Memorandum

To: Howell Township Board

From: Robert Spaulding, Supervisor

Re: Non-Disclosure Agreement (NDA) Discussion

A non-disclosure agreement (NDA), or confidentiality agreement, is a legally binding contract that restricts a party from sharing sensitive or proprietary information with others. In the recent work of our Resident Research Committee (RRC), banning NDAs was proposed as part of its work on a High Impact Land Use Ordinance as some public officials have been asked to sign an NDA in the early stages of potentially controversial land uses such as data centers, utility infrastructure, and other potential developments. Trustee Boal also requested that it appear as an agenda item for the Board to discuss.

Jonathan Hohenstein reached out to our Township legal Counsel Christopher Patterson from Fahey Schultz Burzych & Rhodes for guidance.

Jonathan,

You are correct that this would ultimately be a policy decision for the Township Board.

If the Board's goal is to prohibit Township officers, officials, employees, and representatives from entering into non-disclosure agreements related to Township business, there are generally two approaches available:

1. ***Board Policy***

   The Board could adopt a policy prohibiting Township employees, appointed officials, and others acting on behalf of the Township from executing NDAs in connection with Township business without prior Board approval. A policy is generally the simpler approach and would govern the Township's internal operations. Violations would be handled through applicable employment, appointment, or contractual remedies. For elected officials, the remedy would be political or via censures.

2. ***Ordinance***

   Alternatively, the Board could adopt an ordinance establishing restrictions on the execution of NDAs related to Township business. An ordinance could include enforcement provisions, such as municipal civil infractions, and would provide a mechanism to enforce the requirement against Township officers, officials, employees, and other persons subject to the ordinance. An ordinance would also create a more formal and permanent regulatory framework than a Board policy.

Before deciding between the two approaches, it would be helpful to understand the specific concerns the members believe they are trying to address, including whether it wants merely an internal governance rule or a

requirement backed by enforceable penalties. Once the Board provides direction on those policy questions, we can prepare either a draft policy or a draft ordinance for consideration.

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Chris,

We have discussed this internally. We think the best method would be to go the policy route, writing a ticket to a Board member or employee seems strange and problematic. We had a thought of updating our ethics policy and including an NDA section. If you have any opinions on this we would be happy to entertain them before we go to the Board for a decision.

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Jonathan:

I would agree that an ordinance presents the complexity you note, which certainly would be disfavored for employees and could discourage employment at the Township. I think putting the provision within the ethics policy makes more sense than a separate policy for NDAs only.

In researching other municipalities, we received Iosco Township's Code of Ethical Conduct which contains a section regarding NDAs, see attached section 27.

I have attached Howell Township's Ethics Policy that was adopted November 18, 2014, for your reference.

COHOCTAH TOWNSHIP

ORDINANCE NO. _____

AN ORDINANCE TO PROHIBIT NON-DISCLOSURE AGREEMENTS

The Township of Cohoctah Ordains:

Section. 1. Addition of New Section 2.1 to the Township Code of Ordinances.

A new Section 2.1 is hereby added to the Township Code of Ordinances and reads in its entirety as follows:

Section 2.1

A. *Title.* This Ordinance may be cited as the "Cohoctah Township Nondisclosure Agreement Ordinance."

B. *Purpose.* To protect the public health, safety, and welfare, and to promote transparency and ethics in government, this Ordinance prohibits township officials, employees, agents, and representatives from entering into nondisclosure disclosure agreements when acting within the scope of their official capacity.

C. *Definition.* For the purposes of this Ordinance, a "nondisclosure agreement" means an agreement or contract that includes a provision or clause that provides that a party to the agreement or contract is prohibited from disclosing, discussing, describing, or commenting on the agreement or contract or any of the terms therein.

D. *Prohibition.* Beginning on and after the effective date of this Ordinance, a Township official, employee, agent, or representative may not enter into a nondisclosure agreement regarding any work done in their official capacity or that may affect their ability to fulfill their official duties. A Township official, employee, agent, or representative that is a party to a nondisclosure agreement outside of their official capacity must recuse from all participation within their official capacity involving the subject matter of the nondisclosure agreement.

