

ORDINANCE NO. 2006-010

CODE OF ETHICS

AN ORDINANCE OF THE VILLAGE OF WIMBERLEY, TEXAS, AMENDING VILLAGE OF WIMBERLEY ORDINANCE NO. 2002-002, "CODE OF ETHICS"; INCLUDING REGULATIONS RELATED TO CONFLICTS OF INTEREST, INTERESTS IN PROPERTY ACQUIRED WITH PUBLIC FUNDS, NEPOTISM, BRIBERY, HONORARIA, GIFTS, VILLAGE RECORDS, MISUSE OF OFFICIAL INFORMATION, ABUSE OF OFFICIAL CAPACITY, AND OFFICIAL OPPRESSION; AND PROVIDING FOR AN EFFECTIVE DATE, PROPER NOTICE AND MEETING, SEVERABILITY AND REPEALER.

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

WHEREAS, the City Council ("Council") of the Village of Wimberley ("Village") finds it desirable and necessary to amend its comprehensive ethics ordinance in a manner that sets out the statutory parameters relating to the conduct of public officials and employees in one easily accessible location; and

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

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

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

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

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

SECTION 1. Recitals

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

SECTION 2. Adoption of Code of Ethics

The Code of Governmental Ethics for the Village of Wimberley is hereby amended as follows:

The Code of Ethics, attached hereto as Exhibit "A" and incorporated herein for all purposes, is hereby enacted. This Code replaces Ordinance No. 2002-002, which is hereby repealed.

SECTION 3. Effective Date

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

SECTION 4. Proper Notice and Meeting

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

SECTION 5. Severability

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

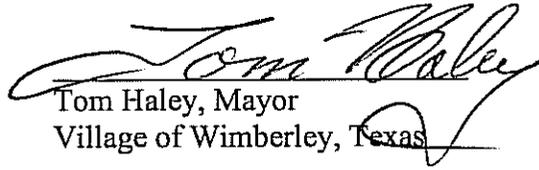
Section 6. Repealer

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

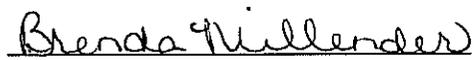
Section 7. Relation to Other Ordinances and Laws

This Ordinance shall not be construed to require or allow any act which is prohibited by any other ordinance or by state or federal law. The requirements and prohibitions described in this Ordinance are in addition to any other requirements or prohibitions provided by state or federal law. Nothing in this Ordinance shall be construed as a waiver of the Village's right to bring or to seek any and all remedies allowed by law where violations of this Ordinance may also constitute a violation of another state or federal law.

PASSED AND APPROVED by the City Council of the Village of Wimberley, Texas
this 18th day of September, 2006.


Tom Haley, Mayor
Village of Wimberley, Texas

ATTEST:



Brenda Millender, City Secretary
Village of Wimberley, Texas

[SEAL]

APPROVED AS TO FORM:


Patty L. Akers, City Attorney
Village of Wimberley, Texas

EXHIBIT "A"

CODE OF ETHICS

I. DEFINITIONS

A. General

Words and phrases used in this Code shall have the meanings set forth in this section. Words and phrases which are not defined in this Code but which are defined in other ordinances of the Village of Wimberley shall be given the same meanings set forth in those ordinances. Other words and phrases shall be given their common, ordinary meaning unless the context clearly requires otherwise. Headings and captions are for reference purposes only and shall not be used in the interpretation of this ordinance.

B. Specific Definitions

1. Business Entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.
2. Candidate has the meaning assigned by section 251.001 of the Texas Election Code.
3. City Employee means both full-time and part-time employees of the Village of Wimberley.
4. City Official means the Mayor, every member of the City Council, the City Administrator, the City Secretary, the City Attorney, the City Engineer or any City Officer and all members of any commission, committee, or board appointed by the City Council or the Mayor. This term also includes City Employees.
5. Confidential Information means any information that a City Official would be privy to because of the official's position but otherwise is not available to the public under the provisions of the Texas Public Information Act [TEX. GOV'T CODE §§ 552.001 *et seq.*].
6. Conflicts Disclosure Statement means a completed Texas Ethics Commission conflicts disclosure form that complies with the requirements of Chapter 176 of the Texas Local Government Code. For ease of reference, a blank conflicts disclosure form that meets the requirements of this Code is attached hereto and incorporated herein as Exhibit 1.

