

**PEAINE TOWNSHIP
CONFLICTS OF INTEREST POLICY**

Policy No. 2020-_____

SECTION ONE - PURPOSE AND DEFINITIONS:

Section 1-1 Purpose. The Township Board recognizes the public's faith and trust in government is eroded when an employee or board or commission members acts in their official capacity when there is a conflict of interest. The purpose of this policy is to establish guidelines for standards of conduct, which shall govern the performance of the Township Board and the employees and appointed boards and commissions of the Township in the conduct of Township business to prevent potential conflicts of interest. The Township Board further recognizes the public's faith and trust in government is eroded when an employee and board or commission member acts in their official capacity where there is not only an actual conflict of interest, but an appearance of a conflict of interest. Therefore, although this policy prescribes conduct that is an actual conflict of interest, a Township employee and board or commission member should interpret this policy broadly in the conduct of their Township business and in their official capacity to avoid the appearance of any conflict of interest by a Township employee and board or commission member.

Section 1 - 2. Definitions.

"Employee" means a person employed by the Township, whether on a full-time or part-time basis.

"Gift" means any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, travel, lodging, and honoraria for speaking engagements related to or attributable to government employment or the official position of an officer or employee.

"Government contract" means a contract in which the Township 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 Township.

"Governmental decision" means a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, Policy, or measure on which a vote by the members of a board or commission is required and by which the board or commission formulates or effectuates public policy or serves its purpose and function for the Township.

"Officer or Official" means a person who holds office by election or appointment within the Township, regardless of whether the officer is compensated for service, in his or her official capacity.

"Official action" means a decision, recommendation, approval, disapproval or other action or failure to act which involves the use of discretionary authority.

"Prohibited source" means any person or entity who:

(1) is seeking official action (i) by an officer or (ii) by an employee, or by the officer or another employee directing that employee;

(2) 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;

(3) conducts activities regulated (i) by the officer or (ii) by an employee, or by the officer or another employee directing that employee; or

(4) has interests that may be substantially affected by the performance or non-performance of the official duties of the officer or employee.

SECTION TWO – STANDARDS OF CONDUCT

Section 2 – 1. Gift Ban. Except as permitted by this Policy, no officer or employee of the Township shall intentionally solicit or accept any gift from any prohibited source or which is otherwise prohibited by law or Policy.

Section 2 – 2. Exception to Gift Ban. Section 2 – 1 is not applicable to the following:

(1) Opportunities, benefits, and services that are available on the same conditions as for the general public.

(2) Anything for which the officer or employee pays the fair market value.

(3) Any contribution that is lawfully made under the Campaign Finance Laws of the State of Michigan.

(4) 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.

(5) Anything provided by an individual on the basis of a personal friendship unless the recipient has reason to believe that, under the circumstances, the gift was provided because of the official position 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.

(6) Food or refreshments not exceeding \$15.00 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.

(7) 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 similar circumstances.

(8) Intra-governmental and inter-governmental gifts. For the purpose of this policy, "intra-governmental gift" means any gift given to an officer or employee from another officer or employee of the Township, and "inter-governmental gift" means any gift given to an officer or employee by an officer or employee of another governmental entity.

(9) Bequests, inheritances, and other transfers at death.

(10) Any item or items from any one prohibited source during any calendar year having a cumulative total value of less than \$50.00.

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

Section 2 – 3. Disposition of gifts. An officer or employee does not violate this Policy if he or she promptly takes reasonable action to return a gift from a prohibited source.

Section 2 – 4. Confidential Information. A public officer or employee shall not divulge to an unauthorized person, confidential information acquired in the course of employment or in their official capacity in advance of the time prescribed by the Township or the board or commission to which the confidential information was provided for its authorized release to the public.

Section 2 – 5. Personal Opinion. An officer or employee shall not represent his or her personal opinion as that of the Township nor shall an officer or employee allow their personal opinions to influence their official actions. All governmental decisions shall be based on the available facts and the policies of the Township and other applicable guidelines, rules or statutes and independent judgment irrespective of the employee or officer's personal opinion or the influence of individuals or special interest groups.

