



CITY OF NILES

## BOARDS AND COMMISSIONS POLICY HANDBOOK

“NEVER DOUBT  
THAT A SMALL, GROUP  
OF THOUGHTFUL,  
COMMITTED CITIZENS  
CAN CHANGE THE  
WORLD. INDEED, IT IS  
THE ONLY THING THAT  
EVER HAS.”

- Margaret Mead

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Note: For the purpose of simplicity in this document; boards, committees, task forces, and/or commissions will simply be referred to as “commissions.” Board and commission members will be referred to as “commissioners.”

## HELPFUL WEBSITES:

CITY OF NILES: <http://www.ci.niles.mi.us/>

NILES, MICHIGAN – CODE OF ORDINANCES: [https://www.municode.com/library/mi/niles/codes/code\\_of\\_ordinances](https://www.municode.com/library/mi/niles/codes/code_of_ordinances)

## PREVIOUS POLICIES

Unless otherwise required by local, State or Federal law, this policy supersedes and replaces all previously approved policies, bylaws, articles, or other formation documents, save the City Charter or established by local, state or federal laws or regulations.

## ROLES OF COMMISSIONS

Commissions function in two distinct capacities in the public policy process in Niles: Advisory and Administrative. Some will serve in both capacities.

### THE ADVISORY ROLE

Each Advisory Commission makes recommendations to the City Council based on the scope of its particular service area. Typically, Advisory Commissions have a work agenda in place for a calendar year during which it undertakes projects, deliberates on issues and hosts special events.

The City Council is responsible for making the final decisions on most issues or topics, but it will look to the commissions for advice, background information and analysis. As the elected body, the City Council has discretion to accept advice in full, in part or not at all.

### THE ADMINISTRATIVE ROLE

Certain commissions have an additional administrative role. This means that they are permitted or required by charter, statute or ordinance to conduct formal reviews and issue administrative decisions. It is vital that rules established by law are followed by commissioners and that every administrative decision is supported by facts placed on the record.

An administrative decision shall not be based on the number of people who show up to speak for or against, rather, it shall be based on applicable law and presented facts or testimony. In fact, courts will overturn decisions that lack a factual basis and decision makers may even be liable if determinations are not based on what is permissible under the law. In some cases, a decision may be appealed to the City Council; in others, an appeal will be made to Circuit Court.

## COMMISSION POSITIONS

Commissions elect their chairperson and vice-chairperson annually. A commission may also appoint sub-committees and members to chair them as needed. The staff liaison or their designee is responsible for all record keeping and financial reporting.

## **COMMISSION RESPONSIBILITIES**

Members of commissions have the following responsibilities:

- To attend training with the City Clerk within the first 90-days of appointment;
- To adhere to and abide by the City's Code of Ethics and Conflict of Interest policies;
- To attend all regularly scheduled meetings ;
- To use parliamentary procedure to conduct and participate in meetings;
- To hold public hearings when called for in the commission's enabling legislation, or when otherwise prudent to provide the opportunity for public comment;
- To make recommendations to City Council as required by law or upon request;
- To refrain from any act that constitutes a conflict of interest;
- To follow the operating rules the board or commission has established;
- To review all relevant materials and come to the meetings prepared to discuss the issues;
- To work cooperatively with other commissions when there are areas of common interest or overlap in responsibilities;
- To abide by the provisions of the Open Meetings Act.

## **RULES AND PROCEDURES FOR BOARDS AND COMMISSIONS**

All City of Niles residents are eligible to serve on a maximum of two commissions at one time. The application is available at <http://www.ci.niles.mi.us/Government/BoardsCommissions.htm> or by calling (269) 683-4700.

Appointments are made by the Mayor, the City Council, or the City Administrator and vacancies can be filled at any time of the year, should they occur. A majority vote of the City Council is required to confirm an appointment. Commissioners are appointed to three-year terms.

If a commissioner finds it difficult to meet the expectations of their assignment he or she can resign at any time. A resignation does not, however, prohibit an individual from being appointed again at a future date. Commissioners must also notify the staff liaison if they are unable to attend a meeting. This is critically important when staff is determining if there will be a quorum of the members as required to conduct business.

A quorum is determined as follows: a majority of the members of each commission appointed and serving shall constitute a quorum for the transaction of business. Any member who has been granted a leave of absence, whose resignation has been accepted by City Council, who has been removed by the appointing authority or automatically removed for nonattendance, shall not be deemed to be serving for purposes of determining a quorum. A commissioner fulfilling the remaining time on an unexpired term is still eligible for appointment to a full term on the same commission.

# OPEN MEETINGS ACT

## BASIC INTENT

The basic intent of the Michigan Open Meetings Act (MCL 15.261 et seq.) is to strengthen the right of all Michigan citizens to know what goes on in government by requiring public bodies to conduct nearly all business at open meetings. Members of public bodies need to closely watch their obligations under Michigan's Open Meetings Act (OMA); Act 276 of 1976

[http://www.legislature.mi.gov/\(S\(ey0aopwe4qmpa0eelqkqhphq\)\)/printDocument.aspx?objName=mcl-act-267-of-1976&version=txt](http://www.legislature.mi.gov/(S(ey0aopwe4qmpa0eelqkqhphq))/printDocument.aspx?objName=mcl-act-267-of-1976&version=txt) .

## KEY DEFINITIONS

- “Public body” means any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority or council, which is empowered by state constitution, statute, charter, ordinance, resolution or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function, or a lessee thereof performing an essential public purpose and function pursuant to the lease agreement.
- “Meeting” means the convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy.
- “Closed session” means a meeting or part of a meeting of a public body which is closed to the public.
- “Decision” means a determination, action, vote or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy.

## COVERAGE

The OMA broadly covers a large group of public bodies, including local legislative or governing bodies, boards, commissions, committees, subcommittees, authorities, or councils that are empowered to perform governmental functions.

The law also applies to:

- local and intermediate school districts;
- governing boards of community colleges, state colleges and universities;
- special boards and commissions created by law (i.e., public hospital authorities, road commissions, health boards, district library boards and zoning boards, etc.).

The act does not apply to a meeting of a public body which is a social or chance gathering not designed to avoid the law.

The following are some, but not all, examples of OMA issues that frequently challenge public bodies:

- With few exceptions, public body deliberations or decisions must occur in meetings open to the public (MCL 15.263). An actual off-the-record vote is not required in order to violate the Act.
- Private discussions or decisions among a quorum of a public body, or a series of sub-quorum discussions or decisions, will violate the OMA.
- Off-record consensus building efforts equivalent to deliberations or decision-making are illegal. For example, use of telephone calls, sub-quorum meetings or e-mail exchanges (known as "round-the-horn" decision-making) are illegal.

- A quorum of a public body may attend the same civic, social or political gathering, provided that the members do not join to consider or decide on a public business matter.
- Several public bodies have come under the scrutiny of the media or prosecutors for OMA violations due to e-mail communications among members of public bodies using public or private e-mail accounts.
- The use of City or private e-mail accounts to deliberate/decide on official business is wrongful and raises the possibility that a user's private e-mail account may be subject to inspection and disclosure for OMA compliance, as well as Michigan Freedom of Information Act requests.
- One member can canvass other board or commission members to see where votes are coming out on a specific issue, but this process can easily slide into an illegal "round-robin" voting.
- Members often have legitimate concerns about business operations that need to be communicated. To avoid OMA problems, members asking questions or making recommendations by e-mail or other communications shall direct these communications to the body's staff liaison, with no courtesy copies to other members. The head of the public body can then present these questions and recommendations to the public body for discussion in open or appropriate closed sessions.
- The reasons for closed meetings are very few and narrow, accordingly:
  - "Personnel issues" or "private matters" provide no basis. A specific employment action is needed and the affected employee must ask for the closed meeting.
  - Discussions or resolution of legal demands or threatened litigation do not authorize a closed session, but consideration of a related attorney-client communication may.
  - During the closed session, members must not stray into matters outside of the purpose for calling the closed session.

## **NOTIFICATION OF MEETINGS**

- The law states that within **ten days** of the first meeting of a public body in each calendar or fiscal year, the body must publicly post a list stating the dates, times and places of all its regular meetings at its principal office.
- For the purposes of all commissions, all postings are made at City Hall by the City Clerk and at the regular location of the meeting.
- If there is a change in schedule, within three days of the meeting in which the change is made, the public body must post a notice stating the new dates, times and places of regular meetings.

## **SPECIAL AND IRREGULAR MEETINGS**

- For special and irregular meetings, public bodies must post a notice indicating the date, time and place **at least 18 hours** before the meetings.
- Note: A regular meeting of a public body, which is recessed for more than 36 hours, can only be reconvened if a notice is posted 18 hours in advance.

## **CLOSED MEETINGS**

The law provides for closed meetings in a few specified circumstances. In order for a public body to hold a closed meeting, two-thirds of its members must vote affirmatively in a roll call. Also, the purpose for which the closed meeting is being called must be stated in the meeting when the roll call is taken.

Closed meetings may be called without a two-thirds vote for the following reasons:

- considering the dismissal, suspension or disciplining of, or to hear complaints or charges brought against a public officer, employee, staff member or individual when the person requests a closed hearing;
- considering the dismissal, suspension or disciplining of a student of a public school when the student or guardian requests a closed hearing;
- strategy and negotiation sessions necessary in reaching a collective bargaining agreement when either party requests a closed hearing; and
- partisan caucuses of the state legislature. Other reasons a public body may hold a closed meeting, but which in order to call for the closed meeting require a two-thirds vote of all members elected or appointed and serving:
  - to consider the purchase or lease of real property;
  - to consult with its attorney about trial or settlement strategy in pending litigation, but only when an open meeting would have detrimental financial effect on the public body's position;
  - to review the contents of an application for employment or appointment to a public office when the candidate requests the application to remain confidential. However, all interviews by a public body for employment or appointment to a public office have to be conducted in an open meeting except meetings held in the search process for a president of an institute of higher education under section 4, 5 or 6 of article VIII of the state constitution of 1963 that meet all the requirements of Section 8 (j) of the act; and
  - to consider material exempt from discussion or disclosure by state or federal statute.

## **EXPLANATION OF MINUTES OF CLOSED MEETING**

Minutes of closed meetings must also be taken although they are not available for public inspection and would only be disclosed if required by a civil action. These minutes may be destroyed one year and one day after approval of the minutes of the regular meeting at which the closed session was approved. If an audio-tape is made of a closed meeting, it must also be retained for one year and one day.

## **ENFORCEMENT OF THE ACT**

Under the law, the attorney general, prosecutor or any citizen can challenge in circuit court the validity of a decision of a public body to meet in closed session made in violation of its provisions. If the body is determined to be in violation of the law and makes a decision, that decision can be invalidated by the court. In any case where an action has been initiated to invalidate a decision of a public body, the public body may reenact the disputed decision in conformity with the act. A decision reenacted in this manner shall be effective from the date of reenactment and will not be declared invalid by reason of a deficiency in the procedure used for its initial enactment.

## **PENALTIES UNDER THE ACT**

- The first time a public official intentionally breaks this law, he or she can be punished by a maximum fine of \$1,000.

- For a second offense within the same term of office, the official can be fined up to \$2,000, jailed for a maximum of one year or both.
- A public official who intentionally violates the act is also personally liable for actual and exemplary damages up to \$500, plus court costs and attorney fees.

**PUBLICATION: Freedom of Information and Open Meetings**  
<http://www.legislature.mi.gov/Publications/OpenMtgsFreedom.pdf>

**PUBLICATION: Citizens Guide to State Government**  
<http://www.legislature.mi.gov/Publications/CitizensGuide.pdf>

## PARLIAMENTARY PROCEDURE

All commissions are required to use parliamentary procedures to conduct their meetings and periodically, the City offers a workshop in parliamentary procedures that is made available to all commissioners and city staff who wish to participate. Commissioners and staff are also encouraged to familiarize themselves with Robert's Rules of Order Newly Revised. This is of particular importance for chairpersons in their capacity as presiding officer tasked with conducting fair and efficient meetings.

**ROBERT'S RULES OF ORDER:** [HTTP://WWW.RULESONLINE.COM/INDEX.HTML](http://www.rulesonline.com/index.html)

## MINUTES (MCL 15.269 SEC. 9.)

- (1) Each public body shall keep minutes of each meeting showing the date, time, place, members present, members absent, any decisions made at a meeting open to the public, and the purpose or purposes for which a closed session is held. The minutes shall include all votes taken at the meeting. The public body shall make any corrections in the minutes at the next meeting after the meeting to which the minutes refer. The public body shall make corrected minutes available at or before the next subsequent meeting after correction. The corrected minutes shall show both the original entry and the correction.
- (2) Except for minutes taken during a closed session, all minutes are public records open to public inspection, and a public body shall make the minutes available at the address designated on posted public notices pursuant to [the OMA \(PA 276\)](#). The public body shall make copies of the minutes available to the public at the reasonable estimated cost for printing and copying.
- (3) A public body shall make proposed minutes available for public inspection within 8 business days after the meeting to which the minutes refer. The public body shall make approved minutes available for public inspection within 5 business days after the meeting at which the minutes are approved by the public body.
- (4) A public body shall not include in or with its minutes any personally identifiable information that, if released, would prevent the public body from complying with section 444 of subpart 4 of part C of the general education provisions act, 20 USC 1232g, commonly referred to as the family educational rights and privacy act of 1974.

