

**CITY OF BANGOR
ORDINANCE # 2 5 8
ETHICAL STANDARDS OF CONDUCT**

AN ORDINANCE TO ADD CHAPTER 36: ETHICS TO TITLE III, ADMINISTRATION, CODE OF ORDINANCES, FOR THE CITY OF BANGOR ESTABLISHING A CODE OF ETHICAL STANDARDS OF CONDUCT FOR PUBLIC OFFICIALS AND EMPLOYEES OF THE CITY OF BANGOR THAT IS APPLICABLE TO PERSONS IN MUNICIPAL SERVICE WHETHER COMPENSATED OR NOT AND WHETHER ELECTED, APPOINTED OR HIRED AND TO PRESCRIBE PENALTIES FOR VIOLATIONS.

THE CITY OF BANGOR ORDAINS:

36.10 TITLE

This ordinance shall add Chapter 36 to Title III of the City Code of Ordinances and shall be titled Ethical Standards of Conduct.

36.20 INTERPRETATION

This Chapter shall establish ethical standards of conduct for elected and appointed officials of the City of Bangor whether compensated or not. The standards shall also apply to employees of the City of Bangor whether administrative or appointive, whether compensated by the hour or by salary, and whether members of an employee group or not.

36.30 SEVERABILITY

If any provision or section of this ordinance may later be amended or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provisions or applications.

36.40 REFERENCE TO OTHER SECTIONS

This ordinance, sections of this ordinance, or any of the parts of this amendment take precedence over other sections of this code. The Bangor City Council automatically amends affected sections of this code upon proper adoption, from time to time, of subsequent amendments.

36.50 PUBLIC POLICY DECLARATION

It is hereby declared to be the standard of ethical service to the City of Bangor that all officials and employees avoid conflicts between their private interests and those of the general public whom they serve. To enhance the faith of the people and to assure the integrity and impartiality of all officials and employees of the City, it is necessary that adequate guidelines be provided for

separating their roles as private citizens from their roles as public servants. Elected and appointive office, whether compensated or not, and public employment is a public trust and any effort to realize personal gain through official conduct is a violation of that trust. The ethical standards established herein are intended to eliminate to the fullest extent possible violations of ethical conduct and to ensure that such are investigated and punished where applicable.

36.60 Definitions

As used in this ordinance, the following words and phrases shall have the following meanings:

Agreement – an understanding between two or more persons or entities; a contract

Appointed – selected and installed in an office or position

Associated – the condition of being an owner, partner, member, part owner, employee, limited partner, stock holder, director, lender, borrower, or having a financial interest in

Beneficiary – a person or entity receiving a benefit

Business – commercial or industrial enterprise or establishment, store, etc.; work, employment, profession of an individual or group; commerce

Candidate – someone who seeks or who has been proposed for an office, position, or award

City – the City of Bangor

City employee – an employee of the City of Bangor whether full or part-time, contract or hired

City funds – any funds, money, or monetary rights owned by the city, or under City control in a fiduciary or representative capacity

City officer / official – an officer of the City of Bangor; someone holding an official position of authority with the City; e.g. the clerk, the mayor, the assessor, etc. whether the position is elective, appointive, administrative, contracted or hired and whether compensated or not as established by City Charter or City Ordinance which involves the exercise of a public power, trust or duty. This does not include a volunteer not appointed or elected to office.

City personnel – individuals working for the City of Bangor as employees for wages, salary or other agreed benefits

City Property – anything tangible or intangible including rights, owned by the City or under the control of the City in fiduciary or representative capacity

Compensation – money, property, thing of value or benefit conferred upon or received by any person or sought for any person in return for services rendered for or to be rendered to himself/herself or another

Conflict of interest – an interest that competes with or is adverse to a legitimate interest of the City

Consideration – something given or promised in exchange for something else, tangible or intangible, including promises

Contracts – agreements or mutual understandings supported by present or future consideration

Contribution – money or aid given another

Council – the City Council of the City of Bangor

Decision making – exercising public power to adopt laws, regulations or standards, render decisions, establish policy, determine questions of discretion

During the course of City business – while planning, working on, reporting on, or carrying out the affairs of the City whether for compensation or not

Duty of due care – exercising power, trust, authority or decision making as an prudent person

would exercise; not acting on a direct conflict of interest or a potential conflict of interest to self benefit or the benefit of another

Elected – chosen by the eligible voters of the City

Election fraud – a crime consisting of an intentional act which violates the election laws of the State of Michigan and which act is either designated as fraud by the relevant statute

Employee – a person working for the City for wages, salary, or other benefits and under the control and supervision of the City as to hours, work standards, and rules of work, etc.

