

ORDINANCE NO. ___16, 2012_____

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF VALPARAISO, INDIANA, AMENDING ORDINANCE NO. 37-2005 ENTITLED AN “ETHICS ORDINANCE FOR THE CITY OF VALPARAISO” AND CHAPTER 36 OF THE CODE OF ORDINANCES

WHEREAS, on September 11, 2006, the Common Council of the City of Valparaiso, Indiana, adopted Ordinance No. 37-2005 entitled an “Ethics Ordinance for the City of Valparaiso”; and

WHEREAS, on June 13, 2011, the Common Council of the City of Valparaiso, Indiana, adopted Ordinance No. 18-2011 entitled “An Ordinance Amending Ordinance 37-2005 an Ethics Ordinance for the City of Valparaiso”; and

WHEREAS, the Ethics Ordinance for the City of Valparaiso, Indiana, is codified in the City’s Code of Ordinances in Chapter 36; and

WHEREAS, earlier this year the Indiana General Assembly enacted Public Law 135-2012 (HEA 1005) which mandates that certain municipalities adopt and implement anti-nepotism policies as of July 1, 2012; and

WHEREAS, by enacting Public Law 135-2012 (HEA 1005) the Indiana General Assembly created two (2) new sections of the Indiana Code located at Ind. Code § 36-1-20.2 (Nepotism) and Ind. Code §36-1-21 (Contracting with a Unit); and

WHEREAS, the Common Council of the City of Valparaiso, Indiana, is desirous of amending Ordinance No. 37-2005 and Chapter 36 of the Code of Ordinances in order to comply with the requirements of Public Law 135-2012 (HEA 1005), I.C. 36-1-20.2 and 36-1-21.

NOW, THEREFORE, BE ORDAINED BY THE COMMON COUNCIL OF THE CITY OF VALPARAISO, INDIANA, AS FOLLOWS:

Section 1. Section 36.02 of the City of Valparaiso, Indiana’s Code of Ordinances is hereby revised and amended as follows:

§ 36.02 DEFINITIONS.

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

APPOINTED PERSON.

- (1) A person holding one of the following public positions:

(a) Executive branch employee, appointed by the Mayor and confirmed by the Common Council;

(b) Any other person appointed by the Mayor, except persons employed solely in maintenance, clerical, secretarial or similar positions;

(c) Any person appointed by the Common Council, except persons employed solely in maintenance, clerical, secretarial, or similar positions.

(2) An individual or person serving on or for an advisory body shall not be considered an appointed person under this chapter.

CITY. The City of Valparaiso, Indiana.

COMPENSATION. Any payment received or to be received whether the compensation is in the form of a fee, salary, retainer, forbearance, forgiveness, or other form of valuable recompense.

DIRECT LINE OF SUPERVISION. An elected officer or employee who is in a position to affect the terms and conditions of another individual's employment, including making decisions about work assignments, compensation, grievances, advancement, or performance evaluation. The term does not include the responsibilities of the executive, legislative body, or fiscal body of a unit, as provided by law, to make decisions regarding salary ordinances, budgets, or personnel policies of the unit.

ELECTED OFFICIAL. Means any of the following:

(1) The executive or a member of the executive body of the City;

(2) A member of the legislative body of the City; or

(3) A member of the fiscal body of the City.

EMPLOYED. An individual who is employed by a unit on a full-time, part-time, temporary, intermittent, or hourly basis. The terms does not include an individual who holds only an elected office. The term includes an individual who is a party to an employment contract with the unit.

EMPLOYEE. Any individual, other than a public official, receiving compensation for services performed for the City except individuals who perform services as independent contractors.

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

ETHICS COMMISSION. The City Ethics Commission Advisory Body.

ETHICS OFFICER. The individual appointed as Ethics Officer with the duties and responsibilities as set forth in § 36.22.

FAIR MARKET VALUE. The price that would be paid by a willing buyer to a willing seller in a good faith transaction in which neither party is compelled to enter.

FAMILY MEMBER. Includes a spouse, parent, child, stepchild, adopted child, sibling, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, or daughter-in-law.

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

- (1) Salary, benefits, services, fees, commissions, gifts or expenses associated primarily with the donee's employment or business or provided to the donee by the city, to the extent that such gift is not inconsistent with applicable Indiana statutes;
- (2) An award, plaque, certificate, or similar personalized item given in recognition of the donee's public, civic, charitable, or professional service;
- (3) An honorary membership in a service or fraternal organization presented merely as a courtesy by such organization;
- (4) The use of a public facility or public property, made available by a governmental agency, for a public purpose;
- (5) An honorarium;
- (6) An expense related to an honorarium event paid to a person or a person's spouse or guest;

(7) Transportation provided to a public official or employee by an agency in relation to officially approved governmental business;

(8) Gifts solicited or accepted from a relative.

