

Code of Ordinance
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Code of Ethics

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**CITY OF POTTERVILLE
EATON COUNTY, MICHIGAN**

ORDINANCE NO. 231

ORDINANCE TO ADOPT A CODE OF ETHICS FOR
THE CITY OF POTTERVILLE

CHAPTER OF THE CODE OF ORDINANCES FOR THE CITY
OF POTTERVILLE

Section 1. Title, Purpose, Intent and Definitions

1-1 Title.

This ordinance shall be known and cited as the "City of Potterville Ethics" or the "Code of Ethics".

1-2 Purpose.

In an effort to maintain the public trust, the City of Potterville City Council hereby declares that all public officials and employees of the City of Potterville shall avoid any conflict between their private interests and those of the general public they serve. Furthermore, to enhance the faith of the citizens in the integrity and impartiality of the elected and appointed officials of the City of Potterville, it is necessary to provide specific guidelines for dealing with conflicts of interest, nepotism and proper conduct of officials and employees. The City of Potterville intends that its officials and employees will avoid any action, which might result in or create the appearance of:

1. using public office or employment for private gain
2. giving or accepting preferential treatment or monetary gain to or from any person or organization
3. impeding government efficiency or economy
4. a lack of independence or impartiality of action
5. making an official decision outside of proper channels
6. affecting adversely the confidence of the public in the integrity of the City of Potterville

1-3 Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

1. "employee" means a person employed by the city, whether on a fulltime or part-time basis
2. "confidential information" means information obtained in the course of holding public office or employment that is not available to members of the public and which the official or employee is not authorized to disclose, except to designated individuals or bodies, including written and non-written information
3. "gift" means any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible to 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.
4. "governmental contract" means a contract in which the City 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

5. "officer" or "official" means a person who holds office by election or appointment within the City, regardless of whether the officer is compensated for service in his or her official capacity
6. "official action" means a decision, recommendation, approval, disapproval or other action or failure to act which involve the use of discretionary authority
7. "prohibited source" means any person or entity who:
 - a) Is seeking official action(i) by an officer or (ii) by an employee, or by the officer or another employee directing that employee
 - b) 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
 - c) Conducts activities regulated (i) by the officer or (ii) by an employee, or by the officer or another employee directing that employee; or
 - d) Has interest that may be substantially affected by the performance or nonperformance of the official duties of the officer or employee.

Section 2. Standards of Conduct

2-1 Conflict of interest

No officer or employee of the city shall use, or attempt to use, his or her official position to secure, request, or grant unreasonably any special consideration, privilege, exemption, advantage, contract, or preferential treatment for himself, herself, or others, beyond that which is available to every other citizen.

2-2 confidential information

Except as otherwise required by law or court order, an officer or employee shall not divulge to an unauthorized person confidential information acquired in the course of employment or in the course of holding office in advance of the time prescribed for its authorized release to the public. *State law reference: MCL15.342 (1)*

2-3 Personal Opinion

An officer or employee shall not represent his or her personal opinion as that of the city. *State law reference: MCL15.342 (2)*

2-4 Business Transactions

- a) An officer or employee shall not engage in a business transaction in which the 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.
- b) 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 her or her course of employment with this state. *State law reference MCL15.342(5)*

2-5 Incompatibility

Except as otherwise provided by law, an officer or employee shall not engage in or accept employment or render services for private or public interest when the 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 or judgment or action in the performance of official duties. *State law reference MCL15.342 (6)*

2-6 Negotiation of Contracts

Except as provided by Section 2a of Act 196 of 1973, MCL 15.341 *et seq.*, and other applicable law, a public officer or employee shall not participate in the negotiation or execution of contracts, making 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 public officer or employee has a financial or personal interest. *State law reference: MCL 15.342(7)*

2-7 Use of City Property and Resources

An officer or employee shall not use, or permit other to use, any property owned by the city for profit or personal convenience or benefit except (a) when available to the public generally, or to a class of residents, on the same terms and conditions; (b) when permitted by policies approved by the city council; or (c) when, in the conduct of official business, used in minor way for personal convenience.