## MINUTES GUIDANCE:

Meetings: Agenda and Minutes A handbook for local officials  
 Wells F. Cook, Ph.D., PRP, Central Michigan University  
 Published by the Michigan Municipal League  
<http://www.mml.org/pdf/meetings/book.pdf>

## **MAKING A MOTION**

- A motion cannot be discussed unless it is seconded.
- Unless a motion is seconded, it must not be discussed.
- Obtain the floor (the right to speak) by being the first to raise your hand when the person speaking has finished. Must be recognized by the Chair before speaking!
- Debate cannot begin until the Chair has stated the motion or resolution. If there is no debate, then the Chair calls the question. (Asking for a vote)
- Before the motion is stated by the Chair (the question) members may suggest modification of the motion; the mover can modify as he pleases, or even withdraw the motion without consent of the seconder; if mover modifies, the seconder can withdraw the second!
- The “immediate pending question” is the last question stated by the Chair Motion/Resolution – Amendment – Motion to Postpone
- The member moving the “immediately pending question” is entitled to preference to the floor!
- No member can speak twice to the same issue until everyone else wishing to speak has spoken to it once!
- All remarks must be directed to the Chair. Remarks must be courteous in language and deportment – avoid all personalities, never allude to others by name or to motives!
- The agenda and all committee reports are merely recommendations! When presented to the assembly and the question is stated, debate begins and changes occur!

## **AMEND A MOTION**

An amendment to a motion is really a new motion made to change or modify the previous motion which is under consideration.

An amendment may do one of four things:

1. Add or insert a certain word or words, or a sentence, to the motion under consideration.
2. Strike out a certain word or words, or a sentence, in the motion under consideration.
3. Substitute another motion for the one being considered.
4. Substitute words or replace wording under consideration. An amendment, like the principal motion, must be seconded. It is also debatable, and may again be amended.

The proper form for making an amendment is: “I move to amend the motion to read . . . .” or “I move to amend the motion by . . . .”

The amendment to a motion, if seconded, must be voted upon before the original motion. If the amendment to the motion is carried, the original motion, must be voted upon as amended. On the other hand, if the amendment is lost, the motion is voted upon as originally stated. In case of an amendment to an amendment, the last amendment is always voted upon first. If it is carried, the preceding amendment is then voted upon as amended.

## **FOUR WAYS OF VOTING**

When the discussion is over, the chairman repeats the motion. He then puts it to a vote.

The following four methods are commonly used:

### **1) Voting by Acclamation**

“Aye” or “Nay.” This is probably the most commonly used method of voting. However, it has both advantages and disadvantages:

a. Advantages:

It is the quickest method. For unimportant questions, or where there is no doubt about the wishes of the majority, it is very satisfactory.

b. Disadvantages:

- (1) The minority group may produce enough sound to “drown out” the majority,
- (2) the chairman has an unusual opportunity to favor the outcome if the vote is close,
- (3) the side voting first (which must always be the affirmative) has a decided psychological advantage.

## **2) Voting by Standing or Raising the Hand**

This method overcomes the first two disadvantages of voting by acclamation (“Aye” or “Nay”). The majority and the minority are clearly identified—from the floor and from the chair. This method is advisable for all important matters, where the two following methods are not used, and where the result of the voter would otherwise be uncertain.

## **3) Voting by Roll Call**

Roll call gives every voter a chance to register his choice. It is used for matters of importance, each person’s vote usually being made a matter of record. Legislative bodies, therefore, use it frequently.

## **4) Voting by Ballot**

This takes more time. Slips of paper are first passed around to the voters who write the name of the person they prefer, or “yes” or “no” on their slip. To make voting by ballot more speedy, tellers may be selected to collect and count ballots. Voting by ballot has these advantages: first, it is secret. No one person need influence the vote of another; second, it is accurate. Every person has a chance to vote and get a fair decision. Thirdly, the decision is not known until all ballots are cast.

# **WORKING SUCCESSFULLY TOGETHER**

Locally, we routinely choose to appoint individuals to a commission whose views, backgrounds, opinions and values vary widely from one another. The purpose of diverse representation on city commissions is to ensure that the entire community has a voice in decision-making. Sometimes these differences cause conflict during the process of deliberation and finalizing recommendations. Nonetheless, in order to be an effective commissioner, each individual must:

- Work within a team framework of compromise and exchange;
- Separate people from the issues when conflict arises;
- Focus on mutual interests and shared goals;
- Look for compromises and work to understand diverse perspectives;
- Examine one’s own approach to dealing with conflict and be open about concerns where there is room for compromise;
- Strive to problem-solve based on collaboration rather than simply making a decision.

Most issues will be resolved and decisions made through the voting and deliberation processes. It is important to recognize that as a commissioner, you have done your job by thoroughly examining the pros and cons of each situation. Once an issue is decided, it is equally important to accept the wishes of the majority and move on to the next issue.

# **PUBLIC PARTICIPATION AT COMMISSION MEETINGS**

Board and commission meetings are open to the public. As the presiding member, the chairperson is responsible for calling the meeting to order on time and adjourning at a reasonable hour.

If meetings are canceled or rescheduled, notification must be posted 24 hours in advance so that those individuals wishing to attend and participate have access to advanced notice

People who come to participate in a public hearing or come to express their views on an issue may be doing so for the first time. The experience can be intimidating and emotional. Sometimes their behavior is nervous,

forgetful or even aggressive; however, most people will relax when they perceive that they are treated well and that their concerns are given thoughtful consideration.

### **MEETING COURTESY:**

- An agenda shall always be available for members of the audience;
- Commissioners shall treat the members of the public with dignity and respect;
- Commissioners shall refrain from displaying negative gestures or sounds when they disagree with a member of the public or another commissioner;
- Side conversations shall be avoided;
- The chairperson shall inform the audience of the time limits for speakers and should adhere to those limits;
- The chairperson shall explain the purpose of the meeting and the appropriate time to ask questions;
- The chairperson shall explain technical terms or jargon that might otherwise make it difficult for the audience to follow the deliberations;
- The chairperson shall thank participants for their attendance.

## **THE CHALLENGING MEETING**

If it is anticipated that a particular meeting may be difficult because of controversy surrounding an issue, the chairperson is encouraged to discuss the situation with the staff representative and another commissioner whose input he or she respects. Consideration should be given to making the meeting as productive as possible while respecting differences and individual needs.

### **RUNNING A SMOOTH MEETING:**

- Plan the agenda carefully and strategically;
- Make sure the room is comfortable and that adequate seating and audio capability are provided;
- Plan for the location of the media to avoid unnecessary disruptions;
- Try to anticipate difficult questions, problems and information in advance so that clear, concise responses can be given.

### **DURING THE MEETING:**

- Begin with a staff review of the issue so everyone is operating with the same set of facts;
- Review procedural expectations including speaker time limits;
- Remind the speakers that they must address the commission, not the audience;
- Explain the rules surrounding public comment and if questions from the audience will be accepted;
- Remind the audience that there shall be no demonstration for or against a speaker;
- Make sure that all who wish to speak have an opportunity to do so;
- Model polite listening behavior;
- Apply speaker time limits impartially.

## **THE RELATIONSHIP OF COMMISSIONS WITH THE MAYOR & CITY ADMINISTRATOR**

The City's Mayor and the City Administrator shall be Ex-Officio members of each City sponsored Board, Commission, Committee or Task Force and shall have the right to participate in all the deliberations thereof, but shall not have the right to vote. The Mayor or the City Administrator may call a Special Meeting or a Committee of the Whole Meeting of any Commission with proper notice and in accordance with the State of Michigan's Open Meeting Act.

## **THE RELATIONSHIP OF COMMISSIONS WITH CITY COUNCIL**

The City's eight Councilmembers divide the task of serving as liaisons to the various commissions. The role of Councilmembers varies between commissions. Generally speaking, liaisons do not become actively involved in the general conduct of the work of a commission, but shall be allowed to provide input at any meeting of the Commission. Recommendations for consideration of appointments of new commissioners are made in collaboration with the City's Staff Liaison as a recommendation of the Commission to the City Council. All appointments must then be approved by the entire City Council during a meeting.

Each commission advises the City Council on specific issues or on policy matters regarding its assigned responsibilities and duties.

It is incumbent upon the Council liaison to keep the other Councilmembers updated and ensure that the Council remains informed of important activities of each commission.

In some cases an individual commissioner who cares deeply about a particular issue may wish to appeal directly to the Council in order to shape the outcome of Council's decision. However, this is discouraged because it detracts from the purpose of the commission which is to arrive at a decision, recommendation or set of recommendations based on consensus. The outcome of commission deliberations shall be based on the vote of the body rather than the preferences of a single member. The responsibility of a commission is not to control the outcome of decisions that will ultimately be undertaken by Council, but to provide the best possible advice based on public input, analysis and review of the issue(s).

Each commission has its own set of tasks to accomplish based on mission. Some activities are prescribed by local ordinance, State of Michigan, and/or federal statute. Others are established by interests and expertise of commission members. Each commission should prepare, in collaboration with staff support and the council liaison, a work program comprised of items to take up over the course of a calendar year.

## **THE RELATIONSHIP WITH CITY STAFF**

### **THE CITY ADMINISTRATOR AND THE COMMISSION'S STAFF LIAISON**

Commissions are assigned a staff liaison with expertise in the area falling under its purview. The City Administrator has management authority over all commissions, save the City Council, with regards to policy review, omission, and conflicting policies. The City Administrator makes all assignments of staff liaison in accordance with all applicable local, State and Federal laws/regulations. The staff liaison is assigned to attend representative commission meetings but is not a voting member of the group. In some cases, they are active participants during the discussion phase and, in other cases, they are not.

Staff for some commissions, such as the Planning Commission, is expected to make a formal recommendation on the course of action, based on the law, policy and professional expertise. In all cases, the role of staff is to support the work of commissioners by providing information and background, keeping minutes and agendas, helping to plan and organize commission activities and in general, acting as facilitator. Staff is expected to have an in-depth understanding of the community and its history. When commissioners differ on an issue, the role of staff is to remain neutral. Staff will look to the chairperson to speak for the commission as a whole.

Once a commission has taken action, it is the role of staff to make a formal report and presentation, upon Council's or City Administrator's request, to Council and to prepare any associated materials needed. Staff is required to provide a complete overview of the commission's proceedings and to ensure that all relevant points are included in the final packet of information the City Council will use for deliberation and decision-making.

While staff is actively involved in the commission's work, they also have other duties and assignments. It is solely the Department Director who determines staff work agendas and directs staff activities. Sometimes commissioners will want to direct the work of staff or take it on personally, however, neither course of action is appropriate. If commissioners have concerns about staff activities and work, they should be discussed directly by the individuals involved. Often, this type of discussion provides insight to commissioners about the types of constraints under which staff operate. If the concern is unresolved, the commissioner may approach the City Administrator to discuss their concerns. If the concern remains unresolved after discussion with the City Administrator, the commissioner may approach the City Council with concerns.

## **THE CITY CLERK**

The City Clerk maintains all documentation and responds to requests for information, which are subject to the Freedom of Information Act (FOIA), on behalf of the City and must adhere to the standards specified within the City's policy. Each member of a commission must participate in at least one training session within the first 90-days of appointment with the City Clerk to learn about the Open Meetings Act, the Freedom of Information Act and this Boards and this Commissions Policy Manual. The City Clerk will respond to all requests made to a commission, for information, under FOIA, and according to the City's FOIA response policy included in this manual.

Each commission must provide the City Clerk with the following documents:

1. Notification of Meeting
2. Notification of Cancellation of a Meeting
3. Notification of a Special Meeting
4. Notification of a Cancellation of a Special Meeting
5. Meeting Agenda
6. Commissioner Board Packages
7. Meeting Minutes
8. Requests for Information

The City Clerk may request an audience with the commission to provide training on the OMA, FOIA or City policies on documentation and must be granted time at the commission's next regular meeting or at a special meeting called if the commission does not have a regular schedule.

## **ROLE OF THE CITY ATTORNEY**

Occasionally, the City's Attorneys will work with a commission on a specific issue or will attend meetings to advise and counsel the commission. The staff representative, with the Department Director's approval, will

make arrangements for the City's Attorneys' involvement with the commission. The City staff representative or the City Council liaison must facilitate all interactions with the City's Attorney.

The City's Attorney is the City Council's primary legal representative and renders legal opinions on their behalf only in matters involving the City. The City Attorney's opinions are binding as he or she would defend the City in the case of a legal challenge.

## **ROLE OF THE CHAIRPERSON**

The chairperson is the key to the effectiveness of the group decision-making process. The chairperson provides direction and sets the tone for the meeting with the other commissioners and with the public. The chairperson must strike a balance between moving the meeting along and allowing for an inclusive and democratic process. To be effective, the chairperson needs the support and trust of the other members.

