

**ORDINANCE NO. 05-09-27-E**

**AN ORDINANCE OF THE VILLAGE OF BEE CAVE, TEXAS, AMENDING CHAPTER 9 OF THE VILLAGE OF BEE CAVE CODE OF ORDINANCES BY AMENDING ARTICLE 9.1100, "CODE OF ETHICS ADOPTED," INCLUDING REGULATIONS RELATED TO CONFLICTS OF INTEREST; INTERESTS IN PROPERTY ACQUIRED WITH PUBLIC FUNDS; NEPOTISM; BRIBERY; HONORARIUMS; GIFTS; VILLAGE RECORDS; MISUSE OF OFFICIAL INFORMATION; ABUSE OF OFFICIAL CAPACITY; AND OFFICIAL OPPRESSION; AND AMENDING ARTICLE 9.1200, "OFFICE OF DEPUTY VILLAGE ATTORNEY" AND PROVIDING FOR AN EFFECTIVE DATE; PROPER NOTICE AND MEETING; SEVERABILITY CLAUSE AND REPEALER CLAUSE.**

**WHEREAS**, statutory provisions governing the ethical conduct of public officials and employees are found in various codes including the Texas Local Government Code, the Texas Government Code and the Texas Penal Code; and

**WHEREAS**, the Board of Alderman ("Board") of the Village of Bee Cave ("Village") finds it desirable and necessary to adopt and amend its comprehensive ethics ordinance that sets out the statutory parameters relating to the conduct of public officials and employees in one easily accessible location; and

**WHEREAS**, the Board believes that a position in government is a position of public trust that demands a high standard of behavior; and

**WHEREAS**, each employee and official of the Village should uphold the Constitution, laws and regulations of the United States and the State of Texas; and

**WHEREAS**, the Village seeks to promote personal integrity, honesty and ethical conduct in all activities undertaken by Village employees and officials through the adoption of this Ordinance; and

**WHEREAS**, the Village seeks to inspire public confidence and trust in Village officials and employees through the adoption of the "Ethics Code"; and

**WHEREAS**, new appointments to the office of the Deputy Village Attorney is necessary since the Village now employs the firm of Bickerstaff Heath Smiley Pollan Keever and McDaniel as its Village Attorney;

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMAN OF THE VILLAGE OF BEE CAVE, TEXAS:**

## **SECTION 1. RECITALS**

The Board hereby finds that the statements set forth in the recitals of this Ordinance are true and correct, and the Board hereby incorporates such recitals as part of this Ordinance.

## **SECTION 2. ADOPTION OF CODE OF ETHICS**

Article 9.1100 Code of Ethics is hereby amended as follows:

The Code of Ethics dated September 27, 2005 attached hereto Exhibit "A" and incorporated herein for all purposes is hereby enacted and shall replace the document entitled "VOBC - Do the Right Thing" dated August 11, 1998.

## **SECTION 3. OFFICE OF DEPUTY VILLAGE ATTORNEY**

Article 9.1200 is hereby amended to read as follows:

Any attorney with the law firm of Bickerstaff Heath Smiley Pollan Keever and McDaniel (except the Village Attorney) who performs legal services on behalf of the Village of Bee Cave and including the prosecution of cases in municipal court is hereby appointed deputy village attorney.

## **SECTION 4. Effective Date**

This Ordinance shall take effect immediately from and after its passage and publication as may be required by governing law.

## **SECTION 5. Proper Notice and Meeting**

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code and as required by Chapter 52 of the Texas Local Government Code.

## **SECTION 6. Severability**

It is hereby declared to be the intention of the Board that the phrases, clauses, sentences, paragraphs and sections of this Ordinance be severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance, and the remainder of this Ordinance shall be enforced as written.

**Section 7. Repealer**

The provisions of this Ordinance shall be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent or in conflict with any of the provisions of this Ordinance are hereby expressly repealed to the extent that such inconsistency is apparent.

**PASSED AND APPROVED** by the Board of Alderman of the Village of Bee Cave, Texas this 27<sup>th</sup> day of September 2005.

