

VILLAGE OF BERRIEN SPRINGS  
BERRIEN COUNTY, MICHIGAN  
ORDINANCE NUMBER 375

An Ordinance to add Chapter 48, "Ethics" to the Village of Berrien Springs Code of Ordinances. The Village of Berrien Springs ordains:

A new Chapter 48, entitled "Ethics" is added to the Code of Ordinances for the Village as follows:

**ARTICLE I**

**Sec. 48-1 Public Policy.**

Public office is a public trust. For government to operate properly, each Village official must earn and honor the public trust by integrity and conduct.

The Village hereby declares that all Village Officials must avoid conflicts between their private interests and the public interest. Public Officials must:

- (1) Be independent, impartial and responsible to the people;
- (2) Make governmental decisions and policy in the proper governmental channels; and
- (3) Not use public office for personal gain.

To enhance public trust, the Village must provide its Public Officials with adequate guidelines for separating their roles as private citizens from their roles as public servants.

This Code sets minimum standard of ethical conduct for all Village Officials, elected or appointed, paid or unpaid. It proscribes actions incompatible with the public interest and directs disclosure of private financial or other interests in matters affecting the Village.

**ARTICLE II**

**Sec. 48-2 Responsibilities of Public Office.**

Village Officials are bound to uphold the Constitution of the United States and the Constitution of the State and to carry out impartially and comply with the laws of the nation, state, and the Village. Village Officials must not exceed their authority or breach the law or ask others to do so. Village Officials are bound to observe in their official acts the highest standards of ethical conduct and to discharge the duties of their offices

faithfully, regardless of personal consideration, recognizing that their official conduct should be above reproach.

All Village Officials shall safeguard public confidence by being honest, fair and respectful of all persons and property with whom they have contact, by maintaining non-partisanship in all official acts, and by avoiding official conduct which may tend to undermine respect for Village Officials and for the Village as an institution.

### **ARTICLE III**

#### **Sec. 48-3 Definitions.**

“Village Official” or “Public Official” means a person who holds office by election or by appointment serving in any capacity with the Village in any position established by the General Law Village Act or by Village ordinance, which involves the exercise of a public power, trust or duty. The term includes all officials of the Village, whether or not they receive compensation, and persons who serve on advisory boards and commissions. The term does not include Village inspectors and student representatives appointed to Village boards or commissions.

Compensation means any money, property, thing of value or benefit conferred upon or received by any person in return for services rendered or to be rendered to himself or herself or any other party.

Financial interest means any interest in money, property or thing of value or benefit.

Immediate Family means a Village Official, his or her spouse, children, step-children, by blood or adoption, who resides with the Village Official.

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

Personal interest means an interest arising from blood or marriage relationships or any business association.

Private gain means any interest or benefit, in any form, received by a Village Official.

Substantial shall mean considerable in quantity or significantly great.

## ARTICLE IV

### Sec. 48-4 Intention of Code.

It is the intention of Section 48-6 below that Village Officials avoid any action, whether or not specifically prohibited by Section 48-6, which might result in or create the appearance of:

- (1) Using public employment of office for private gain;
- (2) Giving or accepting preferential treatment, including the use of Village property or information, to or from any organization or person;
- (3) Losing complete independence or impartiality of action;
- (4) Making a Village decision outside official channels; or
- (5) Affecting adversely the confidence of the public or the integrity of the Village government.

The code of ethics is intended to be preventative and not punitive. It should not be construed to interfere with or abrogate in any way the provisions of any federal or state statutes, the General Law Village Act, the Village ordinances, or any rights and/or remedies guaranteed under a collective bargaining agreement.

This declaration of policy is not intended to apply to contributions to political campaigns, which are governed by state law.