Section 2 – 6. Use of Public Resources. An officer or employee shall use their official position and Township resources, property, and funds under the officer'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.

Section 2 – 7. Personal Profit or Gain Prohibited. A public officer or employee shall not engage in a business transaction in which the public officer or employee or the officer or employee’s family members 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.

Section 2 – 8. Incompatibility and Other Conflicts of Interest. Except as otherwise provided in Const 1963, statute, or in Section 2 - 10, an officer 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 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.

Section 2 – 9. Personal and Financial Interests. Except as provided in Section 2 – 10, an officer 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 or employee has a financial or personal interest.

Section 2 – 10. Contractual Conflicts of Interest. The state law that governs conflicts of interests with respect to contracts is the Contracts of Public Servants with Public Entities Act, MCL 15.321 et seq, (the “Act”). The Act generally prohibits a board or commission member from being a party, directly or indirectly, to any contract between himself or herself and the Township. MCL 15.322. Subsection (2)(b) of the Act further prohibits a board or commission member from participating in any contract, including the approval of a contract, between the Township and

- (a) Him or herself.
- (b) Any firm, meaning a co-partnership or other unincorporated association, of which he or she is a partner, member, or employee.
- (c) Any private corporation in which he or she is a stockholder owning more than 1% of the total outstanding stock of any class if the stock is not listed on a stock exchange, or stock with a present total market value in excess of \$25,000.00 if the stock is listed on a stock exchange or of which he or she is a director, officer, or employee.
- (d) Any trust of which he or she is a beneficiary or trustee.

1. Disclosure Required. Unless the employee or board member making the disclosure will directly benefit from the contract in an amount less than \$250.00 and less than 5% of the public cost of the contract and the public servant files a sworn affidavit to that effect with the Township Board or the contract is for emergency repairs or services, disclosure shall be made in the following manner:

A. If a Township board or commission member’s interest in the contract is greater than \$5,000, disclosure of the conflict and the nature of the conflict must be given at a public meeting at least 7 days before the meeting at which the board or commission votes on the contract. The minutes of the meeting should reflect the disclosure made along with the nature of the pecuniary interest of the member.

B. If a Township board or commission member's interest in the contract is less than \$5,000, the member may either give notice at a public meeting as set forth in Section 3. A or as follows:

a. Provide written disclosure of the conflict and the nature of the conflict to the Supervisor if the contract is to be approved by the Township Board or the chair of the board or commission entering into the contract or, if the conflicted individual is the Supervisor or chair, the Clerk or secretary at least 7 days before the meeting at which the board or commission will vote on the contract.

b. The written disclosure must be included in the notice of the public meeting at which the contract is to be voted on and shall be made part of the minutes of the meeting at which the contract is voted on as well as the nature of the pecuniary interest of the member.

c. Form of Disclosure. The following form of disclosure is suggested:

I, _____, make the following disclosure pursuant to the Contracts of Public Servants with Public Entities Act: "Township may be entering into a contract with _____ and I [describe the interest that member has that makes the Act apply for example "am a board member of _____"]. I have a pecuniary interest and I will be abstaining from deliberation and voting on the contract.

2. Procedure:

a. A board or commission member that has a conflict under the Act shall not take part in negotiating the contract, representing either party in the transaction, soliciting the contract, or deliberating and voting on the contract.

b. The contract shall be approved by a vote of not less than 2/3 of the full membership of the board or commission entering into the contract in open session without the vote of the member making the disclosure.

c. The minutes of the meeting at which a disclosure occurs shall reflect both the disclosure as provided in 1.A or 1.B as well as the contents of the contract at issue, including the duration, financial consideration for the contract, facilities or services of the Township included in the contract, and the nature and degree of assignment of employees of the Township for fulfillment of the contract.

Section 2 – 11. Representation Before Governmental Body.