Exchange – v. t. – to give in return

Expectation – looking forward to something; a looking forward as due

Favor – an unfair partiality; an obliging act; v.t. to be partial to, to support; advocate; to help

Financial gain – increase in monetary or material wealth or earnings

Gain – an increase in power, advantage, wealth, possessions, earnings

Gift – something given without recompense

Immediate family – spouse, child or step child, mother, father, step-parents, grand parents, step grand parents, brothers, sisters, step-brothers or sisters, or in-laws of any kind

Influence – the power of persons or things to influence others

Interfere – to come between for some purpose; meddle; attempt to determine course or outcome without authority or legitimate purpose

Member – any of the persons constituting an organization or group

Moral turpitude – an act of baseness; vileness or depravity; conduct contrary to honesty, justice or good morals

Officer / official – a person holding office, or position of authority in the City as may be described in the City Charter or by ordinance but not a volunteer not appointed or elected to a position

Official conduct – action or inaction by an officer or employee acting on behalf of the City

Official duty / official action – a decision, action, recommendation, approval, disapproval or other action or failure to action which involves the use of power, trust, decision making, or authority, or with moral turpitude

Other persons / Anyone else – members of ones immediate family or individual persons, or businesses, entities, associations, or groups

Personal gain – advantage or increase in wealth, possessions, power or other benefits for an individual or on behalf of another individual

Potential conflict of interest – a situation whereby the interests of the City and the interests of someone else will, may, or might become in conflict in the ordinary course of events

Promise – an agreement to do or not do something

Reward – something given for something done

Rules of ethical conduct – the provisions of this ordinance

Solicit – to ask or seek; often earnestly; to entice another to do something

36.70 STANDARDS OF CONDUCT

The City's integrity rests solidly on the foundation of several general rules of ethical behavior. These rules form fundamental values to be understood and honored by all.

1. Principles

The City expects its candidates, officers, officials and employees to be honest, to tell the truth, and to 'play by the rules.' The City expects its candidates, officers, officials and employees to be

aware the first small step taken that undermines ones integrity or the integrity of the City usually leads to another and another. In a short time, without having done anything major, integrity is compromised.

2. Honesty

The City expects its candidates, officers, officials and employees to not misrepresent situations, to not steal from the City, not falsify records, or misuse City property, equipment, supplies or assets for personal gain or benefit or for the gain or benefit of others.

3. Fairness

The City expects its candidates, officers, officials and employees to treat each other and everyone else with evenhandedness, fairness and sincerity.

4. Perception

The City expects its candidates, officers, officials and employees to act in such a way as to create the perception that he, she, and the City is acting fairly, honestly, and evenhandedly without partiality, favoritism, or dishonesty. The City expects its candidates, officers, officials and employees to avoid the appearance of impropriety, that behavior which suggests he, she or the City is acting questionably.

5. Spirit of the Law

The City expects its candidates, officers, officials and employees to honor the spirit of the law as well as the letter of the law.

6. Direction and Suggestion

The City expects its candidates, officers, officials and employees to understand that no improper action is made proper because a higher officer, official, or employee might have directed or suggested the action.

7. Gray Areas

Recognizing that there are times when City candidates, officers, officials and employees confront situations where there are two or more legitimate points of view, where there is no clear right or wrong answer, and that past practices have given way to new practices. It is in these situations the City expects its candidates, officers, officials and employees to be particularly careful and give thorough examination and thought before taking action or making decisions.

36.80 PROHIBITED ACTS

The following acts, actions, inactions, and attempted acts and actions constitute a violation of the ethical standards of conduct for city officials, officers and employees. These include but are not necessarily limited to these specific references but, rather, are intended as providing examples of actions and inactions that are prohibited by this ordinance.

1. Gratuities

No city officer, official or employee of the City shall solicit, accept or receive, directly or indirectly, any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it can

reasonably be inferred that the gift is intended to influence him or her in the performance of their official duty/duties or is intended as a reward for any official action on their part.