In the chairperson's absence, the vice-chairperson will assume the duty of presiding over the meeting

## **FOURTEEN TECHNIQUES OF AN EFFECTIVE CHAIRPERSON;**

- Uses parliamentary procedure at all times;
- Expects courteous behavior from all commissioners and models such behavior;
- Treats the public with courtesy and diplomacy;
- Listens attentively to all speakers;
- Solicits opinions, ideas and perspectives from all members and avoids letting a few dominate the discussion;
- Protects new ideas from rejection prior to fair evaluation;
- Keeps the discussion focused on the topic at hand and redirects the group when it digresses;
- Delays decision-making until all of the ideas have been articulated and given consideration;
- Attempts to gain consensus;
- Balances discussion and meeting time constraints;
- Assures formal decorum is observed at all times;
- Keeps the audience apprised of process and procedure being used by the group;
- Always restates the motion prior to calling for a vote;
- Applies time limits to all speakers consistently.

## **MEDIA RELATIONS**

Local government is a major source of news for the local print, radio and television media. Each outlet assigns a specific reporter to cover the City. The City works closely with the media to ensure accurate and thorough coverage of its issues. Generally, reporters will seek information directly from the City Manager, City Councilmembers, or individual department directors.

If approached by a reporter, consider these guidelines:

- You have the right as a private citizen to speak with the media but first ask yourself if you are the best person to answer questions about the commission's work. Is it more appropriate for the reporter to speak with a City official?

- If you speak with a reporter, stick to the facts. Anything you say may end up in print or on TV. If you do not want to see it in print or over the airwaves, don't say it;
- If you decide to provide your opinion, make it clear that you are speaking for yourself, not the balance of your commission, the City Council or Administration;
- Sometimes reporters get it wrong. Remember that any time you discuss an issue, you run the risk of being misquoted or misrepresented;

Commissioners are discouraged from engaging in direct media contact. Media relations should be discussed by the commission with consensus about publicizing a project, issue or decision.

## **FREEDOM OF INFORMATION ACT**

### **PREAMBLE: STATEMENT OF PRINCIPLES**

It is the policy of the City of Niles that all persons, except those incarcerated, consistent with the Michigan Freedom of Information Act (FOIA), are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people shall be informed so that they may fully participate in the democratic process.

The City's policy with respect to FOIA requests is to comply with State law in all respects and to respond to FOIA requests in a consistent, fair, and even-handed manner regardless of who makes such a request.

The City acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. The City acknowledges that sometimes it is necessary to invoke the exemptions identified under FOIA in order to ensure the effective operation of government and to protect the privacy of individuals.

The City of Niles will protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records. The City's policy is to disclose public records consistent with and in compliance with State law.

The City Council has established the following written procedures and guidelines to implement the FOIA and a written public summary of the specific procedures and guidelines relevant to the general public regarding how to submit written requests to the public body and explaining how to understand a public body's written responses, deposit requirements, fee calculations, and avenues for challenge and appeal. The written public summary will be written in a manner so as to be easily understood by the general public.

### **SECTION 1: GENERAL POLICIES**

The City Council, acting pursuant to the authority at MCL 15.236, designates the City Attorney as the FOIA Coordinator and City Clerk and Police Records Supervisor as the Assistant FOIA Coordinators. He or she are authorized to designate other City staff to act on his or her behalf to accept and process written requests for the City's public records and approve denials.

FOIA Continued

It is imperative that any employee of the City of Niles who receives a written or electronic FOIA request to immediately forward that request to the City Clerk or Police Department Records Supervisor.

If a request for a public record is received by fax or email, the request is deemed to have been received on the following business day. If a request is sent by email and delivered to a City spam or junk-mail folder, the request is not deemed received until one day after the FOIA Coordinator first becomes aware of the request. The FOIA Coordinator shall note in the FOIA log both the date the request was delivered to the spam or junk-mail folder and the date the FOIA Coordinator became aware of the request.

The FOIA Coordinator shall review City spam and junk-mail folders on a regular basis, which shall be no less than once a month. The FOIA Coordinator shall work with City Information Technology staff to develop administrative rules for handling spam and junk-mail so as to protect City systems from computer attacks which may be imbedded in an electronic FOIA request.

The FOIA Coordinator may, in his or her discretion, implement administrative rules, consistent with State law and these Procedures and Guidelines to administer the acceptance and processing of FOIA requests.

The City is not obligated to create a new public record or make a compilation or summary of information which does not already exist. Neither the FOIA Coordinator nor other City staff are obligated to provide answers to questions contained in requests for public records or regarding the content of the records themselves.

The FOIA Coordinator shall keep a copy of all written requests for public records received by the City on file for a period of at least one year.

The City will make this Procedures and Guidelines document and the Written Public Summary publicly available without charge. If it does not, the City cannot require deposits or charge fees otherwise permitted under the FOIA until it is in compliance.

A copy of this Procedures and Guidelines document and the City's Written Public Summary must be publicly available by providing free copies both in the City's response to a written request and upon request by visitors at the City's office.

This Procedures and Guidelines document and the City's Written Public Summary will be maintained on the City's website at: [www.nilesmi.org/FOIA](http://www.nilesmi.org/FOIA) , so a link to those documents will be provided in lieu of providing paper copies of those documents.

## **SECTION 2: REQUESTING A PUBLIC RECORD**

No specific form to submit a request for a public record is required. However the FOIA Coordinator may make available a FOIA Request Form for use by the public.

Requests to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the City may be submitted on the City's FOIA Request Form, in any other form of writing (letter, fax, email, etc.), or by verbal request.

FOIA Continued

A request must sufficiently describe a public record so as to enable City personnel to identify and find the requested public record.

Written requests for public records may be submitted in person or by mail to any City office. Requests may also be submitted electronically by fax and email. Upon their receipt, requests for public records shall be promptly forwarded to the FOIA Coordinator for processing.

A person may request that public records be provided on non-paper physical media, emailed or other otherwise provided to him or her in digital form in lieu of paper copies. The City will comply with the request only if it possesses the necessary technological capability to provide records in the requested non-paper physical media format.

A person may subscribe to future issues of public records that are created, issued or disseminated by the City on a regular basis. A subscription is valid for up to 6 months and may be renewed by the subscriber.

A person serving a sentence of imprisonment in a local, state or federal correctional facility is not entitled to submit a request for a public record. The FOIA Coordinator will deny all such requests.

### **SECTION 3: PROCESSING A REQUEST**

Unless otherwise agreed to in writing by the person making the request, the City will issue a response within 5 business days of receipt of a FOIA request. If a request is received by fax, email or other electronic transmission, the request is deemed to have been received on the following business day.

The City will respond to a request in one of the following ways:

- Grant the request.
- Issue a written notice denying the request.
- Grant the request in part and issue a written notice denying in part the request.
- Issue a notice indicating that due to the nature of the request the City needs an additional 10 business days to respond for a total of no more than 15 business days. Only one such extension is permitted.
- Issue a written notice indicating that the public record requested is available at no charge on the City's website [www.nilesmi.org/FOIA](http://www.nilesmi.org/FOIA).

#### ***When a request is granted:***

If the request is granted, or granted in part, the FOIA Coordinator will require that payment be made in full for the allowable fees associated with responding to the request before the public record is made available.

The FOIA Coordinator shall provide a detailed itemization of the allowable costs incurred to process the request to the person making the request.

A copy of these Procedures and Guidelines and the Written Public Summary will be provided to the requestor free of charge with the response to a written request for public records, provided however, that because these Procedures and Guidelines, and the Written Public Summary are maintained on the City's website at: [www.nilesmi.org/FOIA](http://www.nilesmi.org/FOIA), a link to the Procedures and Guidelines and the Written Public Summary will be provided in lieu of providing paper copies of those documents.

FOIA Continued

If the cost of processing a FOIA request is \$50 or less, the requester will be notified of the amount due and where the documents can be obtained.

If the cost of processing a FOIA request is expected to exceed \$50 based on a good-faith calculation, or if the requestor has not paid in full for a previously granted request, the City will require a good-faith deposit pursuant to Section 4 of this policy before processing the request.

In making the request for a good-faith deposit the FOIA Coordinator shall provide the requestor with a detailed itemization of the allowable costs estimated to be incurred by the City to process the request and also provide a best efforts estimate of a time frame it will take the City to provide the records to the requestor. The best efforts estimate shall be nonbinding on the City, but will be made in good faith and will strive to be reasonably accurate, given the nature of the request in the particular instance, so as to provide the requested records in a manner based on the public policy expressed by Section 1 of the FOIA.

***When a request is denied or denied in part:***

If the request is denied or denied in part, the FOIA Coordinator will issue a Notice of Denial which shall provide in the applicable circumstance:

- An explanation as to why a requested public record is exempt from disclosure; or
- A certificate that the requested record does not exist under the name or description provided by the requestor, or another name reasonably known by the City; or
- An explanation or description of the public record or information within a public record that is separated or deleted from the public record; and
- An explanation of the person's right to submit an appeal of the denial to either the office of the City Administrator or seek judicial review in the Berrien County Circuit Court; and
- An explanation of the right to receive attorneys' fees, costs, and disbursements as well as actual or compensatory damages, and punitive damages of \$1,000, should they prevail in Circuit Court.
- The Notice of Denial shall be signed by the FOIA Coordinator.

If a request does not sufficiently describe a public record, the FOIA Coordinator will issue a Notice of Denial indicating that the request is deficient, seek clarification or amendment of the request by the person making the request. Any clarification or amendment will be considered a new request subject to the timelines described in this Section.

***Requests to inspect public records:***

The City shall provide reasonable facilities and opportunities for persons to examine and inspect public records during normal business hours. The FOIA Coordinator is authorized to promulgate rules regulating the manner in which records may be viewed so as to protect City records from loss, alteration, mutilation or destruction and to prevent excessive interference with normal City operations.

**SECTION 4: FEE DEPOSITS**

If the fee estimate is expected to exceed \$50.00 based on a good-faith calculation, the requestor will be asked to provide a deposit not exceeding one-half of the total estimated fee.

FOIA Continued

If a request for public records is from a person who has not paid the City in full for copies of public records made in fulfillment of a previously granted written request, the FOIA Coordinator will require a deposit of 100% of the estimated processing fee before beginning to search for a public record for any subsequent written request by that person when all of the following conditions exist:

- The final fee for the prior written request is not more than 105% of the estimated fee;
- The public records made available contained the information sought in the prior written request and remain in the City's possession;
- The public records were made available to the individual, subject to payment, within the time frame estimated by the City to provide the records;
- Ninety (90) days have passed since the FOIA Coordinator notified the individual in writing that the public records were available for pickup or mailing;
- The individual is unable to show proof of prior payment to the City; and
- The FOIA Coordinator has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit.

The FOIA Coordinator will not require an increased estimated fee deposit if any of the following apply:

- The person making the request is able to show proof of prior payment in full to the City;
- The City is subsequently paid in full for the applicable prior written request; or
- Three hundred sixty five (365) days have passed since the person made the request for which full payment was not remitted to the City.

## **SECTION 5: CALCULATION OF FEES**

A fee may be charged for the labor cost of copying/duplication.

A fee will **not** be charged for the labor cost of search, examination, review and the deletion and separation of exempt from nonexempt information **unless** failure to charge a fee would result in unreasonably high costs to the City because of the nature of the request in the particular instance, and the City specifically identifies the nature of the unreasonably high costs.

Costs for the search, examination review, and deletion and separation of exempt from non-exempt information are "unreasonably high" when they are excessive and beyond the normal or usual amount for those services (Attorney General Opinion 7083 of 2001) compared to the costs of the city's usual FOIA requests, not compared to the city's operating budget. (*Bloch v. Davison Community Schools*, Michigan Court of Appeals, Unpublished, April 26, 2011)

The following factors shall be used to determine an unreasonably high cost to the City:

- Volume of the public record requested
- Amount of time spent to search for, examine, review and separate exempt from non-exempt information in the record requested.
- Whether the public records are from more than one City department or whether various City offices are necessary to respond to the request.
- The available staffing to respond to the request.
- Any other similar factors identified by the FOIA Coordinator in responding to the particular request.

FOIA Continued

The Michigan FOIA statute permits the City to charge for the following costs associated with processing a request:

- Labor costs associated with copying or duplication, which includes making paper copies, making digital copies, or transferring digital public records to non-paper physical media or through the Internet.
- Labor costs associated with searching for, locating and examining a requested public record, when failure to charge a fee will result in unreasonably high costs to the City.
- Labor costs associated with a review of a record to separate and delete information exempt from disclosure, when failure to charge a fee will result in unreasonably high costs to the City.
- The cost of copying or duplication, not including labor, of paper copies of public records. This may include the cost for copies of records already on the city's website if you ask for the city to make copies.
- The cost of computer discs, computer tapes or other digital or similar media when the requester asks for records in non-paper physical media. This may include the cost for copies of records already on the city's website if you ask for the city to make copies.
- The cost to mail or send a public record to a requestor.

Labor costs will be calculated based on the following requirements:

- All labor costs will be estimated and charged in 15-minute increments, with all partial time increments rounded down. If the time involved is less than 15 minutes, there will be no charge.
- Labor costs will be charged at the hourly wage of the lowest-paid City employee capable of doing the work in the specific fee category, regardless of who actually performs work.
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits.
- The City may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits, but in no case may it exceed the actual cost of fringe benefits.
- Overtime wages will not be included in labor costs unless agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit cost.
- Contracted labor costs will be charged at the hourly rate of \$48.90 (6 times the state minimum hourly wage).

