

ORDINANCE NO. 1377

AN ORDINANCE REPEALING ORDINANCE NO. 1254 AND ALL AMENDMENTS THERETO; ADOPTING AN ETHICS ORDINANCE FOR THE CITY OF LIVE OAK TEXAS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CUMULATIVE NATURE; PROVIDING FOR A PENALTY AND AN EFFECTIVE DATE.

WHEREAS, the City Council previously adopted an ethics ordinance for the City of Live Oak; and

WHEREAS, the Ethics Review Board has held public meeting to review and make recommended amendments to the City's ethics ordinance as it currently exists; and

WHEREAS, the City Council has reviewed the recommend amendments to the Ethics Ordinance and at a public meeting unanimously approved the recommended amendments.

NOW THEREFORE, be it ordained by the City Council of the City of Live Oak, Texas:

**I.
REPEALER**

The City Council for the City of Live Oak Texas hereby specifically repeals Ordinance 1254 and all amendments adopted thereto.

**II.
ETHICS ORDINANCE ADOPTED**

The City Council for the City of Live Oak Texas hereby adopts the attached Ethics Regulations (Exhibit A), as if fully set forth within this Ordinance.

**III.
SEVERABILITY**

If any section, subsection, paragraph, or sentence, clause, phrase, or word in this Ordinance, or application thereof, to any person or circumstance is held invalid such holding shall not affect the validity of the remaining portions of the same and the City Council hereby declares it would have passed such remaining portions despite such invalidity.

**IV.
CRIMINAL PENALTY**

Any person violating any provisions of this ordinance shall, upon conviction, if convicted in the Municipal Court of the City of Live Oak shall be subject to a fine not to exceed Five Hundred Dollars (\$500.00). This provision shall not, however, be preclusive of any criminal prosecutions which may involve violations prosecutable only in either the District Courts or County Courts at Law of Bexar County, Texas.

**V.
CUMULATIVE**

This ordinance is cumulative of all other laws addressing conflicts of interest and the prohibitions and sanctions that may be imposed under other laws relating to the subjects covered hereunder.

PASSED and APPROVED the 29th day of July, 2008



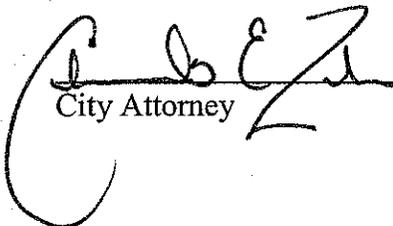
Joseph W. Painter, Mayor

ATTEST:



Deborah L. Goza, City Secretary

APPROVED AS TO LEGAL SUFFICIENCY:



City Attorney

**CITY OF LIVE OAK ETHICS REGULATIONS
EXHIBIT A TO ORDINANCE NO. _____**

**ARTICLE I.
DEFINITIONS**

As used in this Ordinance, the following words and phrases have the meaning ascribed to them in this section, unless the context requires otherwise or more specific definitions set forth elsewhere in this Ordinance apply:

Acceptance: "Acceptance" of an offer of subsequent employment or business opportunities includes legally binding contracts and all informal understandings that the parties expect to be carried out.

Affiliated: Business entities are "affiliated" if one is the parent or subsidiary of the other or if they are subsidiaries of the same parent business entity.

Affinity: Relationship by "affinity" (by marriage) is defined in V.T.C.A., Government Code §§ 573.024 and 573.025.

Before the city: Representation or appearance "before the city" means before the city council; before a board, commission, or other city entity; or before a city official or employee.

Benefit: Means anything reasonably regarded as pecuniary gain or pecuniary advantage, including a benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.

Business entity: Means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

City: Means the City of Live Oak.

City Official: The term includes the following persons: The mayor, members of the city council, municipal court judges and magistrates, the city attorney, the city manager, assistant city managers, department heads, executive secretaries, members of all boards, commissions, committees, and other bodies created by the city council pursuant to federal or state law or city ordinance, including entities that may be advisory only in nature; and board members of any entity who were appointed by the city council to such board membership.

Code of ethics: "Code of ethics," "ethics code," or "this code" means divisions 1 through 10 of this Ordinance.

Confidential government information: Includes all information held by the city that is not available to the public under the Texas Open Records Act and any information from a meeting

closed to the public pursuant to the Texas Open Meetings Act, regardless of whether disclosure violates the Act.

Consanguinity: Relationship by "consanguinity" (by blood) is defined in Government Code, §§ 573.022 and 573.023.

Discretionary contract: Means any contract other than those which by law must be awarded on a low or high qualified bid basis.

Economic interest: Includes, but is not limited to, legal or equitable property interests in land, chattels, and intangibles, and contractual rights having more than de minimis value. Service by a city official or employee as an officer, director, advisor, or otherwise active participant in an educational, religious, charitable, fraternal, or civic organization does not create for that city official or employee an economic interest in the property of the organization. Ownership of an interest in a mutual or common investment fund that holds securities or other assets is not an economic interest in such securities or other assets unless the person in question participates in the management of the fund.

