

CITY OF CLAWSON
OAKLAND COUNTY, MICHIGAN
ORDINANCE NO. 754

AN ORDINANCE TO AMEND AND RESTATE THE CITY OF CLAWSON PART II CODE OF ORDINANCES CHAPTER 2 ADMINISTRATION ARTICLE VII BOARDS, COMISSIONS AND AUTHORITIES, DIVISION 1 GENERALLY, NEW SECTION 2-311 CODE OF ETHICS TO ESTABLISH THE CITY OF CLAWSON'S CODE OF ETHICS AND TO PROVIDE FOR THE CREATION OF AN ETHICS BOARD; AND SANCTIONS FOR VIOLATIONS HEREIN

NOW THEREFORE THE CITY OF CLAWSON ORDAINS:

Article VII, Division 1, Section 2.311 of the Clawson Code of Ordinance shall state as follows:

The City of Clawson Hereby Ordains:

Preamble.

- (a) Public office and employment are public trusts. The vitality and stability of Clawson city depends upon maintaining public confidence in the integrity of its elected and appointed officers and employees. Whenever conduct undermining that integrity occurs, either actual or perceived, public confidence is jeopardized.

In furtherance of maintaining public confidence in the integrity of its elected and appointed officers and employees, the government of the City of Clawson has a duty to pronounce standards of ethical conduct which: Ensure public duties are forthrightly and ethically performed; and inform city officials and employees of the standards which the citizenry expects them to observe.

The purpose of this chapter is to publish standards of ethical conduct that are clearly established and uniformly applied. These standards will provide the public and city officials and employees with guidance and information about ethical expectations.

Title.

- (b) This chapter shall be known and may be cited as the "City of Clawson code of ethics."

Policy.

- (c) It is the public policy of this city that all elected and appointed officials and employees shall construe and implement ethical standards and guidelines with sincerity, integrity and commitment so as to advance the spirit of this ordinance in accordance with the following guiding principles:
- i. *Public Interest.* City officials and employees 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.
 - ii. *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.
 - iii. *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.
 - iv. *Democratic Leadership.* All city officials shall honor and respect the spirit and principles of representative democracy and will scrupulously observe the spirit as well as the letter of the law.
 - v. *Respectfulness.* All city officials and employees 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.

Definitions.

- (d) As used in this chapter:
- i. "City official or employee" is a person elected, appointed or otherwise serving in any capacity involving the exercise of a public power, trust or duty.
 - ii. "Compensation" is any money, property, thing of value or benefit received by any person in return for services rendered.
 - iii. "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 or employee's duty to the public interest in the exercise of official duties or official actions.
 - iv. "Gift" is any thing of value, money, loan of money, goods, or services given without due consideration. "Gift" does not include:
 1. Information-gathering trips paid for by a person or entity seeking approval of a proposal from a decision-making body of the city, provided that the decision-making body, prior to the trip, makes all of the following determinations:
 - a. The information will be useful and material;
 - b. The trip will improve and not unduly influence the decisional process; and
 - c. The decision-making body designates the official(s) and/or employee(s) who will participate.
 2. Small perishable or consumable gifts of a nominal value, and any reportable campaign contributions pursuant to state law.
 - v. "Immediate family" is a spouse, child, parent, sister or brother wherever residing, or any relative sharing the same household.
 - vi. "Official duties" or "official actions" are decisions, recommendations, approvals, disapprovals or other actions which involve the use of discretionary authority.

Prohibited conduct.

- (e) Gifts. A city official, elected member, member of any board or employee shall not, directly or indirectly, solicit or accept a gift that could unduly influence the manner in which they enact their official duties.
- i. *Preferential Treatment.* A city official, elected member, member of any board or employee shall not use his/her official position to unreasonably secure, request or grant, any privileges, exemptions, advantages, contracts, or preferential treatment for himself/herself or others.
 - ii. *Use of Information.* A city official, elected member, member of any board or employee who acquires information in the course of his or her official duties, which by law or policy is confidential, shall not prematurely divulge that information to an unauthorized person nor use the information to further the private interest of the city official or employee or any third party. Information which is deemed exempt from disclosure under the Michigan Freedom of Information Act, Act 442, Public Acts of Michigan, 1976, or which is the subject of a duly called closed meeting held in accordance with the Michigan Open Meetings Act, Act 267, Public Acts of Michigan, 1976, is confidential. A city official or employee shall not suppress or refuse to provide city reports or other information which is publicly available.
- (f) Conflict of Interest.
- i. No city official, elected member, member of the board or employee shall engage in employment, render services, or engage in any business, transaction or activity which is in direct conflict of interest with his/her official duties.
 - ii. No city official, elected member, member of the board or employee may use any confidential information obtained in the exercise of his/her official duties for personal gain or for the gain of others.
 1. No city official elected member, member of the board or employee shall intentionally take or refrain from taking any official action, or induce or attempt to induce any other city official, elected member, member of the board or employee to take or refrain from taking any official action, on any matter before the city which would result in a financial benefit for any of the following:
 - a. The city official or employee.
 - b. An immediate family member.

