

**PASSED 9-11-06 VOTE 7-0
ORDINANCE 37, 2005**

ETHICS ORDINANCE FOR THE CITY OF VALPARAISO

WHEREAS, the City of Valparaiso has been blessed with honest and ethical government and the current administration wishes to maintain that heritage; and,

WHEREAS, the City has determined it is necessary to develop a code to govern the conduct of Public Officials so that their conduct will be legally correct, honest, and fair to all concerned and untainted by any consideration of private gain; and,

WHEREAS, the City believes it is important to foster public confidence in the government of our City by discouraging conduct which creates the appearance of impropriety and striving to maintain the highest level of ethics in local government.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Valparaiso as follows:

Chapter 4 of the Municipal Code of the City of Valparaiso is hereby amended and is entitled "Ethics Commission" and shall read as follows:

4.01 TITLE

Title of this ordinance shall be the Ethics Ordinance and it shall be included in the Municipal Code of the City of Valparaiso as Chapter 4.

4.02 DEFINITIONS

For purposes of this ordinance, the words and phrases defined in this section shall have the following meanings:

(a) Appointed Person shall mean a Person holding one of the following public positions:

- (1) Executive branch employee, appointed by the Mayor and confirmed by the Common Council;
- (2) Any other Person appointed by the Mayor, except Persons employed solely in maintenance, clerical, secretarial or similar positions;
- (3) Any Person appointed by the City Common Council, except Persons employed solely in maintenance, clerical, secretarial, or similar positions.

An individual or Person serving on or for an advisory body shall not be considered an Appointed Person under this ordinance.

(b) City means the City of Valparaiso, Indiana.

(c) Compensation means any payment received or to be received whether the compensation is in the form of a fee, salary, retainer, forbearance, forgiveness, or other form of valuable recompense.

(d) Employee means any individual, other than a Public Official, receiving Compensation for services performed for the City except individuals who perform services as independent contractors.

(e) Ethics means the standards of conduct that indicate how one should behave and act. The standards are derived from the community's values, norms, and principles. This ordinance provides guidance for ethical conduct, but it is not intended to set forth all ethical or unethical behavior or actions.

(f) Ethics Commission means the City of Valparaiso Ethics Commission advisory body.

(g) Ethics Officer means the individual appointed as Ethics Officer with the duties and responsibilities as set forth in Section 4.08 of this ordinance.

(h) Fair Market Value means the price that would be paid by a willing buyer to a willing seller in a good faith transaction in which neither party is compelled to enter.

(i) Family Member shall include a spouse, parent, child, stepchild, adopted child, sibling, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, or daughter-in-law.

(j) Gift means that which is accepted by a donee or by another on the donee's behalf, or that which is paid or given to another for or on behalf of a donee, directly, indirectly, or in trust for his or her benefit or by any other means, for which equal or greater consideration is not given. Among other things, a Gift may be real property; the use of property; tangible or intangible personal property; the use of tangible or intangible personal property; a preferential rate or terms on a debt, loan, goods, or services (which rate is below the customary rate and is not either a government rate available to all other similar situated government Employees or Public Officials or a rate which is available to similarly situated members of the public by virtue of occupation, affiliation, age, religion, sex, or national origin); forgiveness of indebtedness; lodging or parking, food or beverage; membership dues; tickets to events, performance or facilities; services provided by persons pursuant to a professional license or certificate; other personal services for which a fee is normally charged by the person providing the

services; any other similar service or thing having an attributable value not already provided for in this section.

Gift does not include:

- (1) Salary, benefits, services, fees, commissions, gifts or expenses associated primarily with the donee's employment or business or provided to the donee by the City, to the extent that such gift is not inconsistent with applicable Indiana statutes;
- (2) An award, plaque, certificate, or similar personalized item given in recognition of the donee's public, civic, charitable, or professional service;
- (3) An honorary membership in a service or fraternal organization presented merely as a courtesy by such organization
- (4) The use of a public facility or public property, made available by a governmental agency, for a public purpose;
- (5) An Honorarium;
- (6) An expense related to an Honorarium event paid to a Person or a Person's spouse or guest;
- (7) Transportation provided to a Public Official or Employee by an agency in relation to officially approved governmental business.
- (8) Gifts solicited or accepted from a relative.

