

**VILLAGE OF VOLENTE**

**ORDINANCE NO. 2017-O-09**

**AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF VOLENTE ENACTING RULES, PROCEDURES, AND POLICIES CONTROLLING THE VILLAGE'S GOVERNMENT AND ADMINISTRATION, INCLUDING CODE OF ETHICS**

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**WHEREAS**, the Village of Volente desires to adopt a comprehensive set of articulated rules, procedures, and policies to provide for orderly, fair, efficient, and equitable administration of municipal government; and

**WHEREAS**, the Village of Volente is authorized to adopt an ordinance that is proper for the government of the municipal corporation pursuant to Tex. Loc. Gov't Code § 51.032; and

**WHEREAS**, such rules, procedures, and policies will facilitate good, orderly government and promote the public health, safety, and general welfare of the citizens of the Village of Volente;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE VILLAGE OF VOLENTE, TEXAS:**

**ARTICLE 2.02 MAYOR AND COUNCIL**

**Division 1. Generally**

**Sec. 2.02.001 Election date; term of office**

(a) General election date. The general election date for the offices of mayor and village council in the village shall be the uniform election date in November of each year, as may be established and modified by the state legislature.

(b) Two-year terms. The regular term of office for the positions of mayor and members of the village council shall be two (2) years.

(c) Staggered terms. The terms of office of the village council shall be staggered so that a portion of the village council shall be elected each year.

**Secs. 2.02.002–2.02.030 Reserved**

**Division 2. Vacancies<sup>2</sup>**

**Sec. 2.02.031 Applicability**

Except as may be required by applicable state law, the provisions of this division shall govern the appointment or election to fill a vacancy in an office of a village council member resulting from a resignation, removal, failure to qualify, death or for any other reason.

### **Sec. 2.02.032 Election versus appointment**

If an election must be held to comply with applicable state law regulating the holding of elections, then an election shall be held to fill the vacancy. Otherwise, the village council shall fill the vacant position by council appointment, but may consider waiting for the next election if there is a relatively short period of time remaining in the vacant seat's term.

### **Sec. 2.02.033 Appointment process**

The following process shall be used to make any appointment:

- (1) The Council shall determine the date that an appointment will be voted on in a public meeting. The vote should be as soon as practical after council receives written notice that the seat will be vacated, and no more than thirty days before the seat will be vacated. The Village shall provide written notice by US mail to all residential addresses within the village that it is accepting applications for the vacant position. The date this notice is mailed should be at least thirty days before the council vote, but no more than 45 days.
- (2) Applications will be received by the village for 14 days after the date public notice is mailed.
- (3) A regular scheduled or special called public meeting of the village council shall be held during which each candidate will have the opportunity to provide oral and/or written information to the council and the citizens as to why he or she would like to serve on the council. Public comment will then be allowed including an opportunity for the public to ask questions of the candidate(s), followed by the opportunity for council members to ask questions of the candidate(s), followed by motions from council and discussions until a majority vote appoints a candidate.
- (4) In the event that the procedure provided in this section results in no prospective candidate applying who meets the minimum qualifications set by law, the village council will start the above process again within 30 days.
- (5) If permitted by applicable law, vacancies in more than one village council position may be filled concurrently by appointment pursuant to the procedures provided in this section.
- (6) The vote to fill a vacancy pursuant to this division, including the requirement of a quorum and participation of the mayor or, if applicable, the mayor pro tem, shall be governed by the law applicable to a vote of the governing body to enact an ordinance.

### **Sec. 2.02.034 Factors to be considered in appointing candidates**

(a) The village council may consider the following factors:

- (1) The candidate's unique qualifications, experiences or skills that will be useful to the village;
- (2) The extent of public support for the candidate, taking into account recent election results;

- (3) The candidate's prior experience serving on village committees;
- (4) The candidate's prior experience serving on the village council;
- (5) If the candidate resides in an area of the village that is currently under-represented on the council;
- (6) If the candidate is engaged in business, personal or financial interests that may present conflicts of interest or ethical issues;
- (7) Each candidate's presentation before the council and citizens, and responses to any questions posed; and
- (8) The recommendation, if any, of the council member whose seat is being filled.

(b) Each member of the village council may consider other factors that are not included in this section and may exercise his or her discretion in weighing these factors and any others.