7. Conflict of Interest Questionnaire means a completed Texas Ethics Commission conflict of interest questionnaire that complies with the requirements of Chapter 176 of the Texas Local Government Code. For ease of reference, a blank conflict of interest questionnaire that meets the requirements of this Code is attached hereto and incorporated herein as Exhibit 2.
8. Economic Benefit means any taxable income or any money, real or personal property, contract rights, sale, lease, option, credit, loan, discount, service, or other tangible or intangible thing of value, whether similar or dissimilar to those enumerated.
9. Economic Interest means receipt of an Economic Benefit or a legal or equitable interest in real or personal property or a fiduciary obligation to such property. Service by a City Official as an officer, director, advisor, or otherwise active participant in an educational, religious, charitable, fraternal, or civic organization does not create an Economic Interest in the property of that organization. Ownership of an interest in a mutual or common investment fund that holds securities or other assets is not an Economic Interest in the securities or other assets unless the City Official participates in the management of the fund. A City Official does not have an Economic Interest in a matter if the economic impact on the City Official is indistinguishable from the impact on the public or on the particular group affected by the matter.
10. Family Member means a person related to another person within the first degree by consanguinity or affinity as described by Subsection II(C)(4) of this Code.
11. First Degree of Consanguinity or Affinity has the meaning assigned by the chart in Subsection II(C)(4) of this Code.
12. Gift means a favor, hospitality, or economic benefit other than compensation but does not include the following: (1) campaign contributions reported as required by state law; (2) gifts received from a relative if given on account of kinship; (3) any value received by will, intestate succession, or as a distribution from an *inter vivos* or testamentary trust; or (4) gifts of food, lodging, transportation, or entertainment accepted as a guest.
13. Income means economic benefit received.
14. Indirect Ownership means an equity interest in a business entity in which the interest is held through a series of business entities, some of which own interests in others.
15. Property means real estate, personal items, equipment, goods, crops, livestock, or an equitable right to income from real estate, personal items, equipment, goods, crops, or livestock.

16. Second Degree of Consanguinity or Affinity has the meaning assigned by the chart in Subsection II(C)(4) of this Code.
17. Source of Income means any business entity, employment, investment, or activity which earned or produced income, including interest, dividends, royalties or rents, which has been paid to or for the credit of a City Official, candidate, or family member or which would be taxable to said City Official, candidate, or family member under the United States Internal Revenue Code, as amended, even though not actually paid or credited.
18. Substantial Interest in a Business Entity means the interest that a City Official and/or a family member has in a business or business entity as described below:
 - (a) The City Official or family member owns ten percent (10%) or more of voting stock or shares of the business entity;
 - (b) The City Official or family member owns ten percent (10%) or more, or \$15,000.00 or more, of the fair market value of the business entity;
 - (c) The funds received by the City Official or family member from the business entity exceed ten percent (10%) or more of the person's gross income for the previous year; or
19. Substantial Interest in Real Property means the interest that a City Official and/or the City Official's parent, child, spouse or spouse's parent controls or has an interest in real property if the interest has a market value of \$2,500.00 or more.
20. Third Degree of Consanguinity has the meaning assigned by the chart in Subsection II(C)(4) of this Code.

II. STANDARDS OF CONDUCT

A. General Provisions

1. No City Official may disclose any Confidential Information gained through the official's position concerning property, operations, policies, or affairs of the Village for gain or advantage in an Economic Interest of the City Official or the persons identified in Subsection II(C)(4) of this Code.
2. No City Official may use the official's position or Village-owned facilities, equipment, supplies, or resources of the Village for gain in an Economic Interest of the City Official, for a political campaign of the Official, or for any of the persons identified in Subsection II(C)(4) of this Code. Due to the administrative difficulty and cost involved in recapturing the discount or award for the Village, a discount or award given for travel, such as frequent flyer miles, rental car or hotel

discounts or food coupons, is not a thing of value belonging to the Village for purposes of this section.

