

ARTICLE XIII. ETHICAL STANDARDS FOR COUNTY OFFICERS AND EMPLOYEES

Sec. 2-451. Short title.

This article shall be known and may be cited as the "Local Code of Ethics".

(Ord. No. 2008-15, § 2, 7-8-08)

Sec. 2-452. Definitions.

As used in this article, the following terms shall have the meanings given herein. All other terms used in this article shall have the meaning provided in F.S. Ch. 112, Pt. III:

- (a) *Board* or *BCC* means the Orange County Board of County Commissioners.
- (b) *Business associate* has the meaning ascribed in F.S. § 112.312, and is defined to mean any person or entity engaged in or carrying on a business enterprise with a public officer, public employee, or candidate as a partner, joint venture, corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange, or co-owner of property.
- (c) *Business entity* has the meaning ascribed in F.S. § 112.312, and is defined to mean any corporation, partnership, limited partnership, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state.
- (d) *Business relationship* means the creation of a business relationship with a business associate.
- (e) *County* means Orange County, Florida.
- (f) *County ethics officer* means the county attorney or designee designated as the local ethics officer by executive order.
- (g) *County investigative officer ("investigator")* means the authorized agent retained by contract with the county whose duty it is to administer and process the provisions of this article.
- (h) *De minimums* means any benefit, property, or service that has value of five dollars (\$5.00) or less.
- (i) *Form 1, Form 6 and Form 8B* means those forms described in F.S. § 112.3147, which are prescribed by the commission on ethics.
- (j) *Hearing officer* means the person authorized under this Code and retained by contract with the county for the purpose of holding final administrative hearings and establishing penalties, consistent with the provisions of F.S. § 162.03, for alleged violations of this article.
- (k) *Indirect* or *indirect interest* has the meaning ascribed in F.S. § 112.312, and is defined to mean an interest in which legal title is held by another as trustee or other representative capacity, but the equitable or beneficial interest is held by the person required to file under this part.
- (l) *Local financial disclosure* means the four additional statements of financial interests required to be filed pursuant to section 2-453 of this Code.
- (m) *Material interest* has the meaning ascribed in F.S. § 112.312, and is defined to

mean direct or indirect ownership of more than five (5) percent of the total assets or capital stock of any business entity. For the purposes of this act, indirect ownership does not include ownership by a spouse or minor child.

(n) *Mayor* means the Orange County Mayor.

(o) *Perception or appearance of conflict* is intended to be construed consistent with the intent stated at F.S. § 112.311, and, for the limited purposes described in this article, in addition to the ordinary meaning of the terms "perception or appearance of conflict," this term shall be deemed to include a situation where the mayor or member of the BCC has or had, within a previous two-year period, a potential conflict of interest due to involvement in a business relationship with a person now bringing the matter before the BCC.

(p) *Significant interest* means direct or indirect ownership of more than one thousand dollars (\$1,000.00) of assets or capital stock of any business entity as described in F.S. § 112.3144(3).

(q) *Special master* means the person authorized by this Code and retained by contract with the county to hold hearings for the purpose of determining probable cause, consistent with the provisions of F.S. § 162.03, for alleged violations of this article.

(r) *Subsidiary entity* means a separate business entity that is more than one-half (1/2) owned by another.

(Ord. No. 2008-15, § 2, 7-8-08)

Sec. 2-453. Code of ethical standards for county officers and employees.

(a) *Local financial disclosure.*

(1) In addition to the annual statement of financial interests and all other disclosure documents required to be filed pursuant to Florida law, any person required to file an annual statement of financial interest, as described in F.S. Ch. 112, Pt. III, shall file four (4) separate local financial disclosure forms with the Orange County Office of Agenda Development on a schedule as follows:

- For the period of January 1 to March 31, within thirty (30) days following March 31;
- For the period of April 1 to June 30, within thirty (30) days following June 30;
- For the period of July 1 to September 30, within thirty (30) days following September 30; and
- For the period of October 1 to December 31, within thirty (30) days following December 31.

The filing party shall continue to file the annual statement of financial interest as required under Florida law, and such annual filing is not under the jurisdiction of this Code.