2. Preferential Treatment

No city officer, official or employee of the City shall use or attempt to use their official position to unreasonably secure, request or grant, any privileges, exemptions, advantages, contracts, or preferential treatment for themselves or others.

3. Use of Information

A) No city officer, official or employee of the City who acquires information in the course of their official duties, which information by law or policy is not available at the time to the general public, shall use such information to further the private interests of themselves or anyone else.

B) No city officer, official or employee of the City shall obtain or use City records, documents, communications, or others written or electronic records of the City or those under the control of the City to further the private interests of themselves or anyone else.

C) No city officer, official or employee of the City shall use their position to obtain information or records, which information or records by law or policy is not available at the time to the general public without requesting such information or records through the methods granted by the Freedom of Information Act.

4. Full Disclosure

No city officer, official or employee of the City shall participate, as an agent or representative of the City, in approving or disapproving, voting, abstaining from voting, recommending or otherwise acting upon any matter in which he or she has a direct or indirect interest without disclosing the full nature and extent of their interest. Such a disclosure must be made before the time to perform their duty or concurrently with that performance. If the officer, official or employee is a member of a decision making or advisory body, the disclosure must be made to the Chairman and other members of the body on the official record. Otherwise, a disclosure would be appropriately addressed by an appointed officer or employee to the supervisory head of the organization, or by an elected officer to the general public.

5. Use of City Property

No city officer, official or employee of the City shall, directly or indirectly, make use of or permit others to make use of City property, equipment, vehicles, or supplies of any kind for purely personal gain.

6. Other Prohibited Conduct

No city officer, official or employee of the City shall engage in any of the practices described below in list form. The following acts, actions, inactions, and attempted acts and actions constitute a violation of the ethical standards of conduct for city officials, officers and employees. These include but are not necessarily limited to these specific references but, rather, are intended as providing examples of actions and inactions that are prohibited by this ordinance, if not the Charter and labor agreements. They include:

1. Impeding government efficiency or operation.
2. Affecting adversely the confidence of the public in the integrity of the City.

3. Interfering on behalf of an employee or a member of one's immediate family.
4. Divulging confidential information.
5. Misusing City personnel resources, property, funds or assets for personal gain or the gain of others.
6. Representing his or her individual opinion as that of the City.
7. Violating labor agreements between the City and its employees.
8. Violating policies adopted by the City Council.
9. Engaging in a business transaction that cause the candidate, officer, official or employee to derive a personal gain.
10. Engaging in employment or rendering services that are incompatible or in conflict with the discharge of his or her official duties.
11. Offering a candidate, officer, official or employee of the City a gift, loan, contribution, reward or promise based on agreement, promise, or expectation that the vote, decision making or action of the candidate, officer, official or employee of the City would be influenced thereby.
12. Engaging in an act, actions or other conduct contrary to honesty, justice or good morals; or an act or actions of moral turpitude.
13. Acting on behalf of the City or on the behalf of the City Council when authority has not been specifically given.
14. Making a city decision outside of the official channels.
15. Soliciting support, financial or material, for City social, athletic, or recreational parties from individuals or firms that do business with the City or want to.
16. Appearing before City bodies on behalf of a private interest.
17. Participating in decision making affecting the interest of ones business or immediate family. The decision making may include monetary decisions, labor agreements, or other decisions that impact ones business and/or immediate family.
18. Missing in attendance from three consecutive regularly called meetings at which the attendance of the city officer, or official is required and know as part of the duties of such city officer, or official.

36.90 EXCLUSIONS

This ordinance is not intended to cover the following.

A) This ordinance shall not prohibit a city officer, official, candidate or employee from accepting minor gifts such as meals, awards, pens, pencils, and other token items valued at \$25 or less when the gift is extended during the course of city business and no return promise is made by the recipient.

B) This ordinance shall not prevent any officer, official or employee from accepting their regular compensation.

C) This ordinance does not prohibit the expression of views and opinions or communications of plans for future action, nor does it prohibit contributions to political parties or candidates as permitted by law.

D) This ordinance shall not apply to a City officer, official or employee who in the course of decision making discloses a direct or indirect conflict of interest or potential conflict of interest in any matter before the City Council, advisory board or commission and is permitted to continue participating in the decision making.

E) This ordinance shall not prohibit the city manager, city attorney and all law enforcement officials from exercising their usual power, control and discretion which are part of their duties.

