

MICHIGAN CITY COMMON COUNCIL

ORDINANCE NO. _____

**AN ORDINANCE AMENDING AND RESTATING
ORDINANCE NO. 4043
COMMONLY CALLED THE ETHICS ORDINANCE
FOR THE CITY OF MICHIGAN CITY, INDIANA**

WHEREAS, the Common Council of the City of Michigan City adopted Ordinance No. **4043**; and

WHEREAS, the Ethics Advisory Commission has recommended various amendments to correct certain errors, lessen the administrative burden of compliance, and to more accurately reflect the intent of the Common Council at the time it passed said Ordinance.

NOW THEREFORE BE IT ORDAINED by the Common Council of the City of Michigan City, Indiana that Michigan City Ordinance No. **4043** is hereby repealed and the following is hereby adopted to take its place:

Section 1. Purpose and Intent.

The Common Council of the City of Michigan City finds that the proper operation of representative government requires that public officials and employees be independent, impartial and responsible to the people; that government decisions and policies be made in the proper channels of governmental structure; and that public office not be used for personal gain. Accordingly, it is the purpose and requirement of this Ordinance to maintain a high level of professionalism; to establish legal and ethical standards of conduct for all officials and employees of the city, whether elected or appointed, paid or unpaid; to set forth those acts that are incompatible with such standards; to require disclosure by such officials and employees of private, financial, or other interests in matters that may affect the city; and to provide effective means for enforcement thereof.

Section 2. General Provisions.

- a. All department heads, boards, commissions, and employees shall receive from the Office of the City Clerk a copy of this Ordinance within 45 days after its adoption.
- b. An electronic copy of this Ordinance shall be available for review by all officials and employees. Any candidate for public office or any individual being considered for appointment as a public official shall be provided with a copy of this article prior to their appointment and all such individuals shall be advised that their appointment will be subject to the terms and conditions of this Ordinance and that they shall be bound by this article if appointed or elected. In addition, all vendors and contractors doing business with the City shall be given notice, as provided in Appendix B, of this Ordinance and direction as to where they may obtain a copy hereof.

- c. Any official or employee shall address any inquiries concerning the provisions or references made herein to the Ethics Advisory Commission in writing. The Commission shall respond in writing to any request from any official or employee for an interpretation of a rule, regulation, or any section of this Ordinance.
- d. In the event that any section of this Ordinance is or comes into conflict with any federal or state law or ruling of a federal or state agency, such law, rule, and/or ruling of the federal or state agency shall supersede the terms of that section of this Ordinance. All remaining sections found not to be in conflict with any federal or state law or ruling of a federal or state agency shall remain in effect.
- e. This Ordinance shall not prohibit an official or employee from being reimbursed for expenses, receiving money as a campaign contribution, participating in collective bargaining, or being paid for service as a public official except as may be prohibited by applicable state law or state rules and regulations, or any ruling of a state agency of the State of Indiana.
- f. Any official or employee may appear before any public body on their own behalf regarding any matter in which they have a personal financial interest provided that full disclosure is made in advance and such activity is not otherwise prohibited by law.
- g. Any employment, appointed position or contractual relationship that exists prior to adoption of this Ordinance shall not be a violation of this Ordinance.
- h. No official shall represent a person, entity, or petitioner in any matter before the City for a period of one hundred eighty (180) days following termination of duties or responsibilities to the City.
- i. In addition to review and recommendations by the Ethics Advisory Commission, the Common Council shall review this article and act on any recommended changes at least once every four years, and may do so more frequently as needed.
- j. This Ordinance shall not be construed so as to impair the ability of these officials and employees to participate in ceremonial, representational, or informational functions in the pursuit of their official duties.
- k. This Ordinance is enacted to ensure public confidence in the integrity of city government, and shall be liberally construed in favor of protecting the public interests by fully disclosing conflicts of interest and promoting ethical standards of conduct for all city officials and employees.
- l. Violations of this Ordinance may result in disciplinary actions up to and including termination.

Section 3. Definitions.

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

- a. *Agency* means any authority, board, commission, committee, council, department, division, office, or other instrumentality of the executive and administrative departments of city government of the City of Michigan City, Indiana, or any subdivision thereof.
- b. *Business Entity* means a proprietorship, partnership, limited partnership, unincorporated association, trust, firm, corporation, or limited liability corporation.
- c. *(The) City* means the City of Michigan City, Indiana.
- d. *Commission* means the Ethics Advisory Commission created by this Ordinance.
- e. *Compensation* means any money, thing of value, service or financial benefit conferred upon or received by any person in return for services rendered or to be rendered, whether by that person or another.
- f. *Conflict of Interest* means any situation in which an individual exploits a position for personal or financial gain. Such conflict of interest shall apply to pecuniary interests, and also to votes cast in actions by councils, boards, and commissions.
- g. *Doing Business* means engaging in an activity: (1) for profit or gain or (2) that requires a license or permit by an agency.
- h. *Employee* means any individual, other than an elected or appointed official, whether on a full-time or part-time basis or pursuant to a contract, whose duties are subject to the direction and control of an employer with regard to the material details of how the work is to be performed, and who receives compensation for services performed for the City of Michigan City, Indiana, but does not include an independent contractor.
- i. *Employer* means any agency of the City of Michigan City, Indiana.
- j. *Ethics Advisory Commission* means the Commission established by Section 9 of this Ordinance, and is also an agency under the jurisdiction of this Ordinance.
- k. *Fair Market Value* means the price that would be paid by a willing buyer to a willing seller in a good faith transaction into which neither party is compelled to enter.
- l. *Financial Interest* means an interest:
 - 1) In a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or