*Caroline* Caroline Murphy  
Carolyn Murphy, Mayor  
Village of Bee Cave, Texas

**ATTEST:**

Sherry Mashburn  
Sherry Mashburn, Village Secretary  
Village of Bee Cave, Texas

[SEAL]

**APPROVED AS TO FORM:**

Patty L. Akers  
Patty L. Akers, Village Attorney  
Village of Bee Cave, Texas

**EXHIBIT "A"**

**ARTICLE 9.1100  
CODE OF ETHICS**

**Section 9.1101. Definitions**

The terms used in this Article shall have the following meanings:

Business Entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.

Candidate. This term has the meaning assigned by section 251.001, Election Code.

City Official means the Mayor, every member of the Board of Alderman, the Village Administrator, the Village Secretary, the Village Attorney, the Village Engineer and all members of any commission, committee, or board appointed by the Board of Alderman or the Mayor.

Confidential Information means any information that a City Official would be privy to because of the official's position but otherwise is not available to the public under the provisions of the Texas Public Information Act (Tex. Gov't Code Ch. 552).

Conflict Disclosure Statement means the Texas Ethics Commission disclosure statement form required by Chapter 176 of the Local Government Code.

Conflict of Interest Questionnaire means the Texas Ethics Commission conflicts of interest form required by Chapter 176 of the Local Government Code.

Economic Benefit means any taxable income or any money, real or personal property, contract rights, sale, lease, option, credit, loan, discount, service, or other tangible or intangible thing of value, whether similar or dissimilar to those enumerated.

Economic Interest means a legal or equitable interest in real or personal property or a fiduciary obligation to such property or contractual right in such property that is more than Two Thousand Five Hundred Dollars (\$2500.00). Service by a City Official as an officer, director, advisor, or otherwise active participant in an educational, religious, charitable, fraternal, or civic organization does not create an Economic Interest in the property of that organization. Ownership of an interest in a mutual or common investment fund that holds securities or other assets is not an Economic Interest in the securities or other assets unless the City Official participates in the management of the fund. A City Official does not have an Economic Interest in a matter if the economic impact on the City Official is indistinguishable from the impact on the public or on the particular group affected by the matter.

Family Member means the spouse, parent or child, and the parents of a spouse, City Official, or appointee.

Gift means a favor, hospitality, or economic benefit other than compensation but which does not include campaign contributions reported as required by state law, gifts received from a relative if given on account of kinship, or any value received by will, intestate succession, or as a distribution from an inter vivos or testamentary trust.

Income means economic benefit received.

Indirect Ownership means an equity interest in a business entity where the interest is held through a series of business entities, some of which own interests in others.

Property means real estate, personal items, equipment, goods, crops, livestock, or an equitable right to income from real estate, personal items equipment, goods, crops, or livestock.

Second Degree of Consanguinity or Affinity is defined through a chart in Section 9.1104(c)4.

Source of Income means any business entity, employment, investment, or activity which earned or produced income, including interest, dividends, royalties or rents, which has been paid to or for the credit of a City Official, candidate, or family member or which would be taxable to said City Official, candidate, or family member under the United States Internal Revenue Code, as amended, even though not actually paid or credited.

Substantial Interest means the interest that a City Official and/or a family member has in a business or business entity or in real property as described below.

- (a) The City Official or family member owns ten percent or more of voting stock or shares of the business entity;
- (b) The City Official or family member owns ten percent or more or \$15,000.00 or more of the fair market value of the business entity; or
- (c) The funds received by the City Official or family member from the business entity exceed ten percent or more of the person's gross income for the previous year.
- (d) The City Official has a Substantial Interest in real property if he, his parent, or child or, if married, his spouse or his spouse's parent, controls or has an interest in the real property and the interest has a market value of \$2,500.00 or more.

Third Degree of Consanguinity is defined through a chart in Section 9.1102(c)4).

## **Section 9.1102. Standards of Conduct**

### **(a) General Provisions**

**(1)** No City Official may disclose any Confidential Information gained through the official's position concerning property, operations, policies, or affairs of the Village, for gain or advantage in an Economic Interest of the City Official or the persons identified in Section (c)(2)(B) of this Section.

**(2)** No City Official may use the official's position or Village-owned facilities, equipment, supplies, or resources of the Village for gain in an Economic Interest of the City Official, for a political campaign of the Official, or for any of the persons identified in Section (c)(2)(B) of this Section. A discount or award given for travel, such as frequent flyer miles, rental car or hotel discounts, or food coupons, are not things of value belonging to the Village for purposes of this section due to the administrative difficulty and cost involved in recapturing the discount or award for the Village.

