

**AN ORDINANCE**  
**of the City Council of the City of Berkley, Michigan**  
**to Repeal and Replace Section 2-40 of Article II of Chapter 2, Officers and Employees,**  
**of the City of Berkley Code of Ordinances**  
**to Adopt a New Code of Ethics for City Officers, Officials and Employees.**

**THE CITY OF BERKLEY ORDAINS:**

**SECTION 1:** Section 2-40 of Article II of Chapter 2 of the Berkley Code of Ordinances shall be repealed in its entirety and replaced with the following new Section 2-40.

**Sec. 2-40. – Ethics.**

(a) *Purpose.*

The purpose of this section establishes a code of ethics for the officers, officials, and employees of the City. The section also provides references to certain state statutes that regulate the conduct of officers, officials, and employees of local government. This section establishes a Board of Ethics to hear complaints against officers, officials, and employees of the City and, when there is a reasonable basis to believe that the respondent has violated this section's code of ethics to refer those complaints for prosecution, sanctions, and/or a disciplinary hearing by the appointing authority. This section provides for penalties for violations.

(b) *Definitions.*

- (1) *Employee* means a person employed by the City, whether on a full-time or part-time basis.
- (2) *Gift* means any gratuity, discount, donation, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, travel, lodging, and honoraria for speaking engagements related to or attributable to government employment or the official position of an officer, official, or employee.
- (3) *Government 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.
- (4) *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 council, board, commission, or authority is required and by which the City formulates or effectuates public policy.
- (5) *Immediate family* means a person and a person's spouse and the person's children and step-children, by blood or adoption, who reside with that person.

- (6) *Officer or Official* means a person who holds office, by election or appointment, within the City regardless of whether the officer or official is compensated for service in his or her official capacity.
- (7) *Official action* means a decision, recommendation, approval, disapproval or other action or failure to act which involves the use of discretionary authority.
- (8) *Prohibited source* means any person or entity who:
  - a. is seeking official action (i) by an officer or official or (ii) by an employee, or by the officer, official, or another employee directing that employee;
  - b. does business or seeks to do business (i) with the officer or official or (ii) with an employee, or with the officer, official, or another employee directing that employee;
  - c. conducts activities regulated (i) by the officer or official or (ii) by an employee, or by the officer, official, or another employee directing that employee; or
  - d. has interests that may be substantially affected by the performance or non-performance of the official duties of the officer, official, or employee.

(c) *Standards of conduct*

- (1) *Gift Ban.* Except as permitted by this section, no officer, official, or employee of the City shall intentionally solicit or accept any gift from any prohibited source or which is otherwise prohibited by law or ordinance.
- (2) *Exceptions.* Subdivision (c)(1), above, is not applicable to the following:
  - a. Opportunities, benefits, and services that are available on the same basis or conditions as for the general public.
  - b. Anything for which the officer, official, or employee pays the fair market value.
  - c. Any contribution that is lawfully made under the Campaign Finance Act and 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, father-in-law, mother-in-law, son-

in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, and including the father, mother, grandfather, or grandmother of an individual's spouse and the individual's fiancé or fiancée.

- e. 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 given because of the official position or employment of the recipient and not because of the personal friendship. In determining whether a gift is provided on the basis of personal friendship, the recipient shall consider the circumstances under which the gift was offered, such as: (i) the history of the relationship between the individual giving the gift and the recipient of the gift, including any previous exchange of gifts between those individuals; (ii) whether to the actual knowledge of the recipient the individual who gave the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and (iii) whether to the actual knowledge of the recipient the individual who gave the gift also at the same time gave the same or similar gifts to other officers or employees.
- f. Food or beverages not exceeding \$50.00 per person in value on a single calendar day; provided that the food or refreshments are (i) consumed on the premises from which they were purchased or prepared, or (ii) catered. For 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, official, or employee), if the benefits have not been offered or enhanced because of the official position or employment of the officer, official, or employee, and are customarily provided to others in similar circumstances.
- h. Intra-governmental and inter-governmental gifts. For the purpose of this section, "intra-governmental gift" means any gift given to an officer, official, or employee from another officer, official, or employee of the City, and "inter-governmental gift" means any gift given to an officer, official, or employee by an officer, official, 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 \$~~100~~.