2) Involving property or services.

The term includes an interest arising from employment or prospective employment for which negotiations have begun. The term does not include an interest of an official or employee in the common stock of a corporation unless the combined holdings in the corporation of the official or employee, or that individual's relative, are more than one percent (1%) of the outstanding shares of the common stock of the corporation. The term does not include an interest that is not greater than the interest of the general public or any city official or employee.

- m. *Gifts or Honoraria* means money or other property having economic value which is transferred to an official or employee without consideration in money or money's worth, but does not include:
- 1) Food or drink consumed by an official or employee or a relative, during the conduct of official public business or attendance at public ceremonies as a public official or employee;
 - 2) Mementos or souvenirs of nominal value received at public ceremonies or commemorating official business;
 - 3) Invitations or tickets to political fund raising dinners or public charitable benefits when used by an official or employee or a relative;
 - 4) Food or drink consumed by an elected official or department director during attendance in connection with official duties at a convention of public officials, if consumed at a reception or gathering with other public officials, or in connection with local meetings for official business.
- n. *Handbook* means an employee handbook, personnel manual, or similar document of any agency, or a Board Handbook for all boards, commissions, committees, or councils of the City of Michigan City.
- o. *Information of a Confidential Nature* means information:
- 1) Obtained by reason of the position or office held; and
 - 2) Which:
 - (a) A public agency is prohibited from disclosing under IC 5-14-3-4(a);
 - (b) A public agency has the discretion not to disclose under IC 5-13-3-4(b); and that the agency has not disclosed; or
 - (c) The information is not in a public record, but if it were, would be confidential.

- p. *Interest* means any direct or indirect monetary or material benefit accruing to a city official or employee as a result of a contract or transaction which is or may be the subject of an official act or action by or with the city (except for such transactions which would confer similar benefits to all other persons and/or property similarly situated).
- q. *Material Interest in a Business* means ownership of five (5) percent or more of a business entity.
- r. *Mayor* means the Mayor of the City of Michigan City, Indiana.
- s. *Nepotism* means the appointment or hiring of a relative by an official or employee.
- t. *Official* means any individual elected or appointed to an office or position in any agency of the city, whether such individual is paid or unpaid. This definition includes all elected officials of the city; members of all commissions, committees, and boards established by state statute or local ordinance, resolution, or motion; and all individuals appointed by the Mayor or the Common Council.
- u. *Open Door Law* means IC 5-14-1.5, Public Meetings.
- v. *Pecuniary Interest* means an interest that will result or is intended to result in an ascertainable increase in the income or net worth of the official or employee or a relative.
- w. *Person* means any individual, association, corporation, or other legal entity.
- x. *Probable Cause* means such cause as is found to exist upon a reasonable inquiry that would induce a reasonably intelligent and prudent person to believe that a person has committed an act or acts constituting an ethical violation under this chapter.
- y. *Relative* means spouse, child, parent, sibling, or grandchild. Relatives also include persons related by marriage (including in-laws); those related by law (including adoption); and other persons who reside in the official or employee's residence or who are financially dependent upon the official or employee.
- z. *Resident* means a person who makes their home within the corporate limits of the City of Michigan City. To be considered a resident, a person who has another home or other residence outside of the city must spend more than 60% of their time in the home within the city.

The singular of any noun, when used in this Ordinance, includes the plural whenever appropriate and the masculine includes the feminine and vice versa.

Section 4. Application of policy.

a. This Ordinance shall apply to all officials and employees of the city, as defined in Section 3 of this Ordinance. The written acceptance of this policy shall be condition for initial and continuing service with the city by an appointed official. ~~All individuals excluded hereby from the application of this Ordinance are invited to voluntarily comply with the financial disclosure requirements of this ordinance.~~

~~a. The singular of any noun, when used in this ordinance, includes the plural whenever appropriate and the masculine includes the feminine and vice versa. (MOVED to end of Section 3)~~

Section 5. Non-partiality and non-discrimination.