**(3)** Except as specifically authorized by Village ordinance, no City Official may appear before the body of which the official is a member to represent the City Official or any person identified in Subsection (c)(2)(B) of this Section. The City Official may designate and be represented by a person of the official's choice in any such matter.

**(4)** No City Official may act as surety for any person or business entity that has a contract with the Village, or as a surety on any bond required by the Village for a City Official.

**(5)** These General Provisions do not prohibit a City Official from representing the City Official's interest in the City Official's owner-occupied homestead before any Village body, except the body of which the official is a member.

### **(b) Gifts**

No City Official may solicit or accept any contribution, gift, or economic benefit that is offered or given with the intention of influencing the judgment or discretion of such official; or given in consideration of the favorable exercise of the official's judgment or discretion in the past.

### **(c) Conflict of Interest.**

**(1) Substantial Interest.** No City Official may vote on or participate in any decision-making process on a matter concerning property or a business entity if the official has a Substantial Interest in the property or business entity.

**(2) Economic Interest.**

**(A)** No City Official may vote on or participate in any decision-making process on a matter requiring filing of a Conflicts Disclosure Statement if the official has an Economic Interest in the outcome of the matter under consideration.

**(B)** To avoid the appearance and risk of impropriety, a City Official may not take any official action that the official knows is likely to affect the Economic Interests of:

**(i)** The City Official's parent, child, step-child, spouse, or other family member within the second degree of consanguinity or affinity or a client of the City Official;

**(ii)** An employer of the City Official, the official's parent, child, step-child, or spouse;

**(iii)** A business entity for which the City Official serves as an officer or director or serves in any policy-making position;

**(iv)** A person or business entity from whom, within the past twelve months, the City Official or the official's spouse, directly or indirectly, received an Economic Benefit;

**(v)** A person or business entity from whom, within the past twelve months, the City Official or the official's spouse, directly or indirectly, engaged in negotiations pertaining to business opportunities.

**(3) Conflicts Disclosure Statement and Recusal.**

**(A)** A City Official shall file a sworn Conflicts Disclosure Statement with the Village Secretary whenever a person or entity has contracted with the Village or is considering doing business with the person or entity and the City Official has an employment relationship or other business relationship with the person or entity or the City Official has received or will receive an Economic Benefit in or with the person or entity, or if the person or entity, has given to the City Official gifts that have a value in the aggregate of more than \$250.00 in the 12-month period preceding the date the City Official becomes aware that the Village has a contract with such person or entity or that the Village is considering doing business with such person or entity. The City Official shall file the Conflicts Disclosure Statement with the Village Secretary no later than 5:00 p.m. on the seventh business day after the date the City Official becomes aware of the facts that require the filing of the Statement.

**(B)** A City Official commits an offense if the City Official knowingly fails to file the Conflicts Disclosure Statement. An offense under the above subsection 9.1102(c)(3)(A) is a Class C misdemeanor.

(C) The Village Secretary shall accept and file any and all City Official Conflict Disclosure Statements and any Vendor Conflict of Interest Questionnaires.

(D) The Village Secretary shall maintain a list of City Officials and shall make that list available to the public and any person who may be required to file a Conflicts of Interest Questionnaire. The Village Secretary shall maintain copies of the Conflict Disclosure Statements and Conflict Questionnaires on the Village's internet website.

(E) A City Official having a Substantial Interest in the outcome of a matter under consideration shall disclose that the official has a Substantial Interest and recuse himself/herself immediately from voting and from the discussion of the matter. The City Official shall also promptly file an affidavit with the Village Secretary disclosing the nature and extent of the conflict, and the affidavit shall be included in the official minutes of the body.

