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troymi.gov

CITY COUNCIL AGENDA ITEM

Date: November 21, 2024

To: Honorable Mayor and Troy City Council Members

From: Frank Nastasi, City Manager
Lori Grigg Bluhm, City Attorney

Subject: Review of Chapter 14-A- Elected and Appointed Persons' Ethics Ordinance

Chapter 14-A, the Elected and Appointed Persons' Ethics Ordinance, requires that the members of the Troy City Council annually review the Ordinance at the first regular meeting in November (Section 14.3 (D)). According to this provision, City Council "*may evaluate past operations and consider recommendations and make any necessary revisions.*"

November 25, 2023 is the City Council organizational meeting in November, which is modified by a State law election change. The Ordinance is attached and included as a report in the Agenda packet, allowing for City Council's review.

Under Section 14.3 (B), all elected officials are also required to sign a statement, affirming that they have read and understood the Ordinance and agree to be bound by its provisions. This written attestation must occur prior to the start of the first official meeting after the conclusion of the election, which is after the certification of the election winners by the Oakland County Board of Canvassers.

City Administration will have an attestation form prepared for all elected City Council members to sign in compliance with this provision. City Council may also desire a future review of Chapter 14A- Elected and Appointed Persons' Ethics Ordinance. City Administration is happy to accommodate the consensus of the Troy City Council.

Chapter 14A – Elected and Appointed Persons’ Ethics Ordinance

14.1 Purpose. This Code of Ethics is adopted to allow all public officials to construe and implement ethical standards and guidelines, and require elected and appointed official’s conduct be above reproach. Troy’s elected and appointed officials shall carefully and conscientiously avoid any conduct that undermines public confidence, guided by the following principles:

- *Public interest.* City officials are delegated power from the public and are obliged to exercise that power as trustees of the public. The power and resources of government service therefore shall be used only to advance the public interest.
- *Objective judgment.* Loyalty to the public interest requires that all matters shall be decided with independent, objective judgment, free from avoidable conflicts of interest, improper influences, and competing loyalties.
- *Accountability.* Government affairs shall be conducted in an open, efficient, fair and honorable manner, which enables citizens to make informed judgments and to hold officials accountable.
- *Democratic leadership.* All City officials shall honor and respect the principles of representative democracy and will scrupulously observe the spirit as well as the letter of the law.
- *Respectfulness.* All City officials shall safeguard public confidence by being honest, fair and respectful of all persons and property with whom they have contact, by maintaining nonpartisanship in all official acts, and by avoiding conduct which may tend to undermine respect for City officials and employees and for the City as an institution.

14.2 Definitions. The following words and phrases shall have the following meaning:

City official is a person elected, appointed or otherwise serving in any capacity involving the exercise of a public power, trust or duty.

Compensation is any money, property, thing of value or benefit received by any person in return for services rendered.

Confidential Information is information obtained by a Public Official or Employee by reason of his or her position that is not available to members of the public pursuant to the Michigan Freedom of Information Act or other applicable laws, regulations, or procedures.

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 duty to the public interest in the exercise of official duties or official actions.

Entity means any agents, agency, contractors, vendors, or entities operated for economic gain, whether professional , industrial, or commercial, and whether established to produce or deal with a product or service, including but not limited to entities operated in the form of a corporation, limited liability company, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust, activity or other entities which is organized for profit.

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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 an official position of an official. Gift does not include small tokens of a nominal value, or any reportable campaign contributions pursuant to State law.

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, including a board, commission, committee, subcommittee, authority, or council, which is empowered to exercise authority or perform an official action, or formulate or effectuate public policy.

Immediate Family Member shall mean Public Official's spouse, significant other, parent, parent -in- law, step- parent, sibling, child, step -child, grandchild, step-grandchild or grandparent or any relative sharing the same household.

Official means a person who holds office, by election or appointment within the City, regardless of whether they are compensated for service in an official capacity, including individuals appointed to a City board or commission. It does not include City employees for the purposes of this Ordinance.