E. *Exceptions.* The prohibition above does not apply to confidentiality obligations that are:

1. Required by law; or

2. Narrowly defined and approved in writing in advance by the Township Board, following review and recommendation by the Township Attorney. To approve such an exception, the Township Board must determine that confidentiality is necessary to protect legitimate township interests and that public disclosure would cause demonstrable harm. The approval must be recorded in the public minutes and include a written finding explaining the necessity and scope of the confidentiality.

F. *Penalties*. A violation of this Ordinance may result in disciplinary action consistent with applicable Township policies, employment agreements, and law. The Township Board may pursue any remedies available under law for unauthorized commitments.

Section 2. Validity and Severability.

If any portion of this Ordinance is found invalid for any reason, such holding will not affect the validity of the remaining portions of this Ordinance.

Section 3. Repealer.

All other ordinances inconsistent with the provisions of this Ordinance are hereby repealed to the extent necessary to give this Ordinance full force and effect.

Section 4. Effective Date.

This Ordinance takes effect as provided by law.

SPEAKER TOWNSHIP
Sanilac County, Michigan

ORDINANCE NO. 2026-02-02

AN ORDINANCE TO PROHIBIT NON-DISCLOSURE AGREEMENTS

The Township of Speaker Ordains:

Section. I. Addition of New Section 10.0 to the Township Code of Ordinances

A new Section 10.0 is hereby added to the Township Code of Ordinances and reads in its entirety as follows:

Section 10.1

A. ***Title.*** This Ordinance may be cited as the Speaker Township Non-Disclosure Agreement Ordinance.

B. ***Purpose.*** To protect the public health, safety, and welfare and to promote transparency and ethics in government, this Ordinance prohibits township officials, employees, agents, and representatives from entering into non-disclosure agreements, which could financially benefit themselves, family members or friends, when acting within the scope of their official capacity.

C. ***Definition.*** For the purposes of this Ordinance, a "non-disclosure agreement" means an agreement or contract that includes a provision or clause that provides that a party to the agreement or contract is prohibited from disclosing, discussing, describing, or commenting on the agreement or contract or any of the terms therein.

D. ***Prohibition.*** Beginning on and after the effective date of this Ordinance, a Township official, employee, agent, or representative may not enter into a non-disclosure agreement regarding any work done in their official capacity or that may affect their ability to fulfill their official duties. A Township official, employee, agent, or representative that is a party to a non-disclosure agreement outside of their official capacity shall recuse from all participation within their official capacity involving the subject matter of the non-disclosure agreement.

E. ***Exceptions.*** The prohibition above does not apply to confidentiality obligations that are:

i. Required by law;
ii. Narrowly defined and approved in writing in advance by the Township Board, following review and recommendation by the Township Attorney.

To approve such an exception, the Township Board must determine that confidentiality is necessary to protect legitimate township interests and that public disclosure would cause demonstrable harm. The approval must be recorded in the public minutes and include a written finding explaining the necessity and scope of confidentiality.

iii. Governed by joint defense and cost sharing agreements entered into under the Urban Cooperation Act of 1967 and the Intergovernmental Contracts Act (PA 35 of 1951) to protect the Township's attorney-client privilege and/or position in ongoing or potential litigation.

F. ***Penalties.*** A violation of this Ordinance may result in disciplinary action consistent with applicable Township policies, employment agreements, and law. The Township Board may pursue any remedies available under law for unauthorized commitments.

Section 10.2 Validity and Severability

If any portion of this Ordinance is found invalid for any reason, such holding will not affect the validity of the remaining portions of this Ordinance.

Section 10.3 Repealer

All other ordinances inconsistent with the provisions of this Ordinance are hereby repealed to the extent necessary to give this Ordinance full force and effect.

Section 10.4 Effective Date

This Ordinance is effective immediately following publication.