F) This ordinance shall not prohibit the Mayor and city council from making policy decisions, enacting legislation, and directing the affairs of the city in accordance with their legal powers and responsibilities as provided in the City Charter or State statutes.

G) This ordinance shall not be enforced to cause any person to be favored or discriminated against because of race, gender, age, handicap, religion, country of origin or political affiliation.

36.100 INTEGRITY, REPUTATION AND THE ABILITY TO ENFORCE STANDARDS

Preserving the integrity of the City of Bangor is important to all officers, officials and employees of the City. Fairness, honesty, evenhandedness, and sincerity, a kind that transcends both the law and the values of individuals are achieved by observing an overriding set of ethical standards. Integrity is also preserved by recognizing, at times, complaints of questionable actions of City officers, officials and employees and others need to be handled with the same fairness, honesty, evenhandedness and sincerity. A City's reputation and its overall success are securely linked. The City of Bangor's reputation, obviously, is based on more than the collective reputations of its employees and officials. The City's reputation depends on how people perceive that the city, whatever the issue or set of circumstances, will act with integrity. Preserving the integrity of the City may result in official action to enforce and punish violations of the Ethical Standards of Conduct.

1. Controlling Authorities

All matters concerning the Ethical Standards of Conduct shall be directed to one of two controlling authorities depending upon employment status of the person or group involved. The request may be made by the individual or any City candidate, officer, official, or employee. There are two different controlling authorities depending upon whose request, act or action the controlling authority is reviewing.

A) Requests to investigate or take action to enforce the Ethical Standards of Conduct regarding elected and appointed City officers and officials or candidates for elective or appointive office shall go to the Mayor, City Council and City Attorney.

1) Should the request involve a member of the City council, that member shall not be a part of the controlling authority.

B) Requests to investigate or take action to enforce the Ethical Standards of Conduct regarding employees of the City shall go to the City Manager and City Attorney.

1) Should the request involve the City Manager or the City Attorney, the Mayor shall name a replacement to serve on the controlling authority for that request.

2. Authority to Render Advisory Opinions

The above listed authorities may issue written advisory opinions, when deemed appropriate, interpreting the Ethical Standards of Conduct ordinance as set forth herein. Any City officer,

official, employee may seek guidance from the controlling authority upon written request on questions directly relating to the propriety of their conduct as officers, officials and employees. Each written request and advisory opinion shall be confidential unless released by the requester.

3. Authority to Punish Violations

The above listed authorities shall take appropriate action upon any complaint, request for information, or otherwise resolve matters concerning the Ethical Standards of Conduct ordinance for the City of Bangor. Except for direct references that may be provided by City Charter or labor agreements controlling any action either authority above may take or except as either may establish an action that either authority may take, both authorities are herein empowered to take and enforce actions, as they deem appropriate. The appropriate action to be taken in any individual case shall be at the sole discretion of the controlling authority involved which may include but is not necessarily limited to any of the following:

- A) Referral of the matter to a higher authority.
- B) Pursuing further investigation by the controlling authority.
- C) Deeming no action to be required.
- D) Pursuing such other course of action which is reasonable, just and appropriate under the circumstances.
- E) Taking appropriate disciplinary action, including declaring a forfeiture of office and removal from office, appointed position or employment whether or not the removal of office is directly referenced by City Charter or by labor agreement but is referenced by this ordinance.
 - 1) If the violation is for an offense also contained in the City Charter and is one which the Charter determines is punished by removal, the process for removal from office is the same as the process in the City Charter.
 - 2) If the violation is for an offense also contained in labor agreements between the City and its employees, then the process for removal is the same as contained in the labor agreements.
 - 3) If the violation is for an offense contained in this ordinance and for which the controlling authority recommends the forfeiture and removal from office, whether elective, or appointive or from a position as an employee, then the process contained herein is the process that is followed.

4. Advisory Opinions

Any City candidate, officer, official, or employee of the City of Bangor may seek advisory opinions. Advisory opinions may include guidance to any candidate, officer, official, or employee. Request for an advisory opinion shall be made in writing and provide as much detail as possible. The controlling authority may investigate as it deems appropriate and with regard to due process and the rights of individuals as established in State and Federal laws. The controlling authority may take as much time as it deems necessary before rendering its opinion provided that all attempts to satisfy the request in a timely manner are made. The controlling authority shall issue its advisory opinions in writing. The advisory opinion shall be confidential and shall not be released to anyone or any entity unless the person making the request releases the opinion.