- c. An outside employer.
- d. Any business in which the city official or employee, or any immediate family member of the city official or employee, has a financial interest.
- e. Any business with which the city official, elected member, member of the board or employee or any immediate family member is negotiating or seeking prospective employment or other business or professional relationship.
- f. Except as otherwise provided by law, no city elected official shall serve with compensation as an officer or as a member of a managing or executive board with the right to vote in any corporation, business, or entity which engages or seeks to engage in any business, transaction or activity with the city. The foregoing shall not apply to entities which are advisory only, or which have no legal standing, or which are substantially affiliated with or controlled by the city or 501C(3) not-for-profit organizations; or to membership on a managing or executive board on an ex officio basis without vote.

2. In Contracts.

- a. Except as otherwise permitted herein, no city official, elected member, member of the board or employee or any immediate family member of a city official or employee shall be a party, directly or indirectly, to any contract with the city except for collective bargaining agreements. The foregoing shall not apply if the contract is awarded after public notice and competitive bidding, provided that the city official or employee shall not have participated in establishing contract specifications or awarding the contract, shall not manage contract performance after the contract is awarded, and shall disclose the city official's or employee's interest in the contract.
- b. A city official shall not engage in a business transaction with the city except as permitted by Act 317, Public Acts of Michigan, 1968, as amended. Compliance with the requirements of said Act shall constitute compliance with this subsection.
- iii. *Use of City Property.* A city official, elected member, member of the board or employee shall not, directly or indirectly, use any city property for personal gain or for the private benefit of a third party.
- iv. *Political Activity.* No city official, elected member, member of the board or employee shall use any city time or property for his/her own political benefit or for the political benefit of any other person seeking elective office; provided, that the foregoing shall not prohibit the use of property or facilities available to the general public on an equal basis for due consideration paid. No political activity shall interfere with the performance of the usual duties of any city official or employee.
- v. *Nepotism.* No city official or employee shall cause the employment or any favorable employment action of an immediate family member. No employee shall participate in any employment decision about that family member. This section shall not prevent a city official or employee 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.
- vi. *Retaliation.* No person making a complaint or requesting an advisory opinion, or participating in any proceeding of the board of ethics, shall be retaliated against in any manner for such action or participation.

Disclosure.

- (g) *Annual Disclosure Statement.* The following elected and appointed city officials and employees shall file an annual disclosure statement.
 - i. The mayor, members of the city council, the city manager, city attorney, city clerk and city treasurer;
 - ii. The directors and deputy directors of all administrative departments;
 - iii. The members of the planning commission, and the zoning board of appeals; and
 - iv. Other city officials and employees who, in the ordinary course of their duties, regularly exercise significant discretion over the solicitation, negotiation, approval, awarding, amendment, performance, or renewal of city contracts.
- (h) Annual Disclosure Statement—Content.

- i. The annual disclosure statement shall disclose the following financial interest of the city official, elected member, member of the board or employee or of the latter's immediate family in any company, business or entity that has contracted with the city or which has sought licensure or approvals from the city in the two (2) calendar years prior to the filing of the statement:
 1. Any interest as a partner, member, employee or contractor in or for a co-partnership or other unincorporated association;
 2. Any interest as a beneficiary or trustee in a trust;
 3. Any interest as a director, officer, employee or contractor in or for a corporation;
 4. Legal or beneficial ownership of one percent (1%) or more of the total outstanding stock of a private corporation not listed on a stock exchange;
 5. Legal or beneficial ownership of stock with a market value of twenty-five thousand dollars (\$25,000.00) or more in a company which is doing business with the city and which is not listed on the New York or American Stock Exchanges.
 6. The annual disclosure statement shall include a summary listing each business transaction with the city involving a financial interest described in this section of the city official or employee or the city official's or employee's immediate family during the prior two (2) calendar years.
 7. If there is no reportable financial interest or transaction applicable to the city official or employee or the city official's or employee's immediate family, the annual disclosure statement shall contain a certification as to that fact.
- ii. *Annual Disclosure Statement—When And Where Filed.* One (1) original executed annual disclosure statement and one (1) copy shall be filed with the board of ethics on or before April 15th each year.
- iii. *Transactional Disclosure.* A city official or employee 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 as outlined supra without disclosing the interest in the transaction prior to participating in the transaction. If the official is a member of a decision-making or advising body, the disclosure must be made to the chair and other members and made part of the official record of the body. A council member who absents himself/herself from a vote shall disclose the reason to the entire body. In the case of an employee, the disclosure must be made to his/her immediate supervisor.
- iv. *Disclosure of Gifts.* Any gift received in a city official's or employee's official capacity which could unduly influence the manner in which they enact their official duties should be reported immediately to the board of ethics. Such gifts should be returned to the donor, or donated to a charity, with the explanation to the donor that city policy will not permit the acceptance of the gift.
- v. *Disclosure Forms.* All disclosures shall be made on forms provided for that purpose by the board of ethics and filed with the board of ethics. All disclosure statements shall become public documents.
- vi. *Campaign Finance Statements.* Any candidate or committee, as defined in the Michigan Campaign Finance Act, 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 primary, regular and special city elections, or whose districts are comprised wholly or substantially of the city, may file with the city clerk a duplicate copy of any statement or report required to be filed under Act 388 promptly following the filing of such report with the appropriate filing official designated pursuant to Act 388.