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

- (3) *Disposition of gifts.* An officer, official, or employee does not violate this section if he or she promptly takes reasonable action to return a gift from a prohibited source.
- (4) *Confidential Information.* An officer, official, or employee shall not divulge to an unauthorized person, confidential information acquired in the course of employment or official position in advance of the time prescribed for its authorized release to the public.
- (5) *Personal Opinion.* An officer, official, or employee shall not represent his or her personal opinion as that of the City.
- (6) *Public Resources.* An officer, official, or employee shall use personnel resources, property, and funds under the officer's, official's, or employee's official care and control judiciously and solely in accordance with prescribed constitutional, statutory, and regulatory procedures and not for personal gain or benefit.
- (7) *Personal Profit.* An officer, official, or employee shall not engage in a business transaction in which the officer, official, or employee may profit from his or her official position or authority or benefit financially from confidential information which the officer, official, or employee has obtained or may obtain by reason of that position or authority. Instruction which is not done during regularly scheduled working hours except for annual leave or vacation time shall not be considered a business transaction pursuant to this subsection if the instructor does not have any direct dealing with or influence on the employing or contracting facility associated with the instructor's course of employment or engagement with the City.
- (8) *Incompatibility and Conflicts of Interest.* Except as otherwise provided in Const 1963, statute, or in subdivision (c)(10), an officer, official, or employee shall not engage in or accept employment or render services for a private or public interest when that employment or service is incompatible or in conflict with the discharge of the officer, official, or employee's official duties or when that employment may tend to impair his or her independence of judgment or action in the performance of official duties. The simultaneous holding of more than one public position under certain circumstances is contrary to the requirements of the Incompatible Public Offices Act, MCL 15.181 et seq. However, the simultaneous holding of certain public positions is specifically authorized by the Michigan Constitution of 1963 or state statute.
- (9) *Personal and financial interests.* Except as provided in subdivision (c)(10), an officer, official, or employee shall not participate in the negotiation or execution

of contracts, making of loans, granting of subsidies, fixing of rates, issuance of permits or certificates, or other regulation or supervision relating to a business entity in which the officer, official, or employee has a financial or personal interest.

(10) State Conflict of Interest Act, Validity of Contracts, and Voting on, Making, or Participating in Governmental Decisions.

a. This section shall not in any manner vary or change the requirements of 1968 PA 317, being sections 15.321 to 15.330 of the Michigan Compiled Laws, which governs the solicitation by and participation in government contracts by officers and employees of the City and preempts all local regulation of such conduct.

b. This section is intended as a code of ethics for the City's officers, officials, and employees. A contract in respect to which an officer, official, or employee acts in violation of this section, shall not be considered to be void or voidable unless the contract is a violation of a statute which specifically provides for that remedy.

c. Subject to paragraph (d), below, subdivisions (c)(8) and (c)(9) shall not apply and an officer or official shall be permitted to vote on, make, or participate in making a governmental decision if all of the following occur:

(i) The requisite quorum necessary for official action on the governmental decision by the City Council to which the officer has been elected or appointed is not available because the participation of the officer or official in the official action would otherwise violate subdivisions (c)(8) and (c)(9).

(ii) The officer or official is not paid for working more than 25 hours per week for the City.

(iii) The officer or official promptly discloses any personal, contractual, financial, business, or employment interest he or she may have in the governmental decision and the disclosure is made part of the public record of the official action on the governmental decision.

d. If a governmental decision involves the awarding of a contract, subdivisions (c)(8) and (c)(9) shall not apply and an officer or official shall be permitted to vote on, make, or participate in making the governmental decision if all of the following occur:

(i) All of the conditions of subdivision (c)(10)c, above, are fulfilled.

- (ii) The officer or official will directly benefit from the contract in an amount less than \$250.00 or less than 5% of the public cost of the contract, whichever is less.
  - (iii) The officer or official files a sworn affidavit containing the information described in paragraph (ii), above, with the City Council making the governmental decision.
  - (iv) The affidavit required by paragraph (iii), above, is made a part of the public record of the official action on the governmental decision.
  
- (11) Political Activities of Public Employee or Public Officer.
  - a. Employees of local units of government running for office, political campaigning by employees, and limitations on officers and employees seeking support from other employees for those campaigning for public office and for or against ballot proposals are regulated by the Political Activities by Public Employees Act, MCL 15.401 et seq. Complaints may be filed with the Michigan Department of Energy, Labor and Economic Growth. MCL 15.406. Violation of the provisions of that Act by employees and appointed officers are subject to appropriate disciplinary action, up to and including termination by the appointing authority. Violations are also subject to the sanctions listed in subsection (g), below.
  - b. Michigan Campaign Finance Act, MCL 169.201 et seq. Complaints regarding compliance with this Act may be filed with the Michigan Department of State.
  