(k) Honorarium means a payment of money or anything of value, directly or indirectly, to a Public Official or Employee, or to any other Person on his or her behalf, as consideration for a speech, address, oration or other oral presentation; or a writing other than a book, which has been or is intended to be published.

Honorarium does not include:

- (1) The payment for services related to employment held outside the Public Official's public position, which resulted in the Person becoming a Public Official;
- (2) Any ordinary payment or salary received in consideration for services related to the Public Official's or Employee's public duties;
- (3) The payment or provision of actual and reasonable transportation, lodging, and food and beverage expenses

related to the Honorarium event, including any event or meeting registration fee, for a Public Official or Employee and spouse or guest.

(l) Person includes individuals or firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, limited liability companies, and all other groups or combinations.

(m) Public Official means any elected official or department head. An individual or Person serving on or for an advisory body shall not be considered a Public Official under this ordinance.

4.03 APPOINTMENTS AND EMPLOYMENT

1. No Family Member of a Public Official may be employed by the City if the Public Official has the direct responsibility for hiring, firing, promotion, or other disciplinary actions with regard to such Employee.

2. Family Members of Public Officials who are attending secondary or post-secondary school on a full-time basis may be employed for summer vacation or other vacation employment with the City so long as such employment is not under the direct supervision of the Public Official and further provided that such potential Employees shall be considered, based upon his or her qualifications, along with any other applicants for a position or opening.

3. No Public Official shall appoint a Person to any position when the Public Official is a principal or officer of an organization where said Person is also an employee, shareholder, officer, or director of the same organization. This prohibition shall not apply to any not-for-profit organizations or similar entities where neither the Public Official nor the Person being considered for Appointment receives any remuneration from the not-for-profit organization.

4. To the extent there are Family Members of a Public Official currently employed by the City and such employment may be in conflict with the provisions of Section 4.03, their employment (in their current positions) shall be grandfathered and excluded from the limitations and prohibitions contained in Section 4.03.

4.04 USE OF PUBLIC PROPERTY

1. No Public Official or Employee shall use the funds or property of the City for a purpose which is, or would reasonably appear to be, for the private benefit of such Public Official unless the property is available to the general public on equal terms ~~and~~ or the use is in accordance with municipal policies or ordinances.

2. No Public Official or Employee shall allow the use of equipment, supplies, or labor of the City to perform services on any non-public property unless an emergency exists or specific authorization is given by the appropriate department head and approved by the Board of Public Works and Safety.

4.05 CONFLICTS OF INTEREST

1. It shall be a conflict of interest and violation of this ordinance for a Public Official or Employee to participate in the procurement of any contract, or purchase by the City if such contract or purchase benefits financially the Public Official or Employee, his or her Family Member, or other entity in which he or she has a financial interest.

2. It shall be a conflict of interest and violation of this ordinance for a Public Official:

A. To participate in any vote or participate in any discussion in his or her public capacity on any matter if the matter has an economic benefit to the Public Official, his or her Family Member, or anything in which he or she has a financial interest. In addition to recusal, a Public Official shall disclose any potential relationship to the Office of the Clerk-Treasurer within five (5) days of obtaining such knowledge unless the relationship has been previously disclosed. The Clerk-Treasurer shall retain on file all such disclosures. In the event that the Public Official desires to abstain from voting on a particular matter, the Public Official shall announce his or her intention to abstain before the vote is taken and shall also provide a reason for the abstention. In the event that the abstention from voting would result in a lack of quorum for the board or commission to act, then the affected Public Official may vote after full disclosure.

B. To pressure, coerce, force, or require any other Public Official to engage in any conduct that would result in economic benefit to either Public Official.

C. To assist any Person in any transaction with the City when such assistance is or would reasonably appear to be improperly enhanced by the position of the Public Official of the City. Public Officials may provide such assistance if it is provided in the course of their official duties.

D. To disclose or use any information obtained as a Public Official for his or her private gain, for the gain of another Public Official or for any other Person unless and until such information is available to the public.

E. To solicit or receive a Gift or loan when it has been or would reasonably appear to have been solicited, received or given with the intent to give or obtain special consideration or

influence as to any action by such Public Official in his or her official capacity.