Official duties or *official actions* are failures to act or decisions, recommendations, approvals, disapprovals or other actions which involve the use of discretionary authority.

Pecuniary Interest means the opportunity, directly or indirectly, to profit or share in any profit derived from a transaction.

Prohibited source means any person or entity who:

Is seeking official action by an official;

Does business or seeks to do business with the official;

Conducts activities regulated by the official or by a City employee, or another employee directing that employee; or

Has interests that may be substantially affected by the performance or nonperformance of the official duties of the official.

Publicly Disclose shall mean to disclose in such a manner as to ensure all involved in considering the decision, action or contract are aware of the conflict of interest or other situation requiring disclosure and the nature of same.

Relative means any relationship established by blood, marriage, or legal action.

Unethical Conduct means a violation of any prohibited conduct as described in this Ordinance or under State law.

14.3 **Annual Training and Acknowledgement.**

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- A. This Ethics Ordinance is intended to be self-enforcing and therefore becomes most effective when everyone is thoroughly familiar with and embraces its provisions. For this reason, ethical standards shall be included in the regular orientation for newly elected and appointed officials.
- B. Prior to attending the first official meeting after election or appointment, City officials shall sign a statement affirming they have read and understood this Ethics Ordinance and agree to be bound by its provisions.
- C. City officials shall participate in annual ethics training provided by City Administration or a qualified outside contractor.
- D. This Ordinance shall be annually reviewed by the Troy City Council at the first regular meeting in November. At that time, Council may evaluate past operations and consider recommendations and make any necessary revisions.

14.4 Principal Ethical Responsibilities.

- A. City Officials are bound to uphold the Constitution of the United States and the Constitution of the State and to carry out impartially and comply with the laws of the United States, State of Michigan, and the City.
- B. City officials shall communicate only truthful and complete information. Public officials shall not knowingly make false or misleading statements or use false or misleading information as a basis to support a decision.
- C. City officials shall conduct themselves with respect and civility, and as role models for residents, business people and other stakeholders. City officials shall support the maintenance of a positive and constructive workplace environment for City employees, citizens and businesses dealing with the City.
- D. City officials agree to conduct public deliberations and processes openly, unless such deliberations are lawfully closed to the public. City officials also agree to become informed concerning the issues to be considered at each meeting.
- E. City officials shall exercise the public trust for the common good, and not for personal gain. City officials shall be guided by the principle that all official decisions and all official actions are intended to improve the quality of life in the community.
- F. Because of the value of independent advice of boards, commissions and committees to the public decision-making process, members of the Troy City Council shall refrain from using their official positions to unduly influence the deliberations, outcomes or recommendations of any other City board, commission or committee proceedings. To that end, City Council members shall not attend any board or committee meeting where the board or committee members are appointed or approved by the Troy City Council. However, this does not prevent a City Council member who is duly appointed to a board or committee from attending and participating at those board or committee

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meetings.

- G. When a City Council member represents the City on a regional or multijurisdictional board or commission and is confronted with an issue that pits or could pit the City's interests against the greater interests of the broader board or commission, the City Council representative shall make significant efforts to obtain direction and guidance from Troy City Council in advance of any required vote, in accordance with the Open Meetings Act provisions.
- H. In their official, professional and personal lives, City officials shall observe proper decorum, and not engage in offensive behavior or take any action that results in an appearance of impropriety. City officials should avoid the use of derogatory or denigrating language. While recognizing First Amendment rights, all City officials should refrain from abusive conduct and personal charges or verbal attacks upon the character or motives of other City officials, residents, employees, contractors, and officials from other governmental entities.
- I. City officials shall support official Council or Board or Committee actions, resolutions, decisions, policies or positions. This does not preclude City officials from presenting individual opinions and positions in certain situations, as long as City officials explicitly state that they do not represent the Council, Board or Committee or the City as a whole.
- J. City officials must not exceed their authority or breach the law or ask others to do so.
- K. City officials shall safeguard public confidence by being honest, fair and respectful of all persons and property with whom they have contact, by maintaining non-partisanship in all official acts, and by avoiding official conduct which may tend to undermine respect for Public Officials and Employees and for the City as an institution.
- L. City officials shall work with other City officials to establish effective policies.
- M. City officials shall delegate the authority for the running of the City to the City’s Administrative staff.
- N. City officials should encourage free expression of opinion by all other City officials.
- O. City officials should render decisions in a fair and impartial manner, based on the available facts and independent judgment, rather than succumbing to the influence of individual or special interest groups.
- P. City officials should make every effort to attend all meetings.
- Q. City officials should use the same care and caution when using electronic media as would be exercised when speaking face to face or through written memorandum or other communication.