(c) Candidates seeking appointment must be eligible to hold office under state law.

## **ARTICLE 2.03 BOARDS, COMMISSIONS AND COMMITTEES:**

### **Division 1. Generally**

**Secs. 2.03.001–2.03.030 Reserved**

### **Division 2. Standing and Special Committees**

**Sec. 2.03.031 Appointment and term of members**

- (a) Committee members shall be appointed by the village council.
- (b) Committee members will be appointed at the first regular meeting following the village elections or as soon thereafter as possible.
- (c) Committee member appointments will be for a term of one year or until appointments are made following the village elections.

**Sec. 2.03.032 Structure of committees**

- (a) Each standing committee shall have a council member or the mayor as a voting member . Each year, at the first regular meeting after the swearing in of the new officials, the mayor will submit to council for approval a recommendation for the chair of each standing committee. The chair of each standing committee will be approved by council vote.
- (b) Committees shall be composed of at least a minimum of two (2) and/or a maximum of six (6) additional regular members, who shall be residents of the village. The chair of each standing committee will submit to council for approval a recommendation for the committee members.

(c) Two alternate committee members may be appointed, who shall also be residents of the village. Alternate committee members may vote when a primary committee member is absent.

(d) One honorary committee member who shall not vote may be appointed who has experience in a field relating to the standing committee and may or may not be a resident of the village.

**Sec. 2.03.033 Purpose of committees**

The purpose of committees is to serve in an advisory capacity to assist and make recommendations to the council and department heads and to research, develop, implement, and evaluate policies, programs, and projects.

**Sec. 2.03.034 Standing committees established**

The following standing committees shall be established:

- (1) Public safety (police and fire department);
- (2) Budget, finance and administration;
- (3) Public works (streets, drainage);
- (4) Planning and governmental relations (includes comprehensive planning, master and future zoning plan; and relations with other governmental agencies i.e. Brushy Creek Regional Utility Authority, CAPCOG);
- (5) Environmental (parks and trails);
- (6) Public relations and communications.

**Sec. 2.03.035 Meetings and rules of procedures**

(a) The chairperson or vice-chairperson appointed by the chair of the committee shall be in attendance at all committee meetings.

(b) A majority of regular committee members shall constitute a quorum.

(c) A standing committee that is "purely advisory" in nature is not subject to the Open Meetings Act, nor any of its agenda, notice and minutes requirements. However, all standing committees should open their meetings to the public and should post their meeting agendas on the Village website calendar at least 72 hours before the meeting..

(d) Members will hold a meeting as soon as possible after appointment by the council to review committee actions of the previous year and plan for the current year.

(e) At the first meeting after appointment by the council, the committee may approve a regular committee meeting schedule.

(f) Upon request by any member, the chairperson shall call a meeting within 30 days or other time period that is reasonable under the circumstances.

(g) Members do not possess legislative powers and are vested only with the authority to fulfill the purposes of the committee as set forth in section 2.03.033.

(h) Standing committees shall meet a minimum of four times a year.

**Sec. 2.03.036 Reporting to council**

(a) Committee reports will be made at a city council meeting by the chairperson.

(b) Supporting material, if any, must be given to the city secretary no later than noon on the Thursday preceding the regular council meetings.

**Sec. 2.03.037 Special committees**

“Ad hoc” or “special” committees may be temporarily set up by the city council or the mayor to deal with specific short-term items that cannot be handled by a regular standing committee. These committees will be dissolved as soon as the purpose for which the committee was formed has been fulfilled.

**ARTICLE 2.04 OFFICERS**

**Sec. 2.04.001 City administrator**

(a) The office of city administrator is hereby created.

(b) The city administrator shall be appointed by the city council when and if deemed necessary by the council.

(c) The city administrator shall have the powers and duties as prescribed from time to time by the city council.

(d) The city administrator may be removed from office in all event(s) and in the manner(s) provided in Tex. Loc. Gov't Code Ch. 22, or any successor statutes thereto, or as provided in an employment agreement.