While performing official duties, no official or employee shall grant or make available to any person any consideration, treatment, advantage, or favor beyond that which is the City policy to grant or make available to the public at large, without prior Common Council approval. No official or employee shall discriminate against any person in violation of federal law, state law, or the ordinances of this City.

Section 6. Adoption of State Law.

The state laws governing Ethics and Conflicts of Interest (IC 4-2-6), Campaign Contributions (IC 3-9-2), Public Meetings (Open Door Law, IC 5-14-1.5), Access to Public Documents (IC 5-14-3), Disclosure of Economic Interests by Consultants in Public Projects (IC 5-16-11), and Statutory Conflict of Interest (IC 35-44-1-3) as amended and supplemented, are hereby incorporated herein by reference so as to make it clear that such acts and all amendments thereto are effective and operative as to the City.

Section 7. Standards of Ethical Conduct.

Any potential or existing conflicts of interest shall be fully disclosed in the Uniform Conflict of Interest Statement. A copy of the form shall be made available in the Personnel Office of the City of Michigan City, and is included in Appendix A of this Ordinance. The Personnel Director shall keep completed forms on file in the Personnel Office.

a. **Disqualification from acting on city business.** Any official or employee shall disqualify himself or herself and refuse to act on any matter in which such official or employee or a relative, or the private employer of the official or employee, has a pecuniary interest or might derive a profit and upon which the official or employee would be required to act in the discharge of official duties.

b. **Improperly using official position.** No official or employee shall use or permit the use of any individual, funds or property under the control, direction, or custody of that official or employee, or of any funds or property of an agency, for a purpose which is, or to a reasonable person would appear to be, for the private benefit of the official or employee or any other person; provided that nothing shall prevent the private use of property of an agency which is available on equal terms to the public generally (such as the use of library

books or tennis courts), or use of property of an agency in accordance with municipal policy in the conduct of official business (such as the use of automobiles of an agency), or the use of off-duty equipment by law enforcement officials assigned to those law enforcement officials, if allowed by the rules of the respective department, if, in fact, the property is used appropriately.

- c. **Improper influence.** No official or employee, except in the course of official duties, shall assist any person in any transaction with an agency when such official or employee's assistance is, or to a reasonable person would appear to be, enhanced by that official or employee's position with an agency; provided that this subsection shall not apply either to officials or employees appearing on their own behalf or representing themselves as to any matter in which they have a proprietary interest, if not otherwise prohibited by law.
- d. **Prohibition of certain financial interest. Unless full advance disclosure thereof is made on the Uniform Conflict of Interest Statement, no** ~~No~~ official or employee, ~~regardless of prior disclosure thereof,~~ who has a material interest, personally or through a relative, in any business entity doing or seeking to do business with an agency shall influence or attempt to influence the selection of or the conduct of business with such business entity by an agency.
- e. **Gifts or loans prohibited.** No official or employee shall solicit or receive any thing of monetary value from any person when it has been solicited, received or given or, to a reasonable person, would 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 official or employee in official capacity; provided that nothing shall prohibit contributions, including political contributions, which are reported in accordance with applicable law or which are accepted on behalf of an agency, or an honorarium, travel or other expenses reimbursed to any official or employee as a result of a speaking engagement or personal appearance made as a result of that individual's official position.
- f. **Gifts or honoraria in excess of \$100.00 prohibited.** No official or employee shall accept personal gifts or honoraria (including such received by a relative) that exceed an aggregate value of one hundred dollars (\$100.00) in any twelve (12) consecutive months from an individual business entity that is doing business or attempting to do business with the agency in which the official or employee holds an office or position of employment.
- g. **Disclosure of privileged information.** No official or employee shall disclose or use any information gained through official position for the immediate or anticipated personal gain or benefit of the official or employee or any other person; provided that nothing shall prohibit the disclosure or use of the information which is a matter of public knowledge or which is available to the public on request.
- h. **Nepotism.**
 - 1) No official or employee shall hire, promote, or transfer his or her own a relative to any position that:

- (a) Places the official or employee in the same agency or department as his or her own relative; nor shall any such relative be entitled to receive any compensation for services out of any appropriation of the Common Council; or
 - (b) Places the official or employee in direct or indirect supervisory or managerial capacity over his or her own ~~a~~-relative; or
 - (c) Allows the official or employee to directly or indirectly influence salary adjustments, career progress, or other managerial activities involving his or her own ~~a~~-relative; or
 - (d) Requires the official or employee to audit or review the work of his or her own ~~another~~ relative.
- 2) This section shall not be construed to prevent relatives of an official or employee from being elected to public office, nor shall it prevent such an occurrence due to change in marital status.
- i. No person shall apply for a job or contract with an agency for which the person has served as a member of the governing board or commission of that agency until at least one hundred eighty (180) days after her membership has ended.

Section 8. Uniform Conflict of Interest Statement.