F. To receive a Gift or Honorarium in excess of Two Hundred Dollars (\$200.00) in any calendar year from any individual or other entity doing business with the City of Valparaiso; however, the Public Official may receive such Gift or Honorarium and donate the Gift or Honorarium to a not-for-profit agency or to the City of Valparaiso for public purpose.

4.06 STATEMENT FOR DISCLOSURE OF ECONOMIC INTEREST

1. All elected officials of the City and all candidates for elective office in the City shall meet all requirements regarding disclosure of economic interests including but not limited to filing of disclosure forms in the same format as required by State Election Laws. Copies of all forms shall be filed with the Clerk-Treasurer of the City.

2. In addition to the above requirement, all Public Officials shall be required to file an annual statement disclosing the name of any outside business or occupation outside his or her duties with the City together with the business address and phone number; any financial interest in a business entity along with an explanation and extent of his or her relationship to said entity; any financial interest of a Family Member or business associate which would affect his or her relationship with the City; the amount of Gifts or Honoraria exceeding Two Hundred Dollars (\$200.00) received by the Public Official or his or her Family Member from an outside contractor. For purposes of this provision, outside contractor shall mean any Person who has a contract, purchase or other commercial venture pending with the City or has engaged in any contract, purchase or other commercial venture with the City within the past thirty-six (36) months. Elected officials are understood to have all departments and divisions of the City within their segment of responsibility. In the event that the Public Official has no outside business or occupation or financial interest, that would require the filing a statement of disclosure to this section, then no filing will be required.

4.07 ETHICS COMMISSION

1. The Ethics Commission has jurisdiction~~s~~ over current or former Public Officials, current or former Employees, and current or former Appointed Persons for acts or omissions during their employment, elected term, or appointment. The Ethics Commission shall consist of five (5) residents of the City of Valparaiso. Appointments to the Ethics Commission shall be made as follows:

A. The President of Valparaiso University shall appoint

one (1) member for an initial term of one (1) year.

B. The President of Porter hospital shall appoint one (1) initial member for a term of two (2) years.

C. The Board of Directors of the Greater Valparaiso Chamber of Commerce shall appoint an initial member for a term of one (1) year.

D. The Chief Executive Officer of the largest for-profit employer in the City of Valparaiso shall appoint one (1) initial member for a period of two (2) years.

E. The four (4) appointees shall designate a fifth (5th) member who shall serve an initial term of one (1) year. The fifth member shall not be an employee from Valparaiso University, Porter hospital, the Greater Valparaiso Chamber of Commerce, or the largest for-profit employer in the City of Valparaiso.

F. Thereafter all appointing bodies shall make Appointments for a period of two (2) years with the understanding that no individual shall serve for a period of more than three (3) consecutive two (2) year terms.

G. No Person appointed to the Ethics Commission shall be a Public Official.

2. The ~~Mayor City~~ shall appoint an attorney to serve as legal counsel for the Ethics Commission. Legal counsel for the Ethics Commission shall advise and counsel the Ethics Commission as necessary, but he or she is not a member of the Ethics Commission.

3.

A. Every Public Official, Appointed Person, or Employee when in doubt about the applicability and interpretation of any City ethics law to himself or herself in a particular context, may submit in writing the facts of the situation to the Ethics Commission with a request for an advisory opinion to establish the standard of public duty. Any Public Official or Employee who has the power to hire or terminate Employees may likewise seek an advisory opinion from the Ethics Commission as to the application of the provisions of the ethics laws to any such Employee or applicant for employment. An advisory opinion shall be rendered by the Ethics Commission, and each such opinion shall be numbered, dated and published.

B. Such opinion, until amended or revoked, shall be binding on the conduct of the Public Official or Employee who sought the opinion or with reference to whom the opinion was sought, unless material facts were omitted or misstated in the request for the advisory opinion.

C. The Ethics Commission shall assist in the preparation of materials and programs designed to assist Persons in complying with the ethics laws and this ordinance. The Ethics Commission shall work with the City Ethics Officer in establishing, presenting, and expanding the City's ethics education program.

4. A complaint to allege a violation of this ordinance shall be in writing and notarized.

A. Complaints concerning City Employees ~~of the City~~ or Public Officials that are department heads shall be submitted to the City Ethics Officer. The City Ethics Officer shall handle such complaints in accordance with Section 4.08(3) of this ordinance.