14.5 Gifts

- A. City officials shall not intentionally solicit or accept any gift or loan of money, goods, services or other things of value from any prohibited source or which is otherwise prohibited by law or ordinance. The following are not prohibited by law or ordinance:
1. Any contribution that is lawfully made under the Campaign Finance Laws of the State of Michigan.
 2. Opportunities, benefits, and services that are extended to all participants in an event or activity that is open to the public.
 3. Acceptance of promotional or logo material with a nominal value not exceeding \$25.00.
 4. Anything for which the public official pays the fair market value.
 5. A gift from an immediate family member or significant other.
 6. Perishable or consumable gifts with a nominal value not exceeding \$25.00.
 7. 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 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 the individual who gave the gift also at the same time gave the same or similar gifts to other public officials.
 8. Food, refreshments, lodging, transportation, and other benefits resulting from a City official’s attendance at a relevant educational or training conference, such as a Michigan Municipal League conference, unless the recipient has reason to believe that, under the circumstances, the gift was provided because of the unique official position of the recipient and not extended to other similarly situated officials.
 9. Admission to a charitable or non-profit event or fundraiser when the City official is attending as a representative of the City or for which other public officials of other local governments have similarly been provided complimentary admission due to their status as governmental officials.
 10. Admission to events honoring another public official or governmental official when the City Official is attending as a representative of the City or for which other public servants or officials of other local governments have similarly been provided complimentary admission due to their status as governmental officials.
 11. Intra-governmental and inter-governmental gifts. An intra-governmental gift means any gift given to a City official from another official or

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employee, and an inter-governmental gift means any gift given to an official by an official or employee of another governmental entity.

- B. A City official does not violate this section if they explain the City’s policy against the acceptance of gifts and promptly take reasonable action to return a gift from a prohibited source or donate said gift to a non-profit organization.

14.6 Disclosure of Confidential Information.

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

14.7 Public resources.

A public official shall use personnel resources, property, and funds under their care and control judiciously and solely in accordance with prescribed constitutional, statutory, and regulatory procedures and not for personal or political gain.

14.8 Personal Profit.

- A. No City official shall intentionally take or refrain from taking any official action, or induce or attempt to induce any other City official from taking any official action on any matter before the City which would result in a financial benefit for the City official, an immediate family member, an outside employer, any business in which the City official or an immediate family member has a financial interest, or any business with which the City official or immediate family member is negotiating or seeking prospective employment or other business or other professional relationship.
- B. No City Official shall use or attempt to use his or her official position to secure or request any special consideration, privilege, exemption, advantage, contract or preferential treatment for himself, herself, or others, beyond that which is available to every other citizen.
- C. No City Official shall acquire any financial benefit in or accept any employment concerning any project which has been granted approval by the City within one year of the Public Official' s participation in any manner in considering or recommending the approval or disapproval of said project.

14.9 Incompatibility of Office and Conflicts of Interest

- A. A City 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 official's duties or when that employment may tend to impair his or her independence of judgment or action in the performance of official duties.