**Sec. 2.04.002 City secretary**

(a) The office of city secretary shall be filled by appointment. At the first regular meeting held after the general city election held on the first Tuesday in November of each even-numbered year, or as soon thereafter as practicable, and after the members of the city council elected at the election in the even-numbered year have qualified and been installed in office, the city council shall appoint a city secretary to serve for a term of two years and until his or her successor shall have been duly appointed and qualified. The secretary, at the beginning of each term of office, shall take and subscribe to the official oath of office and shall post bond in a sum as the city council shall direct, the premium on the bond to be paid by the village. The secretary shall perform all of the statutory duties prescribed by law in Tex. Loc. Gov't Code section 22.073, and as hereafter amended, and other duties as may be prescribed from time to time by the city council, or as provided in state law.

(b) The person appointed as city secretary shall be ex-officio city treasurer of the village, and the powers and duties of the city treasurer as prescribed in Tex. Loc. Gov't Code 22.075, and as hereafter amended, are hereby conferred on the person holding the office of city secretary.

(c) Any bond posted by the city secretary as required by subsection (a) above shall extend to all of the duties and responsibilities imposed by this section and applicable statutes.

**State law references**—Appointment of secretary, V.T.C.A., Local Government Code, sec. 22.071; powers and duties of city secretary, V.T.C.A., Local Government Code, sec. 22.073; bond and duties of treasurer, V.T.C.A., Local Government Code, sec. 22.075.

## **ARTICLE 2.05 PERSONNEL REGULATIONS**

### **Sec. 2.05.001 Personnel policy manual adopted**

The village personnel policy manual attached to Ordinance 2015-O-05(157) as exhibit A is adopted as the personnel policy manual for the village. (Ordinance 2011-O-122 adopted 4/8/11; Ordinance 2015-O-05(157) adopted 4/21/15)

**Editor's note**—The personnel policy manual is not printed herein, but is on file and available for public inspection at the village offices.

## **ARTICLE 2.06 POLICE**

### **Sec. 2.06.001 Office of marshal abolished**

The office of marshal for the village is hereby abolished.

**State law reference**—Abolition of office of marshal, V.T.C.A., Local Government Code, sec. 22.076.

## **ARTICLE 2.07 RECORDS MANAGEMENT**

### **Sec. 2.07.001 Definition of village records**

All documents, papers, letters, books, maps, photographs, sound or video recordings, microfilm, magnetic tape, electronic media, or other information-recording media, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of this state, created or received by the village or any of its officers or employees pursuant to law or in the transaction of public business are hereby declared to be the records of the village and shall be created, maintained, and disposed of in accordance with the provisions of this article or procedures authorized by it and in no other manner. (Ordinance 2005-O-42, sec. 1, adopted 4/19/05)

### **Sec. 2.07.002 Records declared public property**

All records as defined in section 2.07.002 are hereby declared to be the property of the village. No official or employee of the village has, by virtue of his or her position, any personal or property right to such records even though he or she may have developed or compiled them. The unauthorized destruction, removal from files, or use of such records is prohibited. (Ordinance 2005-O-42, sec. 2, adopted 4/19/05)

### **Sec. 2.07.003 Policy**

It is hereby declared to be the policy of the village to provide for efficient, economical, and effective controls over the creation, distribution, organization, maintenance, use, and disposition of all records of this office through a comprehensive system of integrated procedures for the management of records from their creation to their ultimate disposition, consistent with the requirements of the Local Government Records Act and accepted records management practice. (Ordinance 2005-O-42, sec. 3, adopted 4/19/05)

### **Sec. 2.07.004 Records management officer**

The city secretary will serve as records management officer for the village as provided by law and will ensure that the maintenance, destruction, electronic storage, or other disposition of the records of this office is carried out in accordance with the requirements of the Local Government Records Act. (Ordinance 2005-O-42, sec. 4, adopted 4/19/05)

### **Sec. 2.07.005 Records control schedules**

Appropriate records control schedules issued by the state library and archives commission shall be adopted by the records management officer for use in the village, as provided by law. Any destruction of records of the village will be in accordance with these schedules and the Local Government Records Act. (Ordinance 2005-O-42, sec. 5, adopted 4/19/05)

## **ARTICLE 2.08 – ETHICS**

### **Sec. 2.08.001 Purpose**

This code of ethics has four purposes:

- (a) To encourage high ethical standards in official conduct by public servants;
- (b) To establish minimum guidelines for ethical standards of conduct for all public servants by setting forth those acts or actions that are incompatible with the best interests of the Village;
- (c) To require disclosure by public servants and candidates of private financial or property interests in matters affecting the Village; and
- (d) To provide minimum standards of ethical conduct for the Village's public servants, provide procedures regarding complaints for violations of such standards, and provide a mechanism for disciplining violators of such standards.