B. Complaints concerning Public Officials who are not City Employees shall be submitted to the Chairperson of the Ethics Commission. The Chairperson shall provide an unredacted copy of the complaint to all members of the Ethics Commission, the attorney for the Ethics Commission, and the Person who is the subject of the complaint.

5. Upon receipt of a complaint, the Ethics Commission may:

A. Upon a majority vote, reject, without further proceedings, a complaint that the Ethics Commission considers frivolous or inconsequential;

B. Upon a majority vote, reject, without further proceedings, a complaint that the Ethics Commission is satisfied has been dealt with appropriately by a federal, state, or local agency; or

C. Upon a majority vote, determine that the complaint does not allege facts sufficient to constitute a violation of this ordinance and dismiss the complaint.

6. If the complaint is not disposed of under Section 4.07(5) of this ordinance, the Ethics Commission may undertake any additional investigation deemed appropriate to determine if probable cause exists to support the allegations in the complaint. If the Ethics Commission finds by a majority vote that probable cause exists to support an alleged violation of this ordinance, it shall convene a public hearing on the matter within sixty (60) days after making the determination. The Person who is the subject of the complaint shall be notified within fifteen (15) days of the Ethics Commission's determination of probable cause. The subject of the complaint or Person filing the complaint may request a continuation of the hearing date and, if approved by the Ethics Commission, a date will be scheduled no later than thirty (30) days after the original hearing date. Except as provided in this Section, the Ethics Commission's evidence relating to a complaint and investigation is confidential.

7. A complaint that is filed with or proceeding that is held by the Ethics Commission before there has been a finding of probable cause is confidential unless the subject of the complaint or investigation elects to have information disclosed, or the Ethics Commission elects to respond to public statements by the person who filed the complaint. The Ethics Commission may acknowledge:

A. The existence of an investigation before the finding of probable cause; or

B. That the Ethics Commission did not find probable cause to support an alleged violation.

A complaint filed with the Ethics Commission is open for public inspection after the Ethics Commission finds that probable cause exists. The Ethics Commission may compel the attendance and testimony of witnesses and the production of relevant records and documents by a subpoena enforceable by the Porter County Circuit or Superior Court.

8. If a hearing is to be held, the subject of the complaint may examine and make copies of all evidence in the Ethics Commission's possession relating to the complaint. At the hearing, the charged party shall have the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross-examine opposing witnesses. The Person filing the complaint shall also have the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross-examine opposing witnesses. The only evidence to be considered must be given under oath or affirmation.

9. After the hearing, the Ethics Commission shall provide a report, in writing, of its findings of fact. A finding, by a majority vote, of a violation of this ordinance, or any other statute or rule establishing standards of official conduct of Public Officials, Appointed Persons, or Employees, shall be signed by a majority of the Ethics Commission's members and shall be made public. The report shall be presented to :

A. The subject of the complaint;

B. The City's Mayor; and

C. The City's Common Council.

10. The Ethics Commission may also forward its report to any of the following:

A. The prosecuting attorney and law enforcement agency of each county in which the violation occurred;

B. The state board of accounts;

- C. The attorney general; or
- D. Any other appropriate person.

4.08 ETHICS OFFICER

1. The position of the City Ethics Officer is hereby established. The City Ethics Officer is to be appointed by the City's Mayor. The City Ethics Officer is not a voting member of the Ethics Commission.

2. The mission of the City Ethics Officer is to encourage each of the department heads and Employees of the City to act ethically in all actions. The Ethics Officer shall be the first contact to the City employees. This mission requires that the Ethics Officer not only encourage compliance with various laws, but more importantly, encourage each Employee and department head to adhere to the highest standards of ethical behavior. In pursuing that broad mission, the duties of the Ethics Officer include, but are not limited to the following:

- A. Develop policies, programs and strategies to deal with all ethics-related matters;
- B. Develop training and implementation of educational programs;
- C. Attend Ethics Commission meetings;
- D. Encourage compliance with the spirit and letter of this ordinance and the State of Indiana's ethics laws;
- E. Review periodically this ordinance and other applicable laws and regulations and recommend to the Ethics Commission appropriate changes to this ordinance;
- F. The Ethics Officer shall be the liaison between the Ethics Commission and the department heads and Employees of the City;
- G. The City Ethics Officer may seek formal opinions from the Ethics Commission on interpretation of his or her duties or of this ordinance; and
- H. Accomplish other duties as requested by the Mayor.

