIA means Michigan's Freedom of Information Act, 1976 PA 442, as amended, MCL 15.231 *et seq.*

Manager means the City Manager of the City or her or his designee.

Mayor means the Mayor of the City or, in the Mayor's absence, the Vice Mayor of the City.

Official means a person to whom this policy applies as stated in Section 3.

Official's household means those persons residing in the same dwelling unit as the official.

Official's immediate family means the spouse, children, siblings or parents of the official.

Private gain means any direct financial benefit that is different than any financial benefit members of the general public or a significant group of the general public would gain in similar circumstances.⁵

Sole proprietor means (i) the sole owner of a business that is not formed as an entity, or (ii) the sole holder of any equity or ownership interest in a business entity.

5. Standards. The following standards shall apply to all officials in their service to the City.

(1) Compliance. An official shall comply with all charter provisions, ordinances, laws, rules, regulations, articles of incorporation, bylaws, procedures and policies applicable to (i) the official's office, (ii) the body on which the official serves, or (iii) the meetings the official attends.

(2) Confidential Information. An official shall not (i) disclose to anyone any confidential information before it is authorized for release to the general public or (ii) use confidential information for private gain.

(3) Representation.

(a) An official shall not represent his or her personal views as those of the City or the body on which the official serves.

(b) An official shall not make any statements or answer any questions on behalf of the City or the body on which the official serves unless expressly authorized by the body on which the official serves, the City Commission, or, for officials other than a City Commissioner, the Manager.

(c) An official shall not represent that he or she has any authority separate from that of the body on which he or she serves.⁶

(d) An official shall act within the authority granted to the body on which he or she serves and shall respect the roles of other officials and bodies.⁷

(e) An official shall not interfere with the City's administrative functions or the duties of City staff and shall not impair the City staff's ability to implement policy decisions made by any official body.

⁵ Gain that is or could be realized by the City is not private gain because it inures to the benefit of the general public that the City serves. Gain that is or could be realized by a group, such as businesses in a certain area, also is not private gain. There is also no private gain or conflict of interest where state law requires a board to be comprised, at least in part, of representatives of businesses, neighborhoods, entities, or areas. However, if a particular decision or action would affect a single individual, family or business, private gain may result.

⁶ Except for specific statutory or other authority granted to specific officers of a body, unless the body otherwise designates, it is the body on which the official serves, not an individual official, that has governmental authority.

⁷ Because it is directly elected by the people, the City Commission has the overall policy making and oversight role for the City. Other bodies serve roles that advise or recommend to the City Commission and exercise authority granted by the City Commission or by applicable laws, ordinances, rules and regulations.

(4) City Resources. Except to the extent they would be available to others in similar circumstances,⁸ an official shall not use or attempt to use City personnel resources, property, funds, or information for private gain.

(5) Gifts. An official shall not solicit or accept a gift or a loan of money, goods, services, or other thing of value which may tend or may reasonably appear to be intended to influence the manner in which the official performs his or her duties.

(6) Private Gain.

(a) An official shall not vote, act upon, participate in any discussion or, except as provided below, engage in any communications regarding any matter from which he or she knowingly may realize any private gain or regarding which he or she has a conflict of interest.

(b) An official shall not represent any individual or entity before a body on which he or she serves. A City Commissioner shall not represent any individual or entity before any body subject to this policy. However this does not limit any official's ability to appeal his or her residential (or, if the official is the sole proprietor of a business, that business') property tax valuation or to address zoning or construction matters involving his or her residence (or, if the official is the sole proprietor of a business, such matters involving that business).

(7) Favoritism. An official shall not display any favor for or disfavor of anyone in the discharge of the official's duties. City actions and decisions shall be made fairly and impartially. An official shall treat persons appearing before a body with courtesy and respect. However, this does not prevent an official from stating his or her views or advocating regarding matters under consideration or communications to that public body.

6. Administration and Enforcement. It is the intent of these provisions to encourage officials to disclose potential concerns and seek advice as needed or desired to ensure compliance. Accordingly, this policy shall be administered and enforced as follows:

(1) Advice. Any official, other than a City Commissioner, in an effort to comply with this policy, may seek the advice of the Manager and, with the Manager's consent, the City attorney, regarding any upcoming proceeding, action or decision, or regarding any potential situation addressed by this policy. A City Commissioner, in an effort to comply with this policy, may directly seek the advice of the City attorney. If an official (i) does so prior to any violation of this policy, (ii) truthfully and fully discloses all information requested by the Manager or City attorney, and (iii) complies with the Manager's or City attorney's advice and direction, he or she shall not be subject to sanctions as detailed in subsection (5).

(2) Disclosure.