- (12) Anti-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 interests 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 or official are disqualified from holding any appointed office or employment during the term for which said elected or appointed officer or official was elected or appointed: spouse, child, parent, grandchild, grandparent, brother, sister, half-brother, half-sister, or the spouse of any of them. This subsection shall in no way disqualify such relatives or their spouses who are bona fide appointed officers, officials, or employees of the City at the time of the election or appointment of said officer or official to elective City office.
  
- (13) Representation Before Governmental Body. An officer, official, or employee of the City shall not represent any other person in any matter that the person has before the City when the officer, official, or employee appoints or otherwise supervises the board, commission, officer or employee responsible for handling

the matter.

(14) Transactional Disclosure. Whenever an officer, official, or employee is required to recuse himself or herself in order to comply with the Standards of Conduct in subsection (c), 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 Board of Ethics and City Clerk a signed Statement of Disclosure disclosing the reason for recusal. The clerk shall send copies of the Statement of Disclosure to all of the members of the City Council and the Statement shall be attached to the council meeting minutes.

(15) Annual Disclosure Statement.

- a. The following elected and appointed officers, officials, and employees shall file an annual disclosure statement: all elected and appointed officers, officials, and employees; the directors and deputy directors of administrative departments, members of the zoning board of appeals, planning commission, building code board of appeals, Downtown Development Authority, Parks and Recreation Advisory Board, and tree board, and those who regularly exercise significant discretion over the solicitation, negotiation, approval, awarding, amendment, performance, or renewal of City contracts.
- b. The annual disclosure statement shall disclose the following financial interest of the officer, official, or employee or his or her 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 calendar years prior to the filing of the statement:
  - (i) Any interest as a partner, member, employee or contractor in or for a co-partnership or other unincorporated association;
  - (ii) Any interest as a beneficiary or trustee in a trust;
  - (iii) Any interest as a director, officer, employee or contractor in or for a corporation; and
  - (iv) Legal or beneficial ownership of 1% or more of the total outstanding stock of a corporation.

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 officer, official, or employee and/or the immediate family of the officer, official, or employee during the two prior calendar years.

If there is no reportable financial interest or transaction applicable to the officer, official, or employee and/or the immediate family of the officer or employee, the annual disclosure statement shall contain a certification to that effect.

(d) *Board of Ethics*

(1) There is hereby created a board to be known as the Board of Ethics of the City. The Board shall be comprised of three members appointed by the Mayor with the advice and consent of the City Council. No person shall be appointed as a member of the Board who is related, either by blood or by marriage up to the degree of first cousin, to any elected officer or official of the City.

(2) At the first meeting of the Board, the initial appointees shall draw lots to determine their initial terms of 3, 2, and 1 year(s), respectively. Thereafter, all board members shall be appointed to 3-year terms by the Mayor with the advice and consent of the City Council. Board members may be reappointed to serve subsequent terms.

At the first meeting of the Board and thereafter at the discretion of the Board, the board members shall choose a chairperson from their number. Meetings shall be held at the call of the chairperson or any 2 board members. A quorum shall consist of two Board members, and official action by the Board shall require the affirmative vote of two Board members.

The business of the Board, including its hearings, shall be conducted at a meeting held in compliance with the Open Meetings Act, 1976 PA 267, MCL 15.261 et seq.

(3) The City Council may remove a Board member in case of misfeasance, nonfeasance, or malfeasance in office after service on the Board member of the written charges against the Board member and after providing an opportunity to be heard in person or by counsel 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.

(4) The Board of Ethics shall have the following powers and duties:

a. To promulgate procedures and rules governing the performance of its duties and the exercise of its powers.



- b. Upon receipt of a signed, notarized, written complaint against an officer, official, or employee, to investigate, conduct hearings and deliberations, issue referrals for disciplinary hearings and refer violations of subsection (c) or state or federal criminal statutes to the attention of the City Attorney (or such other attorney designated by City Council) with a request for the filing of the appropriate criminal prosecution or civil infraction enforcement. The Board shall, however, act only upon the receipt of a written complaint alleging a violation of this section 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 officers, officials, and employees of the City.
- d. To request the attendance of witnesses and the production of books and records pertinent to an investigation. It is the obligation of all officers, officials, and employees of the City to cooperate with the Board during the course of its investigations. Failure or refusal to cooperate with requests by the Board shall constitute grounds for reprimand, discipline or discharge of appointed officers, officials, and employees of the City.
- e. The powers and duties of the Board are limited to matters clearly within the purview of this section.