**(4) Consanguinity and Affinity**

**Affinity Kinship (Marriage) Relationships**

1 <sup>st</sup> Degree	2 <sup>nd</sup> Degree
Father-in-Law	Spouse's Grandfather
Mother-in-Law	Spouse's Grandmother
Son-in-Law	Spouse's Brother (Brother-in-Law)
Daughter-in-Law	Spouse's Sister (Sister-in-Law)
Spouse	Spouse's Grandson
	Spouse's Granddaughter
	Brother's Spouse (Sister-in-Law)
	Sister's Spouse (Brother-in-Law)

**Consanguinity (Blood) Relationships**

1 <sup>st</sup> Degree	2 <sup>nd</sup> Degree	3 <sup>rd</sup> Degree
Father	Grandfather	Great-Grandfather
Mother	Grandmother	Great-Grandmother
Son	Brother	Nephew
Daughter	Sister	Niece
	Grandson	Great-Grandson
	Granddaughter	Great-Granddaughter
		Uncle
		Aunt

**(5) Budget Matters**

The Board shall take a separate vote on any budget item specifically dedicated to a contract with a business entity in which a member of the Board has a Substantial

Interest. The member of the Board that has the Substantial Interest may not participate in the separate vote.

### **Section 9.1103. Interest in Property Acquired with Public Funds**

#### **(a) Disclosure of Interest in Property**

A City Official who has a legal or equitable interest in real property that is to be acquired with public funds shall file an affidavit within 10 days before the date on which the property is to be acquired by purchase or condemnation.

#### **(b) Affidavit**

The affidavit must:

- (1)** state the name of the City Official;
- (2)** state the City Official's office, public title, or job designation;
- (3)** fully describe the property;
- (4)** fully describe the nature, type, and amount of interest in the property, including the percentage of ownership interest;
- (5)** state the date when the person acquired an interest in the property;
- (6)** include a verification as follows: "I swear that the information in this affidavit is personally known by me to be correct and contains the information required by Section 553.002, Government Code"; and
- (7)** contain an acknowledgement of the same type required for recording a deed in the deed records of the county.

The affidavit must be filed with the county clerk of the county in which the City Official resides and the county clerk of each county in which the property is located.

### **Section 9.1104. Nepotism**

#### **(a) Prohibition**

**(1)** A City Official may not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of an individual to a position that is to be directly or indirectly compensated from Village funds or fees of office if:

**(A)** the individual is related to the City Official within the third degree by consanguinity (blood or adoption) or the second degree by affinity (marriage); or

**(B)** the City Official holds the appointment or confirmation authority as a member of a state or local board, the legislature, or a court and the individual is related to another member of that board, legislature, or court within the third degree by consanguinity (blood or adoption) or the second degree by affinity (marriage).

**(2)** A City Official may not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of an individual to a position in which the individual's services are under the public official's direction or control and that is to be compensated directly or indirectly from Village funds or fees of office if:

**(A)** the individual is related to another public official within the third degree by consanguinity (blood or adoption) or the second degree by affinity (marriage); and

**(B)** the appointment, confirmation of the appointment, or vote for appointment or confirmation of the appointment would be carried out in whole or partial consideration for the other public official appointing, confirming the appointment, or voting for the appointment or confirmation of the appointment of an individual who is related to the first public official within the third degree by consanguinity (blood or adoption) or the second degree by affinity (marriage).

**(b) Exceptions**

**(1)** The prohibitions in section 9.1104(a) do not apply to:

**(A)** an appointment to the office of a notary public or to the confirmation of that appointment;

**(B)** an appointment or employment of a personal attendant by an officer of the Village for attendance on the officer who, because of physical infirmities, is required to have a personal attendant; or

**(C)** any other appointment excepted under Chapter 573, Government Code.

**(2)** The prohibition in section 9.1104(a)(1) does not apply to an appointment, confirmation of an appointment, or vote for an appointment or confirmation of an appointment of an individual to a position if:

**(A)** the individual is employed in the position immediately before the election or appointment of the City Official to whom the individual is related in a prohibited degree; and

**(B)** that prior employment of the individual has been continuous for at least 2 (two) years.

**(3)** If, under Subsection (b)(2), an individual continues in a position, the City Official to whom the individual is related in a prohibited degree may not participate in any deliberation or vote on the appointment, reappointment, confirmation of the appointment or reappointment, employment, reemployment, change in status, compensation, or dismissal of the individual if that action applies only to the individual and is not taken regarding a bona fide class or category of employees.

