

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS

ORDINANCE NO. 2008-15

EFFECTIVE DATE

Jan 01 2009

AN ORDINANCE PERTAINING TO ETHICAL STANDARDS FOR OFFICERS AND EMPLOYEES OF ORANGE COUNTY, FLORIDA; CREATING A NEW ARTICLE XIII IN CHAPTER 2, ORANGE COUNTY CODE, TO CREATE A LOCAL CODE OF ETHICAL STANDARDS FOR OFFICERS AND EMPLOYEES; MAKING LEGISLATIVE FINDINGS; PROVIDING A SHORT TITLE; PROVIDING DEFINITIONS; PROVIDING FOR MORE FREQUENT FINANCIAL DISCLOSURE; PROVIDING FOR MORE STRINGENT LOCAL DISCLOSURE REQUIREMENTS AND STANDARDS OF CONDUCT FOR OFFICERS AND EMPLOYEES; PROVIDING AN ENFORCEMENT STRUCTURE; PROVIDING FOR PENALTIES; PROVIDING FOR APPEAL; PROVIDING FOR ESTABLISHMENT OF A LOCAL ADVISORY BODY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Orange County is committed to the highest standards of conduct by and among County officials in the performance of public duties; and

WHEREAS, individual and collective adherence to high ethical standards by public officials is central to the maintenance of public trust and confidence in government; and

WHEREAS, public servants have taken on a special obligation to operate ethically and ethical leadership results in treating all citizens with respect and sets an example of civility, integrity, and diversity; and

WHEREAS, each County officer and employee is accountable to the community in providing service according to the highest standards of performance, professionalism, and ethical conduct; and

WHEREAS, in serving the public, we find County officers and employees must preserve the public trust through our commitment to elevate the community's interests over the interests of particular groups or individuals; and

WHEREAS, to maintain integrity and dignity of government, decision-makers will exercise judgment that is independent and objective and officials will operate in the sunshine, as transparency ensures accountability and an atmosphere of public awareness.

Section 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 Part III, Chapter 112, Florida Statutes.

(a) *Board or BCC* means the Orange County Board of County Commissioners.

(b) *Business Associate* has the meaning ascribed in section 112.312, Florida Statutes, 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 venturer, 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 section 112.312, Florida Statutes, 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 minimus* means any benefit, property, or service that has value of \$5.00 or less.

(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 section 162.03, Florida Statutes, for alleged violations of this article.

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

Section 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 part III, Chapter 112, Florida Statutes, 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

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 section (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 \$35 which are provided at meetings of professional, civic, non-profit, or charitable organizations;

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 section 112.3143, Florida Statutes, 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 (2) 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:

- i. 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
- ii. the matter is brought by or benefits a person with whom the Mayor or that member knowingly was a business

(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 professionals' client is subject to regulation under state law or rule.

Section 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;

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:

- i. a written determination of jurisdiction identifying specific code sections,
- ii. a recommendation as to probable cause, and
- iii. a recommendation as to fine or other sanction, which shall be

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 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.

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:

(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) 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:

i. exempt from the provisions of section 119.07(1), Florida Statutes, and section 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

ii. exempt any proceeding conducted as described in this section from the provisions of section 286.011, Florida Statutes, and section 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

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 is 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 provide 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.