The Commission shall require:

- a. All administrative or executive officials of the City of Michigan City; and
- b. All elected officials of the City of Michigan City; and
- c. All members of boards and commissions for the City of Michigan City; and
- d. Any employee who has the power to hire or discharge other employees, or make financial decisions or purchases for the City or a department or agency thereof; and
- e. to file a Uniform Conflict of Interest Statement on or before the first day of May of each year and updated as new conflicts arise. Copies of this form shall be made available in the Personnel Office of the City of Michigan City, and is included as Appendix A of this Ordinance. The Personnel Director or designee or designees appointed by the Mayor shall keep completed forms on file in the Personnel Office or the related department.

Section 9. Appointment of the Ethics Officer.

- a. The Mayor shall appoint an Ethics Officer with the advice and consent of the Common Council. The appointee shall be: a current legal resident of the City; must have been a legal

resident for the two consecutive years immediately preceding appointment; must remain a legal resident for the remainder of the term; and must be at least twenty-one (21) years of age at appointment. The Ethics Officer is not a voting member of the Commission.

- b. The Ethics Officer shall not be a paid position, but shall be a responsibility of a member of the Personnel Department.
- c. The Ethics Officer shall be the first contact to city employees. The mission of the Ethics Officer is to encourage compliance with this Ordinance, but also to encourage each employee and department head to adhere to the highest standards of ethical behavior.
- d. The duties of the Ethics Officer include, but are not limited to the following:
 - 1) Develop policies, programs, and strategies to deal with all ethics-related matters;
 - 2) Develop training and implementation of educational programs concerning ethics;
 - 3) Attend all meetings of the Ethics Advisory Commission;
 - 4) Encourage compliance with both the spirit and the letter of this Ordinance and the ethics laws of the State of Indiana;
 - 5) Periodically review this Ordinance and other applicable laws and regulations and recommend to the Commission any appropriate amendments;
 - 6) Serve as liaison between Ethics Advisory Commission and the department heads and employees of the city;
 - 7) Seek formal opinions from the Commission on interpretation of duties of the Ethics Officer or of this Ordinance; and
 - 8) Handle complaints submitted to the Ethics Officer.

Section 10. Creation and Composition of the Ethics Advisory Commission.

- a. **Creation.** There is hereby created and established an Ethics Advisory Commission, consisting of the following members who shall be: current legal residents of the City; must have been legal residents for two consecutive years immediately preceding appointment; must remain legal residents for the remainder of a term; and must be at least twenty-one (21) years of age at appointment.
 - 1) Four (4) Appointed board members: two (2) appointed by the Mayor and two (2) appointed by majority vote of the Common Council, who do not hold a position of employment in any agency, and are not declared candidates for elected, non-party public office:

- (a) One (1) Mayoral appointment and one (1) Council appointment shall be for an initial period of one year; and
 - (b) One (1) Mayoral appointment and one (1) Council appointment shall be for an initial period of two years.
- 2) The two Mayoral appointments shall not be members of the same political party and the two Council appointments shall not be members of the same political party.
- b. **Counsel.** The Corporation Counsel of the City or another attorney appointed by the Mayor shall serve ex officio as secretary of the Commission, and shall advise and counsel the Commission, but shall not be a member.
- c. **Compensation.** A per diem, as established in the city's annual budget, shall be paid to each member in attendance at a duly called meeting (regular or special).
- d. **Qualifications.** The Ethics Officer and the Appointed Members shall not receive any other remuneration as salary, wages, or stipend from the city or any of its other boards or subdivisions. Each member shall take an oath of office to conscientiously discharge the Commission's duties before participating on the Board. A signed copy of each oath shall be filed with the Board of Works and with the City Clerk. Additionally, no appointed member of the commission may be:
 - 1) A city official or relative of a city official; or
 - 2) A city employee or relative of a city employee; or
 - 3) An elected public official; or
 - 4) A candidate for elected public office; or
 - 5) Any person having any economic interests with any council member or mayor; or
 - 6) Anyone who has been a paid campaign worker or political consultant for any city council or mayoral candidate.
 - 7) **No person shall serve on the Ethics Advisory Commission who has been convicted of any felony of any kind or any misdemeanor involving dishonesty or moral turpitude in the State of Indiana or any other state.**
- e. **Appointment Terms.** Other than the initial appointments, all appointments to the Commission shall be for two years, beginning January 1 of the first year and ending December 31 of the second year. Members appointed after September 30 of a calendar year shall fill their position through December 31 of that same year, and their full term of appointment shall commence on January 1 of the following year. Each appointee shall serve at the pleasure of the appointing authority until a successor is duly appointed and

qualified. Appointees may be removed at any time for just cause by their appointing authority. If for any reason a vacancy occurs, the appropriate appointing authority as set forth in this section shall name a replacement to fill out the unexpired term within 30 days of actual or official notice that the vacancy exists. All replacements shall comply with the requirements of this section. A member appointed to fill a vacancy shall serve for the duration of the unexpired term. No individual shall serve for a period of more than three consecutive two-year terms.