3. Except as specifically authorized by Village ordinance, no City Official may appear before the body of which the official is a member to represent the City Official or any person identified in Subsection II(C)(4) of this Code. The City Official may designate and be represented by a person of the official's choice in any such matter.
4. No City Official may act as surety for any person or business entity that has a contract with the Village, or as a surety on any bond required by the Village for a City Official.
5. These General Provisions do not prohibit a City Official from representing the City Official's interest in the City Official's owner-occupied homestead before any Village body, except the body of which the official is a member.

B. Gifts

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

C. Conflict of Interest.

1. Substantial Interest. No City Official may vote on or participate in any decision-making process on a matter concerning property or a business entity if the official has a Substantial Interest in the property or business entity.
2. Economic Interest.
 - (a) A City Official is not prohibited from voting or participating in any decision-making process on a matter if the official has an Economic Interest in the outcome of the matter under consideration. However, the official shall file a Conflicts Disclosure Statement in the form provided by Exhibit 1 to this Code.
 - (b) To avoid the appearance and risk of impropriety, a City Official may not, without filing a Conflicts Disclosure Statement in the form provided by Exhibit 1 to this Code, take any official action that the official knows is likely to affect the Economic Interests of any one or more of the following:

- (i) The City Official's parent, child, step-child, spouse, or other family member within the second degree of consanguinity or affinity or a client of the City Official;
- (ii) An employer of the City Official, the official's parent, child, step-child, or spouse;
- (iii) A business entity for which the City Official serves as an officer or director or serves in any policy-making position;
- (iv) A person or business entity from whom, within the past twelve months, the City Official or the official's spouse, directly or indirectly, received an Economic Benefit;
- (v) A person or business entity from whom, within the past twelve months, the City Official or the official's spouse, directly or indirectly, engaged in negotiations pertaining to business opportunities.

3. Conflicts Disclosure Statement and Recusal.

- (a) A City Official shall file a sworn Conflicts Disclosure Statement with the City Secretary whenever a person or entity has contracted with the Village or is considering doing business with the person or entity and the City Official has an employment relationship or other business relationship with the person or entity or the City Official has received or will receive an Economic Benefit in or with the person or entity, or if the person or entity has given to the City Official gifts that have a value in the aggregate of more than \$250.00 in the 12-month period preceding the date the City Official becomes aware that the Village has a contract with such person or entity or that the Village is considering doing business with such person or entity. The City Official shall file the Conflicts Disclosure Statement with the City Secretary no later than 5:00 p.m. on the seventh business day after the date the City Official becomes aware of the facts that require the filing of the Statement.
- (b) A City Official commits an offense if the City Official knowingly fails to file the Conflicts Disclosure Statement as required by this Code. An offense under this subsection is a Class C misdemeanor.
- (c) The City Secretary shall accept and file any and all City Official Conflicts Disclosure Statements and any Vendor Conflict of Interest Questionnaires.
- (d) The City Secretary shall maintain a list of City Officials and shall make that list available to the public and any person who may be required to file a Conflicts of Interest Questionnaire. The City Secretary shall maintain

copies of the Conflict Disclosure Statements and Conflict Questionnaires on the Village's internet website.

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

4. Consanguinity and Affinity

Affinity Kinship (Marriage) Relationships

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

Consanguinity (Blood) Relationships

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

- 5. Budget Matters. The Council shall take a separate vote on any budget item specifically dedicated to a contract with a business entity in which a member of the Council has a Substantial Interest. The member of the Council that has the Substantial Interest may not participate in the separate vote.

III. INTEREST IN PROPERTY ACQUIRED WITH PUBLIC FUNDS

A. Disclosure of Interest in Property

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

B. Affidavit

- (1) The affidavit must include the following information:
 - (a) The name of the City Official;
 - (b) The City Official's office, public title, or job designation;
 - (c) A full description of the property;
 - (d) A full description of the nature, type, and amount of interest in the property, including the percentage of ownership interest;
 - (e) The date when the person acquired an interest in the property;
 - (f) A verification that states as follows: "I swear that the information in this affidavit is personally known by me to be correct and contains the information required by Section 553.002 of the Texas Government Code"; and
 - (g) An acknowledgement of the same type required for recording a deed in the deed records of the county.
- (2) The affidavit must be filed with the county clerk of the county in which the City Official resides and the county clerk of each county in which the property is located.