HONORARIUM. A payment of money or anything of value, directly or indirectly, to a public official or employee, or to any other person on his or her behalf, as consideration for a speech, address, oration or other oral presentation; or a writing other than a book, which has been or is intended to be published. **HONORARIUM** does not include:

(1) The payment for services related to employment held outside the public official's public position, which resulted in the person becoming a public official;

(2) Any ordinary payment or salary received in consideration for services related to the public official's or employee's public duties; or

(3) The payment or provision of actual and reasonable transportation, lodging, and food and beverage expenses related to the honorarium event, including any event or meeting registration fee, for a public official or employee and spouse or guest.

MEMBER OF THE FIRE DEPARTMENT. The fire chief or a firefighter appointed to the department.

MEMBER OF THE POLICE DEPARTMENT. The police chief or a police officer appointed to the department.

NEPOTISM. Favoritism granted to relatives or friends regardless of merit.

PERSON. Individuals or firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, limited liability companies, and all other groups or combinations.

PUBLIC OFFICIAL. Any elected official or department head. An individual or person serving on or for an advisory body shall not be considered a public official under this chapter.

RELATIVE. Means any of the following:

_____ (1) Spouse.

_____ (2) A parent or stepparent.

_____ (3) A child or stepchild. An adopted child of an individual is treated as a natural child of the individual.

_____ (4) A brother, sister, stepbrother, or stepsister. Brother and sister includes a brother or sister by half blood.

(5) A niece or nephew.

(6) An aunt or uncle.

(7) A daughter-in-law or son-in-law.

Section 2. Section 36.03 of the City of Valparaiso, Indiana's Code of Ordinances is hereby revised and amended as follows:

§ 36.03 APPOINTMENTS, EMPLOYMENT AND NEPOTISM.

Paragraphs (A) through (D) below shall continue to apply to all individuals employed by the City on or before July 1, 2012, unless the individual has a break in employment with the City. The following are not considered a break in employment with the City:

(1) The individual is absent from the workplace while on paid or unpaid leave, including vacation, sick, or family medical leave, or worker's compensation.

(2) The individual's employment with the City is terminated following by immediate reemployment by the City, without loss of payroll time.

(A) No family member of a public official may be employed in the same department of the public official if that public official has direct and/or immediate supervisory responsibility for hiring, firing, promotion, or other disciplinary actions with regard to such employee unless the department has policies, procedures and/or collective bargaining agreements in place which provide for the recusal of the public official in matters related to hiring, firing, promotion or other disciplinary actions with regard to the employee so as to avoid nepotism.

(B) Family members of public officials who are attending secondary or post-secondary school on a full-time basis may be employed for summer vacation or other vacation employment with the City so long as such employment is not under the direct and/or immediate supervision of the public official and further provided that such potential employees shall be considered, based upon his or her qualifications, along with any other applicants for a position or opening.

(C) No public official shall appoint a person to any position when the public official is a principal or officers of an organization where said person is also an employee, shareholder, officer, or director of the same organization. This prohibition shall not apply for any not-for-profit organizations or similar entities where neither the public official nor the person being considered for appointment receives any remuneration for the not-for-profit organization.

(D) To the extent there are family members of a public official currently employed by the City and such employment may be in conflict with the provisions of this section, their employment (in their current positions) shall be grandfathered and excluded from the limitations and prohibitions contained in this section.

Paragraphs (E) through (I) shall apply beginning on July 1, 2012, and shall apply to all individuals beginning their employment with the City after July 1, 2012, and all individuals employed with the City on or before to July 1, 2012, that have experienced a break in employment with the City as described above subsequent to July 1, 2012 .

(E) Individuals who are relatives may not be employed by the City in a position that results in one (1) relative being in the direct line of supervision of the other relative.

(F) A precinct election officer (as defined in IC 3-5-2-40.1) that are imposed by IC 3 or a volunteer firefighter are not considered employment by the City.

(G) If an individual is employed by the City on the date the individual's relative begins serving a term of elected office of the City and is not otherwise exempt from the application of Paragraphs (E) through (I), an individual may remain employed by the City and maintain the individual's position or rank even if the individual's employment would violate Paragraph (E) above.

(H) An individual described in Paragraph (F) may not be promoted to a position or be promoted to a position that is not within the merit ranks, in the case of an individual who is a member of a merit police department or merit fire department if the new position would violate Paragraph (E).

(I) These requirements do not abrogate or affect an employment contract with the City that an individual is a party to and is in effect on the date the individual's relative begins serving a term of an elected office of the City.

(J) Each elected officer of the City shall annually certify in writing, subject to the penalties of perjury, that the officer has not violated this chapter. An officer shall submit the certification to the executive of the unit no later than December 31 of each year.