### **Sec. 2.08.002 Present Public Servants**

#### **(a) Standards of Conduct.**

- (1) To avoid the appearance and risk of impropriety, public servants shall not solicit or accept any gift, personal favor or benefit from any person doing business with,

seeking to do business with, or being regulated by the Village; and shall not take any action on behalf of any person or business entity from which he or she has received a prohibited gift, or in which he or she has a substantial interest. Public servants shall not take any action that he or she knows might reasonably tend to influence any other public servant to not properly perform their official duty. No public servant may grant any improper favor, service or thing of value to any person that is not uniformly available to the general public.

(2) As used in this article the word gift means a favor, hospitality, economic benefit, product or item having a value of \$50.00, or more. A gift does not include campaign contributions reported as required by state law, money, items, or benefits 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 established by a spouse or ancestor.

(3) The following factors are considered in evaluating whether a gift is prohibited:

(A) The value of the gift, or gifts, does not exceed \$50.00 per gift, or \$200.00 in aggregate, during any twelve (12) consecutive calendar months;

(B) Any preexisting relationship between the donor and donee;

(C) Whether the benefit of the gift is transferred to the Village rather than to the public servant, and whether any consideration is given in exchange for the gift; and

(D) Whether the person or entity giving the gift, or on whose behalf the gift is made, has done business with or has been regulated by the Village within the immediate preceding twenty- four (24) calendar months, or is seeking to do business with the Village, or does business with or is regulated by the Village during the subsequent twelve (12) months.

(E) Those items or services that do not constitute prohibited gifts include, but are not limited to, the following:

(1) Awards publicly presented in recognition of public service.

(2) Entertainment, meals or refreshments furnished in conjunction with public events, appearances, or ceremonies related to official Village business, if furnished by the sponsor of such public event, and meals and refreshments having a value of less than \$50.00 when furnished or provided to the public servant during the conduct of public business.

(3) Any item received by a public servant and donated to a charitable organization or presented to the Village within one (1) business day from the date of receipt; any item(s) other than money the value of which does not exceed \$50.00 per gift or \$200.00 in aggregate during any twelve (12) consecutive calendar months.

(4) Pens, pencils, calendars, T-shirts, caps and similar items containing logos, slogans, company names or other marketing material and commonly given



out for advertising purposes.

(b) Personal Financial Interest.

(1) Public servants of the Village shall not participate in a vote or decision in which they have a direct substantial financial interest. Ownership in an amount in excess of one percent (1%) of an entity or property shall constitute substantial interest. Where members of the City council have a substantial interest in business or in real property which is affected by a proposed City council action and where any conflict of interest may arise they shall file an affidavit of disclosure provided by the city secretary prior to the vote and abstain from voting on such matters.

(2) No officer or employee of the Village shall have a financial interest direct or indirect, or by reason of ownership of stock in a corporation, in a contract with the Village, or be financially interested directly or indirectly in the sale to the Village of land, materials, supplies or services except on behalf of the Village as an officer or employee; provided, however, that the provision of this section shall only be applicable when the stock owned by the officer or employee exceeds one (1%) percent of the total capital stock of the corporation, or the Village's taking of an interest in land by use of its eminent domain authority. Any violation of this shall render the contract voidable.

(3) In keeping with current case law, when a member of the city council has a substantial interest in business or in real property which is affected by a proposed city council action and such member is required to abstain from voting on such matter after filing his or her affidavit of disclosure, such abstention shall count as a ineligibility for that matter only and the number of votes required for passage of such matter shall be reduced by the number of ineligible members. In instances where a supermajority of the members of the governing body is required for passage, such supermajority number or fraction shall be based on the number of eligible voting members of the governing body and shall not count any ineligible members.