IV. NEPOTISM

A. Prohibition

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

- (A) The individual is related to the City Official within the third degree by consanguinity (blood or adoption) or the second degree by affinity (marriage), as illustrated by the chart in Subsection II(C)(4) of this Code; or
 - (B) The City Official holds the appointment or confirmation authority as a member of a state or local board, the legislature, or a court and the individual is related to another member of that board, legislature, or court within the third degree by consanguinity (blood or adoption) or the second degree by affinity (marriage), as illustrated by the chart in Subsection II(C)(4) of this Code.
2. A City Official may not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of an individual to a position in which the individual's services are under the public official's direction or control and that is to be compensated directly or indirectly from Village funds or fees of office if:
- (a) The individual is related to another public official within the third degree by consanguinity (blood or adoption) or the second degree by affinity (marriage), as illustrated by the chart in Subsection II(C)(4) of this Code; and
 - (b) The appointment, confirmation of the appointment, or vote for appointment or confirmation of the appointment would be carried out in whole or partial consideration for the other public official appointing, confirming the appointment, or voting for the appointment or confirmation of the appointment of an individual who is related to the first public official within the third degree by consanguinity (blood or adoption) or the second degree by affinity (marriage), as illustrated by the chart in Subsection II(C)(4) of this Code.

B. Exceptions

1. The prohibitions in Section IV do not apply to the following:
- (a) An appointment to the office of a notary public or to the confirmation of that appointment;
 - (b) An appointment or employment of a personal attendant by an officer of the Village for attendance on the officer who, because of physical infirmities, is required to have a personal attendant; or

- (c) Any other appointment excepted under Chapter 573 of the Texas Government Code.
- 2. The prohibition in Section IV(A)(1) does not apply to an appointment, confirmation of an appointment, or vote for an appointment or confirmation of an appointment of an individual to a position if:
 - (A) The individual is employed in the position immediately before the election or appointment of the City Official to whom the individual is related in a prohibited degree; and
 - (B) That prior employment of the individual has been continuous for at least two (2) years.
- 3. If, under Subsection IV(B)(2), an individual continues in a position, the City Official to whom the individual is related in a prohibited degree may not participate in any deliberation or vote on the appointment, reappointment, confirmation of the appointment or reappointment, employment, reemployment, change in status, compensation, or dismissal of the individual if that action applies only to the individual and is not taken regarding a bona fide class or category of employees.

V. HONORARIA

A. Prohibition

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

B. Exception

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

VI. GIFTS

A. Prohibitions

- 1. A City Employee performing regulatory functions or conducting inspections or investigations shall not solicit, accept, or agree to accept any benefit from a

person the City Employee knows to be subject to regulation, inspection, or investigation by the City Employee or the Village.

2. A City Employee having custody of prisoners shall not solicit, accept, or agree to accept any benefit from a person the City Employee knows to be in his custody or the custody of the Village.
3. A City Employee or a City Official who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of the Village shall not solicit, accept, or agree to accept any benefit from a person the City Employee or City Official knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of his discretion.
4. A City Employee or City Official who has judicial or administrative authority, who is employed by or in a tribunal having judicial or administrative authority, or who participates in the enforcement of the tribunal's decision shall not solicit, accept, or agree to accept any benefit from a person the City Employee or City Official knows is interested in or likely to become interested in any matter before the City Employee or City Official or tribunal.

