

**VILLAGE OF BIRCH RUN
ORDINANCE NO. 99-2**

**A ORDINANCE TO ESTABLISH DEFINITIONS OF AND PROCEDURES FOR
CONFLICTS OF INTEREST, NEPOTISM AND THE PROPER CONDUCT OF
PUBLIC OFFICIALS AND EMPLOYEES OF THE VILLAGE OF BIRCH RUN**

Adoption Date: March 22, 1999

Effective Date: April 1, 1999

Amendment First Reading: October 25, 2004

Amendment Second Reading: November 15, 2004

Amendment Adoption: November 15, 2004

Effective Date: November 25, 2004

THE VILLAGE OF BIRCH RUN ORDAINS:

Section 1. Title. This Ordinance shall be referred to as the “Code of Ethics Ordinance” and shall apply to all elected and appointed officials and employees of the Village of Birch Run.

Section 2. Purpose & Intent. In an effort to maintain the public trust, the Birch Run Village Council hereby declares that all public officials and employees of the Village of Birch Run shall avoid any conflict between their private interests and those of the general public they serve. Furthermore, to enhance the faith of the citizens in the integrity and impartiality of the elected and appointed officials of the Village of Birch Run, it is necessary to provide specific guidelines for dealing with conflicts of interest, nepotism and the proper conduct of officials and employees. The Village of Birch Run intends that its officials and employees will avoid any action, which might result in or create the appearance of:

- (A) Using public office or employment for private gain;
- (B) Giving or accepting preferential treatment or monetary gain to or from any Person or organization;
- (C) Impeding government efficiency or economy;
- (D) A lack of independence or impartiality of action;
- (E) Making an official decision outside of proper channels; or
- (F) Affecting adversely the confidence of the public in the integrity of the Village of Birch Run.

Section 3. Definitions. Whenever these terms are used in this Ordinance, they shall have the following meaning:

- (1) “Affinity” means a relationship by marriage.
- (2) “Official” means a person elected or appointed to serve the Village of Birch Run in any capacity.
- (3) “Business” means a corporation, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual holding company, joint stock company, receivership, trust, or other entity which is organized for profit.
- (4) “Business transaction with the Village” includes, but is not limited to, contracts, loans, grants, the fixing of rates or fees, and the issuance of permits.
- (5) “Business with which the individual is associated” means a business in which any of the following applies:
 - (a) The individual is an owner, partner, director, officer or employee.
 - (b) A member of the individual’s immediate family is an owner, partner, director, officer or employee.
 - (c) The individual or a member of the individual’s immediate family is a holder of stock worth at least one thousand (\$1,000) dollars at fair market value or which represent more than a five percent (5%) equity interest in the business.
 - (d) The individual or a member of the individual’s immediate family is a stockholder of a publicly traded business who holds stock worth at least twenty-five (\$25,000) thousand dollars at fair market value or which represents more than a ten (10%) percent equity interest in the publicly traded business, other than publicly traded stock under a trading account if the individual reports the name and address of the stockholder.
- (6) “Confidential Information” means information which has been obtained in the course of one’s official capacity or employment with the Village which is not known by or available to the general public or which is obtained on the basis of a promise of confidentiality or which is required to be held confidential by law or regulation or which the employees or official has been directed to keep confidential. Confidential information may include information regarding labor negotiations, police matters, employee records, purchase of property or pending litigation.
- (7) “Employee” means an individual who works for the Village either under appointment or contract in return for financial compensation.
- (8) “Gift” means a payment, subscription, advance, forbearance, rendering or deposit of money, services or anything of value, made without exchange of reasonable consideration. Gift does not include anything of value received as a

devise, bequest or inheritance or a loan or credit arrangement made according to reasonable and prevailing rates and terms and which does not discriminate in favor of or against an official or employee of the Village.

“Gift” does not include a gift received from the following:

- (a) A relative within the fifth degree of family, under the civil law computation method, to the officer or employee, or the spouse of such a relative; or
 - (b) A spouse of the officer or employee, or a spouse’s relative within the fifth degree of family to the spouse, under the civil law computation method.
- (9) “Immediate family” includes a son, daughter, spouse, dependent as defined by the Internal Revenue Code, parent, parent-in-law, brother, sister, brother-in-law, sister-in-law, step parent, step brother, or step sister of an official or employee of the Village.
- (10) “Public servant” includes all persons serving any public entity, except members of the legislature and state officers who are within the provisions of section 10 of article 4 of the state constitution as implemented by legislative act.
- (11) “Village” includes any authority, department, commission, committee, council, board, or any other agency of the Village of Birch Run.

Section 4. Conflicts of Interest.