### **Section 9.1105 Honorariums**

#### **(a) Prohibition**

A City Official is prohibited from soliciting, accepting, or agreeing to accept an honorarium in consideration for services that the City Official would not have been requested to provide but for the City Official's official position or duties.

#### **(b) Exception**

This section does not prohibit a City Official from accepting (1) transportation expenses, (2) lodging expenses or (3) meals in connection with a conference or similar event in which the City Official renders services, such as addressing an audience or engaging in a seminar to the extent that those services are more than merely perfunctory.

### **Section 9.1106. Gifts**

#### **(a) Prohibition**

**(1)** A Village Employee performing regulatory functions or conducting inspections or investigations shall not solicit, accept, or agree to accept any benefit from a person the Village Employee knows to be subject to regulation, inspection, or investigation by the Village Employee or the Village.

**(2)** A Village Employee having custody of prisoners shall not solicit, accept, or agree to accept any benefit from a person the Village Employee knows to be in his custody or the custody of the Village.

**(3)** A Village Employee or a City Official who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of the Village shall not solicit, accept, or agree to accept any benefit from a person the Village Employee or City Official knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of his discretion.

**(4)** A Village Employee or City Official who has judicial or administrative authority, who is employed by or in a tribunal having judicial or administrative authority, or who participates in the enforcement of the tribunal's decision shall not solicit, accept, or agree to accept any benefit from a person the Village Employee or City Official knows is interested in or likely to become interested in any matter before the Village Employee or City Official or tribunal.

**(b) Donation of Unsolicited Gift**

A Village Employee or City Official who receives an unsolicited benefit that the Village Employee or City Official is prohibited from accepting under this section may donate the benefit to a governmental entity that has the authority to accept the gift or may donate the benefit to a recognized tax-exempt charitable organization formed for educational, religious, or scientific purposes.

**(c) Exceptions**

The prohibitions set out in this section do not apply to:

**(1)** a fee prescribed by law to be received by a Village Employee or City Official or any other benefit to which the Village Employee or City Official is lawfully entitled or for which he gives legitimate consideration in a capacity other than as a Village Employee or City Official;

**(2)** a gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient; or

**(3)** a benefit to a Village Employee or City Official required to file a statement under Chapter 572, Government Code, or a report under Title 15, Election Code, that is derived from a function in honor or appreciation of the recipient if:

**(A)** the benefit and the source of any benefit in excess of \$50 is reported in the statement; and

**(B)** the benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are nonreimbursable by the state or the Village;

**(4)** a political contribution as defined by Title 15, Election Code;

**(5)** an item with a value of less than \$50, excluding cash or a negotiable instrument as described by Section 3.104, Business & Commerce Code;

(6) an item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental entity;

(7) food, lodging, transportation, or entertainment accepted as a guest and, if the donee is required by law to report those items, reported by the donee in accordance with that law; or

(8) any gift or benefit otherwise excepted under section 36.10, Penal Code.

### **Section 9.1107. Village Records**

#### **(a) Prohibition:**

City Official or Village Employee shall not:

(1) knowingly make a false entry in, or false alteration of, a Village record;

(2) make, present, or use any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine Village record;

(3) intentionally destroy, conceal, remove, or otherwise impair the verity, legibility, or availability of a Village record;

(4) possess, sell, or offer to sell a Village record or a blank Village record form with intent that it be used unlawfully;

(5) make, present, or use a Village record with knowledge of its falsity; or

(6) possess, sell, or offer to sell a Village record or a blank Village record form with knowledge that it was obtained unlawfully.

#### **(b) Exception**

It is an exception to the application of Subsection (a)(3) of this Section that the governmental record is destroyed pursuant to legal authorization or transferred under Section 441.204, Government Code. With regard to the destruction of a local government record, legal authorization includes compliance with the provisions of Subtitle C, Title 6, Local Government Code.

## **Section 9.1108. Misuse of Official Information**

### **(a) Prohibition**

**(1)** A Village Employee or City Official shall not misuse information to which he or she has access by virtue of his or her office or employment and that has not been made public, and shall not:

**(A)** acquire, attempt to acquire or aid another to acquire or attempt to acquire a pecuniary interest in any property, transaction, or enterprise that may be affected by the information;

**(B)** speculate or aid another to speculate on the basis of the information; or

**(C)** as a City Official or Village Employee coerce another into suppressing or failing to report that information to a law enforcement agency.