B. Donations of Unsolicited Gifts

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

C. Exceptions

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

1. A fee prescribed by law to be received by a City Employee or City Official or any other benefit to which the City Employee or City Official is lawfully entitled or for which he gives legitimate consideration in a capacity other than as a City Employee or City Official;
2. A gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient;

3. A benefit to a City Employee or City Official required to file a statement under Chapter 572, Government Code, or a report under Title 15, Election Code, that is derived from a function in honor or appreciation of the recipient if:
 - (a) The benefit and the source of any benefit in excess of \$50 is reported in the statement; and
 - (b) The benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office that are nonreimbursable by the state or the Village;
4. A political contribution as defined by Title 15, Election Code;
5. An item with a value of less than fifty dollars (\$50), excluding cash or a negotiable instrument as described by Section 3.104 of the Texas Business & Commerce Code;
6. An item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental entity;
7. Food, lodging, transportation, or entertainment accepted as a guest and, if the donee is required by law to report those items, reported by the donee in accordance with that law; or
8. Any gift or benefit otherwise excepted under section 36.10, Penal Code.

VII. VILLAGE RECORDS

(a) Prohibition:

A City Official or City Employee shall not:

1. Knowingly make a false entry in, or false alteration of, a Village record;
2. Make, present, or use any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine Village record;
3. Intentionally destroy, conceal, remove, or otherwise impair the verity, legibility, or availability of a Village record;
4. Possess, sell, or offer to sell a Village record or a blank Village record form with intent that it be used unlawfully;

5. Make, present, or use a Village record with knowledge of its falsity; or
6. possess, sell, or offer to sell a Village record or a blank Village record form with knowledge that it was obtained unlawfully.

B. Exception

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

VIII. MISUSE OF OFFICIAL INFORMATION

A. Prohibition

1. A City Employee or City Official shall not misuse information to which he or she has access by virtue of his or her office or employment and that has not been made public, and shall not:
 - (a) Acquire, attempt to acquire or aid another to acquire or attempt to acquire a pecuniary interest in any property, transaction, or enterprise that may be affected by the information;
 - (b) Speculate or aid another to speculate on the basis of the information; or
 - (c) As a City Official or City Employee coerce another into suppressing or failing to report that information to a law enforcement agency.
2. A City Employee or City Official shall not with intent to obtain a benefit or with intent to harm or defraud another, disclose or use information for a nongovernmental purpose that:
 - (a) The City Official or City Employee has access to by means of the City Official's or City Employee's office or employment; and
 - (B) Has not been made public.

B. Definition

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

IX. ETHICS REVIEW COMMISSION

A. Jurisdiction

The Ethics Review Commission (the "Commission") has jurisdiction over ethics complaints as described in this Code involving City Officials and City Employees and may advise the City Council from time to time regarding ethical matters so as to promote personal integrity, honesty and ethical conduct in all matters conducted by the Village of Wimberley.

B. Composition of Commission

The Commission is to be composed of seven (7) members each serving a two (2) year term. Each member of the City Council and the Mayor shall nominate one member to the Commission. A seventh member shall be appointed by majority vote of the City Council. If a vacancy occurs on the Commission, the Council Member Place or the Mayor who made the nomination for the vacant place shall nominate a person to fill the unexpired term. Nominated members become appointed members upon a simple majority vote of the Council. Each Commission member shall take an oath of office comparable to that taken by Council members. Ethics Commissioners shall serve without compensation, but shall be eligible to be reimbursed for actual expenses in accordance with the Village's policy.

1. Terms of Commissioners. Commissioners shall serve two year terms and may be reappointed. Each Commissioner that was appointed prior to the Effective Date of this Ordinance shall continue to serve as a Commissioner and for the duration of the term of their original appointment. The Council may by majority vote remove a Commissioner with or without cause. Any Commissioner who misses three (3) consecutive meetings within a twelve (12) month time period or one-third (1/3) of all regular meetings shall be deemed to have automatically vacated his/her position on the Commission. This section shall not apply to a Commissioner who applied for and received an excused absence from the Commission chairperson prior to the meeting(s) at issue. Any Commissioner who no longer resides within the corporate boundaries of the Village is deemed to have automatically vacated his/her position on the Commission.
2. Commission Officers. From among its members the Commission shall elect its officers, those being the Chairperson, Vice-Chairperson, and Secretary. Officers shall be elected for terms of one (1) year. The Chairperson shall preside over all meetings and may vote. If the Chairperson fails or refuses to act, the Vice-Chairperson shall perform the duties of the Chairperson. If the Chairperson and

Vice-Chairperson are absent, any Commissioner may be appointed by the remaining members of the Commission to preside over the meeting.