Each local financial disclosure shall be submitted on the appropriate form which shall include disclosure of the following information during the reporting period:

a. For persons required under state law to file an annual form of financial interest (Form 6), the local financial disclosure form, as required by Article II, Section 8, Florida Constitution, F.S. §§ 112.3144, 112.312, and 112.3145, and this Code, shall include the following information:

1. The filing party's net worth;

2. Assets worth more than one thousand dollars (\$1,000.00);
3. Liabilities;
4. All sources of income including primary sources of income and secondary sources of income;
5. Interests in specified businesses; and
6. All real property except homestead property which is owned directly or indirectly by the filing party.

b. For persons required under state law to file an annual form of financial interest (Form 1), the local financial disclosure form, as required by Article II, Section 8, Florida Constitution, F.S. § 112.3145, and this Code, shall include the following information:

1. All sources of income including primary sources of income and secondary sources of income;
2. All real property except homestead property;
3. All intangible personal property;
4. Liabilities; and
5. Interests in specified businesses.

c. Additionally, in all cases the filing party shall identify:

1. All business associates; and
2. All business entities in which the filing party has a significant interest either directly or indirectly during the reporting period. In the case of disclosure of a business entity in which the filing party has a significant interest either directly or indirectly this disclosure shall include any limited liability company and all subsidiary entities of such business entity.

Nothing herein shall be construed to require disclosure of a business associate where such disclosure cannot lawfully be obtained under state or federal law and the filing party provides written documentation of same.

(2) A process for distribution of the local financial disclosure forms and the format of the local financial disclosure forms shall be established separately by administrative regulation.

(3) In completing the local financial disclosure forms, if there is no change from the previously filed report, the words, "No Change" may be indicated on the form by the reporting individual; however, in all cases a form shall be signed and filed by the reporting individual.

(b) *Supplemental local financial disclosure.* As a supplement to the local financial disclosure required pursuant to subsection (a), above, the mayor and members of the board shall disclose in writing all business associates and all business entities in which the officer has a significant interest either directly or indirectly during the reporting period, including any limited liability company and all subsidiary entities of such business entity, within seven (7) days of the formation of or the date the party enters into the business. The mayor and members of the board shall disclose this information on a form, adopted separately by administrative regulation, which shall be filed with the Orange County Office of Agenda Development.

Nothing herein shall be construed to require disclosure of a business associate where such disclosure cannot lawfully be obtained under state or federal law and the filing party provides written documentation of same.

(c) *Gifts.* No lobbyist or principal who retains a lobbyist shall make, directly or indirectly, any gift to the mayor and members of the board, except the following items are exempt from this requirement:

- (1) Meals of a value not to exceed thirty-five dollars (\$35.00) which are provided at meetings of professional, civic, nonprofit, or charitable organizations;
- (2) Gifts of de minimus value;
- (3) Meals of any value which are provided at any function where the mayor or a member of the BCC is the featured speaker or a featured guest invited in his/her official capacity and the meeting is open to the public regardless of whether an admission fee is charged to attend said function; and
- (4) Any gift from a relative.

"Gifts" shall be valued as described in F.S. § 112.3148.

(d) *Two-year post-employment restriction for specified employees.*

(1) Consistent with the provisions of F.S. § 112.313(13), for a period of two (2) years following the date an individual leaves employment with the county, those county employees required to file financial disclosure pursuant to F.S. § 112.3145, shall not personally represent any person or entity for compensation before the board of county commissioners.

(2) This paragraph is not applicable to any person who is an employee of the county prior to January 1, 2009.

(e) *One-year post-employment restriction for specified employees.*

(1) For a period of one (1) year following the date an individual leaves employment with the county, a county employee who substantially contributed to the creation of a request for bid or request for proposal, including the bid or proposal package, the associated contract, and the evaluation of any such bid or proposal, may not engage in employment activities for the selected contractor when the employment activity is directly related to the resulting contract or contractual services.

(2) An employee may seek legal counsel of the county ethics officer in interpreting this section of law prior to his/her termination of county employment.

(3) The county administrator may grant a waiver of this restriction as to any affected county employee for good cause shown provided that the employee's termination of employment is not involuntary (except that a waiver shall be granted in cases of involuntary unemployment through no fault of the employee) and in those cases where granting the waiver is in the public interest.

(4) The language provided in paragraph (1), above, shall be included in all bid or proposal packages issued by the county, the contractor's violation of which shall be grounds for county termination of the contract.

(f) *Disclosure; abstaining from vote due to apparent conflict of interest; exceptions.*

(1) In addition to the requirements that a local officer abstain from voting due to conflict as provided in F.S. § 112.3143, when the mayor or a member of the BCC knowingly is a business associate, as defined herein, with any person bringing a matter before the BCC or when a matter before the BCC will benefit any person with whom the mayor or a member knowingly was a business associate in the previous two-year period, the mayor or member shall disclose the existence of the business associate.