36.110 REVIEW PROCESS

1. Determination to Proceed

The controlling authority shall first make a determination to proceed. Any City candidate, officer, official, or employee of the City of Bangor may request that the controlling authority review, investigate and recommend action regarding alleged violations of the City of Bangor Ethical Standards of Conduct ordinance. Such requests shall be in writing. The controlling authority may decide to review, investigate and recommend action regarding alleged violations of the City of Bangor Ethical Standards of Conduct ordinance on their own determination or at the request of other persons. All decisions to review, investigate and recommend action shall first be made in writing.

2. Duty of Due Care

The controlling authority shall be entitled to proceed as it deems necessary and appropriate. The controlling authority shall conduct itself in a manner so as to be thorough, complete and proceed in a reasonable and prudent manner protecting the rights of individuals.

3. Recommendation for Punishment

Any candidate, officer, official or employee, for whom the controlling authority recommends punishment, shall be entitled to a hearing before the controlling authority as herein determined.

A) The controlling authority shall notify, in writing, the affected candidate, officer, official or employee of the charges that the controlling authority is basing its recommendation of punishment.

B) The candidate, officer, official or employee shall have the opportunity to a hearing before the controlling authority.

C) The candidate, officer, official or employee shall notify the controlling authority, in writing, that it wishes to be present at a hearing and whether or not legal counsel will attend as well as any witnesses the candidate, officer, official or employee plans to call.

D) The hearing shall be scheduled within 30 days of the notification of the recommendation for punishment. The hearing shall be closed to the public unless the candidate, officer, official or employee selects to have the hearing open to the public.

E) Minutes of the hearing shall be kept and held by the City Attorney for at least 12 months after which they may be destroyed.

F) Following the hearing, the controlling authority shall decide to:

- 1) Hold the recommendation for further review and investigation,
- 2) Amend its previous recommendation and determine punishment,
- 3) Reject its previous recommendation altogether and take new action or determine to take no punitive action, or
- 4) Proceed with its previous recommendation and take punitive action.

G) Any punitive action recommended by the controlling authority shall be forwarded to the City Council which shall vote on the recommendation for punitive action at its next regularly scheduled meeting of the City Council. At that meeting, the City Council, less any member for whom the punitive action is recommended, a majority of those members remaining shall vote to accept, to reject or to send the recommendation back to the controlling authority.

H) If the recommendation of either the controlling authority, as in 36.110, 3, F) 1), or the City Council, as in 36.110, 3, G, is to result in further review and investigation of the controlling authority, the process in 36.110 shall begin anew.

I) If the recommendation of the controlling authority is accepted by the City Council, its effect is binding and immediate and the candidate, officer, official or employee has been deemed guilty of a violation of the Ethical Standards of Conduct ordinance offending all persons, the City Council, boards, and commissions, of the City of Bangor.

36.120 VIOLATIONS OF ORDINANCE

Punitive action recommended by the controlling authority and adopted by the City Council shall be findings of violations of this Ordinance whether or not a court of competent jurisdiction has also found a violation of the Ordinance. While the City Council may find a person or persons guilty of misconduct and take punitive action against the guilty party, including removal of office, only a court of competent jurisdiction may convict a person for violations of this ordinance. Every person convicted of a violation of this ordinance, by a court of competent jurisdiction, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00) or by a sentence of not more than 93 days in jail, or both, at the discretion of the court.

36.130 EFFECTIVE DATE

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

36.140 RECORD OF ADOPTION

This ordinance was voted upon at a regular meeting of the City Council on January 7, 2002.

AYES: P. Wiles, D. Foot, R. Freislinger, M.L. Garcia, N. Johnson

NAYES: R. Sutherby

PRESENTED: December 3, 2001, December 17, 2001 and January 7, 2002

ADOPTED: January 7, 2002

PUBLISHED: January 14, 2002

EFFECTIVE DATE: February 15, 2002

CERTIFICATION

I, Adeline Starks, the duly appointed Clerk of the City of Bangor, do hereby certify that the above is a true and exact copy of a Resolution, passed by the Bangor City Council, on January 7, 2002, the original of which is on file at the Bangor City Hall

Adeline Starks, City Clerk