3. Qualifications.

- (a) Commission members must be registered voters who are residents of the Village of Wimberley.
- (b) No member of the Ethics Commission may be:
 - (i) A member of the City Council, a member of the Planning and Zoning Commission, a member of the Board of Adjustment, a City Employee, a City Official, or spouse of any of the foregoing;
 - (ii) A candidate for elected public office for the Village;
 - (iii) Anyone having a Substantial Business Interest or Substantial Interest in Real Property with any Councilmember, City Official, City Employee, or Commission member specified under Subsection (i) above;
 - (iv) Anyone who has been a paid campaign worker or paid political consultant for any Council or mayoral candidate; or
 - (v) A convicted felon.

C. Conflicts of Interest

An Ethics Commissioner shall not vote or participate in any matter involving a person listed in Subsection II(C)(4) of this Code nor on any matter involving any person that the Ethics Commissioner has an Economic Interest in or with.

D. Procedures

- 1. The Ethics Review Commission shall have the authority to review and investigate complaints filed in accordance with this Ordinance and issue a written finding and ruling of the Commission's determination when appropriate.
- 2. The Commission shall determine its rules and procedures which shall be submitted in writing for approval of the Council. The Commission shall establish, amend and rescind its procedures and maintain proper records of its proceedings and its opinions. The Commission shall meet as often as necessary to fulfill its responsibilities but must meet at least once a year to review this Code Ethics.

3. The Commission shall have the power to investigate, request and gather evidence necessary to determine if a violation has occurred. The Commission shall have the power to enforce the provisions of this Ordinance, including recommending to the Council the prosecution of alleged violators. Nothing in this Code shall be construed, however, to prevent complainants, including the Village, from instituting direct legal action on their own behalf through the appropriate judicial authority.
4. Service on the Ethics Review Commission does not preclude a member from filing a complaint with the Commission. The Commission member filing the complaint must recuse himself/herself from the Commission procedure.

E. Code Review

The Ethics Review Commission shall make recommendations to the Council regarding revisions and changes to this Code of Ethics.

F. Village Support

1. The Ethics Review Commission may seek any necessary assistance from the Council and City Administrator regarding financial support needed to carry out the Commission's duties.
2. The Commission shall receive from the Village such administrative support as reasonably necessary to carry out the duties of the Commission and to assist the Commission with maintenance of its records in compliance with the Village's records retention schedule.

X. ROLE OF THE CITY ATTORNEY

A. The City Attorney shall serve as legal counsel to the Ethics Review Commission. However, when complaints are filed relating to the Mayor, Council members, City Administrator, or City Attorney, the Commission may use independent legal counsel to advise the Commission and take part in its proceedings.

B. The City Attorney shall serve as Ethics Advisor to City Officials and City Employees. As Ethics Advisor, the City Attorney is available to respond confidentially to inquiries relating to this Code of Ethics and may render advisory opinions on potential conflicts of interest or violation of this section at the request of a City Official or City Employee. A written advisory opinion may be used as a defense to an alleged violation of this Code in any subsequent ethical complaint concerning the matter, unless material facts were omitted or misstated by the person requesting the opinion.

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

D. If a complainant alleges a violation by the City Attorney, the complaint must be filed with the Chairperson of the Ethics Commission, with copies to the Mayor and the City Administrator.

XI. COMPLAINT PROCESS

A. Filing

1. Any City Official, City Employee, or eligible voter of the Village who believes that there has been a violation of this Ordinance may file a sworn complaint. A complaint alleging a violation of this Code of Ethics must meet the requirements herein and must be filed with the City Secretary. A complaint alleging a violation of this Code of Ethics by the City Attorney also must be filed with the persons named in Subsection IX(D) of this Code. A complaint must be filed within one (1) year from the date of the alleged violation.
2. Required Contents of a Complaint. An ethics complaint must be in writing and under oath and must set forth in simple, concise, and direct statements the following:
 - (a) The name of the complainant;
 - (b) The street or mailing address and the telephone number of the complainant;
 - (c) The name of the person who allegedly committed the violation;
 - (d) The position or title of the person who allegedly committed the violation;
 - (e) The nature of the alleged violation, including, if possible, the specific rule or provision of this Code of Ethics alleged to have been violated;
 - (f) A statement of the facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred, which must contain the following:
 - (i) Documents or other material available to the complainant relevant to the allegation;
 - (ii) A list of all documents or other material relevant to the allegation and available to the complainant, but that are not in the possession