(2) a. Unless otherwise a conflict under state law (in which case the matter is not under the jurisdiction of this ordinance), the mayor or any member of the BCC shall

abstain from voting on any matter coming before the BCC if:

1. The matter is brought by or benefits a person with whom the mayor or that member knowingly is a business associate at the time of the vote; or
 2. The matter is brought by or benefits a person with whom the mayor or that member knowingly was a business associate within the two-year period prior to the matter coming before the BCC.
- b. If applicable, the basis for abstaining from the vote shall be an appearance or perception of conflict, as defined in this article, and the mayor or member of the BCC shall:
1. Prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting; and
 2. Within fifteen (15) days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum of voting conflict (commission on ethics Form 8B) filed with the person responsible for recording the minutes of the meeting. The memorandum shall be incorporated into the minutes of the meeting at which the officer abstained.
- (3) Unless otherwise a conflict under state law, for purposes of abstaining from voting due to appearance of conflict, this section may not be applied to a business relationship established prior to:
- a. The effective date of this article, or
 - b. The date the mayor or member of the board began his/her term of office;

However, in all cases where the mayor or a member of the BCC is a business associate, as defined herein, with any person bringing a matter before the BCC or when a matter before the BCC will benefit any person with whom the mayor or a member was a business associate in the previous two-year period, the mayor or member shall disclose the nature of the prior relationship prior to voting.

(g) *Additional disclosure.*

(1) If a mayor or a member of the BCC votes favorably on a matter before the BCC and, within one (1) year from the date of that vote, that mayor or member enters into a business relationship, as defined herein, with the person who brought the matter before the BCC, the business relationship shall be disclosed orally at the next BCC meeting following the mayor or member's knowledge that the business relationship exists. A written memorandum, a form of which is adopted separately by administrative regulation, disclosing the nature of the business relationship shall be filed with the person responsible for recording the minutes of the meeting within fifteen (15) days of the oral disclosure and shall be incorporated into the minutes of the meeting at which the oral disclosure was made.

(2) Disclosure obligations under this paragraph shall cease after the date the mayor or member of the BCC vacates his/her office.

(h) The provisions of this section and any disclosure of business associates or business relationships required under this Code shall not be construed to require the disclosure of any client information when an elected official is a member of a profession and the identity of that professional's client is subject to regulation under state law or rule.

Sec. 2-454. Applicant disclosure; review and approval of certain development-related items.

(a) All procurement or development-related items presented to or filed with the county for consideration shall include a relationship disclosure form, said form to be adopted separately by administrative regulation and which shall direct the applicant to disclose:

(1) Whether the applicant is a business associate, as defined herein, with the mayor or any member of the BCC, including a business associate in a limited liability company or a subsidiary entity of the business entity;

(2) Any person involved with the item who has a beneficial interest in the outcome of the matter and who is a business associate, as defined herein, with the mayor or any member of the BCC, including a business associate in a limited liability company or a subsidiary entity of the business entity;

(3) Whether the applicant is a relative, as this term is defined at F.S. § 112.312(21), of the mayor or any member of the BCC; and

(4) Whether the mayor or any member of the BCC is an employee of the applicant, using the term employee as it is defined at F.S. § 440.02(15).

(b) For development-related items, if an applicant discloses the existence of a relationship as described in subsection (a), above, and the matter will receive final consideration by the concurrency review committee or the development review committee, notwithstanding anything to the contrary in this Code, the matter shall be directed to the BCC for final consideration and action following committee review.

(Ord. No. 2008-15, § 2, 7-8-08)

Sec. 2-455. Investigation of alleged violations.

(a) *Administrative processing.* A complaint form shall be adopted separately by administrative regulation. All complaints shall be filed with the Orange County Office of Agenda Development which shall, within three (3) to five (5) days of receipt, forward said complaint to the county investigative officer. The determination of jurisdiction shall be made by the county investigative officer as follows:

(1) Receipt of sworn complaint by county investigative officer. Such sworn complaint shall be based upon personal information or information other than hearsay and the complaint shall allege all violations that arise from the facts or allegations in a complaint.

(2) Notification to respondent of receipt of complaint.

(3) Review of all documents and legal basis for the complaint.

(4) Interviews with county personnel and/or divisions or departments where necessary to develop a preliminary report finding jurisdiction or lack thereof.