2-8 Political Activities

Any violation of the political Activities by Public Employees Act 169 of 1976, MCL 15.401 *et seq.*, or the Michigan Campaign Finance Act, MCL 169.201 *et seq.*, shall constitute a violation of this ordinance and shall be subject to the sanctions set forth herein.

2-9 Nepotism

Unless the City Council shall by a two-thirds (2/3) vote, which shall be recorded as part of its official proceedings, determine that the best interest of the city 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 officer or employees of the city at the time of the election or appointment of said officer to elective city office.

2-10 Representation before Governmental Body

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

2-11 Gifts

- a) Gifts prohibited: except as permitted by this ordinance, no officer or employee of the city shall intentionally solicit or accept any gift from any prohibited source or any gift that is otherwise prohibited by law or ordinance.
- b) Exceptions: Section (a) is not applicable to the following
 - a. Opportunities, benefits, and services that is available on the same conditions as for the general public.
 - b. Anything for which the officer or employee pays the fair market value.
 - c. Any contribution that is lawfully made under the Campaign Finance Laws of the State of Michigan.
 - d. 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, grandfather in law, father in law, grandmother in law, mother in law, son in law, daughter in law, brother in law, sister in law, stepfather, stepmother, stepson, stepdaughter, stepbrother, step sister, half-brother, half-sister, and including the father, mother, grandfather, or grandmother of an individual's fiancé or fiancée.
 - e. Anything provided by an individual on the basis of a personal friendship unless the recipient has a 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 friendships. 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 of 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.

- f. Food or refreshments not exceeding \$500.00 per person in value on a single calendar day; provided that the food or refreshment 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.
- g. 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 a similar circumstances.
- h. 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 and "inter-governmental gift" means any gift given to an officer or employee by an officer or employee of another governmental entity.
- i. Bequests, inheritances and other transfers at death.
- j. Any item or items from any one prohibited source during any calendar year having a cumulative total value of less than \$50.00.

Each exception listed in this section is mutually exclusive and independent of every other.

c. 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.

2-12 Transactional Disclosure

Whenever an officer or employee is required to recuse himself or herself under Chapter 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 Ethics Committee and the City Clerk a signed statement disclosing the reason for the recusal. The Clerk shall send copies of the statement to all of the members of the City Council, and the statement shall be attached to the minutes of the next meeting.

Section 3. Ethics Committee

3-1 Establishment of the Ethics Committee

The Ethics Committee of the City of Potterville (the "committee") is hereby established. The Committee shall be comprised of three members appointed by the City Mayor with the advice and consent of the City Council. No person shall be appointed as a member of the committee who is related, either by blood or marriage up to the degree of first cousin, to any elected officer of the city. Members shall serve without compensation.

3-2 Term: Meetings

- a) At the first meeting of the committee, the initial appointees shall draw lots to determine their initial terms of 3, 2, and 1 year(s), respectively. Thereafter, all committee members shall be appointed to 3-yr terms by the City Mayor with advice and consent of the City Council. Committee members may be reappointed to serve subsequent terms. At the first meeting of the committee and thereafter at the discretion of the committee, the committee members shall choose a chairperson from their number.
- b) Meetings shall be held at the call of the chair person or any 2 committee members. A quorum shall consist of two committee members, and official action by the committee shall require the affirmative vote to 2 committee members. The business of the committee, including its hearings, shall be conducted at a public meeting held in compliance with the Open Meetings Act, 1976 PA 267, MCL 15.261 *et seq.*

3-3 Removal: Vacancies

The City Council may remove a committee member in case of incompetency, neglect of duty or malfeasance in office after service on the committee member by certified mail, return receipt requested, a copy of the written charges against the committee member and after providing an opportunity to be heard in person or by the council upon not less than 10 days' notice. Mid-term vacancies shall be filled for the balance of the term in the same manner as original appointments.

3-4 Powers and Duties

The committee shall have the following powers and duties.