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- B. 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 permitted where specifically authorized by the Michigan Constitution of 1963 or state statute.
- C. There is a rebuttable presumption that there is no prohibited conflict of interest when a City official is a member or serves on a board, without compensation, which is substantially affiliated with or controlled by the City or 501C(3) not-for-profit organization. However, the City official shall make a disclosure of his or her affiliation prior to any action on the matter.
- D. City officials should err on the side of disclosure when there is a potential or perceived conflict of interest. Where there is any question about a potential conflict of interest, even though it may not be an actual conflict, City officials should discuss the particular situation with the City Manager, City Attorney, City Clerk and/or City staff liaison to the board or committee (City Administration) in advance of any meeting concerning the matter. If after such discussion, City Administration recommends disclosure, considering the interests of the City and those of the individual involved, the City official would then be responsible to publicly disclose the potential conflict or situation to the entire Council, board or committee before any presentation or discussion on the matter. This process allows for the Council, board or committee to take affirmative action to recuse the public official from further participation upon the determination when it determines that there is a conflict of interest.

14.10 Annual Disclosure Statements

- A. The Mayor and all members of the Troy City Council, and all candidates for these elected positions; as well as all members of the Troy Planning Commission and all applicants; all members of the Board of Zoning Appeals and all applicants; and all members of the Troy Liquor Committee and all applicants are required to timely file an Annual Disclosure Statement with the Troy City Clerk. The mandated Annual Disclosure Statement shall provide the information required Section 6.4 and 6.12 of the Troy Charter.
- B. Any candidate for the elected offices of Mayor or City Council who fails to file the required full disclosure statement prior to the deadline for completing all other acts necessary to have his or her name placed on the ballot shall be ineligible to have his or her name placed upon said ballot.
- C. Any applicant being considered for appointment to the Troy Planning Commission or the Board of Zoning Appeals or the Liquor Control Committee who fails to file a full disclosure statement prior to his or her official appointment shall be ineligible to serve on the board or committee.
- D. Any elected or appointed City official that fails to timely submit the required full disclosure statement shall be subject to removal from office for misconduct. In such a case, the City Clerk shall send an official notice to the City official, giving

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them at least ten days to comply, and setting a date for a removal hearing at a regular Troy City Council meeting. If the City official fails to timely file the required full disclosure statement by the scheduled deadline, then the Troy City Council shall hold a hearing in order to provide the City official with an opportunity to present proof of compliance prior to being removed from office. There is a presumption of misconduct in office if the City Clerk states under oath that he or she has not timely received the required full disclosure statement from the City official. The City official will have the opportunity to rebut this presumption, and present all material factual evidence and testimony and/or cross examine witnesses. The City official can be represented by legal counsel at the hearing. If the City official failing to timely file the required full disclosure statement is a City Council member, they shall not participate in any decision. At the close of the hearing, a simple majority of the participating City Council members shall determine if removal from office is appropriate (exclusive of any member whose removal is being considered).

- E. A City official shall not participate, in the course of official duties, in any transaction which subsequently would be required to be disclosed in an annual disclosure statement or which would constitute a conflict of interest without disclosing the interest in the transaction prior to participating in the transaction.

14.11 Personal and financial interests

A City 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 any entity in which the City official has a financial interest, personal interest, or a *fiduciary duty*. For the purposes of this section *fiduciary duty* means the responsibility to act on behalf of a beneficiary as a director or executive board member of a corporation, for profit or otherwise.

14.12 Political Activities

- A. A City official or candidate for City Council shall not solicit contributions or endorsements from City appointees, employees, contractors or volunteers during the course of their official duty. This provision is not intended to interfere with an individual or group's right to endorse or contribute on their own, or to prohibit soliciting contributions or endorsements outside of the course of an official duty.
- B. City resources shall not be used for political benefit in accordance with the restrictions of the Michigan Campaign Finance Act, MCL 169.257 et. seq.. This does not prevent a City official or candidate’s use of City property or facilities that are available to the general public on an equal basis, as long as due consideration is paid. A knowing violation of Section 57 of the Campaign Finance Act is a misdemeanor offense according to MCL 169.257(4).
- C. Any candidate or committee, as defined in the Michigan Campaign Finance Act, MCL 169.257 et. seq., Act 388, Public Acts of Michigan, 1976, as amended, who receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of electors of the City in City elections shall timely file the statements or reports required to be filed in accordance with the Michigan Campaign Finance Act. Any candidate may file a duplicate copy of any

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such statement or report with the Troy City Clerk to supplement the information required by the annual disclosure statement.