(5) Determination of whether respondent will seek to rely upon advice provided in writing by the county ethics officer. If yes, a copy of the written document shall be provided to the county investigative officer and is an affirmative defense to any relevant allegation of violation of this article.

(6) Making the initial jurisdictional determination regarding further action pursuant to this section as follows:

a. For a determination of jurisdiction to be found by the county investigative

officer the complaint shall be based solely on issues related to the local code of ethical standards described in section 2-453 of this Code.

b. If the same or similar complaint is filed with the state commission on ethics, the county may abate its case under this article until the separate complaint is resolved or dismissed by the state.

c. If no jurisdiction is found, the case shall be closed, notice of a finding of no jurisdiction shall be sent to respondent and complainant, and the matters at issue shall not be the basis for any subsequent complaint alleging violations based upon the same action, nonaction, or circumstance.

d. If jurisdiction is found, the following shall be provided to the respondent and complainant:

1. A written determination of jurisdiction identifying specific Code sections;
2. A recommendation as to probable cause; and
3. A recommendation as to fine or other sanction, which shall be based where applicable upon an enforcement response guide and fine matrix adopted separately by administrative regulation.

(7) a. If the respondent accepts the findings of county investigative officer, as provided in subsection (6)d., above, the respondent may, where permitted under the enforcement response guide and fine matrix for reference, provide to the county investigative officer a written acceptance and signed settlement agreement. Once signed by the investigator and respondent, the settlement agreement will be sent to the special master for review and ratification unless the investigator is authorized to finalize settlement under the guidelines stated in the enforcement response guide and fine matrix.

b. If the respondent does not accept the findings of the county investigative officer or settlement is not applicable, the provisions of subsection (b) below shall apply.

c. Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in settling or attempting to settle a matter is not admissible to prove liability for or invalidity of the claim. Evidence of conduct or statements made in settlement negotiations is likewise not admissible.

(b) *Determination of probable cause/preliminary hearing.*

(1) *Preliminary hearing/process.* Upon determination of jurisdiction by the county investigative officer, if the matter does not settle and where applicable the matter shall be referred to a special master retained by the county for the purpose of conducting a preliminary hearing to determine probable cause. At the preliminary hearing, the respondent and the county investigative officer shall each be permitted to make brief statements, in the nature of oral argument, before a probable cause determination is made by the special master. The special master's probable cause determination shall be based upon:

- a. The complaint;
- b. The investigator's preliminary report, including the investigator's recommendation as to probable cause and recommendation as to fine or other sanction;
- c. Any written statements submitted by the respondent; and
- d. Any oral statements made by the county investigative officer and/or the

respondent at the preliminary hearing.

(2) *Settlement agreement.* The special master may, after review, ratify any proposed settlement agreement provided in this matter if such is presented by the respondent and county investigative officer. If the special master disagrees with the proposed settlement agreement, the special master shall inform the respondent and county investigative officer in writing of the reason(s) for the special master's refusal to ratify and may provide an alternative agreement. If the respondent does not accept the special master's alternative agreement, a hearing will be held before the special master as if there had been no settlement agreement presented.

(3) *[Evidence.]* Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in setting or attempting to settle a matter is not admissible to prove liability for or invalidity of the claim. Evidence of conduct or statements made in settlement negotiations is likewise not admissible.

(4) *Hearing/findings.* At the conclusion of the preliminary hearing, the special master may continue its determination to allow further investigation by either party; may order the issuance of a report of its investigation if it finds no probable cause to believe that there has been a violation of this article (thus concluding the matter before it); may order a final, public hearing of the complaint if it finds probable cause to believe that there has been a violation of this article; or may take such other action as it deems necessary to resolve the complaint, consistent with due process of law. In making its determination regarding a determination of probable cause the special master may consider:

- a. The sufficiency of the evidence against the respondent, as contained in the investigator's report;
- b. The admissions and other stipulations of the respondent, if any;
- c. The nature and circumstances of the respondent's actions;
- d. The expense of further proceedings; and
- e. Such other factors as it deems material to its decision.

(5) a. If probable cause is found, the special master shall determine in writing what charges are at issue, shall notify the complainant and the respondent in writing of the finding of probable cause (with a copy to the county investigative officer), and shall include in the written finding the special master's recommended action, including a recommended penalty. The matter shall then be referred to a hearing officer for a final determination.

b. If the respondent accepts the findings of the special master, including the determination of probable cause and the recommended penalty, the respondent may provide to the special master a written acceptance and signed settlement agreement. Once signed by respondent and special master, the settlement agreement will be sent to the hearing officer for review and ratification.

c. If no probable cause is found, the special master shall dismiss the case. A finding of no probable cause by the special master is a full and final adjudication of all such matters and the county investigative officer may not investigate a respondent in any subsequent complaint alleging violations based upon the same action, nonaction, or circumstance.