3. Upon receiving a complaint that an Employee or a Public Official that is a department head has not complied with this ordinance, or has failed to disclose an actual or apparent conflict of interest, the Ethics Officer shall:

- A. Notify the Employee that a complaint has been filed

against him or her and shall allow the Employee to respond, in writing, to the complaint;

B. Meet individually with all parties and make recommendations to the Mayor and department head, if applicable;

C. The complaint will be forwarded to the Ethics Commission under the following circumstances:

(1) If the complaint alleges a severe violation of this ordinance; or

(2) If no resolution or agreement is reached between the parties with the assistance of the Ethics Officer.

Complaints referred to the Ethics Commission concerning Employees shall proceed according to the procedure for Public Officials as set forth in Section 4.07 of this ordinance.

4.09 GENERAL PROVISIONS

1. The following is a list of current state statutes that affect the conduct and business by Public Officials and government Employees. In the event that any such statutes are amended by the General Assembly or additional statutes are adopted by the General Assembly, such amendments or additional statutes shall be considered to be a part of this Ordinance.

I.C. 35-44-1-1	Bribery
I.C. 35-44-1-2	Official Misconduct
I.C. 35-44-1-3	Conflicts of Interest
I.C. 35-44-1-7	Profiteering from Public Services
I.C. 35-44-2-4	Ghost Employment
I.C. 36-4-8-3	Approval of Order for Issue of Warrants
I.C. 36-4-8-13	Obligations in Excess of Appropriation
I.C. 36-7-4-207	Membership of City Plan Commission
I.C. 36-7-4-216	Qualifications - Plan Commission
I.C. 36-7-4-223	Zoning Matters - Conflict of Interest
I.C. 36-7-4-905	Restrictions on Holding Office - BZA
I.C. 36-7-4-909	Conflict of Interest - BZA
I.C. 36-7-12-14	Removal of Commissioner - EDC
I.C. 36-7-12-16	Conflict of Interest - EDC
I.C. 36-7-14-9	Redevelopment Commissioners - Removal
I.C. 36-7-14-10	Conflict of Interest - Redevelopment Commission
I.C. 36-7-18-9	Removal of Commissioner
I.C. 36-7-18-11	Conflict of Interest - Commissioner of a Housing Authority
I.C. 5-16-11-6	Conflict of Interest Disclosure
I.C. 5-16-11-5.5	Consultant conflicts

Copies of the above statutes shall be available in each department and will be available to individuals upon request.

2. All Public Officials shall receive a copy of this ordinance from the Office of the Clerk-Treasurer within thirty (30) days after its adoption. Any candidate for public office or any individual being considered for appointment as a Public Official shall be provided with a copy of this ordinance prior to their appointment and such individuals shall confirm, in writing, that their appointment will be subject to the terms and conditions of this ordinance and they shall be bound by this ordinance if appointed or elected.

3. Any questions as to the provisions or references made herein should be addressed to the Ethics Commission in writing. The Ethics Commission shall respond in writing to any request for an interpretation of a rule, regulation, or this ordinance.

4. In the event that the terms of this ordinance are in conflict with any state law or ruling of a state agency, such law, rule, regulations and/or ruling of the state agency shall supersede the terms of this ordinance.

5. This ordinance shall not prohibit a Public Official or Employee from being reimbursed for expenses, receiving money as a campaign contribution, participating in collective bargaining, or being paid for a service as a Public Official or Employee except that may be provided by applicable state law or state rules and regulations, or any ruling of a state agency of the State of Indiana.

6. A Public Official or Employee may appear before any public body on his or her own behalf as to any matter in which he or she has a personal economic interest if full disclosure is made and such activity is not otherwise prohibited by law.

PASSED by the Common Council of the City of Valparaiso, Indiana by a _____ vote of _____ members present and voting this _____ day of _____, 2006.

Jon Costas, Mayor

ATTEST:

Sharon E. Swihart, Clerk-Treasurer

Presented by me to the Mayor of the City of Valparaiso, Indiana, this _____ day of _____, 200____, at _____ o'clock __.m.

Sharon E. Swihart, Clerk-Treasurer

This Ordinance approved and signed by me this ____ day of _____, 200__ at _____ o'clock __.m.

Jon Costas, Mayor