(c) Confidential Information. Public servants shall not disclose confidential or proprietary information, or any information they have acquired or obtained in the course of any fiduciary capacity or relationship, that could adversely influence the property, government, or affairs of the Village, nor directly or indirectly use his or her position to secure official information about any person or entity, for the financial benefit or gain of such public servant or any third party. Public servants shall not release confidential, proprietary or privileged information for any purpose other than the performance of official responsibilities. It shall be a defense to any complaint under this section that the release of information serves a legitimate public purpose, as opposed to the private financial or political interest of the public servant or any third party or group.

(d) Use of Village Property. Public servants shall not use, request or permit the use of Village facilities, personnel, equipment, or supplies for any purpose other than to conduct Village business unless otherwise provided by law, ordinance or written Village policy; or as specifically authorized by the city administrator as a convenience to the Village, or by terms of employment, e.g. assigned use of a Village vehicle.

(e) Conflict of Interest.

(1) Public servants shall not for pay, profit, compensation, financial gain or benefit represent or appear on behalf of themselves or on behalf of the private interests of others before the city council or other city board, commission, or committee, or represent the private interest of others in any action or proceeding involving the Village.

(2) No current members of the city council shall personally appear on their own behalf before the city council or any board, commission or committee but may designate and be represented by a person of their choice in any such personal business matter. This prohibition does not apply where a council member appears before the council on their own behalf, with respect to an issue arising under this article. A member of any appointed committee or board shall remove himself/herself from deliberation regarding his/her interest.

(f) Additional Standards of Conduct.

(1) Conflicting Outside Employment.

(A) The purpose of this provision is to prevent conflicts of interest, conflicts of loyalty, and loss of efficiency at work.

(B) This provision does not prevent employees or officials from accepting other employment or following any pursuit which in no way interferes with the full and faithful discharge of their public duties, provided that the employees comply with all applicable Village requirements.

(C) A city official or paid city employee shall not solicit, accept or engage in concurrent outside employment or enter into any contract which could impair independence of judgment in, or the faithful performance of, their official duties, or those results in a conflict of interest with their duties as an official or employee of the Village.

(D) City employees must inform their supervisor before engaging in off duty employment, and obtain written authorization from their supervisor prior to accepting outside employment. Employees must consider the policy purpose and be aware of this policy and rule.

(2) Political Activity.

(A) Limitations on the political activities of city officials and employees are those imposed by state law, and Village personnel rules. In addition, the ethical restrictions listed below shall apply.

(B) No employee shall solicit or receive contributions to the campaign funds of any candidate for Village office or take part in the management, affairs, or political campaign of any city candidate. Current members of the city council who are seeking reelection may engage in any activity on behalf of their own

campaign efforts. However, the mayor and council members are prohibited from taking part in the management, affairs, or political campaign of any other city candidate.

This subsection shall be narrowly construed and in no event shall this section be construed or interpreted to prevent any officer, employee, council member, mayor or public servant from expressing his or her personal opinion regarding any candidate for office, or any other matter of public interest; provided that city employees shall not, while in uniform or on duty, make public comments or statements concerning any candidate for elective city office.

(C) Nonprofit Board Membership. While membership is encouraged a council member who serves on the board of a public or private nonprofit organization shall have a voice but no vote on any funding request or contract with the Village by that organization.

### **Sec. 2.08.003 Contracts**

No officer or employee of the Village shall have a financial interest direct or indirect, or by reason of ownership of stock in any corporation, in a contract with the Village, or be financially interested directly or indirectly in the sale to the Village of land, materials, supplies or services except on behalf of the Village as an officer or employee; provided, however, that if the direct or indirect interest results from the ownership of stock the provision of this section shall only be applicable when the stock owned by the officer or employee exceeds one (1) percent of the total capital stock of the corporation. Any violation of this section shall render the contract voidable. This section shall not apply or be applicable to employment agreements approved by the city staff and/or the city council, or instances in which the Village is acquiring property by eminent domain.

### **Sec. 2.08.004 Persons Doing Business with the Village**

(a) Persons Seeking Discretionary Contracts.

All prospective vendors shall comply with Chapter 176, Tex. Loc. Gov't. Code.