Board of ethics.

- (i) Creation: The City of Clawson hereby creates an independent body called the "Board of Ethics."
 - i. Objective: The objective of the Board of Ethics is to issue written opinions regarding ethical, not legal, questions and to engage in activities which will promote ethical behavior.
 - ii. Board membership; terms; quorum; meetings; rules:
 1. The Board of Ethics shall consist of five (5) members nominated by the Mayor and Members of Council with each member seated on the board by a majority vote. Current elected officials or employees shall not be eligible for

appointment to the Board. Members of the Board may be removed by a simple majority vote of the Council.

2. Members shall be appointed for terms of three (3) years, except that of those first appointed, two (2) shall serve for three (3) years, two (2) shall serve for two (2) years, and one (1) shall serve for one (1) year. In the event of a vacancy, the Mayor and Members of Council shall nominate candidates to fill the vacancy for the remainder of the term. Initial nominations shall be made within thirty (30) days of enactment of this chapter, and nominations to fill vacancies and subsequent terms shall be made within sixty (60) days of occurrence of the vacancy or commencement of the term. The Council shall vote on confirmation within thirty (30) days of receipt of nominations. If nominations are not made within the periods specified, the Mayor shall appoint the member(s). If the City Council shall not vote on confirmation within the period specified, the nominations shall be deemed confirmed and the member(s) shall be appointed.
 3. Three (3) members of the Board of Ethics shall constitute a quorum and the affirmative vote of three (3) members shall be necessary for any action. Members of the Board shall serve with compensation equivalent to other City boards and commissions.
 4. The Board of Ethics shall elect its own officers.
 5. The Board of Ethics shall meet at least once annually, and more frequently as it shall determine is necessary. Meetings of the Board shall be subject to the Michigan Open Meetings Act.
 6. The Board of Ethics shall adopt interpretative rules and procedures relating to the requirements and application of this chapter.
- iii. Powers and duties: The Board of Ethics shall have the power to:
1. Receive requests for advisory opinions from City officials or employees.
 2. Receive complaints concerning alleged unethical conduct by a City official or employee from any person or entity.
 3. Receive and retain on file copies of disclosure statements, advisory opinions, and other materials required to be filed under this ordinance.
 4. Upon receipt of a request for advisory opinion or a complaint, preliminarily review the matter to determine if the Board has jurisdiction over the matter and/or persons identified in the request or complaint.
 5. If a complaint concerns an employee covered by a collective bargaining agreement, the Board's sole power shall be to forward the complaint forthwith to the employee's department head to be adjudicated pursuant to the procedures of the collective bargaining agreement.
 6. Subject to the limitations set forth above, inquire into the circumstances surrounding alleged unethical conduct. The Board of Ethics, on its own motion and upon a majority vote, may initiate an inquiry. The Board is hereby authorized to exercise all of the powers granted by the City Charter, except that the Board shall not have the power to subpoena witnesses or compel the production of books, papers, and other evidence. The Board may seek the assistance and opinion of the Prosecuting Attorney or of the City Attorney in the investigation of any matter.
 7. Issue advisory opinions in response to complaints and requests and on its own motion. Advisory opinions of the Board of Ethics shall be maintained in the City Clerk's office and shall be available to the public upon request. The Board shall provide copies of its opinions to the Mayor and the City Council. The Board shall publicize summaries of its advisory opinions to City officials and employees.
 8. Adopt and maintain disclosure forms, which may be revised by the Board of Ethics from time to time.
 9. Propose and monitor an ongoing program of education of City officials and employees regarding ethical issues and concerns.
 10. Report to the Mayor and the City Council from time to time, but not less often than every other calendar year, regarding such matters pertaining to this chapter as the Board deems appropriate, which may include, but not be limited to, the degree to which the policy of this chapter is being achieved; the numbers and nature of requests for advisory opinions and complaints and the ultimate disposition thereof; the implementation and effectiveness of this chapter; and any changes in this chapter recommended to more fully achieve the purposes and policy of this chapter.