Employee: Except as otherwise provided elsewhere in this ordinance, the term "employee" or "city employee" is any person listed on the City of Live Oak payroll as an employee, whether part-time or full-time.

Ethics Law: Means any rule, regulation, ordinance, policy or statute whether local, state or federal in nature within the jurisdictional authority of the Ethics Review Board as described in Article VII Section 2 of this Ordinance.

Former city official or employee: A "former city official" or "former city employee" is a person whose city duties terminate after the passage of this Ordinance.

Gift: Means a voluntary transfer of property (including the payment of money) or the conferral of a benefit having pecuniary value (such as the rendition of services or the forbearance of collection on a debt), unless consideration of equal or greater value is received by the donor.

Indirect ownership: A person "indirectly owns" an equity interest in a business entity where the interest is held through a series of business entities, some of which own interests in others.

Knowingly: A person acts "knowingly," or with knowledge, with respect to the nature of his or her conduct or to circumstances surrounding his or her conduct when he or she is aware of the nature of his or her conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his or her conduct when he or she is aware that his or her conduct is reasonably certain to cause the result.

Officer or City Officer: Includes:

- (a) The mayor or any council member;
- (b) A municipal judge or magistrate or the city attorney;
- (c) A member of any board or commission which is more than advisory in function.

Official action: Includes:

- (a) Any affirmative act (including the making of a recommendation) within the scope of, or in violation of, an official or employee's duties; and
- (b) Any failure to act, if the City Official or employee is under a duty to act and knows that inaction is likely to affect substantially an economic interest of the City Official or employee or any person or entity listed in Section II(a)(2) through (9).

Official information: Includes information gathered pursuant to the power or authority of city government.

Outside Business Associate: includes a person if both that person and the city official or employee own, with respect to the same business entity:

- (a) Ten percent (10%) or more of the voting stock or shares of the business entity; or
- (b) Ten percent (10%) or more of the fair market value of the business entity.

Outside Client: Includes business relationships of a highly personalized nature, but not ordinary business-customer relationships

Ownership: Ownership of an interest in a mutual or common investment fund that holds securities or other assets does not constitute direct or indirect ownership of such securities or other assets unless the person in question participates in the management of the fund.

Partner: Includes partners in general partnerships, limited partnerships, and joint ventures.

Personally and substantially participated: The requirement of having "personally and substantially participated" in a matter is met only if the individual in fact exercised discretion relating to the matter. The fact that the person had responsibility for a matter does not by itself establish that the person "personally and substantially participated" in the matter.

Representation: Encompasses all forms of communication and personal appearances in which a person, not acting in performance of official duties, formally or informally serves as an advocate for private interests. Lobbying, even on an informal basis, is a form of representation.

"Representation" does not include appearance as a witness in litigation or other official proceedings.

Solicitation: "Solicitation" of subsequent employment or business opportunities includes all forms of proposals and negotiations relating thereto.

ARTICLE II. GENERAL

1. Improper economic benefit.

(a) *General rule.* To avoid the appearance and risk of impropriety, a city official or employee shall not take any official action that he or she knows is likely to have an economic effect that is distinguishable from its economic effect on members of the public in general for:

- (1) The City Official or employee;
- (2) His or her parent, child, spouse, or other family member within the second degree of consanguinity or affinity;
- (3) His or her outside client;
- (4) A member of his or her household;
- (5) The outside employer of the City Official or employee or of his or her parent, child, or spouse;
- (6) A business entity in which the City Official or employee knows that any of the persons listed in subsections (1) or (2) holds an economic interest;
- (7) A business entity which the City Official or employee knows is an affiliated business or partner of a business entity in which any of the persons listed in subsections (1) or (2) holds an economic interest;
- (8) A business entity or nonprofit entity for which the city official or employee serves as an officer or director or in any other policy making position; or
- (9) A person or business entity:
 - a. From whom, within the past twelve (12) months, the City Official or employee, or his or her spouse, directly or indirectly has (i) solicited, (ii) received and not rejected, or (iii) accepted an offer of employment; or

- b. With whom the City Official or employee, or his or her spouse, directly or indirectly is engaged in negotiations pertaining to business opportunities.

2. Unfair advancement of private interests.

(a) *General rule.* A city official or employee may not use his or her official position to unfairly advance or impede private interests, or to grant or secure, or attempt to grant or secure, for any person (including himself or herself) any form of special consideration, treatment, exemption, or advantage beyond that which is lawfully available to other persons.

(b) *Special rules.* The following special rules apply in addition to the general rule:

- (1) *Reciprocal favors.* A city official or employee may not enter into an agreement or understanding, whether verbal or written, with any other person that official action by the City Official or employee will be rewarded or reciprocated by the other person, directly or indirectly.