(b) Disclosure of Conflicts of Interest by Persons Appearing Before a Board or City Body. A person appearing before any city board or other city body for the purpose of doing business with the Village shall disclose to that board or body any facts known to such person which may show or establish that:

- (1) An employee or officer of the Village that advises or makes presentations to the board or city body; or
- (2) Any member of the board or city body;

has or may have a conflict of interest pursuant to Chapter 171, Tex. Loc. Gov't. Code, or an interest which would violate the ethical standards set forth in this article, if he or she were to participate in the processing or consideration of the subject matter.

## **Sec. 2.08.005 Financial Disclosure**

Chapter 176, Tex. Loc. Gov't. Code, requires every person, firm or entity proposing to sell any product to the Village, or to contract with the Village, to file documents identifying business connections or relationships they or their employees may have with officers and employees of the Village. Upon any such document identifying an officer of the Village that officer must complete and file a document prescribed by state law.

## **Sec. 2.08.006 Jurisdiction and Hearing of Ethics Complaints**

(a) City Staff. The city staff shall receive and hear all complaints filed against any Village official or employee that is appointed by the city staff. The fact that the city staff has received a complaint, or is hearing a complaint, filed under this code of ethics, shall not deprive or lessen the authority of the city staff to take disciplinary action against such city official or employee without regard to the complaint or hearing. When hearing a complaint, the city staff may adopt such process and procedures as he/she finds suitable to the complaint. The hearing may be conducted informally or as a hearing in which witnesses may be produced.

(b) City Council. The city council shall receive and hear all complaints filed against any city official, board, committee or commission member that is appointed by the city council. The fact that the city council has received a complaint, or is hearing a complaint, filed under this code of ethics, shall not deprive or lessen the authority of the city council to take any discretionary action it finds appropriate, or to take any disciplinary action against such city official, without regard to the complaint or hearing. When hearing a complaint, the city council may adopt such process and procedures as the council finds suitable to the complaint. The hearing may be conducted informally or as a hearing in which witnesses may be produced.

(c) Violations of Chapter 171 or Chapter 176. Complaints alleging a violation of Chapter 171 or Chapter 176, Tex. Loc. Gov't. Code, shall be referred to the appropriate court and prosecutor. Such referral shall not deprive the city staff or the city council, as applicable, from exercising their respective discretionary authority, or any authority granted by local or state law.

(d) Advisory Opinions and Recommendations. The city attorney shall render advisory opinions and make recommendations to the city staff and city council, as applicable, on potential conflicts of interest or potential violations of this code of ethics at the request of a public servant. The city Attorney may recuse themselves and designate independent, outside legal counsel when necessary to avoid a conflict of interest. Such advisory opinions and recommendations shall be rendered thirty (30) days after a request or complaint is received, unless the city attorney requests, and is granted one thirty (30) day extension by the city council or city staff, as applicable. This subsection shall not be applicable to complaints that have been filed with the city council or the city staff.

(e) Defense to Alleged Violations. It shall be a defense to an alleged violation of this code of ethics that the person accused previously requested, and received, a written advisory opinion and recommendation from the city attorney, and acted on such opinion or recommendation in good faith, unless material facts were omitted or misstated by the person requesting the opinion.

Absent, omitted or misstated facts, such written advisory opinion and recommendation shall be binding with respect to subsequent charges based on the same issue and facts concerning the person who requested the opinion.

(f) Disposition of Alleged Ethics Violations.

(1) A sworn complaint based on personal knowledge alleging a violation(s) of this article shall specify the provision(s) of this article alleged to have been violated, and shall name the public servant being charged.

(2) Upon the aforesaid sworn complaint of any person being filed with the city secretary's office, or on its own initiative, the city staff or city council, as applicable, shall consider possible violations of this article by any public servant. A complaint shall not be deemed to be filed on the initiative of the city council, save and except the complaint be signed and sworn by two (2) members of the city council, one of which is the mayor, after consultation with the city attorney. A complaint filed by an individual member of the city council shall be deemed to have been filed in the council member's capacity as a private citizen and, in such event, the member of the city council filing the complaint shall not thereafter participate in a city council meeting, or discuss the same with the city staff if applicable, at which such complaint is considered save and except the council member filing the complaint may participate as a complainant at such meeting.

(3) A complaint alleging a violation of this article must be filed with the city secretary within one (1) year from the date of the action alleged as a violation, and not afterward.