The cost to provide records on non-paper physical media when so requested will be based on the following requirements:

- Computer disks, computer tapes or other digital or similar media will be at the actual and most reasonably economical cost for the non-paper media.
- This cost will only be assessed if the City has the technological capability necessary to provide the public record in the requested non-paper physical media format.
- The City will procure any non-paper media and will not accept media from the requestor in order to ensure integrity of the City's technology infrastructure.

FOIA Continued

The cost to provide paper copies of records will be based on the following requirements:

- Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper will not exceed \$.10 per sheet of paper. Copies for non-standard sized sheets of paper will reflect the actual cost of reproduction.
- The City will provide records using double-sided printing, if it is cost-saving and available.

The cost to mail records to a requestor will be based on the following requirements:

The actual cost to mail public records using a reasonably economical and justified means.

- The City may charge for the least expensive form of postal delivery confirmation.
- No cost will be made for expedited shipping or insurance unless specified by the requestor.

If the FOIA Coordinator does not respond to a written request in a timely manner, the City must:

- Reduce the labor costs by 5% for each day the City exceeds the time permitted under FOIA up to a 50% maximum reduction, if **any** of the following applies:
  - The City's late response was willful and intentional,
  - The written request conveyed a request for information within the first 250 words of the body of a letter facsimile, email or email attachment, or
  - The written request included the words, characters, or abbreviations for "freedom of information," "information," "FOIA," "copy" or a recognizable misspelling of such, or legal code reference to MCL 15. 231, et seq. or 1976 Public Act 442 on the front of an envelope or in the subject line of an email, letter or facsimile cover page.
- Fully note the charge reduction in the Detailed Itemization of Costs Form.

## **SECTION 6: WAIVER OF FEES**

The cost of the search for and copying of a public record may be waived or reduced if in the sole judgment of the FOIA Coordinator a waiver or reduced fee is in the public interest because it can be considered as primarily benefitting the general public. The city council may identify specific records or types of records it deems should be made available for no charge or at a reduced cost.

## **SECTION 7: DISCOUNTED FEES**

### ***Indigence***

The FOIA Coordinator will discount the first \$20.00 of the processing fee for a request if the person requesting a public record submits an affidavit stating that they are:

- Indigent and receiving specific public assistance, or
- If not receiving public assistance, stating facts demonstrating an inability to pay because of indigence.

An individual is not eligible to receive the waiver if:

- The requestor has previously received discounted copies of public records from the City twice during the calendar year; or
- The requestor requests information in connection with other persons who are offering or providing payment to make the request.

An affidavit is a sworn statement. The FOIA Coordinator may make a Fee Waiver Affidavit Form available for use by the public.

### ***Nonprofit organization advocating for developmentally disabled or mentally ill individuals***

The FOIA Coordinator will discount the first \$20.00 of the processing fee for a request from:

- A nonprofit organization formally designated by the state to carry out activities under subtitle C of the federal developmental disabilities assistance and bill of rights act of 2000, Public Law 106-402, and the protection and advocacy for individuals with mental illness act, Public Law 99-319, or their successors, if the request meets all of the following requirements:
  - Is made directly on behalf of the organization or its clients.
  - Is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the mental health code, 1974 PA 258, MCL 330.1931.
  - Is accompanied by documentation of its designation by the state, if requested by the public body.

### **SECTION 8: APPEAL OF A DENIAL OF A PUBLIC RECORD**

When a requestor believes that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, he or she may appeal to the City Council by filing an appeal of the denial with the office of the City Administrator (*or "clerk" or "FOIA Coordinator," etc.*).

The appeal must be in writing, specifically state the word "appeal" and identify the reason or reasons the requestor is seeking a reversal of the denial. The City FOIA Appeal Form (To Appeal a Denial of Records), will be used.

The City Council is not considered to have received a written appeal until the first regularly scheduled City Council meeting following submission of the written appeal.

Within 10 business days of receiving the appeal the City Council will respond in writing by:

- Reversing the disclosure denial;
- Upholding the disclosure denial; or
- Reverse the disclosure denial in part and uphold the disclosure denial in part; or
- Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the City Council shall respond to the written appeal. The City Council shall not issue more than 1 notice of extension for a particular written appeal.

If the City Council fails to respond to a written appeal, or if the City Council upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing a civil action in Circuit Court.

Whether or not a requestor submitted an appeal of a denial to the City Council, he or she may file a civil action in Berrien County Circuit Court within 180 days after the City's final determination to deny the request.

If a court determines that a public record is not exempt from disclosure, it shall order the City to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. Failure to comply with an order of the court may be punished as contempt of court.

FOIA Continued

If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in such an action, the court shall award reasonable attorneys' fees, costs, and disbursements. If

the person or City prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements.

If the court determines that the City has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order the City to pay a civil fine of \$1,000.00, which shall be deposited into the general fund of the state treasury. The court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$1,000.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

### **SECTION 9: APPEAL OF AN EXCESSIVE FOIA PROCESSING FEE**

"Fee" means the total fee or any component of the total fee calculated under section 4 of the FOIA, including any deposit.

If a requestor believes that the fee charged by the City to process a FOIA request exceeds the amount permitted by state law or under this policy, he or she must first appeal to the City Council by submitting a written appeal for a fee reduction to the office of the City Administrator (*or "clerk" or "FOIA Coordinator," etc.*).

The appeal must be in writing, specifically state the word "appeal" and identify how the required fee exceeds the amount permitted. The City FOIA Appeal Form (To Appeal an Excess Fee) may be used.

The City Council is not considered to have received a written appeal until the first regularly scheduled City Council meeting following submission of the written appeal.

Within 10 business days after receiving the appeal, the City Council will respond in writing by:

- Waiving the fee;
- Reducing the fee and issuing a written determination indicating the specific basis that supports the remaining fee;
- Upholding the fee and issuing a written determination indicating the specific basis that supports the required fee; or
- Issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the City Council will respond to the written appeal. The City Council shall not issue more than 1 notice of extension for a particular written appeal.

Where the City Council reduces or upholds the fee, the determination must include a certification from the City Council that the statements in the determination are accurate and that the reduced fee amount complies with its publicly available procedures and guidelines and Section 4 of the FOIA.

Within 45 days after receiving notice of the City Council's determination of an appeal, the requesting person may commence a civil action in Berrien County Circuit Court for a fee reduction.

FOIA Continued

If a civil action is commenced against the City for an excess fee, the City is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute.

An action shall not be filed in circuit court unless **one** of the following applies:

- The City does not provide for appeals of fees,
- The City Council failed to respond to a written appeal as required, or
- The City Council issued a determination to a written appeal.

If a court determines that the City required a fee that exceeds the amount permitted under its publicly available procedures and guidelines or Section 4 of the FOIA, the court shall reduce the fee to a permissible amount. Failure to comply with an order of the court may be punished as contempt of court.

If the requesting person prevails in court by receiving a reduction of 50% or more of the total fee, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages.

If the court determines that the City has arbitrarily and capriciously violated the FOIA by charging an excessive fee, the court shall order the City to pay a civil fine of \$500.00, which shall be deposited in the general fund of the state treasury. The court may also award, in addition to any actual or compensatory damages, punitive damages in the amount of \$500.00 to the person seeking the fee reduction. The fine and any damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

#### **SECTION 10: CONFLICT WITH PRIOR FOIA POLICIES AND PROCEDURES; EFFECTIVE DATE**

To the extent that these Procedures and Guidelines conflict with previous FOIA policies promulgated by City Council or the City Administration these Procedures and Guidelines are controlling. To the extent that any administrative rule promulgated by the FOIA Coordinator subsequent to the adoption of this resolution is found to be in conflict with any previous policy promulgated by the City Council or the City Administration, the administrative rule promulgated by the FOIA Coordinator is controlling.

To the extent that any provision of these Procedures and Guidelines or any administrative rule promulgated by the FOIA Coordinator pertaining to the release of public records is found to be in conflict with any State statute, the applicable statute shall control. The FOIA Coordinator is authorized to modify this policy and all previous policies adopted by the City Council or the City Administration, and to adopt such administrative rules as he or she may deem necessary, to facilitate the legal review and processing of requests for public records made pursuant to Michigan's FOIA statute, provided that such modifications and rules are consistent with State law. The FOIA Coordinator shall inform the City Council of any change these Policies and Guidelines.

These FOIA Policies and Guidelines become effective July 1, 2015.

#### **SECTION 11: APPENDIX OF THE CITY OF NILES FOIA FORMS- OMITTED, CONTACT CITY CLERK FOR ALL FOIA RELATED FORMS**

## **CITY OF NILES CODE OF ETHICS STATEMENT**

**THE CITY OF NILES HEREBY ADOPTS THE FOLLOWING CODE OF ETHICS:**

The City of Niles agrees to maintain a written code or standard of conduct that shall govern the performance of its officers, employees, board members, or agents engaged in the award or administration of third party contracts or sub-agreements supported by Federal assistance. This code or standards shall provide that the City of Niles's officers, employees, board members, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from any present or potential contractor or sub-recipient. The City of Niles may set minimum rules where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. This code or standards shall also prohibit the City of Niles's officers, employees, board members, or agents from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain. As permitted by State or local law or regulations, the code or standards shall include penalties, sanctions, or other disciplinary actions for violations by the City of Niles officers, employees, board members, or their agents, or by contractors or sub-recipients or their agents.

## **PRINCIPLES OF ETHICAL CONDUCT**

The following principles of ethical conduct apply to all officers, employees, board members, or agents of the City of Niles and form the basis for specific standards:

- Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.
- Officers, employees, board members, or agents shall not hold financial interests that conflict with the conscientious performance of duty.
- Officers, employees, board members, or agents shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest referred to in the regulations.
- An Officers, employees, board members, or agents shall not, except pursuant to the exceptions in Subpart B, solicit or accept any gift or other item of monetary value from any person or entity seeking official actions from doing business with, or conducting activities regulated by the City of Niles, or whose interests may be substantially affected by the performance or nonperformance of their duties.
- Officers, employees, board members, or agents shall put forth honest effort in the performance of their duties.
- Officers, employees, board members, or agents shall make no unauthorized commitments or promises of any kind purporting to bind the City of Niles.
- Officers, employees, board members, or agents shall not use public office for private gain.
- Officers, employees, board members, or agents shall act impartially and not give preferential treatment to any private organization or individual.
- Officers, employees, board members, or agents shall protect and conserve Federal property and shall not use it for other than authorized activities.
- Officers, employees, board members, or agents shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflicts with official City of Niles duties and responsibilities.
- Officers, employees, board members, or agents shall disclose waste, fraud, abuse, and corruption to proper authorities.
- Officers, employees, board members, or agents shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those such as Federal, State and local taxes that are imposed by law.

- Officers, employees, board members, or agents shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.
- Officers, employees, board members, or agents shall endeavor to avoid any actions creating the appearance that they are violating the law or these Standards of Ethical Conduct.

### **BASIC CONCEPTS**

- Officers, employees, board members, or agents shall apply the principles stated above in weighing the property of conduct not otherwise addressed in the regulations;
- Officers, employees, board members, or agents shall judge whether circumstances will violate the appearance principle, the last principle set forth above, from the perspective of a reasonable person with knowledge of the relevant facts.
- There are special rules for determining which standards apply to officers, employees, board members, or agents detailed to other agencies, to the Federal government, to the State government or to international organizations.
- A violation of the regulatory standards may be cause for corrective action or for disciplinary action against officers, employees, board members, or agents. There are criminal penalties for violations of criminal status referred to in the regulations.
- Officers, employees, board members, or agents are encouraged to seek the advice of the City of Niles officials. Disciplinary actions for violation of Code of Ethics will not be taken against officers, employees, board members, or agents who rely on such advice.

### **SUBPART B - GIFTS FROM OUTSIDE SOURCES**

Officers, employees, board members, or agents shall not solicit or accept a gift given because of his official position or from a prohibited source. A prohibited source is defined as any person, including any organization more than half of whose members are persons:

- Seeking official actions by the City of Niles;
- Doing or seeking to do business with the City of Niles;
- Regulated by the City of Niles; or
- Substantially affected by the performance of his duties.

### **DEFINITION OF A GIFT**

The term "gift" includes almost anything of monetary value. However, it does not include:

- Coffee, donuts and similar modest items of food and refreshments when offered other than as part of a meal;
- Greeting cards and most plaques, certificates and trophies;
- Prizes in contests open to the public;
- Commercial discounts available to the general public or to all Government or military personnel;
- Commercial loans, and pensions and similar benefits;
- Anything paid for by the Government, secured by the Government under Government contract or accepted by the Government in accordance with a statute;
- Anything for which the employee pays market value.