f. **Resignation. Any Member may resign from the Commission at any time. Any Member who misses three (3) consecutive meetings shall be deemed to have resigned.**

g. **General Authority of the Ethics Advisory Commission.** The Commission shall have the powers and responsibilities:

- 1) To review and make findings concerning any alleged violation of this Ordinance by any person subject to those provisions, including but not limited to current city officials and employees, former city officials and employees, and persons doing business with the city, if a complaint is filed within one year after the date of the alleged violation.
- 2) The termination of a city official's or employee's duties does not affect the jurisdiction of the Commission with respect to alleged violations occurring prior to the termination of the official's or employee's official duties.
- 3) The following is a list of current state statutes that affect the conduct and business of officials and 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 chapter:
 - (a) IC 35-44-1-1, pertaining to bribery;
 - (b) IC 35-44-1-2, pertaining to official misconduct;
 - (c) IC 35-44-1-3, pertaining to conflicts of interest;
 - (d) IC 35-44-1-7, pertaining to profiteering from public services;
 - (e) IC 35-44-2-4, pertaining to ghost employment;
 - (f) IC 36-4-8-3, pertaining to approval of order for issues of warrants;
 - (g) IC 36-4-8-13, pertaining to obligations in excess of appropriation;
 - (h) IC 36-7-4-207, pertaining to membership of city Plan Commission;
 - (i) IC 36-7-4-216, pertaining to qualifications of the Plan Commission;

- (j) IC 36-7-4-223, pertaining to zoning matters, conflict of interest;
 - (k) IC 36-7-4-905, pertaining to BZA, restrictions on holding office;
 - (l) IC 36-7-4-909, pertaining to BZA, conflict of interest;
 - (m) IC 36-7-12-14, pertaining to EDC, removal of Commissioner;
 - (n) IC 36-7-12-16, pertaining to EDC, conflict of interest;
 - (o) IC 36-7-14-9, pertaining to removal of Redevelopment Commissioners;
 - (p) IC 36-7-14-10, pertaining to Redevelopment Commission, conflict of interest;
 - (q) IC 36-7-18-9, pertaining to removal of Commissioner;
 - (r) IC 36-7-18-11, pertaining to conflict of interest, commissioner of a housing authority;
 - (s) IC 5-16-11-6, pertaining to conflict of interest disclosure; and
 - (t) IC 5-16-11-5.5, pertaining to consultant conflicts.
- 4) The above statutes are available on the State of Indiana website at www.in.gov.
- 5) The Commission has the following powers only:
- (a) To adopt, amend and rescind rules and procedures governing its internal organization and operations.
 - (b) To review all city handbooks and make recommendations for any changes, and to adopt a handbook specifically for members of boards, commissions, and committees. Such handbooks shall form the basis of decisions on complaints regarding possible violations of this Ordinance. Complaints covered by handbooks shall be subject to action by the City, department, or agency involved; complaints not covered by handbooks shall be subject to the hearing, appeal, and enforcement sections of this Ordinance.
 - (c) To ensure that all employees and officials are informed and aware of the provisions of this Ordinance as well as those in their respective city handbooks, and to gather, maintain, and annually review the filing of the most currently signed "Uniform Conflict of Interest Statement" for each official or employee.
 - (d) To meet as often as necessary to fulfill its responsibilities.

- (e) To make recommendations to the City Council for amendments to this Ordinance and for such other legislation affecting the subject matter of this Ordinance as the Commission may deem necessary or desirable.
- (f) To receive from the city administration such staff support as they reasonably request to carry out the duties of the Commission.
- (g) To make findings of fact as necessary for the disposition of a complaint.
- (h) To make notifications, extend deadlines, and conduct investigations.
- (i) To subpoena such witnesses and documents as the Commission deems relevant.
- (j) To render advisory opinions concerning matters of governmental ethics, ethical conduct, conflicts of interest and the application of ethical standards set forth in this Ordinance, and issue an advisory opinion in writing as to any such question. The Commission shall publish its opinions with any deletions or modifications necessary to prevent disclosure of the identity of the person who is the subject of the opinion and they shall be filed in the City Clerk's office.
- (k) To provide a continuing program of educational assistance and information regarding ethical conduct of all officials and employees.

Section 11. Meetings and Rules of Procedure.