**(2)** A Village Employee or City Official shall not with intent to obtain a benefit or with intent to harm or defraud another, disclose or use information for a nongovernmental purpose that:

**(A)** the City Official or Village Employee has access to by means of his office or employment; and

**(B)** has not been made public.

In this section, "information that has not been made public" means any information to which the public does not generally have access, and/or that is prohibited from disclosure under Chapter 552, Government Code.

## **Section 9.1109. Ethics Review Commission**

**(a)** The Ethics Review Commission ( the "Commission") has jurisdiction over ethics complaints as described in this Article involving City Officials and Village Employees.

**(b)** The Commission is to be composed of five (5) members each serving a two year term. The Board shall appoint each member to the Commission. If a vacancy occurs on the Commission, the Board shall appoint a person to fill the unexpired term. Each Commission member shall take an oath of office comparable to that taken by Board members. Ethics Commissioners shall serve without compensation, but shall be eligible to be reimbursed for actual expenses in accordance with the Village's policy.

**(1) Terms of Commissioners.** At the Board meeting which creates the Commission two Commissioners shall be selected to serve an initial 1 year term and three Commissioners shall be selected to serve an initial two year term. Thereafter, all members' terms shall be three (2) years. The Board may by majority vote remove a Commissioner with or without cause. Any Commissioner who misses three (3) consecutive meetings within a twelve (12) month time period or one-third (1/3) of all regular meetings shall be deemed to have automatically vacated his/her position on the Commission. This section shall not apply to a Commissioner who applied for and received an excused absence from the Commission chairperson prior to the meeting(s) at issue. Any commissioner who no longer resides within the corporate boundaries of the Village is deemed to have automatically vacated his/her position on the Commission.

**(2) Commission Officers.** From among its members the Commission shall elect its officers, those being the Chairperson, Vice-Chairperson, and Secretary. Officers shall be elected for terms of one (1) year. The Chairperson shall preside over all meetings and may vote. If the Chairperson fails or refuses to act, the Vice-Chairperson shall perform the duties of the Chairperson. If the Chairperson and Vice-Chairperson are absent, any Commissioner may be appointed by the remaining members of the Commission to preside over the meeting.

**(3) Qualifications.**

**(A)** Commission members must be registered voters who are residents of the Village of Bee Cave.

**(B)** No member of the Ethics Commission may be:

**(i)** a City Official, Village Employee or spouse of a City Official or Village Employee;

**(ii)** a candidate for elected public office;

**(iii)** anyone having an Economic Interest with any City Official or Village Employee;

**(iv)** anyone who has been a paid campaign worker or political consultant for any Board or mayoral candidate; or

**(v)** a convicted felon.

**(C)** The Ethics Review Commission shall have the authority to review and investigate complaints filed in accordance with this Article and issue a written finding of the Commission's determination when appropriate.

(D) Service on the Ethics Review Commission does not preclude a member from filing a complaint with the Commission. The Commission member filing the complaint must recuse himself/herself from the Commission procedure.

(E) The Ethics Review Commission makes recommendations to the Board regarding revisions and changes to this Ordinance.

(F) The Ethics Review Commission may seek any necessary assistance from the Board and Village Manager regarding financial support needed to carry out the Commission's duties.

(G) The Commission shall determine its rules and procedures which shall be submitted in writing for approval of the Board. The Commission shall establish, amend and rescind its procedures and maintain proper records of its proceedings and its opinions. The Commission shall meet as often as necessary to fulfill its responsibilities but must meet at least once a year to review this Code Ethics.

(H) The Commission shall have the power to investigate, request and gather evidence necessary to determine if a violation has occurred. The Commission shall have the power to enforce the provisions of this Ordinance, including recommending to the Board the prosecution of alleged violators. Nothing in this Article shall be construed, however, to prevent complainants, including the Village, from instituting direct legal action on their own behalf through the appropriate judicial authority.

(I) The Commission shall receive from the Village such administrative support as reasonably necessary to carry out the duties of the Commission and shall assist the Commission with maintenance of its records in compliance with the Village's records retention schedule.