### **EXCEPTIONS**

Subject to the limitations noted below, there are exceptions which will permit an employee of the City of Niles to accept:

- Unsolicited gifts with a market value of \$20 or less per occasion, aggregating no less than \$50 per calendar year from any one source (this exception does not permit gifts of cash or investment interest);
- Gifts when clearly motivated by a family relationship or personal friendship;
- Commercial discounts and similar benefits offered to groups in which membership is not related to the City of Niles employment or, if membership is related to the City of Niles employment, where the same offer is broadly available to the public through similar groups, and certain benefits offered by professional associations or by persons who are not prohibited sources.
- Certain awards and honorary degrees;
- Gifts resulting from the outside business activities of employees and their spouses;
- Travel and entertainment in connections with employment discussions;
- Certain gifts from political organizations;
- Free attendance provided by the sponsor of an event for the day on which an employee is speaking or presenting information.
- Free attendance provided by the sponsor of a widely-attended gathering of mutual interest to a number of parties where the necessary determination of agency interest has been made; if free attendance to a widely-attended gathering is offered from a nonsponsor, check with your designated ethics counselor;
- Invitations to certain social events extended by persons who are not prohibited sources, provided no one is charged a fee to attend the event;
- Certain gifts of food and entertainment in foreign areas;
- Gifts accepted by the employee of the City of Niles under a specific statute, such as 5 U.S.C.4111 and 7342, or pursuant to a supplemental agency regulation.

The foregoing Code of Ethics was adopted by the Niles City Council at a Regular Council Meeting on the 25<sup>th</sup> day of March, 2002. For the purposes of this policy, it has been adapted to include all officers, employees, board members, or agents of the City.

## **GENERAL LIABILITY**

The City's "errors and omission" insurance policy covers all commission members as they engage in the policy process. Commissions and City Council members are covered in their actions as long as they are based on standards or accepted review procedures in the ordinance they follow. However, if a commission or a commissioner makes an administrative decision that is "arbitrary and capricious" and is not based on standards of review, they will not be covered under this policy. Any individual or group decision to deviate from this policy manual may result in the individual or group's immediate removal from the commission and/or result in a lack of qualified coverage under the City's general liability policy.

## **YOUR COMMITMENT**

Thank You for Your Service! In concluding, we sincerely hope you enjoy your experience serving on one of the City's boards, commissions or authorities. Most participants report satisfaction with the process and with the opportunity to interact with residents with a shared commitment to the policy process and to serving the Niles community. Your dedication is greatly appreciated!

## LISTING OF CITY BOARDS, COMMITTEES AND COMMISSIONS

### BOARD OF REVIEW

Membership:	3 members
Requirements:	Electors of the City who are not either elected or appointed officials of the city.
Term:	4 years
Meetings:	March - TBA
Appointment/Election:	Appointed by majority vote of the City Council
Responsibilities:	The purpose of the board is to review and correct the assessment rolls in accordance with the provisions of State Law.

### BOARD OF UTILITIES

Membership:	5 members
Requirements:	None
Term:	4 years
Meetings:	Third Monday of month, 3:15 pm, City Hall
Appointment/Election:	Appointed by majority vote of the City Council.
Responsibilities:	Advise and consult with the City Council, City Administrator and Utilities Manager on all matters concerning electric, water and sewage treatment facilities of the city.

### BUILDING BOARD OF APPEALS

Membership:	3-7 members PA 230 of 1972
Requirements:	Members must have a background in construction and a working knowledge of the codes being enforced by the governmental subdivision in order to process appeals and consider variances.
Term:	2 years
Meetings:	On Demand
Appointment/Election:	Appointed by majority vote of the City Council
Responsibilities:	Hear the appeal and render and file its decision, with a statement of reasons for the decision.

### DOWNTOWN DEVELOPMENT AUTHORITY

Membership:	9-12 members plus Mayor PA 197 OF 1975 ORD #251
Requirements:	Not less than 7 members shall have an ownership, leasehold or other possessory interest in property located in the downtown district. At least 1 member of the board shall be a resident of the downtown district.
Term:	4 years
Meetings:	3 <sup>rd</sup> Wednesday
Appointment/Election:	Appointed by the Mayor with the majority vote of the City Council.
Responsibilities:	The DDA shall have all the powers and duties as set forth herein and by statute including but not limited to implementing development plans, acquiring and disposing of interests in real and personal property; levying ad valorem tax not to exceed 2 mills on the real and tangible personal property in the downtown district; issuing bonds and other evidences of indebtedness, and authorizing the use of tax increment financing plans all as prescribed in PA 197 of 1975 as amended (MCL 125.1651 et. Seq.).

**FORT ST. JOSEPH ARCHEOLOGY BOARD**

Membership: 15 members  
Requirements: None  
Term: 2 years  
Meetings: On Demand  
Appointment/Election: Appointed by the Mayor with the majority vote of the City Council  
Responsibilities: Advise and consult with the City Council, with the City Administrator and with the  
The mission of the Fort St. Joseph Archaeology Advisory Committee is to recommend to the City of Niles and WMU and promote: 1) a course of action for the financial support necessary for the archaeological investigation and reconstruction of Fort St. Joseph and 2) a comprehensive and insightful interpretation of the material record and history leading to a better understanding of the social and cultural interactions of the Native American Indians and Europeans at this point of contact.

**GOLF BOARD**

Membership: 5 members  
Requirements: Must be registered elector of the city  
Term: 4 years  
Meetings: Third Thursday, April thru September 7:00 pm at the Golf Course Clubhouse  
Appointment/Election: Appointed by majority vote of the City Council  
Responsibilities: Advise and consult with the City Council, with the City Administrator and with the Public Works Director on all matters concerning the Plym Park Golf Course.

**HISTORIC DISTRICT COMMISSION**

Membership: 7 members  
Requirements: 5 persons residing in the city; provided however, that at least 2 members shall be selected from a list of citizens recommended for appointment by majority vote of a duly organized and existing historical preservation society or societies; and provided further, that 1 member shall be architect duly registered in the State of Michigan and residing in the city, if such person is available for appointment.  
Term: 3 years  
Meetings: On Demand  
Appointment/Election: Appointed by Mayor with the majority vote of the City Council  
Responsibilities: Advise and consult with the City Council and the City Administrator. Review of plans for work upon or affecting an historic district until the provision of the within ordinance have been observed. The power and duty of the commission to review applications for building or other permits or work plans shall be limited to exterior features of the district resource. Work plans which pertain to interior features shall not be considered by the commission unless specifically authorized by resolution of the city council. Abide by the Local Historic District Act, Act 169 of 1970.

**HOUSING COMMISSION**

Membership:	5 members
Requirements:	None
Term:	5 years
Meetings:	3 <sup>rd</sup> Thursday
Appointment/Election:	Appointed by the City Administrator
Responsibilities:	Advise and consult with the City Council and with the City Administrator. The Housing Commission shall have those powers and duties enumerated in Section 7 of Act 18 of the Public Acts of 1933, as amended (MCL 125.657, MSA 5.3017) and in addition, shall have such other powers relating to housing project facilities as may be prescribed by ordinance or resolution of the council or as may be necessary to carry out the purposes of this article, providing, however, that all contracts, deeds, leases or purchases entered into by the commission shall be in the name of the city and shall be subject to approval by the council.

**Niles District LIBRARY BOARD**

Membership:	4 members
Requirements:	Representatives for the City of Niles reside within city limits.
Term:	4 years
Meetings:	3 <sup>rd</sup> Tuesday
Appointment/Election:	Appointed by majority vote of the City Council
Responsibilities:	Independent board.

**PARKS AND RECREATION BOARD**

Membership:	9 members
Requirements:	Must be registered elector of the city
Term:	4 years
Meetings:	Fourth Tuesday, 6:00 pm, City Council Chambers 1345 E. Main.
Appointment/Election:	Appointment by a majority of the City Council
Responsibilities:	Advise and consult with the City Council, City Administrator and appropriate department heads on all matters concerning public parks owned and/or operated by the city, within the meaning of Section 8-10 of the Charter.

**PLANNING COMMISSION**

Membership: 9 members  
Requirements: Must hold no other city office except board of appeals. Must represent different occupations or professions  
Term: 3 years  
Meetings: Fourth Wednesday, 5:30 pm, Law Enforcement Complex, Conference Room, 1600 Silverbrook St.  
Appointment/Election: Appointed by the Mayor with the approval of the City Council.  
Responsibilities: The Commission is responsible for adopting and maintaining the City Master Plan, and advising the City Council on matters relating to the future public and private development of the City. The Commission and Department must annually prepare a Capital Improvements Plan and submit it to City Council for consideration. Council may not amend zoning regulations until it has received a report and recommendation from the Planning Commission.

**PUBLIC ART COMMISSION**

Membership: 5-7 members  
Requirements: 2 members must live within City limits  
Term: 2 years  
Meetings: 1<sup>st</sup> Wednesday of each month  
Appointment/Election: Appointed by majority vote of the City Council.  
Responsibilities: Advise and consult with the City Council and City Administrator on all matters concerning public art within the City of Niles.

**ZONING BOARD OF APPEALS**

Membership: 5 members  
Requirements: None  
Term: 3 years  
Meetings: On demand  
Appointment/Election: Appointed by the Mayor with the approval of the City Council.  
Responsibilities: Hear and determine appeals from and review any order, requirement or decision to determination made by the Building Official. Hear and determine special uses and zoning district map boundaries.

# CITY ORDINANCES PERTAINING TO COMMISSIONS

## BOARD OF PUBLIC UTILITIES

ESTABLISHED: 06/28/99

5

MEMBERSHIP:

Ord. #387

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### SEC. 2-182

- (a) There is hereby established a board of public utilities which shall consist of five (5) persons.
- (b) Membership to the board of public utilities shall be by appointment by majority vote of the city council, and members shall serve at the pleasure of the city council; Persons appointed to the board of public utilities shall be registered electors of the city; provided one (1) member of the board may be a non-resident of the City of Niles as long as that member is a rate payer of the board of public utilities, or an employee of an entity rate payer. Nonvoting ex-officio members may be appointed from time to time who shall serve at the pleasure of the city council. The mayor and the city administrator shall be ex-officio members of the board of public utilities and shall have the right to participate in all the deliberations thereof, but shall not have the right to vote.
- (c) Member shall serve without compensation but may be reimbursed for reasonable out-of-pocket expenses with the approval of the city administrator.

### Sec. 2-183 Meetings

The board of public utilities shall conduct one (1) regular meeting each month at a place and time designated and published in advance. Special meetings shall be conducted whenever requested by the mayor, by the city administrator, by the chairperson of the board, by two (2) members of the board of public utilities, or by two (2) members of the city council.

### Sec. 2-185 Responsibilities, duties.

- (a) It shall be the responsibility and duty of the board of public works to advise and consult with the city council, with the city administrator, and with the utilities manager on all matters concerning electric, water and sewage treatment facilities of the city, within the meaning of section 8-10 of the 1982 Charter of the City of Niles.
- (b) The responsibility of the board of public works shall include all matters involving municipal electric, municipal water, and municipal waste water or sewage treatment utilities; matters of the establishment, location and/or relocation, or closure or discontinuance of any of said utilities; continued and preventive maintenance of utility properties; the improvement of utility services; rules and regulations pertaining to utility services; terms and conditions of service; customer relations; the terms, provision and conditions, including costs, of utilities contracts; the expansion or reduction of utilities; matters concerning buildings and other improvements of utilities properties or used in conjunction with utilities; the formulation of policies and short- and long-term plans; and all matters related to or concerning the municipal utilities of the city.
- (c) The board of public utilities shall be knowledgeable of the applicable laws, statutes and regulations pertaining to utilities and their operation and management.
- (d) It shall be among the responsibilities and duties of the board of public utilities to maintain a continuing record of its deliberations and recommendations concerning amendments and proposed amendments to this division, and concerning practices, policies and procedures heretofore established for the operation and management of all municipal utilities, or which are hereafter adopted or proposed for adoption. The records shall also include the advice, suggestions, assistance and offers of assistance provided by the board of public works for the improvement of municipal utilities.

## BOARD OF REVIEW

3 YEAR TERMS

MEMBERSHIP: 3

ESTABLISHED: 01/01/82

CITY CHARTER

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### Sec. 6-3

The board of review shall consist of three (3) electors of the city who are not either elected or appointed officials of the city. They shall be appointed by the council to serve three-year staggered terms subject to the pleasure of the council. Each term shall commence as of January 1. The board shall select its own clerk, who may be the city assessor. They shall meet and complete their work as required by law. The compensation shall be fixed by the council. The council by ordinance or resolution may provide for the appointment of alternate members of the board in addition to those above.

### Sec. 27-3. Review of assessments

The board of review shall meet for the purpose of reviewing and correcting the assessment rolls on the Tuesday immediately following the first Monday in March, and shall proceed with the review in accordance with the provisions of state law. The review of assessments shall be completed on or before the first Monday in April.

## THE GENERAL PROPERTY TAX ACT (EXCERPT)

### Act 206 of 1893

#### BOARD OF REVIEW.

Document	Description
<a href="#">Section 211.28</a>	Board of review for township or city; appointment, qualifications, and terms of members; vacancy; eligibility; quorum; adjournment; deciding questions; board of review committees; meetings; size, composition, and manner of appointment of board of review; alternate members; endorsement of assessment roll; duties and responsibilities contained in MCL 211.29.
<a href="#">Section 211.29</a>	Board of review of township; meeting; submission, examination, and review of assessment roll; additions to roll; correction of errors; compliance with act; review of roll on tax day; prohibitions; entering valuations in separate columns; approval and adoption of roll; conducting business at public meeting; notice of meeting; notice of change in roll.
<a href="#">Section 211.30</a>	Board of review; meetings; alternative dates; sessions; request, protest, or application for correction of assessment; hearing; examination of persons under oath; filing by nonresident taxpayer; notice; filing, hearing, and determination of objection; right of appeal; approval or disapproval of personal property exemption; endorsement and signed statement; delivery of assessment roll; ordinance or resolution authorizing filing of protest by letter; notice of option.

