

JUN 28 2011 NP/BS

EFFECTIVE DATE

JULY 01 2011

ORDINANCE NO. 2011- 09

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY, FLORIDA PERTAINING TO ARTICLE XIII IN CHAPTER 2, ORANGE COUNTY CODE, LOCAL CODE OF ETHICAL STANDARDS FOR OFFICERS AND EMPLOYEES OF ORANGE COUNTY, FLORIDA; CREATING A NEW SECTION 2-451.1, PROVIDING FOR PURPOSE, CLARIFYING THAT ORDINANCE SHALL BE CONSTRUED BROADLY TO ENSURE ETHICAL GOVERNMENT; AMENDING SECTION 2-452, AMENDING DEFINITION OF BUSINESS ASSOCIATE, BUSINESS ENTITY, COUNTY INVESTIGATIVE OFFICER, SIGNIFICANT INTEREST, AND SUBSIDIARY ENTITY, ADDING A DEFINITION FOR PARENT ENTITY; AMENDING SECTION 2-453, AMENDING REQUIREMENTS FOR LOCAL FINANCIAL DISCLOSURE, AMENDING LANGUAGE RELATING TO ABSTAINING FROM VOTING DUE TO APPEARANCE OF CONFLICT, AMENDING LANGUAGE RELATING TO GIFTS, CREATING A NEW SUBSECTION 2-453(h), RELATING TO SOLICITATION AND RECEIPT OF CONTRIBUTIONS; AMENDING SUBSECTION 2-455(a), PROVIDING THAT A COMPLAINT SHALL BE FILED WITH THE OFFICE OF OMBUDSMAN; MAKING CLARIFYING CHANGES THROUGHOUT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, On January 9, 2007 the Board of County Commissioners (Board) created a Task Force on Ethics and Campaign Finance Reform (Task Force) by Resolution 2007-M-02 to explore the need for local regulation in the areas of ethics and campaign finance; and

WHEREAS, on January 29, 2008 the Task Force presented its final report to the Board which included 16 recommendations in the area of local ethics reform; and

WHEREAS, over the next several months the Board discussed and debated the recommendations of the Task Force and hereby found that, consistent with Florida law and the County Charter, the Board could and desired to enact more stringent local regulations in the area of disclosure and standards of conduct for its officers and employees; and

WHEREAS, on July 8, 2008 the Board adopted ordinance 2008-15 thus adopting these higher standards of conduct and enhanced disclosure requirements in a Local Code of Ethics contained within the Orange County Code of Ordinances; and

WHEREAS, on June 29, 2010 the Board adopted ordinance 2010-08 to amend the Local Code of Ethics by adopting revisions suggested or identified by staff or the Board; and

WHEREAS, the Board now seeks to again adopt amendments to the Local Code of Ethics.

THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY, FLORIDA:

Section 1. Section 2-451.1, Orange County Code of Ordinances, is hereby created to read as follows:

Sec. 2-451.1. – Intent and Construction.

(a) Intent. The intent of the Board in adopting a Local Code of Ethics is to ensure that County officers and employees observe in all official acts the highest standards of ethics regardless of personal consideration; recognize that promoting the public interest and maintaining the respect and trust of the people in their government must be of foremost concern; and hold each County officer and employee accountable to the community in providing service in accordance with the highest standards of performance, professionalism, and ethical conduct.

Furthermore, the intent of the Board in adopting a Local Code of Ethics is not to impose additional regulation relating to standards of conduct and disclosure so as to impede unreasonably or unnecessarily the recruitment and retention by government of those best qualified to serve but to allow County officials and employees the opportunity available to other citizens to acquire and retain private economic interests as long as the private economic interests do not conflict with the responsibility of such officials to the public.

(b) Construction. This ordinance shall be broadly construed to effect its purpose of ensuring an ethical government for the benefit of the citizens and residents of Orange County while

encouraging participation in government by those best qualified to serve.-

Section 2. Section 2-452, Orange County Code of Ordinances, is hereby amended to read as follows with underlines showing additions and strikethroughs indicating deletions:

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 Part III, Chapter 112, Florida Statutes F.S. Ch. 112, Pt. III:

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

(b) *Business aAssociate* has the meaning ascribed in subsection F.S. § 112.312(4), 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 venture, corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange, or co-owner of property. In addition, the term includes any person or entity engaged in or carrying on a business enterprise, or otherwise engaging in common investment, with a public officer, public employee, or candidate as a partner, member, shareholder, owner, co-owner, joint venture partner, or other investor, whether directly or indirectly, whether through a Business Entity or through interlocking Parent Entities, Subsidiary Entities, or other business or investment scheme, structure, or venture of any nature.

(c) *Business eEntity* has the meaning ascribed in F.S. § 112.312, and is defined to mean any corporation, limited liability company, 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 rRelationship* means the creation of a bBusiness rRelationship with a bBusiness aAssociate.

(e) *County* means Orange County, Florida.

(f) *County eEthics oOfficer* means the county attorney

or designee designated as the local ethics officer by executive order.

(g) *County Investigative Officer ("Investigator")* means the County Ombudsman or an authorized agent retained by independent contract with the eCounty whose duty it is to administer and process the provisions of this article.

(h) *De Minimis* 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 section F.S. §-112.3147, Florida Statutes, which are prescribed by the Commission on Ethics.

(j) *Hearing Officer* means the person authorized under this Code and retained by contract with the eCounty for the purpose of holding final administrative hearings and establishing penalties, consistent with the provisions of section F.S. §-162.03, Florida Statutes, for alleged violations of this article.

(k) *Indirect* or *iIndirect iInterest* has the meaning ascribed in subsection F.S. §-112.312(13), Florida Statutes, 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 iInterest* has the meaning ascribed in subsection F.S. §-112.312(15), Florida Statutes, and is defined to mean direct or iIndirect ownership of more than five (5) percent of the total assets or capital stock of any bBusiness eEntity. For the purposes of this act, iIndirect ownership does not include ownership by a spouse or minor child.

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

(o) *Parent Entity* means a separate Business Entity that either (i) owns all or a sSignificant iInterest in a Subsidiary Entity or (ii) controls all or a material portion of the operations or assets, or both, of a Subsidiary Entity.

(p) Perception or aAppearance of eConflict is intended to be construed consistent with the intent stated at section F.S. § 112.311, Florida Statutes, and, for the limited purposes described in this article, in addition to the ordinary meaning of the terms "pPerception or aAppearance of eConflict," this term shall be deemed to include a situation where the mayor or commissioner member of the BCC has or had, within a previous two-year period, a potential conflict of interest due to involvement in a bBusiness rRelationship with a person now bringing the matter before the BoardBCC.

(q)(p) Significant Interest means direct or iIndirect ownership of more than one thousand dollars (\$1,000.00) of assets or capital stock of any bBusiness eEntity, as described defined in F.S. § 112.3144(3) this Code, or a return on investment either directly or indirectly valued in excess of one thousand dollars (\$1,000.00) from any Subsidiary Entity within the previous twelve (12) month calendar reporting period.

(r)(q) Special mMaster means the person authorized by this Code and retained by contract with the eCounty to hold hearings for the purpose of determining probable cause, consistent with the provisions of F.S. § section 162.03, Florida Statutes, for alleged violations of this article.

(s)(r) Stand-aAlone sSocial eEvent means a social gathering or function of ten (10) or more persons, the purpose of which is to celebrate or memorialize a particular holiday or event. Examples of stand-alone social events shall include, but not be limited to: baby showers, birthdays, engagement parties, funerals, graduation parties, grand openings, holiday celebrations, and weddings. Any social event, the purpose of which may be related to lobbying or otherwise seeking to influence the mayor or a commissioner on a matter that is scheduled to come before the Board, BCC would not qualify as a stand-alone social event.

(t)(s) Subsidiary eEntity means a separate bBusiness eEntity that is more than one half (1/2) owned by another controlled by another independent or separate Business Entity, in which the controlling Business Entity's interest constitutes a Significant Interest, as defined in this Code. -

Section 3. Section 2-453, Orange County Code of Ordinances, is hereby amended to read as follows with underlines showing additions and strikethroughs indicating deletions:

Sec. 2-453. - Code of ethical standards for ~~e~~County officers and employees.

(a) *Local fFinancial dDisclosure.*

(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 Part III, Chapter 112, Florida Statutes~~F.S. Ch. 112, Pt. III~~, shall file four (4) separate ~~Local fFinancial d~~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 fFinancial d~~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 fFinancial dDisclosure form, as required by Article II, Section 8, Florida Constitution, sections ~~F.S. §§~~ 112.3144, 112.312, and 112.3145, Florida Statutes, 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.

Disclosure relating to items 1 through 6 above shall be interpreted and disclosed in accordance with the requirements and instructions for Commission on Ethics Form 6 and in accordance with the terms as defined in Part III, Chapter 112, Florida Statutes; provided, however, if you are required to file a Form 6 and if you have a beneficial, equitable, or Significant Interest in a Business Entity during the disclosure period you must identify said Business Entity in accordance with this section. Attaching a tax return will not satisfy the quarterly disclosure requirements under this Code.

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, section F.S. § 112.3145, Florida Statutes, 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 bBusiness aAssociates;
and

2. All bBusiness eEntities in
which the filing party has a sSignificant iInterest either directly or
iIndirectly during the reporting period. In the case of disclosure of
a bBusiness eEntity in which the filing party has a sSignificant
iInterest either directly or iIndirectly this disclosure shall include
any limited liability company and all sSubsidiary eEntities of such
bBusiness eEntity.

~~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 lLocal
fFinancial dDisclosure forms and the format of the lLocal
fFinancial dDisclosure forms shall be established separately by
administrative regulation.

(3) In completing the lLocal fFinancial
dDisclosure 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 lLocal fFinancial dDisclosure.* As a
supplement to the lLocal fFinancial dDisclosure required pursuant
to subsection (a), above, the mMayor and each commissioner
members of the board shall disclose in writing all new bBusiness
aAssociates acquired by the mayor or commissioner and all
bBusiness eEntities in which the officer acquires has a sSignificant
iInterest, either directly or indirectly, during the reporting period,
including any limited liability company and all known Parent
Entities and sSubsidiary eEntities of such bBusiness eEntity. The
written disclosure shall be filed within seven (7) days of the
formation of the Business Entity or the date the mayor or
commissionerparty enters into the bBusiness fRelationship with
the new Business Associate. The mayor and each commissioner
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 or ~~and any commissioner~~members of the board, and the mayor and ~~or~~ any commissioner ~~members of the board~~ shall not accept any gift from a lobbyist or principal who retains a lobbyist, except the following items which are exempt from this requirement:

(1) Food or beverage 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 minimis~~ value;

(3) Food or beverage of any value which is provided at any function where the mayor or a commissioner ~~member of the BCC~~ is the featured speaker or a featured guest invited in his/her official capacity, and the meeting is either open to the public or other community leaders or elected officials have been invited and are expected to attend in their respective official capacities regardless of whether an admission fee is charged to attend said function;

(4) Food or beverage of any value which is served at a stand-alone social event; and

(5) Any gift from a relative.

"Gifts" shall be valued as described in section F.S. § 112.3148, Florida Statutes.

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

(1) Consistent with the provisions of section F.S. § 112.313(13), Florida Statutes, for a period of two (2) years following the date an individual leaves employment with the ~~e~~County, those ~~e~~County employees required to file financial disclosure pursuant to section 112.3145, Florida Statutes, shall not personally represent any person or entity for compensation before the Board-BCC.

(2) This paragraph is not applicable to any person who is an employee of the ~~e~~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 ~~e~~County, a ~~e~~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 ~~e~~County ~~e~~Ethics ~~e~~Officer in interpreting this section of law prior to his/her termination of ~~e~~County employment.

(3) The ~~e~~County ~~a~~Administrator may grant a waiver of this restriction as to any affected ~~e~~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 ~~e~~County, the contractor's violation of which shall be grounds for ~~e~~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. ~~§~~ section 112.3143, Florida Statutes, when the mayor or a commissioner member of the BCC knowingly is a ~~b~~Business ~~a~~Associate, as defined herein, with any person bringing a matter before the Board BCC or when a matter before the Board BCC will benefit any person with whom the mayor or a commissioner member knowingly was a ~~b~~Business ~~a~~Associate in the previous two-year period, the mayor or commissioner member shall disclose the existence of the ~~b~~Business ~~a~~Associate.

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

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

1. The matter is brought by or benefits a person with whom the mayor or that commissioner member knowingly is a bBusiness aAssociate at the time of the vote; or

2. The matter is brought by or benefits a person with whom the mayor or that commissioner member knowingly was a bBusiness aAssociate within the two-year period prior to the matter coming before the Board BCC.

b. If applicable, the basis for abstaining from the vote shall be an aAppearance or pPerception of eConflict, as defined in this article, and the mayor or commissioner 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 commissioner member of the BCC—votes favorably on a matter before the Board BCC—and, within one (1) year from the date of that vote, that mayor or commissioner member—enters into a bBusiness fRelationship, as defined herein, with the person who brought the matter before the BoardBCC, the bBusiness fRelationship shall be disclosed orally at the next Board BCC—meeting following the mayor or commissioner's members knowledge that the bBusiness fRelationship exists. A written memorandum, a form of which is adopted separately by administrative regulation, disclosing the nature of the bBusiness fRelationship 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 commissioner 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.~~

(h) *Solicitation and Receipt of Contributions.*

Charitable Contribution Fundraising.

~~The solicitation of funds by the Mayor or a County Commissioner for a non-profit, charitable organization, as defined under the Internal Revenue Code, is permissible so long as there is no quid pro quo or other special consideration, including any direct or Indirect benefit between the parties to the solicitation.~~

Section 4. Subsection 2-455(a), Article XIII, Chapter 2, Orange County Code of Ordinances, is hereby amended to read as follows with underlines showing additions and strikethroughs indicating deletions:

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 Ombudsman or other office as designated by the County Administrator ~~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 eCounty iInvestigative eOfficer as follows:

(1) Receipt of sworn complaint by eCounty iInvestigative eOfficer. 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 eCounty 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 eCounty eEthics eOfficer. If yes, a copy of the written document shall be provided to the eCounty iInvestigative eOfficer 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 eCounty iInvestigative eOfficer 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 eCounty may abate its case under this article until the separate complaint is resolved or dismissed by the state.

c. If no jurisdiction is found, or if it can be concluded from the face of the complaint that the applicable period of limitation has run, 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 ~~e~~County ~~i~~Investigative ~~e~~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 ~~C~~ounty ~~i~~Investigative ~~e~~Officer a written acceptance and signed settlement agreement. Once signed by the investigator and respondent, the settlement agreement will be sent to the ~~s~~pecial ~~m~~aster 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 ~~e~~County ~~i~~Investigative ~~e~~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.

Section 5. Effective date. This ordinance shall take effect October 1, 2011.

ADOPTED THIS DAY OF JUN 28 2011, 2011.



ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: Teresa Jacobs
Teresa Jacobs
County Mayor

ATTEST: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

By: Judie Johnson
Deputy Clerk

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