#### **Section 9.1110. Role of the Village Attorney**

(a) The Village Attorney serves as legal counsel to the Ethics Review Commission. When complaints are filed relating to the Mayor, Board members, Village Manager, or Village Attorney, independent legal counsel may be utilized to advise the Commission and take part in its proceedings.

(b) The Village Attorney serves as Ethics Advisor to City Officials and Village Employees. As Ethics Advisor, the Village Attorney is available to respond confidentially to inquiries relating to the Ethics Ordinance (this Article) and may render advisory opinions on potential conflicts of interest or violation of this section at the request of a City Official or Village Employee. The advisory opinion in any subsequent charges concerning the matter may be used as a defense to an alleged violation of this section unless material facts were omitted or misstated by the person requesting the opinion.

(c) The Village Attorney shall receive all sworn complaints and provide a copy and a preliminary review of the complaint to the Commission for action. The preliminary review does not advise on the merits of a complaint.

(d) If a complainant alleges a violation by the Village Attorney, the complaint must be filed with the Chairperson of the Ethics Commission, with a copy to the Mayor and the Village Manager.

### **Section 9.1111. Complaint Process**

#### **(a) Filing**

(1) Any City Official, Village Employee, or eligible voter of the Village who believes that there has been a violation of this Ordinance may file a sworn complaint. A complaint alleging a violation of this Ordinance must meet the requirements herein and must be filed with the Village Secretary. A complaint alleging a violation of this Article by the Village Attorney must also be filed with the persons named in Section 9.1109. A complaint must be filed within 1 year from the date of the alleged violation.

(2) Required Contents of a Complaint. An ethics complaint must be in writing and under oath and must set forth in simple, concise, and direct statements the following:

(A) The name of the complainant;

(B) The street or mailing address and the telephone number of the complainant;

(C) The name of the person who allegedly committed the violation;

(D) The position or title of the person who allegedly committed the violation;

(E) The nature of the alleged violation, including, if possible, the specific rule or provision of this Article alleged to have been violated;

(F) A statement of the facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred; and must contain the following:

(i) Documents or other material available to the complainant relevant to the allegation;

(ii) A list of all documents or other material relevant to the allegation and available to the complainant, but that are not in the possession of the complainant, including the location of the documents; if known; and

(iii) A list of all documents or other material relevant to the allegation, but unavailable to the complainant, including the location of the documents, if known.

(G) If the complaint is based on information and belief, the complaint shall state the source and basis of the information and belief.

(3) The complaint must be accompanied by an affidavit stating that the information contained in the complaint is either true and correct or that the complainant has good reason to believe and does believe that the facts alleged constitute a violation of this Ordinance.

(4) Upon request, the Village Secretary shall provide information to persons about the requirements of a complaint and the process for filing a complaint.

**(b) Confidentiality and Ex Parte Communications**

(1) No City Official or Village Employee may reveal information relating to the filing or processing of a complaint except as required for the performance of official duties.

(2) All documents relating to a pending complaint are confidential, unless they are required to be disclosed under the Texas Public Information Act (Tex. Gov. Code Ch. 552).

(3) After a complaint has been filed, and during the consideration of a complaint by the Commission, a member of the Commission may not communicate directly or indirectly with any party or person about any issue of fact or law regarding the complaint, except at a meeting of the Commission. This provision does not prevent a member of the Commission from consulting with the Village Attorney regarding procedural and legal issues.

**(c) Notification**

(1) A copy of a complaint which meets the requirements of this section shall be promptly forwarded by the Village Secretary to the Village Attorney and to the person charged in the complaint.

(2) The person alleged in the complaint to have violated this Article shall be provided with a copy of the Ethics Ordinance (this Article) and informed that:

(A) Within 14 days of receipt of the complaint, a sworn response must be filed with the Village Secretary;

(B) Failure to file a response does not preclude the Village Attorney from processing the complaint.

(3) City Officials and Village Employees have a duty to cooperate with the Village Attorney, pursuant to this Section.

(4) All members of the Commission shall receive copies of the complaint, any background documentation, and any responses at least seven days before a hearing on the matter.

### **Section 9.1112. Hearing Process**

#### **(a) Preliminary Hearing**

(1) As soon as reasonably possible, but in no event later than 60 days after receiving a complaint, the Commission shall conduct a Preliminary Hearing. The purpose of the Preliminary Hearing is to determine whether there are reasonable grounds to believe that a violation of this Ordinance has occurred.