## BUILDING BOARD OF APPEALS

2 YEAR TERMS

MEMBERSHIP: 5 ALTERNATE: 1

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A board shall consist of not less than 3 nor more than 7 members. Governmental subdivisions may establish terms of office or comply with those set forth in the Act, which requires that members be appointed for 2-year terms. Appointments are made by the chief executive officer of a city and the chairperson of the county board of commissioners. The Act states, a member of the board of appeals shall be qualified by experience or training to perform the duties of members of the board of appeals. Members must have background in construction and a working knowledge of the codes being enforced by the governmental subdivision in order to process appeals and consider variances. When appointing members, the functions of a Building Board of Appeals should be reviewed. If an enforcing agency denies an application for permit, or if the enforcing agency makes any other decision related to enforcement of construction codes, an interested party, or the persons agent, may appeal in writing to the Building Board of Appeals.

Further, after public hearing, a Building Board of Appeals may grant a specific variance to a substantive requirement of the code(s) under certain conditions. Members of the Building Board of Appeals, therefore, must be knowledgeable of the code(s) and familiar with construction practices. A separate Building Board of Appeals is not required for each part of the code, although it is permissible. It is recommended that there be at least one member as an expert in each of the codes if only one board is established. A person may serve on the Construction Board of Appeals of more than 1 governmental subdivision. Governmental subdivisions may join together and establish one board to serve several enforcing agencies.

### Notice to Interested Parties

A Building Board of Appeals is to hear appeals and requests for variance without undue delay. The act requires the Building Board of Appeals to hear the appeal and render and file its decision, with a statement of reasons for the decision, with the enforcing agency from whom the appeal was taken **not more than 30 days after submission of the appeal**. Proper notice must be distributed, a hearing held, and a decision delivered within those 30 days. Interested parties in an appeal or variance proceeding must be properly notified of the hearing and given reasonable notice of the hearing. The notice should include:

- A statement of the date, hour, place, and nature of the hearing.
- A statement of the legal authority and jurisdiction under which the hearing is to be held.
- A reference to the particular section(s) of statutes, rules, or codes involved.
- A short statement of the matters asserted.

It is recommended that the notice be hand delivered or mailed by certified or registered mail so there is a proof of service. A Proof of Delivery accompanying the notice provides excellent proof of service. A Certification of Mailing completed by the person distributing hearing notices provides documentation that notices were mailed.

### Hearing

Hearings shall be conducted in an impartial manner. If a party fails to appear after proper service of notice, the board may proceed with the hearing and make its decision in the absence of the party, or may postpone the hearing, keeping in mind a decision must be rendered within 30 days from the date of request. If a quorum of the Building Board of Appeals is not present, the appellant should be given the right to request a postponement of the hearing. Interested parties served with a notice of hearing may file written answers before the date set for the hearing. Parties shall be given an opportunity to present oral and written arguments on issues of law and

policy and an opportunity to present evidence and argument on issues of fact. A party may cross-examine a witness, including the author of a document prepared by, on behalf of, or for use of the enforcing agency and offered in evidence. A party may submit rebuttal evidence. An officer of a Building Board of Appeals may administer an oath or affirmation to a witness in a matter before the board. The chairperson or a designated person should act as the presiding officer and may do all of the following:

- Administer oaths and affirmations.
- Regulate the course of the hearings.
- Direct parties to confer to consider simplification of the issues by consent of the parties.

### **Variance from the Code(s)**

Section 15 of the Act is applicable throughout the state.

Section 15(1) provides, in part:

A board of appeals may grant a specific variance to a substantive requirement of the code if the literal application of the substantive requirement would result in an exceptional, practical difficulty to the applicant, and if both of the following requirements are satisfied:

- (a) The performance of the particular item or part of the building or structure with respect to which the variance is granted shall be adequate for its intended use and shall not substantially deviate from performance required by the code of that particular item or part for the health, safety, and welfare of the people of this state.
- (b) The specific condition justifying the variance shall be neither so general nor recurrent in nature as to make an amendment of the code with respect to the condition reasonably practical or desirable.

Section 15(2) states:

A board of appeals may attach in writing any condition in connection with the granting of a variance that in its judgment is necessary to protect the health, safety and welfare of the people of this state. The breach of a condition shall automatically invalidate the variance and any permit, license and certificate granted on the basis of it. In no case shall more than minimum variance from the code be granted than is necessary to alleviate the exceptional, practical difficulty,

### **Decisions**

Official records of all hearings should be prepared and include the following:

- Notices, pleadings, motions, and intermediate rulings.
- Questions and offers of proof, objections, and rulings thereon.
- Evidence presented.
- Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose, i.e., Lansing is in Michigan.
- Findings and exceptions.
- Decisions and reasons for the decision.

## **DOWNTOWN DEVELOPMENT AUTHORITY (MAIN STREET DDA)**

**4 YEAR TERMS**

MEMBERSHIP: 9

ESTABLISHED: 06/11/79

ORD. #251

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### **Sec. 26-31. - Purpose.**

The purpose of this article is to:

- (1) Correct and prevent deterioration in business districts;
- (2) Encourage historic preservation;
- (3) Authorize the acquisition and disposal of interests in real and personal property;
- (4) Authorize the creation and implementation of development plans; and
- (5) Promote economic growth of the downtown district described in this article.

### **Sec. 26-32. - Created.**

A downtown development authority is hereby created pursuant to Public Act No. 197 of 1975 (MCL 125.1651 et seq.). <http://legislature.mi.gov/doc.aspx?mcl-125-1651>

### **Sec. 26-33. - Membership, powers, duties.**

- (a) The downtown development authority shall be under the supervision and control of a board consisting of the mayor and 12 additional members appointed by the mayor subject to approval by the Niles City Council. Not less than seven of the members shall be persons having an ownership, leasehold or other possessory interest in property located in the downtown district, or officers, members, trustees, principals or employees of a legal entity having an ownership, leasehold or possessory interest in property located in the downtown district. If there are more than 100 persons residing in the downtown district, at least one member of the board shall be a resident of the downtown district.
- (b) Following the effective date of this section, of the members appointed an equal number of the members, as near as practical shall be appointed for one-year, two-year, three-year and four-year terms. A member shall hold office until the member's successor is appointed. Thereafter, each member shall serve for a term of four years. An appointment to fill a vacancy shall be made by the mayor for the unexpired term and with approval by affirmative vote of the city council.
- (c) Members of the board shall serve without compensation, but shall be reimbursed for actual and necessary expenses. A chairperson of the board shall be elected by the board.
- (d) The downtown development authority shall have all the powers and duties as set forth herein and by statute including but not limited to implementing development plans, acquiring and disposing of interests in real and personal property; levying ad valorem tax not to exceed two mills on the real and tangible personal property in the downtown district; issuing bonds and other evidences of indebtedness, and authorizing the use of tax increment financing plans all as prescribed in Public Act No 197 of 1975 as amended (MCL 125.1651 et seq.).

**Sec. 26-34. - Boundaries.**

The downtown development authority shall exercise its powers within the following described area, to be known as the "downtown district," in the city:

Commencing at the centerline of Fifth St. and Main St.; thence south along the said centerline of Fifth St. to the intersection of Fifth St. centerline and the south property line of 11-72-4560-0053-00-4 extended; thence west along said property line to the east boundary of the former C.C.C. and St. L. Railroad right-of-way; thence south along said east boundary of said railroad to the south boundary of Lot No. 11-73-2700-0009-01-6; thence east to the west boundaries of the lots fronting on Third St. and on Bond St.; thence south along west lot boundaries to the former railroad right-of-way; thence south along the east boundary of said former railroad right-of-way to its intersection with the centerline of Michigan extended to the west; thence east along the centerline of Michigan St. to the east side of Bond St.; thence south along said east right-of-way boundary of Bond St. to its intersection with the centerline of Fort St.; thence west along said centerline of Fort St. to the east waterline of the St. Joseph River; thence north along the said east waterline of the St. Joseph River to the intersection of the centerline of the Broadway Bridge; thence southwesterly to the intersection of the centerline of Parkway; thence south to the intersection of the centerline of Parkway and the south property line of 11-74-0990-0001-00-9; thence west along said property line to the centerline of State St.; thence north along the centerline of State St. to the intersection of Main St. centerline and the Main St. Bridge centerline; thence northeast along the centerline of the Main St. Bridge to the intersection of the east waterline of the St. Joseph River; thence north along the said waterline of said River to the north south right-of-way line of Pokagon St. extended; thence northeasterly along said right-of-way to the intersection of the centerline of Second St.; thence south to the centerline of Dey St.; thence east to the centerline of Fifth St.; thence north to the centerline of Pokagon St.; thence east to the east right-of-way line of Eighth St.; thence southeasterly to the centerline of Central St. and Eighth St.; thence south to the centerline of Wayne St.; thence west to the centerline of Fifth St.; thence south to the south property line of 11-71-4510-0105-01 extended; thence west along the south property line to the east property line of 11-71-4510-0085-00-2; thence south along the east property line to the south property line of 11-72-0750-0066-01-2; thence west along property line to the intersection with the westerly boundary extended of lot 63, H. B. Hoffman's Addition; thence south along said westerly boundaries to a point which is ten feet north of the southwest corner of lot 64, H. B. Hoffman's Addition; thence west to the centerline of Second St.; thence south along said centerline to the centerline of Cass St.; thence east along said centerline to the southeast corner extended of lot 11-72-3110-0023-01-9; thence south to the southeast corner of lot 11-72-0750-0001-01-6; thence east to the centerline of Fifth St.; thence south down said centerline to the intersection of the north lot line of 11-72-3050-0140-00-0 extended; thence east to the west right-of-way line of Eighth St.; thence south to the north property line of 11-72-3050-0224-00-9 extended; thence east along said property line to the northeast corner of 11-72-0840-0065-01-3; thence south to the north right-of-way line of Cedar St.; thence east to the west right-of-way line of Tenth St.; thence south to the north property line of 11-72-3050-0224-00-9 extended; thence east to the west right-of-way line of Eleventh St.; thence south to the south right-of-way line of Broadway extended; thence east to the west right-of-way line of Twelfth St.; thence southwesterly following the west right-of-way to the intersection of the north right-of-way of Main St. and the west right-of-way of Twelfth St.; thence southeasterly to the southeast right-of-way of Eleventh St.; thence southwesterly along said right-of-way to the north right-of-way line of Maple St.; thence west along said right-of-way to the southwest corner of 11-73-2730-0019-03-0; thence north along said lot line to the southeast corner of 11-73-0840-0007-01-8; thence easterly to the southeast corner of

11-73-0840-0154-01-1; thence west along said lot to the centerline of Ninth St.; thence north to the south right-of-way line of Main St.; thence northwesterly along said right-of-way to the point of beginning. **Sec. 26-35. - Approval of the downtown development plan and tax increment financing plan.**

- (a) *Determination.* It is hereby determined that the amended and restated downtown development and tax increment financing plan (the "plan") constitutes a public purpose; and that approval of the plan was preceded by a public hearing pursuant to notice thereof by publication, posting and mail as required by Public Act No. 197 of 1975 (MCL 125.1651 et seq.).
- (b) *Development plan, tax increment financing plan approved.* The city council hereby adopts and approves the amended and restated downtown development and tax increment financing plan of the downtown development authority of the city, effective November 20, 1998.
- (c) *Considerations.* In making the forgoing determinations and approvals required by Public Act No. 197 of 1975, the considerations contained in section 19 thereof (MCL 125.1669) are declared to have been fully observed, performed and discharged; provided, however, that a development area citizens council has not been founded for the reason that the development area citizens council is not required by Public Act No. 197 of 1975. <http://legislature.mi.gov/doc.aspx?mcl-125-1669>

## HISTORIC DISTRICT COMMISSION

3 YEAR TERMS

MEMBERSHIP: 7

ESTABLISHED: 10/13/86

ORD. #296

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### **Sec. 10.5-6 Code of Ordinance**

- (a) An historic district commission is hereby established. Membership to the commission shall be by appointment by the mayor, subject to the approval of the city council.
- (b) The membership of the commission shall consist of five (5) persons residing in the city; provided, however, that at least two (2) Members shall be selected from a list of citizens recommended for appointment by majority vote of a duly organized and existing historical preservation society or societies; and provided further, that one member shall be architect duly registered in the State of Michigan and residing in the city, if such person is available for appointment.
- (c) Members of the commission shall be appointed for terms of three (3) years, except the initial appointments of some of the members shall be for less than three (3) years to the end that the appointments shall not be required at the same time. Members shall be eligible for reappointment for successive terms.
- (d) In the event of a vacancy on the commission, an interim appointment may be made to complete an unexpired term in the same manner as for an original appointment.
- (e) The mayor or a council member designated by him, the city administrator, the chairperson of the planning commission or his designate, the city engineer and the building official shall be ex officio members of the commission. The commission may appoint no more than six (6) additional persons as ex officio members, who need not be residents of the city, who shall serve at the pleasure of the commission. Ex officio members shall have the right to participate in the deliberation of all matters considered by the commission, but shall not have the right to vote nor shall they be counted as members for any purpose.