of the complainant, including the location of the documents; if known; and

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

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

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

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

B. Confidentiality and Ex Parte Communications

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

2. All documents relating to a pending complaint are confidential, unless they are required to be disclosed under the Texas Public Information Act (TEX. GOV. CODE §§ 552.001 *et seq.*).

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

C. Notification

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

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

(a) Within fourteen (14) days of receipt of the complaint, a sworn response must be filed with the City Secretary; and

- (b) Failure to file a response does not preclude the City Attorney from processing the complaint.
3. City Officials and City Employees have a duty to cooperate with the City Attorney, pursuant to this Section.
4. All members of the Commission shall receive copies of the complaint, any background documentation, and any responses at least seven days before a hearing on the matter.

XII. HEARING PROCESS

A. Preliminary Hearing

1. As soon as reasonably possible, but in no event later than sixty (60) days after receiving a complaint, the Commission shall conduct a Preliminary Hearing. The purpose of the Preliminary Hearing is to determine whether there are reasonable grounds to believe that a violation of this Ordinance has occurred.
2. The complainant and the City Official or City Employee named in the complaint have the right to representation by counsel.
3. Statements at a Preliminary Hearing shall be under oath, but there shall be no cross examination or requests for persons or evidence issued for the hearing.
4. The person filing a complaint shall state the alleged violation and describe in narrative form the testimony and other evidence presented to prove the alleged violation as stated in the written complaint.
5. The City Official or City Employee named in the complaint shall have the opportunity to respond but is not required to attend or make any statement. The City Official or City Employee may describe in narrative form the testimony and other evidence presented to disprove the alleged violation. If the City Official or City Employee agrees that a violation has occurred, the Commission may consider the appropriate sanction.
6. Only members of the Commission may question the complainant, the independent counsel for the Commission, or the City Official or City Employee named in the complaint.
7. At the conclusion of the Preliminary Hearing the Commission shall take one of the following actions:

- (a) If the Commission does not determine that there are reasonable grounds to believe that a violation of this Ordinance has occurred, the complaint shall be dismissed.
- (b) If the Commission determines that there are reasonable grounds to believe that a violation of this Ordinance has occurred, it shall schedule a final hearing.
- (c) If the City Official or City Employee has agreed that a violation has occurred, the Commission may proceed with the Preliminary Hearing to determine the appropriate sanction.

B. Final Hearing

- 1. A final hearing shall be held as expeditiously as possible following the determination by the Commission that there are reasonable grounds to believe that a violation of this Ordinance has occurred, but in no event shall it be held more than thirty (30) days after said determination. The Commission may grant two (2) postponements, not to exceed fifteen (15) days each, upon the request of the City Official or City Employee named in the complaint.
- 2. If a complaint proceeds to a final hearing, the Commission may request witnesses to attend and testify, administer oaths and affirmations, take evidence and request the production of books, papers, records, or other evidence needed for the performance of the Commission's duties or exercise of its powers, including its powers of investigation.
- 3. The issue at a final hearing is whether a violation of this Ordinance has occurred. The Commission shall make its determination based on the evidence in the record. All witnesses shall make their statements under oath. If the Commission determines that a violation has occurred, it shall state its findings in writing, identify the particular provision(s) of this Ordinance that have been violated, and within five (5) working days deliver a copy of the findings to the complainant, the person named in the complaint, and the City Secretary. The City Secretary shall deliver a copy of the findings to the Council, the City Administrator and the City Attorney.