3. Gifts.

(a) *General rule.* A city official or employee shall not solicit, accept, or agree to accept any gift or benefit:

- (1) That reasonably tends to influence or reward official conduct; or

(b) *Special applications.* Subsections (a)(1) and (2), above, do not include:

- (1) A gift to a city official or employee relating to a special occasion, such as a wedding, anniversary, graduation, birth, illness, death, or holiday, provided that the value of the gift is fairly commensurate with the occasion and the relationship between the donor and recipient;
- (2) Reimbursement of reasonable expenses for travel authorized in accordance with city policies;
- (3) A public award or reward for meritorious service or professional achievement provided that the award or reward is reasonable in light of the occasion;
- (4) A loan from a lending institution made in its regular course of business on the same terms generally available to the public;
- (5) A scholarship or fellowship awarded on the same terms and based on the same criteria that are applied to other applicants; or
- (6) Admission to an event in which the city official or employee is participating

in connection with official duties.

- (c) *Campaign, contribution exception.* The general rule stated in subsection (a), above, does not apply to a campaign contribution made pursuant to the Texas Election Code.
- (d) *Gifts to closely related persons.* A city official or employee shall take reasonable steps to persuade:
 - (1) A parent, spouse, child, or other relative within the second degree of consanguinity or affinity; or
 - (2) An outside business associate not to solicit, accept, or agree to accept any gift or benefit:
 - a. That reasonably tends to influence or reward the city official's or employee's official conduct; or
 - b. That the official or employee knows or should know might reasonably be perceived as tending to influence or reward the city official's or employee's discharge of official duties.

If a city official or employee required to file a financial disclosure report under Section VII knows that a gift or benefit meeting the requirements of subsections (d)(2)a. or b., above, has been accepted and retained by a person within subsections (d)(1) or (2), the official or employee shall promptly file a report with the city secretary's office disclosing the donor, the value of the gift or benefit, the recipient, and the recipient's relationship to the official employee filing the report.

4. Confidential information.

- (a) *Improper access.* A city official or employee shall not use his or her position to secure official information about any person or entity for any purpose other than the performance of official responsibilities.
- (b) *Improper disclosure or use.* A city official or employee shall not intentionally or knowingly disclose any confidential information gained by reason of said official or employee's position concerning the property, operations, policies or affairs of the city. This rule does not prohibit: Any disclosure that is no longer confidential by law; or the confidential reporting of illegal or unethical conduct to authorities designated by law.

5. Representation of private interests.

(a) *Representation by a member of the board.* A city official or employee who is a member of a board or other city body shall not represent any person, group, or entity:

- (1) Before that board or body;
- (2) Before city staff having responsibility for making recommendations to, or taking any action on behalf of, that board or body, unless the board or body is only advisory in nature; or
- (3) Before a board or other city body which has appellate jurisdiction over the board or body of which the city official or employee is a member, if any issue relates to the official's or employee's duties.

(b) *Representation before the city.*

- (1) *General rule.* A city official or employee shall not represent for compensation any person, group, or entity, other than himself or herself, or his or her spouse or minor children, before the city. For purposes of this subsection, the term "compensation" means money or any other thing of value that is received, or is to be received, in return for or in connection with such representation.
- (2) *Prestige of office and improper influence.* In connection with the representation of private interests before the city, a city official or employee shall not:
 - a. Assert the prestige of the official's or employee's city position for the purpose of advancing private interests; or
 - b. State or imply that he or she is able to influence city action on any basis other than the merits.

6. Public property and resources.

A city official or employee shall not use, request, or permit the use of city facilities, personnel, equipment, or supplies for private purposes (including political purposes), except:

- (a) Pursuant to duly adopted city policies; or
- (b) To the extent and according to the terms that those resources are lawfully available to the public.

7. Political activity.

Limitations on the political activities of city officials and employees are imposed by state law, the City Charter, and city personnel rules. In addition, the following ethical restrictions apply:

- (a) *Influencing subordinates.* A city official or employee shall not, directly or indirectly, induce or attempt to induce any city subordinate of the official or employee to:
 - (1) Participate in an election campaign, contribute to a candidate or political committee, or engage in any other political activity relating to a particular party, candidate, or issue; or
 - (2) Refrain from engaging in any lawful political activity.

A general statement merely encouraging another person to vote does not violate this rule.

- (b) *Paid campaigning.* A city official or employee shall not accept any thing of value, directly or indirectly, for political activity relating to an item pending on the ballot, if he or she participated in, or provided advice relating to, the exercise of discretionary authority by a city body that contributed to the development of the ballot item. Any thing of value does not include a meal or other item of nominal value the city official or employee receives in return for providing information on an item pending on the ballot.
- (c) *Official vehicles.* A city official or employee shall not display or fail to remove campaign materials on any city vehicle under his or her control.