The Commission shall follow Robert's Rules of Order except where rules otherwise established by the Commission will supersede, such rules to include the following:

- a. **Officers.** At the initial meeting of the Commission and at the first meeting of every year, the members of the Commission shall elect from among themselves a chair and a vice-chair to officiate at meetings.
- b. **Quorum.** Three (3) of the four (4) Commission members shall constitute a quorum to conduct a hearing, or a regular or special meeting, and a majority of the members is required for a majority vote. All official actions of the Commission, other than approval of a motion to adjourn if less than three (3) members are present, shall require a majority vote. A member not voting with the majority may issue a minority opinion. If the Commission is determined to be unlawfully comprised as to qualifications set out in Section 10 of this Ordinance, the Commission shall hold void any votes on any order of business of any member who caused such violation.
- c. **Meetings.** The inaugural meeting will be held within one month of enactment of this Ordinance. The Commission shall hold an annual meeting in January, and any special meetings throughout the year as may be deemed necessary for the transaction of Commission business. All such meetings, except executive sessions to hear complaints or charges brought against a person by another official or employee or a private citizen, shall

be open to the public, and the Commission shall designate the time and place within the City for the holding of the meetings. Any member of the Commission may call for a special session, and all meetings shall conform to State Statute as adopted by Section 6 of this Ordinance.

The Commission shall set its own rules and procedures for meetings provided they are not in conflict with those set forth in this Ordinance.

The chair shall generally supervise the affairs of the Commission, presiding at all meetings or any hearings before the Commission. The secretary shall see that all notices are duly given; make and keep a permanent record of the minutes of all Commission proceedings, its acts and actions; and be custodian of the books provided for these records, which shall be open for inspection at all reasonable times. The secretary shall be custodian of all documents or other evidence received by the Commission. To assist the secretary, the Commission may employ the services of a stenographer to take notes of meetings and hearings, and the Commission shall be empowered to retain the services of additional legal counsel subject to budgetary authority.

- d. **Absences of three (3) consecutive meetings shall operate as a tender of resignation.**

Section 12. Questions, Complaints, and Investigations.

- a. **Questions.** Officials and employees, when in doubt about the applicability and interpretation of this Ordinance to themselves in a particular context, may submit in writing the facts of the situation to the Commission with a request for an advisory opinion to establish the standard of public duty. Any official or employee who has the power to hire, promote, discipline, transfer, or terminate employees may likewise seek an advisory opinion from the Commission regarding the application of the provisions of this Ordinance to any employee or applicant for employment. The Commission shall render an advisory opinion, and each such opinion shall be numbered, dated, and published. Such opinion, until amended or revoked, shall be binding on the conduct of the 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 an advisory opinion.
- b. **Filing a Complaint.** Any person or the Commission on its own initiative, believing there has been a violation of this chapter, may file a notarized, sworn complaint, under penalty of perjury, with the Personnel Department. If a member of the Commission files such complaint, such member is then disqualified from participating in any proceedings that may arise from the complaint. The complaint shall be in writing and signed by the complainant. The written complaint shall:
- 1) Identify the person or persons who allegedly committed the violation;
 - 2) Provide a detailed statement of the facts on which the complaint is based;

- 3) To the extent possible, identify the ethics provision or provisions allegedly violated; and
 - 4) Identify sources of evidence and witnesses, if any, that the complainant recommends should be considered by the Commission.
- c. **Directing Complaints and Findings to the Proper Authority.** Complaints and findings filed with the Personnel Department regarding possible violations of this Ordinance shall be forwarded to the appropriate entity:
- 1) Complaints concerning members of the Fire Department and Police Department shall be forwarded to the Commission of the respective Department for appropriate action under the laws, ordinances, and rules pertaining to those departments and no further action shall be taken under this Ordinance concerning said complaints.
 - 2) All other complaints concerning employees or officials that are department heads shall be submitted to the Ethics Officer, who shall:
 - (a) Notify the official or employee that a complaint has been filed and allow the official or employee to respond, in writing, **within thirty (30) days and, if necessary, with an additional thirty (30) day extension,** to the complaint;
 - (b) Meet individually with all parties and make recommendations to the Mayor and department head, if applicable;
 - (c) Forward the complaint to the Commission if:
 - (i) The complaint alleges a severe violation of this Ordinance;
 - (ii) No resolution or agreement is reached between the parties with the assistance of the Ethics Officer.
 - 3) All other complaints concerning officials who are not city employees shall be submitted to the Chair of the Commission, who shall provide unredacted copies of the complaint to all members of the Commission, the attorney for the Commission, and the person who is the subject of the complaint.
 - 4) Upon receipt of a complaint, the Commission may:
 - (a) Upon a majority vote, reject, without further proceedings, a complaint that the Commission considers frivolous, inconsequential, or outside the purview of this Ordinance;
 - (b) Upon a majority vote, reject, without further proceedings, a complaint that the 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.
 - (d) A determination that a complaint be dismissed can only be made upon the affirmative vote of a majority of the members. Written notice of the dismissal must be sent to both the person who made the complaint and the person charged with the complaint, identifying the reason or reasons for dismissal of the complaint. If the complaint is dismissed, the record shall remain confidential unless the person charged with the complaint requests disclosure.
 - (e) If the complaint is not disposed of under the preceding provisions in this section, the Commission may undertake any additional investigation deemed appropriate to determine if probable cause exists to support the allegations in the complaint. If the Commission finds by a majority vote that probable cause exists to support an alleged violation of this Ordinance, it shall set a public hearing on the matter within sixty (60) days after making that determination. The person who is the subject of the complaint shall be notified in writing within fifteen (15) days of the Commission's determination of probable cause. A copy of such determination shall be delivered to the complainant, to the person charged with the complaint, and, where appropriate, to the person's superior. Notice of such public hearing shall be published at least forty-eight (48) hours before the meeting as specified in IC 5-14-1.5-5.
 - (f) Either the subject of the complaint or the person filing the complaint may request a continuation of the hearing, and the Commission may grant such continuation, but it shall be scheduled no later than thirty (30) days after the original hearing date. However, if the Commission determines that the preliminary investigation must be completed in less than thirty (30) days in order to avoid prejudice or irreparable harm to the person charged with the complaint, the Commission shall complete the preliminary investigation in a shorter period of time.
- d. **Confidentiality.** No official or employee shall reveal information relating to the filing or processing of a complaint, except as required for the performance of official duties. This Ordinance prohibits *ex parte* communications by or to members of the Commission. All attorney work product and attorney-client papers and related communications as to a complaint are confidential to the extent allowed by law, except that all evidence is public information. The complaint remains confidential until there has been a finding that probable cause exists, unless the subject of the complaint or investigation elects to have said information disclosed, or the Commission elects to respond to public statements by the person who filed the complaint. The Commission may acknowledge:
- 1) The existence of an investigation before the finding of probable cause; or
 - 2) That the Commission did not find probable cause to support an alleged violation.