XIII. SANCTIONS AND VIOLATIONS

A. Optional Sanctions Hearing

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

B. Sanctions

1. If the Commission determines that a violation has occurred, it may impose the following sanctions:
 - (a) A letter of notification is an appropriate sanction when the violation is clearly unintentional. The letter of notification shall advise the City Official or City Employee of any steps to be taken to avoid future violations.
 - (b) A letter of admonition is the appropriate sanction when the Commission finds the violation is minor.
 - (c) A letter of reprimand is the appropriate sanction when the Commission finds a serious violation has been committed.
 - (d) A letter of censure is the appropriate sanction when the Commission finds that a serious violation has occurred or more than one serious violation or repeated serious violations of this Ordinance have been committed.
2. Copies of all sanction letters issued by the Commission under this section shall be sent to the Council.
3. In addition, when the seriousness of the violation warrants, the Commission may recommend to the Council the suspension or removal from office of any official serving in a Village-appointed position. Any Village-appointed person removed from office shall be ineligible to hold a position on any Village advisory board, committee or commission, or employment for five (5) years after removal, in addition to any other penalty provided by law.

C. Violation of this Ordinance Not a Criminal Penalty

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

D. Violation of this Ordinance by an Employee

The failure of an employee to comply with one or more of the standards of conduct set forth in this Ordinance shall constitute grounds for disciplinary action, up to and including termination of employment, to the extent allowed by law. All disciplinary action and any appeals therefrom shall be in conformity with applicable procedures established by the Personnel Policies of the Village. Any employee dismissed from employment shall be ineligible for city employment for five (5) years after dismissal, in addition to any other penalty provided by law.

Ethical complaints filed against Village Employees shall be addressed and considered by the Ethics Review Commission and the City Council in the same manner as complaints filed against City Officials. Provided however, that sanctions or disciplinary recommendations and the procedures for determining same, shall not be made by the Commission but shall be conducted in accordance with the Village's Personnel Policies. Nothing in this Ordinance is intended to change an Employees' at-will status of employment.

XIV. APPEAL OF COMMISSION ACTION TO COUNCIL

A. The Commission's findings of violations of this Ordinance and recommendations that disciplinary action shall be forwarded to the City Council for consideration and action. The Commission's findings and ruling of a violation of the Ordinance and recommendations of disciplinary action may be appealed to the City Council by the person(s) charged in the complaint. Upon receipt of a written request for an appeal, the City Council shall promptly schedule a public hearing. The written request for an appeal shall be submitted to the City Secretary before the expiration of ten (10) days from the date of the written findings and rulings of the Ethics Review Commission.

B. Upon receipt of the Commission's findings and ruling and upon conclusion of an appeal, if any, the City Council by simple majority vote shall determine what action, if any, is appropriate pursuant to this Code. The Council may approve of the Commission's recommendation, disapprove the Commission's recommendation or modify the Commission's recommendation. Any disciplinary action shall require the affirmative vote of the super majority of the City Council without the participation of an affected member. No final action, decision or vote with regard to the matter shall be made except in an open meeting that complies with the Open Meetings Act. No disciplinary action shall be taken in excess of that allowed by law.

XV. OPEN MEETINGS TRAINING REQUIRED

Each City Official of the Village shall take the Open Meetings training required by state law within the time frames required by state law.

XVI. DISTRIBUTION AND PROOF OF COMPLIANCE

The City Secretary shall make available to each new City Official designated in this Ordinance a copy of the text of this Ordinance; Chapter 171 and Chapter 176 of the Texas Local Government Code pertaining to conflicts of interest; the Texas Open Meetings Act (TEX. GOV. CODE §§ 551.001 *et seq.*); and the Texas Public Information Act (TEX. GOV. CODE §§ 552.001 *et seq.*) (collectively referred to in this section as the "Ethics Statutes").

XVII. NO LIMITATION ON AUTHORITY OF VILLAGE

Penalties prescribed in this Ordinance do not limit the power of the mayor, city council, or city administrator to discipline employees under their supervision pursuant to applicable Village policies.

The penalties prescribed in this Ordinance do not limit the power of the city council to discipline its own members or to remove members of appointed boards or commissions. Notwithstanding this Ordinance,