(2) The complainant and the City Official or Village Employee named in the complaint have the right of representation by counsel.

(3) Statements at a Preliminary Hearing shall be under oath, but there shall be no cross examination or requests for persons or evidence issued for the hearing.

(4) The person filing a complaint shall state the alleged violation and describe in narrative form the testimony and other evidence which are presented to prove the alleged violation as stated in the written complaint.

(5) The City Official or Village Employee named in the complaint shall have the opportunity to respond but is not required to attend or make any statement. The official may describe in narrative form the testimony and other evidence presented to disprove the alleged violation. If the official agrees that a violation has occurred, the Commission may consider the appropriate sanction.

(6) Only members of the Commission may question the complainant, the independent counsel for the Commission, or the City Official or Village Employee named in the complaint.

(7) At the conclusion of the Preliminary Hearing one of the following actions shall be taken:

(A) If the Commission does not determine that there are reasonable grounds to believe that a violation of this Article has occurred, the complaint shall be dismissed.

(B) If the Commission determines that there are reasonable grounds to believe that a violation of this Article has occurred, it shall schedule a final hearing.

(C) If the City Official or Village Employee has agreed that a violation has occurred, the Commission may proceed with the Preliminary Hearing to determine the appropriate sanction.

**(b) Final Hearing**

(1) A final hearing shall be held as expeditiously as possible following the determination by the Commission that there are reasonable grounds to believe that a violation of this Article has occurred, but in no event shall it be held more than 30 days after said determination. The Commission may grant two postponements, not to exceed 15 days each, upon the request of the City Official or Village Employee named in the complaint.

(2) If a complaint proceeds to a final hearing, the Commission may request witnesses to attend and testify, administer oaths and affirmations, take evidence and request the production of books, papers, records, or other evidence needed for the performance of the Commission's duties or exercise of its powers, including its powers of investigation.

(3) The issue at a final hearing is whether a violation of this Article has occurred. The Commission shall make its determination based on the evidence in the record. All witnesses shall make their statements under oath. If the Commission determines that a violation has occurred, it shall state its findings in writing, identify the particular provision(s) of this Article which have been violated, and within five working days deliver a copy of the findings to the complainant, the person named in the complaint, and the Village Secretary. The Village Secretary shall deliver a copy of the findings to the Board, the Village Manager and the Village Attorney.

**Section 9.1113. Sanctions and Violations**

(a) If the Commission determines that a violation of this Article has occurred, it shall consider appropriate sanctions. The Commission may receive additional testimony or statements before considering sanctions, but is not required to do so.

(b) If the Commission determines that a violation has occurred, it may impose the following sanctions.

(1) A letter of notification is an appropriate sanction when the violation is clearly unintentional. The letter of notification shall advise the City Official or Village Employee of any steps to be taken to avoid future violations.

(2) A letter of admonition is the appropriate sanction when the Commission finds the violation is minor.

(3) A letter of reprimand is the appropriate sanction when the Commission finds a serious violation has been committed.

(4) A letter of censure is the appropriate sanction when the Commission finds that a serious violation has occurred or more than one serious violation or repeated serious violations of this Article have been committed.

(c) Copies of all sanction letters issued by the Commission under this section shall be sent to the Board.

(d) In addition, when the seriousness of the violation warrants, the Commission may recommend to the Board the suspension or removal from office of any official serving in a Village-appointed position.

(e) Except with regard to violations of Chapters 171 and 176 of the Texas Local Government Code, violations of the Penal Code, or violations of the Government Code, a violation by any City Official or Village Employee as designated herein of one or more of the provisions of this Article shall not be deemed to be a Class C misdemeanor under the laws of the State of Texas.

**Section 9.1114. Distribution and Proof of Compliance**

The Village Secretary shall make available to each new City Official designated in this Article, a copy of the text of this Ordinance; Chapter 171 and Chapter 176 of the Texas Local Government Code pertaining to conflicts of interest; the Texas Open Meetings Act (Tex. Gov. Code ch. 551); and the Texas Public Information Act (Tex. Gov. Code ch. 552) (collectively referred to in this section as the "Ethics Statutes").