8. Actions of others.

- (a) *Violations by other persons.* A city official or employee shall not knowingly assist or induce, or attempt to assist or induce, any person to violate any provision in this Ordinance.
- (b) *Using others to engage in forbidden conduct.* A city official or employee shall not violate the provisions of this Ordinance through the acts of another.
- (c) *All contracts for administrative services between a member of the city council and independent contractors shall contain a provision requiring the independent contractor to comply with all requirements imposed by this Ordinance on city employees.*

ARTICLE III.
APPLICABILITY OF SECTION 12.01 OF THE LIVE OAK CHARTER

- (a) An officer or employee has a "financial interest" in a contract with the city or in the sale to the city of land, materials, supplies, or service, if any of the following individuals or entities is a party to the contract or sale:
- (1) The officer or employee;
 - (2) His or her parent, child, or spouse;
 - (3) A business entity in which the officer or employee, or his or her parent, child or spouse, directly or indirectly owns any stock, bond, or financial instrument providing a tangible financial interest; i.e., taxable income.
 - (4) A business entity of which any individual or entity listed in subsection (1), (2) or (3), above, is:
 - a. A subcontractor on a city contract;
 - b. A partner; or
 - c. A parent or subsidiary business entity.
- (b) *Definitions.* For purposes of enforcing Section 12.01 of the City Charter the terms "officer" and "employee" shall be as defined in Article I of this Ordinance.

ARTICLE IV.
FORMER CITY OFFICIALS AND EMPLOYEES

1. Continuing confidentiality.

A former city official or employee shall not use nor disclose confidential government information acquired during service as a city official or employee. This rule does not prohibit:

- (a) Any disclosure that is no longer confidential by law; or
- (b) The confidential reporting of illegal or unethical conduct to authorities designated by law.

2. Subsequent representation.

- (a) *Representation by a former board member.* A person who was a member of a board or other city body shall not represent for compensation any person, group, or entity for a period of one (1) year after the termination of his or her official duties:

- (1) Before that board or body;
 - (2) Before city staff having responsibility for making recommendations to, or taking any action on behalf of, that board or body, unless the board or body is only advisory in nature; or
 - (3) Before a board or other city body which has appellate jurisdiction over the board or body of which the former city official or employee was a member, if any issue relates to his or her former duties.
- (b) *Representation before the city.*
- (1) A former city official or employee shall not represent for compensation any person, group, or entity, other than himself or herself, or his or her spouse or minor children, before the city for a period of one (1) year after termination of his or her official duties.

**ARTICLE V.
DISCRETIONARY CONTRACTS**

- (a) *Impermissible interest in discretionary contract or sale.* This subsection applies only to contracts or sales made on a discretionary basis, and not to contracts or sales made on a competitive bid basis. Within one (1) year of the termination of official duties, a former city officer or employee shall not have a financial interest, direct or indirect, in any discretionary contract with the city, and shall not be financially interested, directly or indirectly, in the sale to the city of any land, materials, supplies, or service. Any violation of this section, with the knowledge, express or implied, of the individual or business entity contracting with the council shall render the contract involved voidable by the city manager or the council. A former city officer or employee has a prohibited "financial interest" in a discretionary contract with the city or in the sale to the city of land, materials, supplies, or service, if any of the following individuals or entities is a party to the contract or sale:
- (1) The former officer or employee;
 - (2) His or her parent, child, or spouse;
 - (3) A business entity in which the former officer or employee, or his or her parent, child or spouse, directly or indirectly owns any stock, bond, or financial instrument providing a tangible financial interest, i.e., taxable income.

- (4) A business entity of which any individual or entity listed in subsection (1), (2) or (3), above, is:
 - a. A subcontractor on a city contract;
 - b. A partner; or
 - c. A parent or subsidiary business entity.

- (b) *Prior participation in negotiation or awarding.* A former city official or employee may not, within one (1) year of the termination of official duties, perform work on a compensated basis relating to a discretionary contract, if he or she personally and substantially participated in the negotiation or awarding of the contract. A former city official or employee, within one (1) year of termination of official duties must disclose to the city secretary immediately upon knowing that he or she will perform work on a compensated basis relating to a discretionary contract for which he or she did not personally and substantially participate in its negotiation, award or administration. This subsection does not apply to a person who was classified as a city official only because he or she was an appointed member for a board or other city body.

- (c) *Exception: prior employment or status.* Notwithstanding subsections (a) and (b), above, a former city official or employee may upon leaving official duties return to employment or other status enjoyed immediately prior to commencing official city duties.

- (d) *Definitions.* For purposes of this section:
 - (1) A "former city employee" is any person who, prior to termination of employee status, was required to file a financial disclosure statement pursuant to section VII.
 - (2) A "former city officer" is any person who, immediately prior to termination of official duties, was:
 - a. The mayor or a member of city council;
 - b. A municipal judge or magistrate or the city attorney;
 - c. A member of any board or commission which is more than advisory in function. The term does not include members of the board of another governmental entity even if some or all of these members are appointed by the city.

- (3) The term "contract" means any discretionary contract other than a contract for the personal services of the former city official or employee.
- (4) The term "service" means any services other than the personal services of the former official or employee.

ARTICLE VI.

EMPLOYEES SUBJECT TO LOCAL GOVERNMENT CODE CHAPTER 176

- (a) The requirements of Local Government Code Sections 176.003 and 176.004 are hereby extended to and applicable to any employee of the City of Live Oak who has the authority to approve contracts on behalf of the City of Live Oak.
- (b) A list of the employees subject to this Section shall be maintained by the City Secretary's office.

ARTICLE VII

ETHICS REVIEW BOARD

1. Structure of the ethics review board.

- (a) *Establishment.* There is hereby established an ethics review board, which shall have the powers and duties specified in this Ordinance.
- (b) *Composition.* The ethics review board shall consist of five (5) members. Each member of the city council shall nominate one (1) member of the board. Each nominee must be confirmed by a majority of city council members. Nomination and confirmation of board members shall be conducted at open meetings of the city council.
- (c) *Terms of office.* Board members shall be appointed to two-year terms. Initial appointments shall be made so that terms are staggered. No member shall serve for more than three (3) two-year terms.
- (d) *Qualifications.* Members of the board shall have good moral character and shall be residents of the city. No member of the board shall be:

- (1) A salaried city official or employee;
- (2) An elected public official;
- (3) A candidate for elected public office;
- (4) An officer of a political party; or

(e) *Removal.* Members of the ethics review board may be removed from office for cause by a majority of the city council only after a public hearing at which the member was provided with the opportunity to be heard. Grounds for removal include: failure to satisfy, or to continue to satisfy, the qualifications set forth in subsection (d), above; substantial neglect of duty; gross misconduct in office; inability to discharge the powers or duties of office; or violation of any provision in this Ordinance.

(f) *Vacancies.* A vacancy shall be filled by a person who will serve for the remainder of the unexpired term. The appointment shall be made by the member of city council who is entitled to make appointments to the seat that was vacated, and must be confirmed by a majority of the city council.

(g) *Recusal.* A member of the ethics review board shall recuse himself or herself from any case in which, because of familial relationship, employment, investments, or otherwise, his or her impartiality might reasonably be questioned. A board member may not participate in official action on any complaint:

- (1) That the member initiated;
- (2) That involves the member of city council who nominated him or her for a seat on the ethics review board; or
- (3) During the pendency of an indictment or information charging the member with an offense, or after a finding of guilt of such an offense.

If the number of board members who are recused from a case is so large that an ethics panel cannot be constituted, as provided for in Section 1 of this Article, the city council shall nominate a sufficient number of ad hoc members so that the case can be heard. Ad hoc members of the ethics review board must be confirmed by a majority vote of the city council and serve only for the case in question.

(h) *Chair and vice-chair.* Each year, the board shall meet and elect a chair and a vice-chair from among its members, who will serve one-year terms and may be re-elected. The chair or a majority of the board may call a meeting of the board. The chair shall preside at meetings of the ethics review board and perform other administrative duties. The vice-chair shall assume the duties of the chair in the event of a vacancy in that position.

(i) *Reimbursement.* The members of the ethics review board shall not be compensated but shall be reimbursed for reasonable expenses incurred in the performance of their official duties.

2. Jurisdiction and powers.

(a) *Jurisdiction.* The ethics review board shall have jurisdiction to investigate and

make findings and recommendations concerning:

- (1) Any alleged violation of this Ordinance;
- (2) Any alleged violation of Section 12.01 of the City Charter;
- (3) Any alleged violation of Texas Local Government Code Chapter 171;
- (4) Any alleged violation of Texas Local Government Code Chapter 176;
- (5) Any alleged violation of Texas Penal Codes Section 36.02, 36.08, 39.02 and 39.06(a); and
- (6) Any alleged violations of Texas Government Code Chapter 553.

The board shall not consider any alleged violation that occurred more than two (2) years prior to the date of the filing of the complaint or more than two (2) years after the complainant discovered or should have discovered the alleged violation.

(b) *Termination of city official or employee's duties.* The termination of a city official's or employee's duties does not affect the jurisdiction of the ethics review board with respect to alleged violations occurring prior to the termination of official duties.

(c) *Powers.* The ethics review board has power to:

- (1) Establish, amend, and rescind rules and procedures governing its own internal organization and operations, consistent with this Ordinance;
- (2) Meet as often as necessary to fulfill its responsibilities;
- (3) Designate ethics panels with the power to render decisions on complaints or issue advisory opinions on behalf of the board;
- (4) Request from the city manager through the city council the appointment of such staff as is necessary to carry out its duties;
- (5) Review, index, maintain on file, and dispose of sworn complaints;
- (6) Make notifications, extend deadlines, and conduct investigations;
- (7) Render, index, and maintain on file advisory opinions;
- (8) Provide assistance to the ethics compliance officer of the city in the training and education of city officials and employees with respect to their ethical responsibilities;

- (9) Prepare an annual report and recommend to the mayor and city council needed changes in ethical standards or procedures; and
- (10) Take such other action as is necessary to perform its duties under this Ordinance.

3. Ethics compliance officer.

(a) *City attorney's office.* The city attorney or an attorney chosen by the city council shall serve as the ethics compliance officer for the city. The ethics compliance officer shall:

- (1) Receive and promptly transmit to the ethics review board complaints and responses filed with the city secretary;
- (2) Investigate, marshal, and present to the ethics review board the evidence bearing upon a complaint;
- (3) Act as legal counsel to the ethics review board;
- (4) Issue advisory opinions to city officials and employees about the requirements imposed by the ethics laws; and
- (5) Be responsible for the training and education of city officials and employees with respect to their ethical responsibilities.

At least once each year, the ethics compliance officer shall cause to be distributed to each city official and employee a notice setting forth the duties of the ethics review board and the procedures for filing complaints. The ethics compliance officer shall also ensure that such notices are posted in prominent places in city facilities.

(b) *Outside independent counsel.* An independent outside attorney, who does not otherwise represent the city, shall be appointed by the city council at the recommendation of the city attorney, to serve as the ethics compliance officer for a particular case:

- (1) When a complaint is filed relating to an alleged violation of the ethics laws by:
 - a. The mayor or a member of the city council; or
 - b. A city employee who is a department head or of higher rank;
- (2) When the ethics review board, at the recommendation of the city attorney, requests such an appointment; or

(3) When requested by the city attorney.

(c) *Exculpatory evidence.* The ethics compliance officer shall disclose to the ethics panel and provide to the person charged with violating the ethics laws evidence known to the ethics compliance officer tending to negate guilt or mitigate the seriousness of the offense.

(d) *Notice of charges.* The city attorney shall consider whether the facts of the case establish a violation of any provision in the ethics laws, regardless of which provisions, if any, were identified in the complaint as having been allegedly violated. However, before the city attorney may find that a violation of a particular rule [has occurred]; the person charged in the complaint must be on notice that compliance with that rule is in issue and must have an opportunity to respond. Notice is conclusively established: if the complaint alleged that the rule was violated; if compliance with the rule is raised by a member of the board or the ethics compliance officer as a disputed issue at a hearing before the ethics panel; or if the board or the ethics compliance officer provides the person charged in the complaint with written notice of the alleged violation and a seven-day period within which to respond in writing to the charge.

(e) *Scheduling of a hearing.* Regardless of whether the complainant or the person charged in the complaint requests a hearing, the ethics panel has discretion to decide whether to hold a hearing.

(f) *Ex parte communications.* It is a violation of this Ordinance:

- (1) For the complainant, the person charged in the complaint, or any person acting on their behalf to engage or attempt to engage, directly or indirectly, in ex parte communication about the subject matter of a complaint with a member of the ethics panel, any other member of the ethics review board, or any known witness to the complaint; or
- (2) For a member of an ethics panel or any other member of the ethics review board to:
 - a. Knowingly entertain an ex parte communication prohibited by subsection (4)(1) of this rule; or
 - b. Communicate directly or indirectly with any person, other than a member of the ethics review board, its staff, or the ethics compliance officer, about any issue of fact or law relating to the complaint.

(e) *Duty to cooperate.* All city officials and employees shall cooperate with the ethics review board and shall supply requested testimony or evidence to assist it in carrying out its charge. Failure to abide by the obligations imposed by this subsection is a violation of this section.

4. Complaints.

(a) *Filing.* Any person (including a member of the ethics review board or its staff, acting personally or on behalf of the board) who believes that there has been a violation of the ethics laws may file a sworn complaint with the city secretary. The complaint shall:

- (1) Identify the person or persons who allegedly committed the violation;
- (2) Provide a statement of the facts on which the complaint is based; and
- (3) To the extent possible, identify the rule or rules allegedly violated.

The complainant may also recommend other sources of evidence that the ethics review board should consider and may request a hearing.

A complaint filed in good faith is qualifiedly privileged. A person who knowingly makes a false statement in a complaint, or in proceedings before the ethics review board, is subject to criminal prosecution for perjury or civil liability for the tort of abuse of process.

(b) *Confidentiality.* No city official or employee shall reveal information relating to the filing or processing of a complaint except as required for the performance of official duties. Ex parte communications by members of the ethics review board are prohibited by this Article subsection 3(f). All papers relating to a pending complaint are confidential.

(c) *Notification.* A copy of a complaint shall be promptly forwarded by the city secretary to the ethics compliance officer and to the person charged in the complaint. The person charged in the complaint shall also be provided with a copy of the ethics rules and shall be informed that:

- (1) Within fourteen (14) days of receipt of the complaint, he or she may file a sworn response with the city secretary;
- (2) Failure to file a response does not preclude the ethics review board from adjudicating the complaint;
- (3) A copy of any response filed by the person charged in the complaint will be provided by the city secretary to the complainant, who may within seven (7) days respond by sworn writing filed with the city secretary, a copy of which shall be provided by the city secretary to the person charged in the complaint;
- (4) The person charged in the complaint may request a hearing; and
- (5) City officials and employees have a duty to cooperate with the ethics review board.

- (d) *Assistance.* The city secretary shall provide information to persons who inquire about the process for filing a complaint.

5. Hearings.

At any hearing held by the ethics commission during the investigation or disposition of a complaint, the following rules apply:

(a) *General rules.* At least three (3) members of the commission must be present for the hearing. Any member of the commission who is not present ceases to be a member of the commission and may not participate in the disposition of the case. All witnesses must be sworn and all questioning of witnesses shall be conducted by the members of the commission. The commission is not bound by the state rules of evidence and may establish time limits and other rules relating to the participation of any person in the hearing. No person may be held to have violated the ethics laws unless a majority of the commission so finds by a preponderance of the evidence.

(b) *Person charged.* The person charged in the complaint has the right to attend the hearing, the right to make a statement, the right to present witnesses, and the right to be accompanied by legal counsel or another advisor. The legal counsel or other advisor to the person charged in the complaint may advise that person during the course of the hearing, but may not speak on his or her behalf, except with the permission of the ethics panel.

(c) *Complainant.* The complainant has the right to attend the hearing, the right to make a statement, and the right to be accompanied by legal counsel or another advisor. The legal counsel or other advisor to the complainant may advise the complainant during the course of the hearing, but may not speak on behalf of the complainant, except with the permission of the ethics panel. Witnesses may not be presented by the complainant, except with the permission of the ethics panel.

6. Disposition.

(a) *Written opinion.* The ethics commission shall make all reasonable efforts to issue a decision within twenty-one (21) days after the filing of a complaint. The ethics panel shall state in a written opinion its findings of fact and conclusions of law. The written opinion shall either:

- (1) Dismiss the complaint; or
- (2) Upon finding that there has been a violation of the ethics laws:
 - a. Make a recommendation of further investigations to the City Council, the City Manager or the City Attorney; or
 - b. State why no remedial action is recommended.

If the ethics panel determines that a violation has occurred, the opinion shall identify in writing the particular rule or rules violated. If the complaint is dismissed, the grounds for the dismissal shall be set forth in the opinion.

(b) *Notification.* Copies of the opinion shall be forwarded to the complainant, the person charged in the complaint, the ethics compliance officer, and any member of the ethics review board who did not participate in the disposition of the case. A copy of the opinion shall also be forwarded to the city secretary, who shall make it available as authorized by law.

(c) *Similar charges barred.* If the complaint is dismissed because the evidence failed to establish a violation of the ethics laws, the ethics review board shall not entertain any other similar complaint based on substantially the same evidence.

(d) *Factors relevant to sanctions.* In deciding whether to recommend, in the case of a violation of the ethics law, criminal prosecution and/or civil remedies, the ethics panel shall take into account relevant considerations, including but not limited to the following:

- (1) The culpability of the person charged in the complaint;
- (2) The harm to public or private interests resulting from the violation;
- (3) The necessity of preserving public confidence in the conduct of local government;
- (4) Whether there is evidence of a pattern of disregard for ethical obligations; and
- (5) Whether remedial action has been taken that will mitigate the adverse effect of the ethical violation.

(f) *Civil remedies.* The following civil remedies may be recommended by an ethics panel which finds that the ethics laws have been violated:

- (1) Review of the case by the city manager, or his or her designate, for disciplinary action;
- (2) A suit by the city for damages or injunctive relief;
- (3) Disqualification from contracting;
- (4) Voiding of a contract; and
- (5) A fine.

7. Petition for declaratory ruling.

Any city official or employee against whom public allegations of ethics violations have been made in the media or elsewhere shall have the right to file a sworn statement with the city secretary affirming his or her innocence, and to request the ethics review board to investigate and make known its findings, and make any relevant recommendations concerning the issue.

8. Advisory opinions.

(a) Opinions issued by the ethics review board.

(1) Requests by persons other than city officials or employees.

- a. By writing filed with the city secretary, any person other than a city official or employee may request an advisory opinion with respect to the interpretation of the ethics laws, but only with respect to whether proposed action by that person would violate the ethics laws. The city secretary shall promptly transmit all requests for advisory opinions to the ethics compliance officer (city attorney) and the chair of the ethics review board. (City officials and employees may request advisory opinions from the city attorney pursuant to subsection (b), below.)
- b. Within thirty (30) days of receipt by the chair of the ethics review board of a request for an advisory opinion, the board shall issue a written advisory opinion. During the preparation of the opinion, the board may consult with the ethics compliance officer of the city and other appropriate persons. An advisory opinion shall not reveal the name of the person who made the request, if that person requested anonymity, in which case the opinion shall be written in the form of a response to an anonymous, hypothetical fact situation. A copy of the opinion shall be indexed and kept by the ethics review board as part of its records for a period of not less than five (5) years. In addition, copies of the opinion shall be forwarded by the chair of the ethics review board, or his or her designate, to the person who requested the opinion, to the ethics compliance officer, and to the city secretary. The city secretary shall make the opinion available as a public record in accordance with the Local Government Records Act. The ethics compliance officer shall promptly cause to be posted the opinion for a period of no less than five (5) years on the Internet via the City of Live Oak's website.