(4) Not later than three (3) working days after the city secretary receives a sworn complaint, the city secretary shall acknowledge the receipt of the complaint to the complainant, and provide a copy of the complaint to the city attorney, the city council or city staff as appropriate, and the person against whom the complaint was alleged. Not later than ten (10) working days after receipt of a complaint, the city secretary shall notify in writing the person who made the complaint and the person against whom the complaint was alleged, of a date for a preliminary hearing. If the city staff or city council does not hold a preliminary hearing within twenty (20) days of receipt of the complaint, it shall notify the person who made the complaint of the reasons for the delay and shall subsequently give further appropriate notification. Complaints not addressed at a preliminary hearing within sixty (60) days of receipt shall be deemed dismissed by operation of law.

(5) The city council or the city staff may consider possible violations of this article on their own initiative. Within seven (7) working days of the decision to consider a possible violation of this article, a draft written complaint specifying the provision(s) of this article alleged to have been violated shall be filed with the city secretary, and provided to the city attorney and the person against whom the complaint was alleged. Not later than fifteen (15) days after the drafting of the complaint, the city secretary shall notify in writing the person against whom the complaint was alleged of the date for the preliminary hearing.

(6) After a complaint has been filed, and during the pending of a complaint before the city council, a member of the city council 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 city council; provided that the mayor and city council may consult and coordinate with the city attorney, or the city attorney's designee.

(7) As soon as reasonably possible, but in no event more than sixty (60) days after receiving a complaint, the city staff or city council, as applicable, shall conduct a preliminary hearing:

(A) The issue at a preliminary hearing shall be the existence of reasonable grounds to believe that a violation of this article has occurred. The person filing a complaint, or the city attorney in cases considered upon the city staff or city council's, as applicable, own initiative, shall state the alleged violation and shall describe in narrative form the testimony and other evidence which would be presented to prove the alleged violations stated in the written complaint. Statements at a preliminary hearing shall be under oath, but there shall be no cross examination requests for persons or evidence issued for the hearing. Members of the city council or the city staff, as applicable, may question the complainant, the city attorney or the city staff, as applicable, or the public servant named in the complaint. All documentary evidence shall be provided to the village, the complainant and the accused at least forty-eight (48) hours in advance of the hearing.

(B) The public servant named in the complaint shall have the opportunity to respond, but is not required to attend or make any statement. The public servant may describe in narrative form the testimony and other evidence that would be presented to disprove the alleged violation. If the public servant agrees that a violation has occurred, he or she may so state and the city staff or city council, as applicable, may consider the appropriate sanction.

(C) The complainant and the public servant named in the complaint shall have the right to representation by counsel.

(D) At the conclusion of the preliminary hearing, the city staff or city council, as applicable, shall decide whether a final hearing should be held. If the city staff or city council, as applicable, determines there are reasonable grounds to believe that a violation of this article has occurred, a final hearing will be scheduled. If the city staff or city council, as applicable, does not determine that there are reasonable grounds to believe that a violation of this article has occurred, the complaint shall be dismissed. A decision to conduct a final hearing is not a finding that a violation has occurred.

(E) The city staff or city council, as applicable, at any time during the preliminary hearing, may also dismiss a complaint if the complaint does not

allege conduct which would be a violation of this article. Before a complaint is dismissed for failure to allege a violation, the complainant may be permitted one opportunity, within ten (10) working days of such preliminary hearing, to revise and resubmit the complaint.

(F) The complainant, the city attorney or the public servant named in the complaint may ask the city staff or city council, as applicable, at a preliminary hearing to request certain persons and evidence for a final hearing, if one is scheduled. All documentary evidence shall be provided to the village, the complainant and the accused at least forty-eight (48) hours in advance of the hearing.

(8) Final Hearing on Complaints.

(A) The final hearing shall be held as expeditiously as possible following the determination by the city staff or city council, as applicable, that reasonable grounds exist to believe that a violation of this article has occurred. In no event shall the hearing be held more than thirty (30) days after said determination. The city staff or city council, as applicable, may grant two

(2) Postponements, not to exceed fifteen (15) days each, upon the request of the public servant named in the complaint.

(B) The issue at a final hearing shall be whether a violation of this article has occurred. The city staff or city council, as applicable, shall make its determination based on clear and convincing evidence in the record. All witnesses shall make their statements under oath.