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

- e. **False accusations and responses.** The Personnel Department shall, in writing, advise the person filing the complaint that falsely accusing someone of a violation of this Ordinance may result in criminal prosecution of anyone who knowingly makes a false accusation. Response to the complaint shall be in writing signed under oath by the person charged in the complaint and filed with the Personnel Department not later than twenty (20) days after he receives a copy of the complaint. The Personnel Department shall, in writing, advise the person charged in the complaint that falsely responding to a complaint may result in criminal prosecution of anyone who knowingly makes a false report under oath.
- f. **Recommendations.** If the Commission determines after a public hearing that a city official or employee has violated the provisions of this Ordinance, the Commission may recommend to the proper authority that the official or employee be subject to disciplinary action.

Section 13. Hearings.

If it is determined by the Commission that an investigational hearing is needed, the following guidelines shall apply:

- a. **Record.** In any and all hearings before the Commission, a competent and complete record of the entire proceedings and of oral and physical evidence shall be kept.
- b. **Conduct of hearings.** The procedures which shall be followed at such hearings shall be in conformance with applicable state laws, the regulations set forth in this section, and other objective rules and standards adopted by the Commission to ensure the appropriate preservation of decorum and due process.
- c. **Notice and appearance.** The person charged with the complaint shall be sufficiently informed of the nature and specific grounds for bringing an action against him, and is entitled to a hearing. The person charged may examine and make copies of all evidence in the Commission's possession relating to the complaint. If the person timely files a response and, thereafter, writes the Commission to request a hearing, the Commission shall proceed to set the matter for hearing and shall cause written notice of the date, time and place of the hearing to be served either in person or by copy left at the last and usual place of residence of the person charged with the complaint, at least 14 days before the date set for the hearing. Both the person filing the complaint and the person charged with the complaint shall be required to attend the hearings, unless excused for good cause by the Commission. Unexcused absence from such a hearing may, at the discretion of the Commission, be deemed admission of guilt or grounds for dismissal.

- d. **Evidence and testimony.** Hearings shall be formal, and shall be conducted promptly and in such a manner as to obtain all facts material to the hearing, to protect the proper interests of all parties and to render findings in accord with the evidence presented. To comply with concepts of fairness and justice, the person charged with the complaint shall have an adequate opportunity to prepare and present a defense at the hearing; the right to be represented by counsel; the right to call and examine witnesses; the right to introduce exhibits; and the right to present such evidence to the Commission as deemed pertinent to the inquiry. Any other person, whom the Commission finds to have a direct interest in the matter, including the person who filed the complaint, shall be entitled to the same rights. All oral evidence to be considered shall be given under oath administered by the Commission. The Commission shall have the power to require the production of documentary and other evidence by subpoena. The burden of proof shall be on the complainant. The Commission may grant a request for a continuance of the hearing if, in its discretion, good and proper cause is shown.

- e. **Decision; review of decision.** When the Commission has reached a decision, it shall provide a report, in writing, of its findings of fact. A finding, by a majority vote of the members, of a violation of this Ordinance, or any other statute or rule establishing standards of ethical conduct for City officials or employees, shall be signed by a majority of the Commission members and shall be made public. The report shall be presented to:
 - 1) The subject of the complaint and the complainant;
 - 2) The Mayor; and
 - 3) The members of the Common Council.