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

Section 2-12 – Manner of Communication in Official Capacity.

An official or employee of the Township shall treat every person with dignity and respect while acting in their Official capacity for the Township.

Section 2 - 12. Transactional Disclosure. Whenever an officer or employee recuses themselves to avoid a conflict of interest under this Policy, they:

- (a) shall immediately refrain from participating further in the matter, and
- (b) shall promptly inform his or her superior, if any.

Section 2-13. Contracts Not Void or Voidable.

A contract in respect to which a public officer or employee acts in violation of this Policy, shall not be considered to be void or voidable unless the contract is a violation of a statute which specifically provides for the remedy

SECTION THREE – FILING AND DISPOSITION OF COMPLAINTS

Section 3 – 1. As deemed appropriate and within its discretion, the Township Board may:

(1) Upon receipt of a signed, notarized, written complaint against an officer or employee alleging a violation of Section Two, investigate, conduct hearings or deliberations concerning the complaint.

(2) Receive information from the public pertaining to its investigations and seek additional information and documents from officers and employees of the Township.

(3) Request the 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 Township to cooperate with the Township Board or its designated agents during the course of its investigations. Failure or refusal to cooperate with requests by the Township Board or its designated agents shall constitute grounds for sanctions as set forth in Section Four for a violation of this Policy.

Section 3 – 2.

(a) Complaints alleging a violation of this Policy shall be filed with the Clerk of the Township.

(b) Within five (5) 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 five (5) business days after receipt by the Clerk of a complaint, the Clerk shall send a notice of confirmation of receipt of the complaint together with a copy 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 Township Board's review of the complaint to determine the sufficiency of the complaint and whether probable cause exists to conduct an investigation to determine whether the respondent named in the complaint violated Section Two of this Policy. The Clerk shall also concurrently send copies of the complaint and notices to the members of the Township Board. The complainant and the respondent may be represented by counsel during the Township Board's review.

(c) If the Township Board determines that the complaint is sufficient and probable cause exists to conduct an investigation to determine whether the respondent violated Section Two of this Policy, the investigation may be conducted by the Township Board or a person or entity appointed by the Township Board utilizing the investigatory powers of the Board as set forth in this Policy. The complainant and respondent may be represented by counsel during the investigation. In the event that an investigation is conducted, within a reasonable period of time after the completion of the investigation, the Township Board shall issue notice to the complainant and the respondent of whether the investigation has established by the preponderance of the evidence that the respondent has or has not violated Section Two of this Policy.

If the investigation establishes by a preponderance of the evidence that the respondent has violated Section Two of this Policy, then the Clerk shall notify in writing the complainant and the respondent of a hearing to determine the appropriate disciplinary action consistent with any applicable laws, rules, or regulations. The respondent may be represented by counsel at the hearing.

(d) No employee or member of any board or commission of the Township shall retaliate against any person who submits a complaint under this Policy or participates in any investigation conducted under this Policy. Retaliation by an employee or board or commission member contrary to this section shall be grounds for sanctions for a violation of this Policy as set forth in Section Four.

(e) Any officer or employee of the Township who files a complaint alleging a violation of this Policy knowing that material information provided therein is not true or that information provided therein was made in reckless disregard for the truth is a violation of this Policy and may be grounds for sanctions as set forth in Section Four.

(f) A complaint under this Policy must be filed with the Clerk within six (6) months of the date the violation of this Policy is alleged to have occurred.

SECTION FOUR – SANCTIONS

Section 4 – 1. Sanctions shall not be construed to diminish or impair the rights of an officer or employee under laws, rules, or regulations.

Section 4 – 2. A violation of this Policy is cause for disciplinary action including any one or more of the following: censure, reprimand, removal, dismissal or discharge and in the case of an elected officer of the Township, charges to be filed with the Governor for removal pursuant to MCL 168.369. A member of any of the Township's appointed board or commissions shall only be removed as set forth in the applicable act authorizing the creation of the board or commission if the applicable act provides for a process and procedure for removal.