(C) If the city staff or city council, as applicable, determines that a violation has occurred, findings shall be stated in writing identify the particular provision(s) of this article which have been violated, and within five (5) working days a copy of the findings shall be delivered to the complainant, if any, the public servant named in the complaint, and the city secretary.

(D) If a complaint proceeds to a final hearing, the city staff or city council, as applicable, 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 city staff or city council, as applicable duties or exercise of its powers, including its duties and powers of investigation. All documentary evidence shall be provided to the village, the complainant and the accused at least forty-eight (48) hours in advance of the hearing.

(9) Sanctions.

(A) If the city staff or city council, as applicable, determines that a violation of this article has occurred, they shall proceed directly to determination of the appropriate sanction(s), if any. The city staff or city council, as applicable, may receive additional testimony or statements before considering sanctions, but is not required to do so. If the public servant named in the complaint acted in

reliance upon a written opinion of the city attorney, the city staff or city council, as applicable, shall consider that fact.

(B) If the city staff or city council, as applicable, determines that a violation of this article has occurred, they may impose one of the following sanctions:

(i) A letter of notification shall be the appropriate sanction when the violation is clearly unintentional, or when the public servant's violation was made in reliance on a written opinion of the city attorney. A letter of notification shall advise the public servant to whom it is directed of any steps to be taken to avoid future violations.

(ii) A letter of admonition shall be the appropriate sanction in those cases in which the city staff or city council, as applicable, finds that the violation is minor and/or may have been unintentional, but calls for a more substantial response than a letter of notification.

(iii) A reprimand shall be the appropriate sanction when the city staff or city council, as applicable, finds that a violation has been committed intentionally or through disregard of this article. A copy of a reprimand directed to a public servant, city official, councilmember, or board or commission member shall be sent to the city council. A reprimand directed to an employee of the Village shall be included in said employee's personnel file.

(iv) A recommendation of removal from employment or a recommendation of suspension from employment, as well as a recommendation for length of suspension, shall be the appropriate sanction when the city staff or city council, as applicable, finds that a serious or repeated violation(s) of this article has been committed.

(v) A letter of censure shall be the appropriate sanction when the city council finds that a serious or repeated violation(s) of this article has been committed intentionally or through culpable disregard of this article by an elected city official.

#### **Sec. 2.08.007 Independent Legal Counsel**

If a complaint is filed against the city staff or any member of the city council independent legal counsel may be utilized to advise the city council, and participate in hearings. The city attorney is authorized to engage independent council on the Village's behalf, unless the complaint is against the city attorney, in which case the Mayor is authorized to engage independent counsel for the Village.

#### **Sec. 2.08.008 General Provisions**

(a) Definitions. The words "public servant" when used in this article, shall mean the elected officers of the Village, all persons appointed by or by vote of the city council, all department heads of the Village, all city employees that have any supervisory authority over other employees, and all



employees that have discretionary authority to make recommendations to boards or to the city council. Words used in the present tense include the future tense. Words used in the plural number include the singular, and words in the singular include the plural. The word "shall" is always mandatory. The word "herein" means in this article. The word "regulations" means the provisions of any applicable article, rule, regulation or policy.

(b) Penalties. Any person who shall violate this code of ethics, or shall fail to comply therewith, or with any of the requirements thereof, shall be deemed guilty of an offense and shall be liable for a fine not to exceed the sum of five hundred dollars (\$500.00).

(c) Reservations and Exceptions. Notwithstanding any other term or provision of this article, this article: (1) does not waive the authority and discretion of the city council or the city staff, as applicable, to enforce higher standards for, or to supervise, provide oversight, appoint and remove, any officer, employee or public servant that is appointed by the city council or city staff, as applicable; and (2) does not transfer or limit the authority of the city staff to act in his or her discretion to enforce higher standards for, or to supervise, provide oversight, appoint and remove, all officers, employees and public servants of the Village that are not appointed and removed by the city council. Further, neither the city staff nor the city council shall be required to file a complaint in order to take action against any employee, public servant or city official under their respective supervision or jurisdiction.

(d) City Staff Complaint Resolution. If the city council is not satisfied with the actions taken by the city staff with respect to any complaint filed with him/her under this code of ethics, the city council shall consider that matter in the annual evaluation of the city staff.