### **Sec. 10.5-8**

- (a) It shall be the duty of the commission to implement or cause to be implemented the provisions of this chapter for the achievement of the purposes stated in section 10.5-1(b) hereof.
- (b) (b) The commission shall review all plans for work upon or affecting an historic district or district resource or proposed historic district or district resource, and shall have the power to issue or deny a certificate of appropriateness with respect to such plans before and work is commenced. The building official shall not issue a building permit or other permit for work, nor shall a property owner or other person commence or continue work, upon or affecting an established or proposed historic district or district resource until the provision of the within ordinance have been observed.
- (c) The commission shall recognize that the forms or characteristics of historic districts or district resources vary, and that the achievement of the purposes prescribed in section 10.5-1(b) may necessitate differences in the guidelines established with respect to a particular, by the commission in concert with property owners affected or to be affected thereby. Guidelines formulated by the commission shall apply uniformly, as the same are found by the commission to applicable, to each established or proposed historic district or district resource having the same or similar form or characteristics. Guidelines shall specify with particularity all matters related to the general compatibility of exterior design, structural height, mass arrangement, texture, appearance, and building and finish materials. The commission may consider nationally accepted design treatment levels or preservation standards in the formulation of guidelines with respect to historical architectural and archaeological value and

significance of an historic district or proposed historic district or district resource in terms of their relationship to the historical, architectural or archaeological value of the surrounding area, and to such other factor, including aesthetic, which the commission deems pertinent.

- (d) Guidelines prepared by the commission shall be the subject of at least one public hearing, and shall thereafter be submitted to the city council. Commission guidelines shall not become effective until approved by resolution of the city council.
- (e) The power and duty of the commission to review applications for building or other permits or work plans shall be limited to exterior features of a district resource. Work plans (or those parts of work plans) which pertain to interior features shall not be considered by the commission unless specifically authorized by resolution of the city council. A certificate of appropriateness shall not be denied for reasons other than prescribed in this chapter and guidelines adopted pursuant hereto. The powers of the commission shall not extend to any work which is not upon or with an historic district or resource or proposed historic district or resource. However, the commission shall act as mediator and counselor, insofar as is possible, to provide guidance to a property owner and to present solutions or alternatives with respect to a proposed work plan or construction, alteration, repair, preservation or conservation, rehabilitation, moving or demolition, or other work upon a district resource in instances in which the proposed work is not in compliance with applicable guidelines.
- (f) The commission may:
  - b) Conduct, assist or participate in studies and programs designed to identify and evaluate additional historic districts and district resources worthy of preservation;
  - c) Consult with and consider the recommendations of civic groups, public agencies and citizens interested in historic preservation;
  - d) Inspect, with the consent of the owners and/or occupants, a property or premises under consideration for designation as a district resource or as a part of a proposed historic district;
  - e) Encourage and advise property owners in the protection, enhancement, perpetuation and use of historic, architectural and/or archaeological properties.
- (g) An application for repair or alteration affecting the exterior appearance of an historic resource, or for its moving or demolition, shall be approved by the commission if any of the following conditions prevail, and if in the opinion of the commission the proposed changes will materially improve or correct these conditions;
  - (1) The resource constitutes a hazard to the safety of its occupants or to the public;
  - (2) The resource is a deterrent to a major improvement program which will be of substantial benefit to the city;
  - (3) Retention of the resource would cause undue financial hardship to the owners; or
  - (4) Retention of the resource would not be in the interest of the majority of the people of the city.

**Sec. 10.5-9. Applications for permits; procedure for review.**

- (a) An application to build or other permit for new construction, or for any addition, alteration, demolition, reconstruction, rehabilitation, repair, restoration or moving of any district resource shall be made to the building official. It shall be the duty of the building official to review the application and to make an initial determination as to whether the provisions of the within ordinance are applicable; and if so, to so advise the commission and the applicant. The commission shall within five (5) business days thereafter either confirm or reverse the initial determination of the building official, who shall promptly inform the applicant of the commission's decision.
- 2) If it is determined by the commission that the provisions of this chapter and guidelines adopted pursuant hereto apply to an application for a permit to build or other permit which affects an established or

proposed historic district or district resource, the building official shall require of the applicant that such additional plans, elevation and other information as deemed reasonably necessary be submitted in order to determine the extent of the proposed undertaking and its relation to any established or proposed historic district or district resource. The building official shall promptly furnish to the commission the application and accompanying documentation, and shall in addition submit his comments and such other information as he deems pertinent. The commission shall review the application and documentation to determine whether the proposed project or work impacts adversely upon an established or proposed historic district or district resource. In the event the plans, elevations and other information would result in consequences adverse to the proposed and objective contained herein, the commission shall so inform the applicant of its findings. The commission and the applicant shall thereupon meet and confer in order that modification of the application and project plan may be discussed and compromise be reached.

- (c) In the event modification of the proposed work plan cannot be agreed upon, the commissions shall determine whether established guidelines apply to the proposed undertaking, and shall inform the applicant of its determination. If established guidelines are not found to be applicable within the meaning of section 10.5-8, the commission shall forthwith commence the preparation of guidelines to apply to the proposed work plan in accordance with the procedures prescribed herein.
- (d) Formal consideration of an application for a permit shall be made at a duly convened meeting of the commission within thirty (30) days of its receipt from the building official unless it is determined that duly adopted guidelines do not apply to the particular proposed work or project. If the commission approves such application, it shall issue a certificate of appropriateness, signed by the chairperson, which shall be attached to the application and returned to the building official.
- (e) If the commission disapproves an application to build or other permit and denies the issuance of a certificate of appropriateness the disapproval and denial shall be in writing and shall include the reasons for the commission's determination, and shall be promptly forwarded to the building official and to the applicant by first class mail. The commission may include a statement of what modifications would be necessary to cause the statement of what modifications would be necessary to cause the commission to reconsider its determination and disapproval of the application and of its denial of a certificate of appropriateness. An applicant may make such modifications to the plan and/or elevation and/or other information as desired, and may resubmit the application and attendant documentation to the commission after so doing.
- (f) The failure of the commission to approve or to disapprove an application or to issue or deny a certificate of appropriateness, or to prepare new guidelines pertaining to the proposed work or project for approval by the city council, within sixty (60) days after the date of receipt of the application for the building official with all necessary attendant documentation, shall unless otherwise mutually agreed upon by the applicant and the commission be deemed to constitute approval, and the issuance of a certificate of appropriateness shall not be required.

**LOCAL HISTORIC DISTRICTS ACT, Act 169 of 1970:** <http://legislature.mi.gov/doc.aspx?mcl-Act-169-of-1970>

## HOUSING COMMISSION

5 YEAR TERMS

MEMBERSHIP: 5

ESTABLISHED: 08/22/66

ORD. #182

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### **Sec. 29-13**

The housing commission shall consist of five (5) members who shall be appointed by the city administrator. The term of office of the members of the commission shall be five (5) years, but members of the first commission appointed hereunder shall be appointed for the terms of one year, two (2) years, three (3) years, four (4) years, and five (5) years, respectively, and annually thereafter, one member shall be appointed for a term of five (5) years. Members of the commission shall serve without compensation and may be removed from office by the city administrator. Any vacancy in office shall be filled by appointment by the city administrator for the remainder of the unexpired term.

### **Sec. 29-14. Meetings; organization.**

The housing commission shall meet at regular intervals after public notice of the time and place of such meeting and all meetings of the commission shall be subject to the Open Meetings Act (MCL 15.261 et seq., MSA 4.1800(11) et seq.). The commission shall adopt by-laws and its own rules of procedure not inconsistent with the provisions of Act 18 of the Public Acts of 1933, as amended (MCL 125.651 et seq., MSA 5.3011 et seq.), or of this article, and shall keep a record of its proceedings. Three (3) members of the commission shall constitute a quorum for the transaction of its business and a president and a vice-president shall be elected by the commission. The commission may appoint a director, who may also serve as secretary, and such other employees or officers as shall be necessary.

The commission shall prescribe the duties of each of its officers and employees and with the approval of the council fix their compensation. The commission may from time to time and with the approval of the council, employ engineers, architects and consultants as necessary to accomplish the purposes for which it is established.

### **Sec. 29-15. Powers and duties.**

The housing commission shall have those powers and duties enumerated in Section 7 of Act 18 of the Public Acts of 1933, as amended (MCL 125.657, MSA 5.3017), and in addition, shall have such other powers relating to housing project facilities as may be prescribed by ordinance or resolution of the council or as may be necessary to carry out the purposes of this article, providing, however, that all contracts, deeds, leases or purchases entered into by the commission shall be in the name of the city and shall be subject to approval by the council.

**HOUSING FACILITIES, Act 18 of 1933 (Ex. Sess.):** <http://legislature.mi.gov/doc.aspx?mcl-Act-18-of-1933-Ex-Sess->

## PARKS & RECREATION BOARD

4 YEAR TERMS

MEMBERSHIP: 9

ESTABLISHED: 06/10/57

ORD. #140

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### **Sec. 16-18**

- (a) The public park and recreation board shall consist of nine (9) members.
- (b) Membership to the public park and recreation board shall be by appointment by majority vote of the city council, and members shall serve at the pleasure of the city council. Persons appointed to the board shall be registered electors of the city, although nonvoting ex officio members may be appointed from time to time who shall serve at the pleasure of the public park and recreation board. The mayor and the city administrator shall be ex officio members of the board and shall have the right to participate in all deliberations thereof, but shall not have the right to vote.
- (c) Members shall serve without compensation, but may be reimbursed for reasonable out-of-pocket expenses with the approval of the city administrator.

### **Sec. 16-19. Meetings.**

The public park and recreation board shall conduct one regular meeting each month at a time and place designated and published in advance. Special meetings may be conducted whenever requested by the mayor, the city administrator, the chairperson of the board, by two (2) members of the board or by two (2) members of the city council.

### **Sec. 16-20. Organization; quorum.**

### **Sec. 16-21. Responsibilities; duties.**

- (a) It shall be the responsibility and duty of the public park and recreation board to advise and consult with the city council, with the city administrator, and with appropriate department heads, on all matters concerning public parks owned and/or operated by the city, within the meaning of Section 8-10 of the Charter.
- (b) The responsibility of the board shall include all matters involving the management and operation of public parks and recreational facilities and programs; the continued and preventive maintenance of park properties and attendant facilities; the establishment or organized recreational programs to be conducted upon or in conjunction with public parks; the selection of a recreation director, and the terms and provisions of contracts therewith, and the selection and contract provisions of other public park personnel; the terms, provisions and conditions, including costs, of contract pertaining to public parks and public park equipment; public relations; and the formulation of policies and short- and long-term plans pertaining to or involving public parks and recreational facilities and programs.
- (c) The public park and recreation board shall be knowledgeable of all applicable laws, statutes and regulations pertaining to public parks and park facilities, equipment, and recreational programs in which public parks are involved; and shall be knowledgeable of the policies and practices or other municipally owned/operated public park systems.
- (d) It shall be among the responsibilities and duties of the public park and recreation board to maintain a continuing record of its deliberations and recommendations concerning amendments and proposed amendments to this article; September 13, 2007 and to assist in the operation and maintenance of public parks and park property by providing advice, suggestions and recommendations concerning practices, policies and procedures, whether heretofore established or hereafter adopted or proposed for adoption.

## PENSION BOARD

**4 YEAR TERMS**

MEMBERSHIP: 8

ESTABLISHED: 12-11-44 02-11-53

ORD. #104

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### **Sec. 2-64**

#### Membership

The pension board shall consist of eight (8) members as follows:

- a) Two (2) members of the council;
- b) One member from the employees of the utilities department;
- c) One citizen member appointed by the mayor;
- d) Two (2) members from the employees of the city other than police or firemen;
- e) One member from the employees of the police department;
- f) One member from the employees of the fire department.

The members of the board as provided in subsections (2), (4), (5) and (6) of this paragraph shall be elected by the respective employees under such rules and regulations as the board shall from time to time adopt.

#### **Terms of office**

The regular term of office for the employee-elected members as provided in subsection (b), shall be four (4) years. The council-appointed members and the mayoral-appointed member shall serve at the pleasure of the council and mayor, respectively. Any member who shall miss three (3) consecutive meetings may be removed by a majority vote of the board.

The board shall have no right to amend the plan or to change the terms or provisions or fail to apply any of the requirements for eligibility for benefits under the plan. The city shall be responsible for maintaining the records and general administration of the plan but the terms and provisions of the plan shall be administered by the board. The board and any member thereof shall be entitled to rely upon the correctness of any information furnished by the actuary or the city. Neither the board, nor any of its members, nor the council, nor the city, or any officer or other member of the city shall be liable because of any act or failure to act on the part of the board or any of its members to any person whatsoever, except that nothing herein shall be determined to release any such individual from liability for fraud or criminal misconduct.