## ARTICLE V

### Sec. 48 – 6 Promulgation.

#### A. Conflict of Interest – General

- (1) No Public Official of the Village shall divulge to any unauthorized person, confidential information acquired in the course of employment in advance of the time prescribed for its authorized release to the public.
- (2) No Public Official of the Village shall represent his or her personal opinion as that of the Village
- (3) Every Public Official of the Village shall use personnel resources, property and funds under his or her official care and control solely in accordance with prescribed constitutional, statutory and regulatory procedures and not for personal gain or benefit.
- (4) No Public Official of the Village shall directly or indirectly, solicit or accept any gift or loan of money, goods, services or other thing of value for the benefit of any person or organization, other than the Village, which tends to

influence the manner in which the Public Official or any other official or employee performs his or her official duties.

Gratuities do not include fees for speeches or published works on legislative subjects and, except in connection therewith for reimbursement of expenses for actual expenditures for travel, and reasonable subsistence, for which no payment or reimbursement is made by the Village, invitations to such events as ground breakings, grand openings, charitable or civic events.

- (5) No Public Official of the Village shall engage in a business transaction in which he or she may profit because of his or her official position or authority or benefit financially from confidential information which he or she has obtained or may obtain by reason of such position or authority.
- (6) No Public Official of the Village shall engage in or accept employment or render services for any private or public interest when that employment or service is incompatible with or in conflict with the discharge of his or her official duties or when that employment may tend to impair his or her independence of judgment or action in the performance of his or her official duties.

This section shall not prohibit a part-time elected or appointed Village Official from engaging in private employment or business on his or her own time as a private citizen and where Village business is not involved, subject to his or her disclosing such private employment or business on the public record for any matter on which he or she may be called upon to act in his or her official capacity, in accordance with Section 48-8 below. He or she shall refrain from voting upon or otherwise participating in debate on any such matter.

- (7) No Public Official of the Village shall participate, as an agent or representative of the Village, in the negotiation or execution of contracts, granting of subsidies, fixing of rates, issuance of permits or certificates, or other regulation or supervision, relating to any business entity in which he or she has, directly or indirectly, a financial or personal interest.
- (8) No Public Official of the Village shall use, or attempt to use, his or her official position to secure, request or grant unreasonably any special consideration, privilege, exemption, advantage, contract or preferential treatment for himself, herself, or others, beyond that which is available to every other citizen.
- (9) Determination of conflict of interest. A conflict of interest exists if:
  - a. The Village Public Official has any financial or personal interest, beyond ownership of his or her place of residence, in the outcome of a matter currently before that Village Public Official, or is associated as owner, member, partner, officer, employee, broker or stockholder in an enterprise that will be affected by the outcome of such matter, and such interest is or may be adverse to the public interest in the proper performance of said Public Official's governmental duties, or;

- b. The Village Official has reason to believe or expect that he or she will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of his or her official activity, or;
  - c. The Public Official has any other prohibited interest as defined by state statutes relating to conflicts of interest.
- (10) Subsequent conflict of interest. No Public Official of the Village shall acquire any financial interest in or accept any employment concerning any project which has been granted approval by the Village or any commission, board, department or employee thereof within one year of the official's or employee's participation in any manner in considering or recommending the approval or disapproval of said project.

B. Full Disclosure

- (1) Responsibility to disclose. It shall be the responsibility of the Public Official to disclose the full nature and extent of his or her direct or indirect financial or personal interest in a matter before him or her.

No Public Official of the Village shall participate, as an agent or representative of the Village, in approving, disapproving, voting, debating, recommending or otherwise acting upon any matter in which he or she has directly or indirectly a financial or personal interest. The Public Official shall, in such circumstances, recuse himself or herself from the matter before him or her.

- (2) Disclosure of conflict of interest and disqualification.

a. Any Village Official who has a conflict of interest, as defined herein, in any matter before the Village shall disclose such fact on the appropriate record of the Village prior to discussion or action thereon and shall refrain from participating in any discussion, voting or action thereon, as follows, provided that such exceptions shall be observed as are permitted by law:

1. A Village council member shall disclose any conflict of interest and the nature and extent of such interest on the record of the Village council;
2. A member of any Village council, commission or committee shall disclose any conflict of interest and the nature and
3. A Village Official who has a financial or other interest in a matter before the Village council or any Village board, commission or committee and who participates in discussion with, or gives an official opinion to the Village council, or to such other Village board, commission or committee relating to such matter, shall disclose on the records of the Village council or such other Village board, commission or committee, as the case may be, any conflict of interest and the nature and extent of such interest.