14.13 Anti-Nepotism

No City official shall cause the employment or any favorable employment action of an immediate family member. No City official shall participate in any employment decision about that family member. This section shall not prevent a City official from preparing or approving a budget which includes compensation for an immediate family member, so long as that immediate family member receives the same treatment as others in his/her classification.

14.14 Retaliation

- A. A Public Official or Employee who reports or is about to report a violation of this Ordinance or who requests an advisory opinion shall not be retaliated against in any manner for such action or participation. Additional protections for City officials and employees who act as Whistleblowers are found in the State Ethics Act MCL 15.341 et. seq., and the Whistleblowers’ Protection Act, 1980 PA 469, MCL 15.361 et. seq..
- B. Any person who reports an alleged violation or files a complaint alleging a violation of this Ordinance, knowing that material information provided therein is not true or provides information in reckless disregard for the truth may be required to reimburse reasonable costs incurred by the City in investigating or responding to the allegations.

14.15 Violations

- A. Any person who believes that a City official has engaged in unethical conduct, in violation of this Ordinance or State law, can submit a written complaint to the Troy City Clerk, Troy City Manager, or Troy City Attorney.
- B. Within five days of receipt, the Troy City Clerk, Troy City Manager or Troy City Attorney will review the complaint and verify that there is procedural compliance with this Ordinance and jurisdiction over the matter and the individual identified in the Complaint, and if so, will forward a written notification of the suspected violation to the City official who allegedly violated the Ordinance and/or the proper investigating authority. This notification shall offer an opportunity to submit a written response to the allegations contained in the Complaint, and provide a deadline for any such response.
- C. When any person has a question or a complaint as to the applicability of any provision of this Ordinance to a particular situation, that question or complaint can also be submitted in writing to the Troy City Clerk, Troy City Manager, or Troy City Attorney.
- D. After the response deadline, the Troy City Clerk, Troy City Manager, or Troy City Attorney shall provide any complaint of a violation of this Ordinance or any

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request for an advisory opinion to the Troy City Council, in addition to all documentation submitted, including but not limited to any response.

- E. The Troy City Council, upon receipt or a request for an advisory opinion or a complaint that a City official engaged in unethical conduct, has the responsibility for determining the sufficiency of the complaint. To that end, the Troy City Council has all the following powers:
- a. Refer the matter to an appropriate law enforcement agency or other authority authorized to act. If such action is taken, then the Troy City Council shall stay any further proceedings until there is a final adjudication.
 - b. Authorize the retention of an outside attorney to investigate the matter and make a recommendation to the Troy City Council.
 - c. Hold a public due process hearing where the City official will have the opportunity to refute the charges of unethical conduct. Any such hearing shall be held as quickly as possible, but not less than fourteen days after written notification of the due process hearing date. The alleged offending City official will have the ability to be represented by legal counsel at any such due process hearing.
 - d. Request assistance or opinion from Troy City Administration.
 - e. Issue an advisory opinion, either with or without identifying the named City official.
 - f. Provide guidance to the named City official.
 - g. Propose and monitor an ongoing program of education of City officials regarding ethical issues and concerns.
 - h. Declare no action is required.
 - i. Issue a written reprimand to the named City official.
 - j. Issue a formal censure to the named City official.
 - k. Pursue removal proceedings against the named City official. If it becomes necessary to seek the removal of a City official, the City Council shall follow the requirements for removal in accordance with the laws of the State of Michigan.
 - l. Impose any other authorized sanction on the offending City official.
- F. In addition to any action by the Troy City Council, a violation of this Ethics ordinance or a violation of State law may also be prosecuted by the appropriate law enforcement agency. Any violation of this Ordinance is a misdemeanor, punishable by imprisonment of up to 90 days and/or a fine of \$500, in the discretion of the Court.

(Rev. 10-25-2021; Eff. 11-04-2021)