(c) *Final determination.*

(1) If the special master finds probable cause, and no settlement has occurred, the matter shall be referred to a hearing officer for a final hearing and issuance of a final administrative order in this matter. The hearing officer's findings shall be based upon:

- a. The complaint;
- b. The investigator's preliminary report, including the investigator's recommendation as to probable cause and recommendation as to fine or other sanction;
- c. Any written statements submitted by the respondent; and
- d. Any oral statements made by the county investigative officer and/or the respondent in this matter.

(2) The final administrative order shall state findings of fact, based on evidence of record, and conclusions of law, and shall impose the appropriate relief or penalty consistent with the powers granted by this article.

(d) *[Investigatory and penalties provisions.]* The investigatory and penalties provisions of this ordinance shall not take effect until such time as subsequent legislation is adopted by the Florida Legislature to:

- (1) Exempt from the provisions of F.S. § 119.07(1), and § 24(a), Article I of the State Constitution the information and records obtained in the course of the local code enforcement process described in this ordinance; and
- (2) Exempt any proceeding conducted as described in this section from the provisions of F.S. § 286.011, and § 24(b), Article I of the State Constitution, until such time as said complaint is dismissed as legally insufficient, until the alleged violator requests in writing that such records and proceedings be made public, or until the special master determines, based on the process described herein, whether the probable cause exists to believe that a violation has occurred.

(Ord. No. 2008-15, § 2, 7-8-08)

Sec. 2-456. Penalties.

(a) Any public officer, administrative (appointed) employee, or former county employee who knowingly violates any provision of this article, including, but not limited to, any failure to file any disclosures required by this article or violation of any standard of conduct imposed by this article, may be punished by one or more of the following, as imposed by the hearing officer in the final administrative order:

- (1) Verbal warning;
- (2) Written reprimand;
- (3) Recommend the BCC publically censure the officer or employee; and/or
- (4) A civil penalty not to exceed five hundred dollars (\$500.00) for each violation.

(b) Any employee who is not an administrative (appointed) employee who knowingly violates any provision of this article, including, but not limited to, any failure to file any disclosures required by this article or violation of any standard of conduct imposed by this article, may be subject to discipline, up to and including termination of employment, in a manner consistent with the disciplinary procedures set forth in the Orange County Policy Manual and Operational Regulations.

(c) Appeal. Pursuant to Florida law allowing for appeal in a local code enforcement matter, an aggrieved party may appeal the final administrative order of the hearing officer to the circuit court. Any appeal shall be filed within thirty (30) days of the execution of the final administrative order.

(Ord. No. 2008-15, § 2, 7-8-08)

Sec. 2-457. Local ethics advisory board.

A county-wide ethics advisory board may be established by resolution for the purpose of monitoring ethics compliance, recommending the need for subsequent amendments to this article or additional regulatory requirements, overseeing and evaluating ethics training and education opportunities offered by the county, and encouraging similar ethics policies in other jurisdictions in Orange County. The ethics advisory board shall be funded and staffed by the county.

At a minimum the resolution establishing the ethics advisory board shall provide as follows:

- (a) The ethics advisory board shall consist of no fewer than five (5) members and no greater than seven (7) members who are residents of Orange County and members may be appointed by the chief judge of the Ninth Judicial Circuit;
- (b) The chief judge of the Ninth Judicial Circuit may select a chair and vice-chair or if the chair and vice-chair are not selected by the chief judge, the members may select a chair and vice-chair;
- (c) The term of each member shall be appointed to serve until the task force is adjourned as provided herein;
- (d) No current elected government official shall be a member of the ethics advisory board;
- (e) Ethics advisory board members shall serve on a voluntary basis and shall not receive any compensation except for reimbursement of direct out-of-pocket expenses, if any, and as allowed under Florida law and county rules and regulations; and
- (f) The ethics advisory board shall meet within one (1) month of its initial appointment and shall meet as necessary to carry out the business of the ethics advisory board.
- (g) The ethics advisory board shall present its report to the board of county commissioners no later than six (6) months from the date of its first meeting.

(Ord. No. 2008-15, § 2, 7-8-08)