- f. The Commission may also forward its report to any of the following:
 - 1) The prosecuting attorney and law enforcement agency of each county in which the violation occurred;
 - 2) The State Board of Accounts;
 - 3) The attorney general; or
 - 4) Any other appropriate person or agency.

Section 14. Appeals.

A person charged with a complaint who is adversely affected by a decision of the Commission may appeal through the judicial process, so informing the Commission in writing of the court appeal within ten (10) days after the appeal is initiated. In the event of an appeal from its finding or order, the Commission shall provide for a written or taped transcript of hearings and any evidence that was introduced, together with findings of fact, Commission orders, and the basis thereof. A copy of this transcript, certified as the official hearing record by the Commission secretary and either the chairman or vice-chairman, shall be delivered and filed in the court having jurisdiction over such appeal within ten days after issue and service of summons on the Commission which shall be made by delivery thereof to the Personnel Department and the attorney for the Commission. All copies shall be at the appellant's expense.

Section 15. Enforcement.

Any official or employee who fails to file a Uniform Conflict of Interest Statement when required by Section 8 of this Ordinance shall be subject to a fine of twenty-five dollars (\$25.00) for each thirty (30) days such statement is delinquent, which shall be in addition to the other provisions of this section. Following a hearing, the Commission shall have the discretion to waive any fine imposed by this section. The maximum penalty under this subsection in any one (1) year time period is one thousand dollars (\$1,000).

Failure of any official or employee to file a Uniform Conflict of Interest Statement when required by Section 8 of this Ordinance may result in the Commission reporting such failure to the appropriate supervisory or appointing authority and may be cause for suspension, discharge, removal from office, or such other disciplinary action as may, by the appropriate authority, be deemed necessary and proper.

A violation of this Ordinance may be cause for a fine up to a maximum of a one thousand and 00/100 dollars (\$1,000.00), suspension, discharge, or removal from office, or such other disciplinary action as may be deemed necessary and proper by the appropriate authority, and consistent with personnel ordinances and rules. The appropriate authority shall make a written response to the Commission, outlining any action taken as a result of either a violation or a written recommendation from the Commission within forty-five (45) calendar days after receipt of the written recommendation. This section shall not derogate from employee rights under any collective bargaining agreement or personnel ordinance, or rules promulgated thereunder. If the appropriate authority determines that the written response required in this section cannot be made within forty-five (45) calendar days after receipt of the recommendation, because of procedures prescribed under any collective bargaining agreement, personnel ordinance, or rule promulgated thereunder, the appropriate authority shall so report to the Commission within forty-five (45) days after receipt of the recommendation, stating the date on which the written response will be submitted to the Commission. Upon receipt of the written response, or in the event no response is received, the Commission shall review such matter and make such further recommendation as may be appropriate.

Section 16. Retaliation.

A city official or employee shall not retaliate or threaten to retaliate against an employee or a former employee because the employee or former employee did any of the following:

- a. Filed a complaint with the Commission.
- b. Provided information or other evidence to the Commission.
- c. Testified at a Commission proceeding.

A city official or employee may take appropriate action against an employee or former employee who took any of the actions listed above if the employee or former employee:

- d. Did not act in good faith; or
- e. Knowingly or recklessly provided false information or testimony to the Commission.

Section 17. Prohibitions.

A person may not do any of the following:

- a. Knowingly or intentionally induce or attempt to induce, by threat, coercion, suggestion, or false statement, a witness or informant in a Commission proceeding or investigation to do any of the following:
 - 1) Withhold or unreasonably delay the production of any testimony, information, document, or other evidence;
 - 2) Avoid legal process summoning the person to testify or supply evidence;
 - 3) Fail to appear at a proceeding or investigation to which the person has been summoned;
 - 4) Make, present, or use a false record, document, or other evidence with the intent that the record, document, or other evidence appear in a Commission proceeding or investigation to mislead a Commission member, the Ethics Officer, or Commission employee.
- b. Alter, damage, or remove a record, document, or other evidence except as permitted or required by law, with the intent to prevent the record, document, or other evidence from being produced or used in a Commission proceeding or investigation.
- c. Make, present, or use a false record, document, or other evidence with the intent that the record, document, or ~~other~~ other evidence appear in a Commission proceeding or investigation to mislead a Commission member, the Ethics Officer, or Commission employee.

Any such action by a person shall be considered a violation of this Ordinance and subject that person to the procedures and penalties stated herein.

This Ordinance shall be in full force and effect after passage and signature of the Mayor.

INTRODUCED BY: / _____

Passed by a vote of _____ the Michigan City Common Council, this _____ day of _____, 2009.

Robert McKee
President, Common Council

Approved by me, this _____ day of _____, 2009.

Charles Oberlie
Mayor of Michigan City

ATTEST:

Thomas F. Fedder, City Clerk