- a) To promulgate procedures and rules governing the performances of its duties and the exercise its powers.
- b) Upon receipt of a signed, notarized, written complaint against an officer or employee, to investigate, conduct hearings, and deliberations, issue referrals for disciplinary hearings and refer violations of Section 2 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. The committee shall, however, act only upon the receipt of a written complaint alleging a violation of this ordinance and not upon its own initiative.

- c) To receive information from the public pertaining to its investigations and to seek additional information and documents from officer and employees of the city.
- d) To request 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 to cooperate with the committee during the course of its investigations. Failure or refusal to cooperate with requests by the committee shall constitute grounds for discipline or discharge of appointed officer and employees of the city.
- e) The committee may, during the course of the investigation, seek council and advice from the city attorney.
- f) The powers and duties of the committee are limited to matters clearly within the purview of this ordinance.

3-5 Complaints

- a) Complaints alleging a violation of this ordinance shall be filed with the City Clerk. The Clerk or member of the Clerk's staff shall attend committee meetings and act as a secretary for the committee.
- b) Within 3 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. The notices sent to the respondent and the complainant shall also advise them of the date, time and place of the committee hearing to determine the sufficiency of the complainant to establish whether there is a reasonable basis to believe that the respondent has violated Section 2 of this ordinance. The Clerk shall also concurrently send copies of the foregoing complaint and notices to the members of the committee.
- c) The committee shall conduct a hearing to review the sufficiency of the complaint and, if the complaint is deemed sufficient to allege a violation of Section 2 of this ordinance, to determine whether there is a reasonable basis to believe that the respondent has violated Section 2 of this ordinance based on the evidence presented by the complainant and any additional evidence provided to the committee 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 committee, the committee shall issue notices to the complainant and the respondent of the committee's ruling on sufficiency of the complaint and, if necessary, as to whether they find that there is reasonable basis to believe that the respondent has violated Section 2 of this ordinance.

- d) If the complaint is deemed sufficient to allege a violation of Section 2 of this ordinance and the committee finds that there is a reasonable basis to believe that the respondent has violated Section 2 of this ordinance, then the City Clerk shall notify in writing the attorney designated by the City Council and shall transmit to the attorney the complaint and all additional documentation in the custody of the committee concerning the alleged violation, with the committee's request for the filing of any appropriate criminal or civil proceedings. The Clerk shall also provide these documents to the respondent's appointing authority within the City with the committee's request for the commencement of appropriate disciplinary action consistent with any applicable collective bargaining agreement, civil service commission rules or employment regulations by the city.
- e) The city and the commission provide officer and employees who act as whistleblowers regarding the conduct of the city's officers and employees with the protection afforded by Sections 2b -2e of the State Ethics, MCL 15.342 *et seq.*, and the Whistleblowers' Protection Act, 1980 PA 469, MCL 15.362 *et seq.*
- f) 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 \$500.00 as well as the reasonable costs incurred by the city in investigating the complaint and the reasonable cost incurred by the respondent to the complaint.
- g) A complaint must be filed with the clerk within two (2) years of the date of the offense is alleged to have occurred.

Section 4. Sanctions

4-1 Violations

A violation of this ordinance may be punished as a misdemeanor by a fine of up to \$500.00 and/or 90 days in jail.

4-2 Disciplinary Action

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.

4-3 Collective Bargaining Agreements

Sanctions shall not be constructed to diminish or impair the right of an officer or employee under any collective

bargaining agreement, nor the city's obligations to comply with such collective bargaining agreements.

4-4 State Statues

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

Section 5. Administrative Provisions

5-1 Validity and Severability

Should any portion of this ordinance be found invalid for any reason, such holding shall not be construed as affecting the validity of the remaining portions of this ordinance.

5-2 Repeal of Prior Ordinance

Any other ordinances or parts of ordinances in conflict herewith and hereby repealed only to the extent necessary to give this ordinance full force and affect.

5-3 Effective Date

This ordinance shall become effective thirty (30) days after adoption.