(a) Before any discussion on the matter by the body on which he or she serves, an official shall disclose to that body any situation that could appear to some to violate this policy and disclose any guidance the official received as provided by subsection (1). The official shall or shall not participate in the consideration of the matter as provided in the Manager's or City attorney's opinion. If the official is not to participate, he or she shall leave the dais or other place where members of the body sit during its meetings to return after the body completes its consideration of that matter.

(b) If, regardless of compliance with this policy, an official strongly believes that, due to a close family or friendship relationship, he or she would find it very difficult to objectively participate in a matter before the body on which the official serves, the official may ask remaining members of the body on which the official serves to excuse the official from his or her duty to otherwise participate in the discussion and action on that matter. The remainder of the body, by a majority vote, may excuse

⁸ For example, assistance by economic development personnel, the rental of City-owned park facilities, and the mayor's performance of a wedding.

the official's participation. An official shall have no duty to request the body to excuse the official's participation, the body shall have no duty to grant such a request, and no other persons shall have any right under this subsection (b).

(3) Questions at Meeting. If questions are first raised at a meeting about the applicability of this provision to an official and a matter pending at that meeting, the highest ranking City staff member at the meeting shall address the issue. The meeting may be recessed to seek advice from the Manager or City attorney or consideration of the matter may be postponed to a later meeting.

(4) Procedure.

(a) Anyone may contact the chair of the body on which an official serves or the Manager with any allegations or concerns that an official has violated this policy. If the chair of a body is contacted, the chair shall contact the Manager. For an issue regarding a City Commissioner, the Mayor or any City Commissioner may contact the City attorney without first contacting the Manager.

(b) The Manager or, with the Manager's consent, the chair of the affected body, may contact the City attorney for an opinion regarding the allegations or concerns. For an issue regarding a City Commissioner, the City attorney shall be contacted.

(c) The Manager or the City attorney may ask the affected official and others for information the Manager or the City attorney think is relevant. All officials shall promptly and fully comply with such requests. For an issue regarding a City Commissioner, the City attorney shall conduct the inquiry.

(d) After obtaining the information, the Manager or City attorney shall opine as to whether or not a violation of this policy occurred. (For an issue regarding a City Commissioner, the City attorney shall render the opinion.) If she or he concludes a violation occurred, she or he shall explain any needed and optional actions to be taken and include any information and considerations that may be helpful in addressing the situation. The affected body, the City Commission, and City staff and officers shall act upon that opinion as they deem appropriate.

(e) If the Manager or City attorney concludes no violation of this policy occurred, she or he shall notify the complaining party and such City staff and officers as she or he deem appropriate.

(f) If anyone, including the complainant, another official, City staff, or anyone else actually affected by the situation, believes the Manager's or City attorney's opinion is incorrect or the accompanying information is incorrect, that person may address the City Commission regarding the issue. Any action by the City Commission is final.

(g) If an official violated this policy and that violation may have affected the outcome of any action, the affected body shall reconsider the decision or action as directed by the Manager or City attorney.

(5) Sanctions. In addition to any other results,⁹ the City Commission may impose one or more of the following sanctions for a violation of this policy. In deciding which, if any, of these sanctions to impose, the City Commission may consider such factors as: (i) the severity of the violation, (ii) its intentionality,¹⁰ (iii) its effects,¹¹ (iv) whether it was the violating official's first or a repeated violation of this policy, (v) whether the violating official acknowledged the violation and intends future compliance with this policy, and (vi) other factors the City Commission may deem pertinent under the circumstances.

⁹ If a violation of this policy also is a violation of any other applicable charter or ordinance provision, law, rule or regulation, actions may also be taken and remedies sought for the violation of the other applicable requirement.

¹⁰ That is, whether it was deliberate, unintentional, an oversight, an error in judgment, etc.

¹¹ That is, whether it had policy, legal or other consequences, whether a decision needed to be reconsidered, whether it resulted in cost to the City, etc.

- (a) A violation of this policy constitutes misconduct, misfeasance and malfeasance in office. For all appointed officials it therefore can be grounds for removal from office.
- (b) Upon the affirmative vote of either a majority of its members either the City Commission may publicly censure an official for a violation of this policy. The official who is the subject of the body's action shall not participate in the consideration or decision on the censure.
- (c) If the violation of this policy included the disclosure of confidential information, the City Commission may decide to withhold confidential information from the violating official. If the confidential information was information presented during a closed session, the City Commission may bar the violating official from participating in one or more future closed sessions. A City Commissioner who is the subject of the action shall not participate in its consideration or vote on it.
- (d) If the violation of this policy was willful or knowing and the City is sued, fined, or suffers another loss as a result, the City Commission may seek indemnification or contribution from the violating official that could include amounts paid in any settlement, judgment, fine or other penalty, plus the costs (*e.g.*, attorneys fees, expert costs, discovery costs, etc.) to defend any such action. A City Commissioner who is the subject of the action shall not participate in its consideration or vote on it.