4. Otherwise, any appointed Village Official shall address such a disclosure to the supervisory head of his or her department, and any elected Village Official shall address such a disclosure to the general public.
- b. If a Village Official who has a conflict of interest, as defined herein, in any matter before the Village, and who discloses that conflict on the appropriate records but who refuses to refrain from discussion, deliberation or voting thereon, the matter under consideration shall be immediately referred to the board of ethics for a final determination as to the conflict in question and whether the official, commissioner or employee must refrain from discussion, deliberation, action or voting thereon.
- c. Within 20 days after election, appointment, or the effective date of this ordinance, or any change in the facts set forth in the Village Official's previously filed disclosure statement, each Village Official shall file with the Village clerk an affidavit and disclosure statement. The Village clerk shall provide each Village Official with the required affidavit and disclosure statement form immediately upon his or her election or appointment.
- d. The effective date for this ordinance shall be upon publication.

## **ARTICLE VI**

### **Sec. 48 – 7 Violation, enforcement and advisory opinions.**

#### **A. Board of Ethics**

- (1) The Village council shall appoint a board of ethics, consisting of three members, as an advisory body for the purpose of interpreting this code of ethics.
- (2) The initial three members of the board of ethics shall be appointed for one-, two-, and three-year terms of office respectively, which shall begin on July 1, 2020. If appointed prior to July 1, 2020, they shall begin their terms of office immediately and their terms shall include the additional time prior to July 1st. Terms of office shall expire on June 30th of the respective years.  

Thereafter, all members shall be appointed to three-year terms, beginning July 1, so that only one member's term expires each year. A member shall hold office until his or her successor is appointed. The Village Council shall fill a vacancy by an appointment for the unexpired term only.
- (3) The board of ethics shall be made up of Village Council Members who have legal, administrative or other desirable qualifications.
  - a. The members of the board of ethics shall serve without compensation.

- b. The board shall select its own presiding officer from among its members.
  - c. The board shall establish such procedures it deems necessary or appropriate to perform its functions as set forth in this article.
- (4) Should an individual serving on the Board of Ethics be subject to an investigation regarding an alleged ethics violation, they will be required to step down as a member of the Board of Ethics and the Village Council will appoint another Village Council member to fulfill his or her term.

**B. Functions of the Board of Ethics.** When there is a question or complaint as to the applicability of any provision of this code to a particular situation, that question or complaint shall be directed to the board of ethics. It shall then be the function of the board of ethics to conduct hearings and/or issue an advisory opinion as applicable.

- (1) Hearings. The board of ethics shall follow the following hearing procedure:
- a. The board shall, within seven days after any matter is brought to its attention, set a date certain for hearing said matter.
  - b. The board shall, at least 28 days before the hearing date, send notice of such hearing, accompanied by a concise statement of the alleged breach of this code of ethics, to any person requested to appear before them, by certified mail, return receipt requested, to addressee only.
  - c. Any person requested to appear before a board of ethics hearing may request one extension for a period not to exceed 28 days. Extensions thereafter will be granted only under extreme circumstances.
  - d. Any person requested to appear before a board of ethics hearing may be accompanied by his or her attorney.
  - e. All hearings at which any person shall be requested to appear shall be subject to the Open Meetings Act.
  - f. All findings of board hearings shall be published in permanent form and communicated to the Village council and the public, subject to the requirements of the Open Meetings Act.
- (2) Advisory opinions. All advisory opinions so issued shall also be published in permanent form and communicated to the Village Council, subject to the requirements of the Open Meetings Act.
- (3) After the board of ethics' advisory opinions and/or hearing findings have been published:

- a. The Village council shall be responsible for imposing any sanction for a violation of this Code on one of its members or any person appointed by the Council to any Village board.
- b. If it becomes necessary to seek the removal of a Village Official after the board of ethics' advisory opinion and/or hearing findings, the Village shall follow the requirements for removal of a Public Official in accordance with the laws of the state.

**Sec. 48 - 8. - Affidavit and disclosure statement.**

Immediately following an election or appointment of a Village Official, the Village clerk shall provide the individual with an affidavit and disclosure statement form. Within 20 days after election, appointment or any change in the facts set forth in the Village Official's previously filed affidavit and disclosure statement, all Village Officials shall file with the Village clerk an affidavit and disclosure statement including the following:

- A. A disclosure statement responding in detail to the following questions:
  1. To the best of your knowledge, do you or any members of your Immediate Family own any interest in real property located within the Village of Berrien Springs, in land contiguous to the Village of Berrien Springs, or in any area covered by a 425 Agreement to which the Village of Berrien Springs is a party?
  2. If your answer to question 1. is affirmative, to the best of your knowledge state the following information for each such interest owned:
    - (a) The nature of your interest in the real property;
    - (b) The location of the real property (for improved property, provide the street address; for unimproved property state its location in relation to existing streets),and;
    - (c) The property's permanent real estate tax identification number.
  3. To the best of your knowledge, do you or members of your immediate family own five percent (5%) or more of any business entity located in the Village of Berrien Springs?
  4. If your answer to question 3. is in the affirmative, state the following, to the best of your knowledge:
    - (a) The name of the entity;
    - (b) The address of the entity;
    - (c) The nature of your relationship to the entity,and;
    - (d) The date relationship commenced.



5. To the best of your knowledge, do you or any members of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the Village of Berrien Springs from which you or they derive direct compensation or financial benefit that is not reported in the prior answers.
6. To the best of your knowledge, have you or any members of your immediate family given or received any gifts, other than from immediate family members, the value of which exceeds \$50.00, within the last year, or since the effective date of this code, whichever time period is shorter, to or from any person or business or other legal entity doing business with the Village, other than legal campaign contributions? If so, list the names and addresses of each donor or donee of each such gift and the date upon which it was made and the nature of the gift.

B. An affidavit in which the Village Official states: "I have read and I understand the Code of Ethics of the Village of Berrien Springs and, to the best of my knowledge, I am not in conflict with its provisions."

Dated:

Subscribed and sworn to before me this \_\_\_\_\_ day of 2020.

Notary Public

\_\_\_\_\_ County, Michigan

My Commission Expires: \_\_\_\_\_

**Prior Ordinances.** All other ordinances or parts of ordinances in conflict with or superseded by this Ordinance are repealed except to the extent that any project, condition, violation or prosecution that was subject to the prior ordinance shall continue.

**Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional, unlawful or unenforceable by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

**Sec. 48 – 9 Effective Date.**

This ordinance shall take effect immediately upon publication.

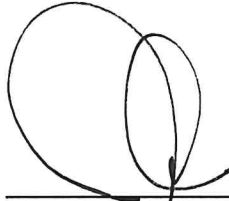
**Publication.** The Village Clerk shall certify to the adoption of this Ordinance and cause the same to be published as required by law.

YEAS: Roll call vote: Jesse Hibler, Jack Davis, Sandy Swartz, Kristin von Maur, Barry Gravitt, Kristin von Maur and Milt Richter.

NAYS: None.

ABSENT: None

Dated: February 18, 2020



**Jesse Hibler, Village President**

Ordinance declared adopted:



**Sheryl A. Kesterke, Village Clerk**

Certification

I hereby certify that the above and foregoing Ordinance was duly adopted by the Village Council of Berrien Springs and published in the Journal Era, a weekly newspaper published in the Village of Berrien Springs, in the issue of said newspaper dated and published on the 26 day of February, 2020.



**Sheryl A. Kesterke, Village Clerk**