## PLANNING COMMISSION

### 3 YEAR TERMS

MEMBERSHIP: 9

ESTABLISHED: 07/25/55

ORD. # 130

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#### **Sec. 18-13**

The planning commission shall consist of nine (9) members who shall represent in so far as practicable different occupations or professions and who shall serve without compensation. Members shall hold no other city office except that one of such members may be a member of the board of appeals.

#### **Sec. 18-14**

All members of the planning commission shall be appointed by the mayor by and with the approval of the city council. Members may, after a public hearing, be removed by the mayor for inefficiency, neglect of duty or malfeasance in office.

#### **Sec. 18-15**

The term of office of each member of the planning commission shall be three (3) years from the first Monday in May of the year of appointment, except that three (3) members of the first commission to be so appointed shall serve for a term of one year, three (3) members for a term of two (2) years, and three (3) members for a term of three (3) years; and thereafter three (3) members shall be appointed for a term of three (3) years from and after the first Monday in May of each and every year. All members shall hold office until their successors are appointed, and any vacancy in the commission shall be filled by appointment by the mayor, by and with the approval of the council.

#### **Sec. 18-16. Organization; meetings; records.**

#### **Sec. 18-17. Powers and duties.**

1. The planning commission shall have such powers and be subject to such limitations as are set forth in the provisions of Act 285 of the Public Acts of 1931, as amended (MCL 125.31 et seq., MSA 5.2991 et seq.). If, at some future date, the statutes of this state shall confer further powers and duties upon, or further limit the powers of a city planning commission, the commission here created shall have the additional powers and duties conferred or be subject to such additional limitations automatically and without amendment of this article.
2. It shall be the function and duty of the planning commission to make and adopt a master plan for the physical, social and economic development of the city and such areas adjacent to the corporate limits of the said city as, in the commission's judgment, bear relation to the planning of the city. The plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the city and its environs which will, in accordance with present and future needs, best promote health, safety, morals, order, convenience, property and general welfare, as well as efficiency and economy in the process of the development of the community.
3. No such master plan adopted by the planning commission shall be given force and effect until the same has been approved by a vote of not less than two-thirds of the council.

# ZONING BOARD OF APPEALS

**3 YEAR TERMS**

MEMBERSHIP: 5

ESTABLISHMENT: 10-26-70

ORD. #224

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## ARTICLE IX.

### CREATION AND MEMBERSHIP

1. A City Zoning Board of Appeals is hereby established. The word “Board” when used in this Section shall be construed to mean the Zoning Board of Appeals. The Board shall consist of five (5) members as provided by Section 601 of Act 110 of the Public Act of 2006, as amended. The first member of such Zoning Board of Appeals shall be a member of the Planning Commission. The remaining members of the Zoning Board of Appeals shall be selected from the electors or the City. The members selected shall be representative of the geographic population distribution of the City. An employee or contractor of the City Council may not serve as a member or an employee of the City Zoning Board of Appeals. Members of the Zoning Board of Appeals shall be removable by the City Council for nonperformance of duty or misconduct in office upon written charges and after public hearing. A member shall disqualify himself from a vote in which he has a conflict of interest. Failure of a member to disqualify himself from a vote in which he has a conflict of interest shall constitute misconduct in office.
2. The term of each member shall be for three (3) years, except for members serving because of their membership on the zoning commission or legislative body, whose terms shall be limited to the time they are members of those bodies. When members are first appointed, the appointments may be for less than 3 years to provide for staggered terms. A successor shall be appointed not more than one (1) month after the term of the preceding member has expired. All vacancies for unexpired terms shall be filled for the remainder of the term.
3. Meetings of the City Zoning Board of Appeals shall be held at the call of the Chairperson and at other times as the Board in its rules of procedure may specify. All meetings of the Zoning Board of Appeals shall be open to the public. The Board shall maintain a record of its proceedings which shall be a public record.

### JURISDICTION AND AUTHORIZED APPEALS

Except as otherwise provided, the Zoning Board of Appeals shall hear and decide appeals from and review any order, requirement, decision or determination made by the Zoning Administrator or Planning Commission, or other official administering or enforcing the provisions of this Ordinance as provided herein. Within this capacity, the Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination.

#### 1. Administrative Review

The Zoning Board of Appeals shall hear and decide appeals where it is alleged by the appellant that there is a factual error in any order, requirement, permit, or decision made by the Zoning Administrator or Planning Commission in the administration or enforcement of this Ordinance.

#### 2. Ordinance Interpretation

The Zoning Board of Appeals shall hear and decide upon the following requests:

- a. Interpret the provisions of this Ordinance when it is alleged that certain provisions are not clear or that they could have more than one meaning. In deciding upon such request, the Zoning Board of Appeals shall ensure that its interpretation is consistent with the intent and purpose of this Ordinance, the Article in which the language is contained, and all relevant provisions of this Ordinance.
- b. As provided in Section 402, determine the precise location of the boundary line between zoning districts when there is uncertainty with respect to the location of district boundaries.

3. **Appeal Procedure**

a. Filing:

Appeals to the Zoning Board of Appeals concerning interpretation or administration of this Ordinance may be taken by any person aggrieved or by any office, department, board or bureau of the City, County, or State affected by any decision of the Zoning Administrator. Appeals shall be filed on forms as provided by the Zoning Administrator and shall include the appropriate filing fee. Such appeal shall be taken within sixty (60) days of the aggrieved action by filing with the Zoning Board of Appeals a Notice of Appeal specifying the grounds thereof. The Zoning Administrator from whom the appeal is taken shall forthwith transmit for presentation to the Board all materials constituting the record upon which the action appealed from was taken.

b. Hearing:

The Zoning Board of Appeals shall fix a reasonable time of the hearing of the appeal and give due notice to the parties in accordance with Section 1204 hereof and decide the appeal within a reasonable time. At the hearing, any party may appear in person or by agent or attorney.

c. Stay of Proceedings:

An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Administrator from whom the appeal is taken certifies to the Zoning Board of Appeals after the Notice of Appeals is filed with him, that by reason of facts stated in the Certificate, a stay would, in his opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by a court record.

4. **Variances**

The Zoning Board of Appeals shall decide variances from the provisions of this Ordinance in harmony with its general purpose and intent, and shall vary then only in the specific instances hereinafter set forth where the Board shall have made a finding of fact based upon the standards hereinafter prescribed that there are practical difficulties or particular hardship in the way of carrying out the strict letter of the regulations of this Ordinance.

a. Initiation –

An application for a variation may be made by any person, firm or corporation, office, department, boards, bureau or commission requesting or intending to request application for a building permit, zoning compliance permit or occupancy certificate.

b. Processing –

An application for a variance shall be filed with the Zoning Administrator, who shall process and present said application to the Board in accordance with applicable statutes of the State of Michigan

and the provisions of this Ordinance. No variances shall be made by the Board except after a public hearing in accordance with Section 1204, hereof.

c. Decisions –

All final decisions of the Zoning Board of Appeals on variances arrived at after the hearing shall be accompanied by findings of facts specifying the reasons for approval/disapproval of the variance. Said decision shall be final and subject to judicial review only in accordance with applicable statutes of the State of Michigan. All variances granted shall be the minimum variance that will make possible a reasonable use of the land, building or structure.

d. Standards

The Zoning Board of Appeals shall not vary the provisions of this Ordinance unless it finds, based on evidence presented, that the request meets each six (6) of the following standards.

- 1) That the need for the variance is due to unique circumstances or physical conditions, such as narrowness, shallowness, shape, water or topography, of the property involved and that the practical difficulty is not due to the applicant's personal or economic hardship.
- 2) That the need for the variance is not the result of actions of the property owner or previous property owners.
- 3) That strict compliance with area, setback, frontage, height, bulk, density or other dimension requirement will unreasonably prevent the property owner from using the property for permitted purpose, or will render conformity with those regulations unnecessarily burdensome. Potential additional costs required in complying with this Ordinance shall not be deemed to made compliance unnecessarily burdensome.
- 4) That the variance will do substantial justice to the applicant as well as to other property owners in the district, or a lesser relaxation than applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
- 5) That the variance will not cause adverse impacts on surrounding property, or the use and enjoyment of property in the neighborhood.
- 6) That the variance shall not permit the establishment within a district any use which is not permitted by right, or any use for which a special land use or temporary use permit is required.

e. Conditions

The Zoning Board of Appeals may impose conditions upon a variance approval. The conditions may include those necessary to protect the natural environment and conserve natural resources, to ensure compatibility with adjacent land uses, and to promote the use of land in a socially and economically desirable manner. Conditions imposed upon a variance approval shall be stated in the record or order and shall remain unchanged except upon application to the Zoning Board of Appeals by the property owner. Similarly, any changes in conditions shall be reflected in the record or order.

f. Effect of Approval.

The variance shall expire at the end of 12 months, unless a zoning compliance permit authorizing the construction has been obtained and construction has started and proceeds to completion in accordance with the terms of the permit, or other tangible evidence of implementation of the variance shall have been presented to the Zoning Administrator.

#### **ZONING BOARD OF APPEALS HAS POWERS OF ZONING ADMINISTRATOR ON APPEALS;**

##### **REVERSALS:**

1. In exercising the powers set forth in this Article, the Zoning Board of Appeals may, so long as such action is in conformity with the terms of this Ordinance, reverse or affirm, wholly or in part, or may modify the order, requirement, decision or determination appealed from. The Board may make such order, requirement, decision or determination as ought to be made, and to that end shall have the powers of the Zoning Administrator or Planning Commission in reference to special use decisions from whom the appeal is taken under appellate jurisdiction.
2. The concurring vote of three (3) members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator or Planning Commission, or to decide in favor of the applicant on any matter upon which it is required to pass under this Ordinance or to effect any variance in the application of this Ordinance.

##### **FINAL DECISIONS AND REHEARING**

1. Final Decisions. Except as provided in this Article, a decision of the Zoning Board of Appeals shall be final.
2. Reapplication.
3. Rehearing. A reapplication or rehearing concerning an action of the Zoning Board of Appeals shall be governed by Sections 1103 and 1104 of this Ordinance, respectively.
4. Appeals from final decisions of the Zoning Board of Appeals shall be subject to judicial review in accordance with the applicable statutes of the State of Michigan.

##### **HEARINGS AND NOTICES**

The Zoning Board of Appeals shall fix a reasonable time of the hearing of an appeal or a request for a variance, upon the receipt of a complete application. The Zoning Board of Appeals shall give due notice to the party requesting the interpretation not less than 15 days before the public hearing and publish a notice of the hearing in a newspaper of general circulation not more than fifteen (15) nor less than five (5) days before such hearing. In addition, if the request for an interpretation or appeal of an administrative decision involves a specific parcel, written notice stating the nature of the interpretation request and the time, date, and place of the public hearing on the interpretation request shall be sent by first-class mail or personal delivery to all persons to whom real property is assessed within 300 feet of the boundary of the property in question and to the occupants of all structures within 300 feet of the boundary of the property in question. If a tenant's name is not known, the term "occupant" may be used.

##### **PROHIBITED APPEALS**

The Zoning Board of Appeals shall not alter or change the zoning district classification of any property or take any actions that have the effect of a legislative action. The Zoning Board of Appeals shall not have authority to hear appeals related to any decision or conditions attached to any decision pertaining to a special land use or planned unit development.

**DUTIES OF ZONING ADMINISTRATOR, ZONING BOARD OF APPEALS, CITY COUNCIL, AND COURTS ON MATTERS OF APPEAL**

1. It is the intent of this Ordinance that all questions under appellate jurisdiction shall be presented to the Zoning Board of Appeals only on appeal from the decision of the Zoning Administrator. Requests for Variances shall be considered to be under the original jurisdiction of the Board and shall be filed with the Board via the Zoning Administrator. Requests for variances shall not be construed as an appeal from the decision of the Zoning Administrator.
  
2. It is further the intent of this Ordinance that the duties of the City Council in connection with this Ordinance shall not include hearing and deciding questions of interpretation and enforcement Under this Ordinance, the City Council shall have only the duties of;
  - a. Considering and adopting or rejecting proposed amendments or the repeal of this Ordinance, as provided by law;
  - b. Establishing a schedule of fees and charges as stated in this Ordinance; and
  - c. Appointing members of the Zoning Board of Appeals and the Zoning Administrator.

**FEES**

Fees for appeals to the Zoning Board of Appeals shall be established by resolution of the City Council.

**MASTER PLAN**

125.3843 Proposed master plan; public hearing; notice; approval by resolution of planning commission; statement; submission of copy of master plan to legislative body; approval or rejection by legislative body; procedures; submission of adopted master plan to certain entities.

<http://legislature.mi.gov/doc.aspx?mcl-125-3843>

**CITY OF NILES ZONING ORDINANCE:**

<http://ci.niles.mi.us/Business/Photos%20%26%20Documents/ZoningOrdinance.pdf>

**CITY OF NILES MASTER PLAN:**

<http://ci.niles.mi.us/Business/Photos%20%26%20Documents/MasterPlan.pdf>

# CITY OF NILES

## BOARDS AND COMMISSIONS POLICY HANDBOOK SIGNATURE PAGE

My signature below confirms that I have received a copy of the Niles City Boards and Commissions Policy. I agree to adhere to and abide by the policy and the Code of Ethics as written.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Today's Date: \_\_\_\_\_

Name of Board: \_\_\_\_\_