(5) Complaints

- a. Complaints alleging a violation of this section shall be filed with the City Clerk. The Clerk or member of the Clerk's staff shall attend the Board meetings and act as secretary for the Board.
- b. Within 3 business days after the receipt by the Clerk of a complaint, the Clerk shall send a notice to the respondent that a complaint has been filed against him or her together with a copy of the complaint. Within 3 business days after receipt by the Clerk of a complaint, the Clerk shall send a notice of confirmation of receipt of the complaint to the complainant. The notices sent to the respondent and the complainant shall also advise them of the date, time, and place of the Board meeting to determine the sufficiency of the complaint and to establish whether there is a reasonable basis to believe that the respondent has violated subsection (c) of this section. The Clerk shall also concurrently send copies of the foregoing complaint and notices to the members of the Board.
- c. The Board shall meet to review the sufficiency of the complaint and, if the

complaint is deemed sufficient to allege a violation of subsection (c) of this section, to determine whether there is a reasonable basis to believe that the respondent has violated subsection (c) of this section based on the evidence presented by the complainant and any additional evidence provided to the Board at the meeting pursuant to its investigatory powers. The complainant and respondent may be represented by counsel at the meeting. Within a reasonable period of time after the completion of the meeting which may be conducted in one or more sessions at the discretion of the Board, the Board shall issue notice to the complainant and the respondent of the Board's ruling on the sufficiency of the complaint and, if necessary, as to whether they find that there is a reasonable basis to believe that the respondent has violated subsection (c) of this section.

- d. If the complaint is deemed sufficient to allege a violation of subsection (c) of this section and the Board finds there is a reasonable basis to believe that the respondent has violated subsection (c) of this section, then the Clerk shall notify in writing the City Attorney (or other attorney designated by the City Council) and shall transmit to the attorney the complaint and all additional documents in the custody of the Board concerning the alleged violation, with the Board's request for the filing of appropriate criminal or civil proceedings. The Clerk shall also provide these documents to the respondent's appointing authority within the City with the Board's request for the commencement of appropriate disciplinary action consistent with any applicable collective bargaining agreement, merit system, civil service commission rules or employment regulations of the City.
- e. Sections 2b - 2e of the State Ethics Act, MCL 15.341 et seq. set forth protections for officers and employees who act as whistleblowers regarding the conduct of the City's officers and employees. Additional whistleblower protections are set forth in the Whistleblowers' Protection Act, 1980 PA 469, MCL 15.361 et seq.
- f. Any person who files a complaint alleging a violation of this section 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 civil fine of up to \$500 as well as the reasonable costs incurred by the City in investigating the complaint and the reasonable costs incurred by the Respondent in responding to the complaint.
- g. A complaint must be filed with the Clerk within 60 days of the date the alleged violation is discovered, or reasonably should have been

discovered.

(e) *Sanctions*

- (1) Sanctions shall not be construed to diminish or impair the rights of an officer or employee under the City Charter, any collective bargaining agreement or the merit system, nor the City's obligation to comply with the Charter, collective bargaining agreements.
- (2) State statutes cited in this section contain criminal penalties and civil remedies that apply, as provided in those statutes, to the conduct regulated by those statutes.
- (3) A violation of this section may be punished as a civil infraction by a fine of up to \$100.00.
- (4) In addition to any other penalty, whether criminal or civil, an employee or officer or official who intentionally violates this section may be subject to disciplinary action including censure, reprimand, removal, dismissal or discharge.

**SECTION 2:** Severability Clause

Should any word, phrase, sentence, paragraph, or section of this Ordinance be held invalid or unconstitutional, the remaining provisions of this ordinance shall remain in full force and effect.

**SECTION 3:** Effective Date

This Ordinance shall become effective 30 days following the date of adoption.

**SECTION 4:** Publication

The City Council directs the City Clerk to publish a summary of this ordinance in compliance with Public Act 182 of 1991, as amended, and Section 6.5 of the Berkley City Charter.

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Dan Terbrack  
Mayor

Attest:

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Victoria Mitchell  
City Clerk