- iv. *Board Actions:* Action to be taken in any individual case may include the following:
 1. Issuing a written advisory opinion.
 2. Deeming no action to be required.
 3. Issuing a written Reprimand to an elected member, member of the boards or city employee if all members of the board are in agreement.
 4. Issuing a formal censure to an elected member, member of the boards or city employee if all members of the board are in agreement.
 5. Referring the matter to an authority within the City authorized to act.
 6. Referring the matter to the prosecuting attorney for prosecution under this ordinance.
- v. *Confidentiality and Due Process:* The Board of Ethics shall keep all complaints strictly confidential. The Board shall keep requests for advisory opinions strictly confidential. All persons alleged to have violated this chapter shall be afforded due process of law, including notice, the opportunity to be heard, and the right to representation of their choice.
- vi. *Advisory opinions:*
 1. The Board of Ethics may issue written advisory opinions interpreting this chapter and its provisions and relevant provisions of State law applicable to City officials and employees. Advisory opinions shall not disclose the identities of the person or entity making the request for an advisory opinion or the identity of the persons or positions who are the subject of a complaint or inquiry. Advisory opinions shall be issued within sixty (60) days of a request. If additional time is needed, the time may be extended by majority vote of the Board.
 2. Advisory opinions may include guidance to any City official or employee on questions including, but not limited to:
 - a. Whether an identifiable conflict of interest exists between his/her personal interests or obligations and his/her official duties.
 - b. Whether his/her participation in his/her official capacity would involve discretionary judgment with significant effect on the disposition of the matter in question.
 - c. Whether the result of the potential conflict of interest is substantial or constitutes a real threat to the independence of his/her judgment.
 - d. Whether he/she possesses certain knowledge or skill which the City will require to achieve a sound decision.
 - e. What effect his/her participation under the circumstances would have on the confidence of the people in the impartiality of their officials and employees.
 - f. Whether a disclosure of his/her personal interests would be advisable and, if so, how such disclosure should be made.
 - g. Whether the public interest would be best served by his/her withdrawal or abstention.
 - h. Whether undue influence is being exerted on him/her.
 3. When the Board of Ethics issues an advisory opinion regarding ethical questions pursuant to this section, the Board shall promptly send a copy of its opinion to:
 - a. The individual who requested the opinion;
 - b. The City official or employee affected;
 - c. An individual who has been identified in a complaint and his/her supervisor, if any;
 - d. The Mayor and Members of Council.
- vii. *Reports from City Officials:* In the event the Board forwards a complaint to a department head in accordance with the provisions of this ordinance, following the adjudication of such complaint, the department head shall file a report with the Board describing the handling and disposition of the complaint.
- (j) **Penalties.** This chapter is intended to encourage and promote the highest standards of ethical conduct and behavior by city officials and employees and is not intended to be a punitive measure. It is anticipated that the issuance by the board of ethics of advisory opinions will conclude all matters originating as requests for advice and substantially all matters originating as complaints.

The board of ethics is not an adjudicative body and no finding of the board shall be deemed conclusive nor, in and of itself, subject any city official elected member, member of the boards or employees to penalties. Any person subject to the work and conclusions of the

board shall have the right to appeal a Formal Censure and/or a Written Reprimand to the City's Prosecuting Attorney. In the event of legal proceedings alleging a violation of this chapter, then in accordance with the provisions of the City Charter, a violation of this chapter shall constitute a municipal civil infraction and shall subject a person found responsible to a maximum civil fine of not more than five hundred dollars (\$500.00).

- (k) **Effective date—Review.** The ordinance codified in this chapter shall be effective immediately. This chapter shall be reviewed every three (3) years to evaluate its operation and to propose any changes needed.
- (l) **Primacy of collective bargaining agreements.** Nothing in this chapter shall be read or implied to supersede any provision of a collective bargaining agreement in effect on the effective date of the ordinance codified in this chapter.

The Clawson City Clerk shall certify to the adoption of this Ordinance and cause the same to be published as required by law; and this Ordinance shall take full force and effect fourteen (14) days after the date of publication.

This Ordinance was adopted by the City Council of the City of Clawson at a meeting duly called and held on the _____, 2021, and ordered to be published as presented by the law.

STATE OF MICHIGAN)

COUNTY OF OAKLAND)

I, the undersigned, the duly qualified and active City Clerk of the City of Clawson, Oakland County, Michigan, do hereby certify that the foregoing is a true and complete copy of an ordinance made, passed, and adopted by the Council of said City at a regular meeting held in the Council Chambers, 425 N. Main Street, Michigan, on _____, 2021 at 7:30 p.m., further this Ordinance was duly published in the _____ 2021 edition of the Daily Tribune, a newspaper of general circulation in the City of Clawson.

Reese Scripture, Mayor

Machele Kukuk, Interim City Clerk

Dated:

Dated: