

## **Ordinance #3528**

### **An Ordinance establishing Chapter 38 of New Castle City Code pertaining to ethics for city employees and officials.**

**WHEREAS,** The proper operation of democratic government requires that public officials and employees be independent, impartial and responsible to the people; that government decisions and policy be made in proper channels of the government structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals, there is hereby established in City Code a chapter of Ethics (Chapter 38) for all City of New Castle officials and employees, whether elected or appointed, paid or unpaid, including members of boards, committees and commissions of the City, as well as any individuals who are candidates for elective office as soon as such individuals file nomination papers with the County Clerk. And,

**WHEREAS,** The purpose of this Ethics Code is to establish guidelines for ethical standards of conduct for all such officials and employees by setting forth those acts or actions that are incompatible with the best interests of the City of New Castle and by directing disclosure by such officials and employees of private financial or other interests in matters affecting the City. The City Council believes that a Code of Ethics for the guidance of elected and appointed officials and employees will help them avoid conflicts between their personal interests and their public responsibilities, will improve standards of public service and will promote and strengthen the faith and confidence of the citizens of this City in their elected and appointed officials and employees. The City Council hereby reaffirms that each elected and appointed City official and employee holds his or her position as a public trust, and any intentional effort to realize substantial personal gain through official conduct is a violation of that trust. The provisions and purpose of this Ethics Code and such rules and regulations as may be established are hereby declared to be in the best interests of the City of New Castle. Then,

#### **THEREFORE BE IT ORDAINED THAT,**

The following definitions shall be applicable in this Chapter:

**(a) BUSINESS.** Means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual or any other legal entity, which engages in profit-making activities.

**(b) PERSONAL INTEREST.** The following specific blood or marriage relationships:

**(c)** A person's immediate family, including: spouse, parent or step-parent, child or step-child, sibling or step-sibling, grandparent, grandchild, uncle or aunt, niece or nephew; or

**(d)** A person's relative by blood or marriage who receives, directly or indirectly, more than one-half (1/2) support from such person or from whom such person receives, directly or indirectly, more than one-half (1/2) of his support.

**(e) SIGNIFICANT INTEREST.** Owning or controlling, directly or indirectly, at least ten percent (10%) or Five Thousand Dollars (\$5,000.00) of the outstanding stock of any business.

**(f) FINANCIAL INTEREST.** Any interest, which shall yield, directly or indirectly, a monetary or other material benefit to the officer or employee or to any person employing or retaining the services of the officer or employee.

**(g) STAFF.** Any full- or part-time employee of the City.

## **I. STATUTORY STANDARDS OF CONDUCT.**

There are certain provisions of Indiana Code which should, while not set forth herein, be considered an integral part of any Code of Ethics. Accordingly, the provisions of the following sections of Indiana Code, as from time to time amended, are made a part of this Code of Ethics and shall apply to public officials and employees whenever applicable, to wit:

- (a) IC 35-44-1-1 Bribery
- (b) IC 35-44-1-2 Official Misconduct
- (c) IC 35-44-1-3 Conflict of Interest
- (d) IC 35-44-2-4 Ghost Empliment

## **II. RESPONSIBILITY OF PUBLIC OFFICE.**

Public officials and employees are agents of public purpose and hold office for the benefit of the public. They are bound to uphold the Constitution of the United States and the Constitution of this State and carry out impartially the laws of the nation, state and municipality, to observe in their official acts the highest standards of morality and to discharge faithfully the duties of their office regardless of personal considerations, recognizing that the public interest must be their prime concern. Their conduct in both their official and private affairs should be above reproach so as to foster respect for government.

## **III. DEDICATED SERVICE.**

(a) Officials and employees should adhere to the rules of work and performance established as the standard for their positions by the appropriate authority.

(b) Officials and employees should not exceed their authority or breach the law or ask others to do so, and they should work in full cooperation with other public officials and employees unless prohibited from so doing by law or by officially recognized confidentiality of their work.

(c) Members of the City staff are expected to follow their appropriate professional code of ethics. Staff members shall file a copy of such professional ethics codes with the Mayor and City Council. The Mayor or Council President may notify the appropriate professional ethics board of any ethics violations involving City employees covered by such professional standards.

## **IV. FAIR AND EQUAL TREATMENT.**

### **(a) USE OF PUBLIC PROPERTY.**

No official or employee shall use or permit the unauthorized use of City-owned vehicles, equipment, materials or property for personal convenience or profit, except when such services are available to the public generally or are provided as City policy for the use of such official or employee in the conduct of official business, as authorized by the Board of Public Works and Safety.

### **(b) USE OF CITY STATIONERY.**

No official or employee shall use, or permit the unauthorized use of, City stationery for personal use.

### **(c) OBLIGATIONS TO CITIZENS.**

No official or employee shall grant any special consideration, treatment or advantage to any citizen beyond that which is available to every other citizen. No official or employee shall use or attempt to use his or her position with the City to secure any advantage, preference or gain, over and above his/her rightful remuneration and benefits, for himself/herself or for a member of his or her immediate family.

**(d) POLITICAL CONTRIBUTIONS.**

No official shall personally solicit from any City employee, other than an elected official, a contribution to a political campaign committee for which the person subject to this Chapter is a candidate or treasurer.

**V. CONFLICT OF INTEREST.**

**(a) FINANCIAL AND PERSONAL INTEREST PROHIBITED.**

- (1)** No official or employee of the City, whether paid or unpaid, shall engage in any business or transaction or shall act in regard to financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of official duties in the public interest contrary to the provisions of this Chapter or which would tend to impair independence of judgment or action in the performance of official duties. An elected official of the City shall recuse himself/herself from any decision making regarding a transaction or business dealing with any person or entity that has contributed more than \$\_\_\_\_\_ to that elected officials political campaign committee(s).
- (2)** Any member of the City Council who has a financial interest or personal interest in any proposed legislation before the Council shall publicly disclose on the records of the City Council the nature and extent of such interest; such official shall not participate in debate or vote for adoption or defeat of such legislation. If the matter before the Board involves a member's personal interest with persons involved, the member may participate in debate or discussion and vote on the matter following disclosure, unless an ordinance or contract is involved; if an ordinance or contract is involved, such official shall not participate in debate or discussion and shall not vote on the matter.
- (3)** Any non-elected official who has a financial interest or personal interest in any proposed legislative action of the City Council or any board, commission or committee upon which the official has any influence or input or of which the official is a member that is to make a recommendation or decision upon any item which is the subject of the proposed legislative action shall disclose publicly on the records of the City Council or the appropriate board, commission or committee the nature and extent of such interest. Such official shall not participate in debate or discussion or vote for adoption or defeat of such legislation.
- (4)** Any City employee who has a financial interest or personal interest in any proposed legislative action of the City Council or any board, commission or committee upon which the employee has any influence of input, or of which the employee is a member, that is able make to a recommendation or decision upon any item which is the subject of the proposed legislative action shall disclose publicly on the records of the City Council or the appropriate board, commission or committee the nature and extent of such interest.

**(b) DISCLOSURE OF CONFIDENTIAL INFORMATION.**

No official or employee shall, without proper legal authorization, disclose confidential information concerning the property, government or affairs of the City, nor shall such information be used to advance the financial or other private interests of the official or employee or others. Indiana's Open Door and access to public records laws will be followed.

**(c) GIFTS AND FAVORS.**

- (1) No official or employee, personally or through a member of his immediate family, may solicit or accept, either directly or indirectly, from any person or organization, money or anything of value if it could be expected to influence the employees official actions or judgments or be considered a reward for any action or inaction on the part of the official or employee.
- (2) No official or employee personally, or through a member of his immediate family, shall accept any gift, whether in the form of money, service, loan, thing or promise, from any person which could reasonably be expected to impair his independence of judgment or action in the performance of his duties or grant in the discharge of his duties any improper favor, service or thing of value. However, it is not a conflict of interest for any public official or employee to receive hospitality that is unsolicited and unrelated to government business, such as a meal, and that is not intended to influence the official.
- (3) An official or employee is not to accept hospitality if, after consideration of the surrounding circumstances, it could reasonably be concluded that such hospitality would not be extended were it not for the fact that the guest, or a member of the guest's immediate family, was a City official or employee. Participation in celebrations, grand openings, open houses, informational meetings and similar events are excluded from this prohibition. This paragraph further shall not be construed to prevent candidates for elective office from accepting hospitality, as a properly reported political contribution, from citizens for the purpose of supporting the candidate's campaign. (hospitality includes meals, beverages and lodging which a person offers at his residence and would not have been offered if the recipient were not an official).
- (4) Gifts received by an official or employee or his immediate family under unusual circumstances shall be referred to the City Council within ten (10) days of receipt for recommended disposition. Any person subject to this Chapter who becomes aware that he/she is or has been offered any gift, the acceptance of which would constitute a violation of this Subsection, shall, within ten (10) days, disclose the details surrounding said offer to the City Council. Failure to comply with this reporting requirement shall constitute an offense under this Chapter.

**(d) REPRESENTING PRIVATE INTERESTS BEFORE CITY AGENCIES OR COURTS.**

- (1) Non-elected City officials and employees shall not appear on behalf of any private person (other than

him or herself, his or her spouse or minor children) before any City agency, board, commission or the City Council if the official or employee or any board, commission or committee of which the official or employee is a member has any jurisdiction, discretion or control over the matter which is the subject of such representation.

- (2) Elected City officials may appear before City agencies on behalf of constituents in the course of their duties as representatives of the electorate or in the performance of public or civic obligations. However, the disclosure requirements of Subsection (a) above shall be applicable to such appearances.

**(e) AD HOC COMMITTEE EXCEPTIONS.**

No violation of the conflict of interest restrictions of this Section shall exist, however, where an individual serves on a special ad hoc committee charged with the narrow responsibility of addressing a specific issue or topic in which that individual, or the employer or a client of that individual, has an interest so long as the individual discloses to the City Council that such interest exists.

**(f) CONTRACTS WITH THE CITY.**

No City official or employee who, in his capacity as such officer or employee, participates in the proposal of a contract in which he has a private pecuniary interest, direct or indirect, or performs in regard to that contract with some function requiring the exercise of discretion on his part shall enter into any contract with the City unless, within the confines of statute:

- (1) The contract is awarded through a process of public notice and competitive bidding or the Board of Works waives the requirement of this Section after determining that it is in the best interest of the City to do so and publishes the facts thereof in the local newspaper.
- (2) The provisions of this Subsection shall not apply to the designation of a public depository of public funds.

**(g) CAMPAIGN CONTRIBUTIONS.**

Campaign contributions shall be reported by all candidates for City office in strict conformity with the provisions of the Indiana Statutes.

**VI. ADVISORY OPINIONS.**

When an official or employee has doubt as to the applicability of a provision of this Ethics Code to a particular situation or definition of terms used in this Chapter, he/she should apply to the City Attorney for an advisory opinion and will be guided by that opinion when given. The official or employee shall have the opportunity to present his/her interpretation of the facts at issue and of the applicability provisions of this Chapter before such advisory decision is made. This Chapter shall be operative in all instances covered by its provisions except when superseded by an applicable statutory provision and statutory action is mandatory, or when the application of a statutory provision is discretionary, but determined by the City Attorney to be more appropriate or desirable. Advisory requests and opinions shall be kept confidential, except when disclosure is authorized by the requestor, in which case the request and opinion may be made public.



## **VII. HIRING AND PROMOTING RELATIVES.**

(a) This Section governs the proposed hiring and promotion of individuals for full-time or part-time work as City employees who are members of the immediate family of current City employees, City elected officials or City officials appointed by elected officials. "Immediate family" includes those relatives by blood or marriage defined as personal interests.

(b) Hiring and promoting an immediate family member of any elected or appointed City official is prohibited. Hiring of any immediate family of any other current City employee will be considered only if that individual has the knowledge and skills, experience or other job-related qualifications that warrant consideration for the position. A person cannot be hired for either full-time or part-time employment in a position immediately supervised by a member of that person's immediate family.

(c) This Section does not apply to non-elected officials who are asked to accept appointment as members of a City board, commission or committee; non-elected officials, however, will be expected to disqualify themselves from participation in matters under consideration which may affect the hiring, retention, classification or compensation of their immediate family if currently employed or being considered for employment by the City.

## **VIII. EMPLOYEES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.**

In the event an employee, covered under a collective bargaining agreement, is allegedly involved in an Ethics Code violation, the terms and conditions set forth in the applicable collective bargaining agreement shall prevail in the administration and interpretation of this Ethics Code Chapter.

## **IX. SANCTIONS.**

(a) A determination that a public official's or public employee's actions constitute improper conduct under the provisions of this Chapter may constitute a cause for removal from office, termination of employment, suspension, reprimand, removal from committee assignment, or other appropriate disciplinary action. As an alternative or in addition to sanctions imposed herein, any individual violating the Ethics Code shall be subject to a fine, as determined by the City Court, of \$2,500.

(b) Sanctions, including any disciplinary action that may affect employees covered under a labor agreement will be consistent with the terms and conditions set forth in the labor agreement, unless State or Federal law prescribes otherwise.

(c) Sanctions, including any disciplinary action that may affect employees covered by the Police and Fire Departments, will be consistent with applicable statutes and regulations.

## **X. EMPLOYEE PERSONNEL POLICIES AND PROCEDURES.**

The City of New Castle Employee Personnel Policies and Procedures, and its amends, is adopted and incorporated herein by reference.

ORDINANCE PURSUANT TO STATE STATUTE.

ALL ORDINANCES IN CONFLICT HERewith ARE HEREBY REPEALED.

ADOPTED BY THE COMMON COUNCIL OF THE CITY OF NEW CASTLE THIS DAY OF \_\_\_\_\_, 2007.

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THOMAS L. NIPP, PRESIDING OFFICER  
COMMON COUNCIL, NEW CASTLE, IN

ATTEST:

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JANICE LAVARNWAY, CLERK TREASURER

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APPROVED BY ME THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2007

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THOMAS L. NIPP, MAYOR OF THE  
CITY OF NEW CASTLE, INDIANA