- (1) Conflicts of Interest Generally. Whenever the performance of his or her official duties will require an official or employee to deliberate or vote on any matter from which he or she may derive personal or financial gain, the official or employee shall make full public disclosure of the nature and extent of the interest to the Village body which has the power to decide the matter.
- (2) Conflicts of Interest in Non-Contractual Business Transactions with the Village. No Village official or employee, on his or her own behalf or on behalf of another person, shall have any interest in any non-contractual business transaction with the Village unless that official or employee shall first make full public disclosure of the nature of the interest. However, no official or employee shall be prohibited from participating in any non-contractual business transaction with the Village involving a non-contractual business with which the individual is associated when the official or employee is not involved, directly or indirectly, or refrains from participation in the decision on the award of the transaction or (b) the Village Council, after reviewing the circumstances, determines that the award of the non contractual business transaction to said official or employee is in the best interest of the Village.
- (3) Conflicts of Interest in Contractual Business Transactions with the Village - 1968 PA 317 as amended, Sec. 3. (1) Section 2 does not apply to either of the following:

- (a) A public servant who is paid for working an average of 25 hours per week or less for a public entity.
 - (b) A public servant who is an employee of a public community college, junior college, or state college or university.
- (2) A contract as defined in and limited by section 2 involving a public entity and a public servant described in subsection (1) shall meet all of the following requirements:
- (a) The public servant promptly discloses any pecuniary interest in the contract to the official body that has power to approve the contract, which disclosure shall be made a matter of record in its official proceedings. Unless the public servant making the disclosure will directly benefit from the contract in an amount less than \$250.00 and less than 5% of the public cost of the contract and the public servant files a sworn affidavit to that effect with the official body or the contract is for emergency repairs or services, the disclosure shall be made in either of the following manners:
 - (i) The public servant promptly discloses in writing to the presiding officer, or if the presiding officer is the public servant who is a party to the contract, to the clerk, the pecuniary interest in the contract at least 7 days prior to the meeting at which a vote will be taken. The disclosure shall be made public in the same manner as a public meeting notice.
 - (ii) The public servant discloses the pecuniary interest at a public meeting of the official body. The vote shall be taken at a meeting of the official body held at least 7 days after the meeting at which the disclosure is made. If the amount of the direct benefit to the public servant is more than \$5,000.00, disclosure must be made as provided under this subparagraph.
 - (b) The contract is approved by a vote of not less than 2/3 of the full membership of the approving body in open session without the vote of the public servant making the disclosure.
 - (c) The official body discloses the following summary information in its official minutes:
 - (i) The name of each party involved in the contract.
 - (ii) The terms of the contract, including duration, financial consideration between parties, facilities or services of the public entity included in the contract, and the nature and degree of assignment of employees of the public entity for fulfillment of the contract.
 - (iii) The nature of any pecuniary interest.
- (3) This section and section 2 do not prevent a public servant from making or participating in making a governmental decision to the extent that law requires the

public servant's participation. If 2/3 of the members are not eligible under this act to vote on a contract or to constitute a quorum, a member may be counted for purposes of a quorum and may vote on the contract if the member will directly benefit from the contract in an amount less than \$250.00 and less than 5% of the public cost of the contract and the member files a sworn affidavit to that effect with the official proceedings. As used in this subsection "governmental decision" means a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, ordinance, order, or measure on which a vote by members of a local legislative or governing body of a public entity is required and by which a public body effectuates or formulates public policy.

- (4) Dual Employment. No Village official or employee shall engage in employment with, or render services for, any person or entity engaged in any business transaction with the Village Unless the official or employee shall first make full public disclosure of the nature and extent of the interest.
- (5) Dual Representation. Each Village official or employee shall make full public disclosure of any special privileges or exemptions he or she will receive because of his or her position with the Village.

Section 5. Procedure for Disclosure of Conflict of Interest.

- (1) Whenever full public disclosure is required under this ordinance, such disclosure shall be made orally on the record in open session at a meeting of the Village body involved or in writing filed with the Village Clerk. Such disclosure shall become part of the official record of the Village body involved and, if applicable, shall also become part of the official record of a regularly schedule meeting of the Village Council.
- (2) Each disclosure shall include, if applicable:
 - (a) The identity of all individuals involved.
 - (b) The sources and amount of income or other financial gain that may be involved.
 - (c) The terms of the business transaction, including but not limited to, duration, consideration between the parties, facilities or services of the Village that are involved, the nature and degree of any assignment of Village employees, and the nature of any financial interest.
- (3) The matter may be approved by a vote of not less than 2/3 of the full membership of the approving body in open session, without the vote of the official or employee making the disclosure.