Section 3. Section 36.05 of the City of Valparaiso, Indiana's Code of Ordinances is hereby revised and amended as follows:

§ 36.05 CONFLICT OF INTEREST AND CONTRACTING WITH THE CITY.

(A) It shall be conflict of interest and violation of this chapter for a public official or employee to participate in the procurement of any contract, or purchase by the City if such contract or purchase benefits financially the public official or employee, his or her family member, or other entity in which he or she has a financial interest.

(B) It shall be a conflict of interest and violation of this chapter for a public official:

(1) To participate in any vote or participate in any discussion in his or her public capacity on any matter if the matter has an economic benefit to the public official, his or her family member, or anything in which he or she has a financial interest. In

addition to recusal, a public official shall disclose any potential relationship to the Office of the Clerk-Treasurer within five days of obtaining such knowledge unless the relationship has been previously disclosed. The Clerk-Treasurer shall retain on file all such disclosures. In the event that the public official desires to abstain from voting on a particular matter, the public official shall announce his or her intention to abstain before the vote is taken and shall also provide a reason for the abstention. In the event that the abstention from voting would result in a lack of quorum for the board or commission to act, then the affect public official may vote after full disclosure.

(2) To pressure, coerce, force or require any public official to engage in any conduct that would result in economic benefit to either public official.

(3) To assist any person in any transaction with the City when such assistance is or would reasonably appear to be improperly enhanced by the position of the public official of the City. Public officials may provide such assistance if it is provided in the course of their official duties.

(4) To disclose or use any information obtained as a public official for his or her private gain, for the gain of another public official or for any person unless and until such information is available to the public.

(5) To solicit or receive a gift or loan when it has been or would reasonably appear to have been solicited, received or given with the intent to give or obtain special consideration or influence as to any action by such public official in his or her capacity.

(6) To receive a gift or honorarium in excess of \$200 in any calendar year from any individual or other entity doing business with the City; however, the public official may receive such gift or honorarium and donate the gift or honorarium to a not-for-profit agency or to the City for public purpose.

(C) Beginning on July 1, 2012, following requirements shall also apply regarding contracting with the City.

(1) The City may enter into a contract or renew a contract for the procurement of goods and services or a contract for public works with:

(a) an individual who is a relative of an elected official; or

(b) a business entity that is wholly or partially owned by a relative of an elected official;

Only if the requirements of this section are satisfied and the elected official does not violate IC. 35-44-1-3.

(2) The City may enter into a contract or renew a contract with an individual or business entity described in section (C)(1) above if:

(a) The elected official files with the City a full disclosure, which must:

(i) be in writing;

(ii) describe the contract or purchase to be made by the City;

(iii) describe the relationship that the elected official has to the individual or business entity that contracts or purchases;

(iv) be affirmed under penalty of perjury;

(v) be submitted to the City Council and accepted to the City Council in a public meeting of the City prior to final action on the contract or purchase; and

(vi) be filed, not later than fifteen (15) days after final action on the contract or purchase, with:

(aa) the state board of accounts; and

(bb) the clerk of the circuit court in the county where the City takes final action on the contract or purchase;

(b) the appropriate agency of the City:

(i) makes a certified statement that the contract amount or purchase price was the lowest amount or price bid or offered; or

(ii) makes a certified statement of the reasons why the vendor or contractor was selected; and

(c) The City satisfies any other requirements under IC 5-22 or IC 36-1-12.

(3) An elected official shall also comply with the disclosure provisions of IC 35-44-1-3, if applicable.

(4) This section does not affect the initial term of a contract in existence at the time the term of office of the elected official of the City begins.

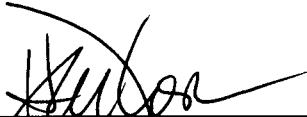
(5) Each elected officer of the City shall annually certify in writing, subject to the penalties for perjury, that the officer is in compliance with this chapter. An officer shall submit the certification to the Mayor not later than December 31 of each year.

Section 4. Any and all other provisions of Chapter 36 (Ethics Policies) of the City of Valparaiso, Indiana's Code of Ordinance shall remain in full force and effect.

Section 5. If any portion of this Ordinance shall be held invalid or unconstitutional by and court of competent jurisdiction, such decision shall not effect any other portion or provision of this Ordinance.


Section 6. This Ordinance shall be in full force and effect from and after its adoption and any publication required by law.

PASSED by the Common Council of the City of Valparaiso, Indiana, by a 7-0 vote of all members present and voting this 25th day of June, 2012.



Jon Costas, Mayor

ATTEST:



Sharon Swihart, Clerk-Treasurer

Presented to me by the Mayor of the City of Valparaiso, Indiana, this 25th day of June, 2012, at 7:40 o'clock p.m.



Sharon Swihart, Clerk-Treasurer

This Ordinance approved and signed by me this 25th day of June, 2012, at 7:40 o'clock p.m.



Jon Costas, Mayor