Section 6. Appearance of Impropriety. An "appearance of impropriety" shall occur when an official or employee is involved in a decision concerning action of a Village body which will affect an immediate family member, even if that official or employee derives no direct or indirect financial benefit from the action. An appearance of impropriety shall be

fully disclosed on the official record to the Village body. After such disclosure, the official or employee may participate in the decision only if he or she has informed the Village body in advance that he or she will so participate.

Section 7. Use of Village Property. No official or employee shall request, use or permit the use of any Village owned or supported property, including but not limited to, any vehicle, equipment, material, labor, service or money, for his or her own personal convenience or private advantage, or that of any other person, unless expressly permitted by the Village Council or its designee.

Section 8. Other Prohibited Conduct. A Village official or employee shall not engage in any of the following conduct:

- (1) Divulging confidential information to any person not authorized to obtain such information.
- (2) Benefiting financially from the disclosure of confidential information.
- (3) Representing his or her own personal opinion as that of the Village.
- (4) Misusing Village personnel resources, property, funds or assets for personal gain.
- (5) Soliciting or accepting a gift or loan of money, goods, services or other things of value which would tend to influence the manner in which the official or employee performs his or her official duties.
 - (a) Gifts or favors for personal gain should not be solicited from an individual or an organization that does business with the Village or seeks to do so. The size of the gift or favor is immaterial. Soliciting gifts or favors, either directly or indirectly, is strictly prohibited. If a gift is offered, a report should be completed and filed with the Village Clerk.
 - (b) The acceptance of inexpensive advertising gifts, such as pens, pencils, key rings, calendars, coffee cups, etc. or other small items, such as boxes of candy, nuts or plants, etc. shared by an entire office and/or enjoyed by the public are not considered gifts of value and can be accepted.
 - (c) Any gift of cash, including gift certificates, is strictly prohibited.
- (6) Engaging in employment or rendering services which are incompatible with the discharge of his or her official duties or which would tend to impair his or her independent judgment.
 - (a) A former Village employee or volunteer who is receiving retirement or pension and/or health care benefits from the Village may serve on the Village Council. However, if any business comes before the Village Council which pertains to or affects such benefits, the former employee or volunteer shall disclose his or her interest and shall refrain from voting on the matter. A change in the Village's retirement or pension and health care

benefits shall be approved by a 2/3 vote of the membership of the Village Council without the vote of the former employee or volunteer.

- (7) A Village Council member's addressing a body, including but not limited to the Zoning Board of Appeals, which is appointed by the Village Council, for the purpose of influencing a decision of that body.

Section 9. Nepotism. Unless the Village Council determines, by a four-fifths vote of its members, which vote shall be recorded as part of the official proceedings, that the best interest of the Village will be served by their employment or appointment, the following relatives of any elected official are disqualified from holding any office or position of employment during the term for which the elected official was elected or appointed: spouse, child, parent, grandchild, grandparent, brother, sister, half-brother, half-sister or the spouse of any of them. All relationships shall include those arising from adoption. This section shall in no way disqualify such relatives or their spouses who are bona fide elected or appointed officers or employees of the Village at the time of the election or appointment of such official or who are presently employed by the Village at the time of the adoption of this ordinance.

Section 10. Interpretation. In no event shall this ordinance be interpreted to prohibit conduct otherwise expressly allowed by the Village Charter or other applicable law.

Section 11. Violation and Penalties.

- (1) Business transactions with the Village involving prohibited activities on the part of officials or employees shall be voidable by a decree of a court of proper jurisdiction in accordance with state law, including but not limited to 1968 PA 317 as amended.
- (2) Any official who violates any provision of this ordinance shall be guilty of misconduct and subject to removal from office as provided by the Village Charter.
- (3) Any person who violates, disobeys, omits, neglects or refuses to comply with any provision of this ordinance shall be punished, upon conviction, by a fine of not more than \$100.00, and costs of prosecution, or by imprisonment for a period not exceeding ninety (90) days, or both fine and imprisonment, in the discretion of the court.

Section 12. Severability. If any section, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance.

Section 13. Savings. All proceedings pending and all rights and liability existing, acquired or incurred at the time this ordinance takes effect are saved and may be consummated according to the law in force when they are commenced.

Section 14. Effective date. This ordinance, as amended, shall become effective the 25th Day of November, 2004.

Village of Birch Run

By: _____
Marianne Nelson, Its President

By: _____
Becky Walther, Its Clerk

I hereby certify that the preceding ordinance, as amended, was adopted by the Village of Birch Run Council at its regular meeting held November 15, 2004, and published in the Birch Run/Bridgeport Herald on _____, 2004.

By: _____
Becky Walther, Its Clerk