- (2) Opinions initiated by the board.* On its own initiative, the ethics review board, acting as the full board, may issue a written advisory opinion with respect to the interpretation of the ethics laws as they apply to persons other than city officials and employees if a majority of the board determines that an

opinion would be in the public interest or in the interest of such person or persons subject to the provisions of the ethics laws. Such an opinion may not include the name of any individual who may be affected by the opinion. A copy of any such opinion shall be indexed and kept by the ethics review board as part of its records for a period of not less than five (5) years. In addition, copies of the opinion shall be forwarded by the chair of the ethics review board, or his or her designate, to the ethics compliance officer and to the city secretary. The city secretary shall make the opinion available as a public record in accordance with the Local Government Records Act. The ethics compliance officer shall promptly cause to be posted the opinion for a period of no less than five (5) years on the Internet via the City of Live Oak's website.

- (3) *Reliance.* If a person reasonably and in good faith acts in reliance on an advisory opinion issued by the ethics review board, that fact may be considered by an ethics panel in adjudicating a complaint filed against that person, but does not by itself bar the finding of a violation.

(b) *Opinions issued by the ethics compliance officer.*

(1) *Requests by city officials or employees.*

- a. By writing filed with the office of the city attorney, any city official or employee may request an advisory opinion with respect to whether proposed action by that person would violate the ethics laws.
- b. Within thirty (30) days of receipt of the request by the office of the city attorney, the ethics compliance officer shall issue a written advisory opinion. The advisory opinion shall not reveal the name of the person who made the request, if that person requested anonymity, in which case the opinion shall be written in the form of a response to an anonymous, hypothetical fact situation. Copies of the opinion shall be forwarded by the ethics compliance officer to the members of the ethics review board, to the person who requested the opinion, and to the city secretary, and promptly posted by the ethics compliance officer for a period of no less than five (5) years on the Internet via the City of Live Oak's website. The city secretary shall make the opinion available as a public record in accordance with the Local Government Records Act.

(2) *Reliance.*

- a. A person who reasonably and in good faith acts in accordance with an advisory opinion issued by the ethics compliance officer may not be found to have violated the ethics laws by engaging in conduct approved in the advisory opinion, provided that:

1. He or she requested the issuance of the opinion;
2. The request for an opinion fairly and accurately disclosed all relevant facts; and
3. Less than five (5) years elapsed between the date the opinion was issued and the date of the conduct in question.

9. Annual Report.

The ethics review board shall prepare and submit an annual report to the mayor and city council detailing the activities of the board during the prior year. The format for the report shall be designed to maximize public and private understanding of the board's operations, and shall include a summary of the content of ethics opinions issued by the board and a listing of current city lobbyists based on information gathered by the board from records on file with the city secretary. The report may recommend changes to the text or administration of this Ordinance. The ethics compliance officer of the city shall take reasonable steps to ensure wide dissemination and availability of the annual report of the ethics review board.

10. Public records and open meetings.

To the extent required, the Ethics Review Board shall comply with the Texas Public Information Act and the Open Records Act.

**ARTICLE VIII.
ENFORCEMENT MECHANISMS**

1. Disciplinary action.

Other city officials and employees who engage in conduct that violates this Ordinance may be notified, warned, reprimanded, suspended, or removed from office or employment by the appointing authority, or by a person or body authorized by law to impose such remedies. Disciplinary action under this section may be imposed in addition to any other penalty or remedy contained in this Ordinance or any other law.

2. Damages and injunctive relief.

This Ordinance has been enacted not only to further the purposes stated in this Ordinance but to protect the city and any other person from any losses or increased costs incurred by the city or other person as a result of the violation of these provisions. It is the intent of the city that this legislative enactment can and should be recognized by a court as a proper basis for a civil cause of action for damages or injunctive relief based upon a violation of its provisions, and that such forms of redress should be available in addition to any other penalty or remedy contained in this Ordinance.

3. Civil fine.

Any person, whether or not an official or employee of the city, who violates any provision of this Ordinance is subject to a fine not exceeding five hundred dollars (\$500.00).

4. Prosecution for perjury.

Any person who files a false sworn statement under provisions of this Ordinance requiring financial disclosures or pertaining to any proceeding before the ethics review board is subject to criminal prosecution for perjury under the laws of the state.

5. Voiding or ratification of contract.

If the ethics review board panel finds that there has been a violation of any provisions in this ordinance that is related to the awarding of a contract, the city council must vote on whether to ratify or void the contract. Such action shall not affect the imposition of any penalty or remedy contained in this Ordinance or any other law.

6. Disqualification from contracting.

(a) Any person (including business entities and nonprofit entities) who intentionally or knowingly violates any provision of this Ordinance relating to persons doing business with the city may be prohibited by the city council from entering into any contract with the city for a period not to exceed three (3) years.

(b) It is a violation of this Ordinance:

(1) For a person debarred from entering into a contract with the city to enter, or attempt to enter, into a contract with the city during the period of disqualification from contracting; or

(2) For a city official or employee to knowingly assist a violation of this Ordinance.

(c) Nothing in this section shall be construed to prohibit any person from receiving a service or benefit, or from using a facility, which is generally available to the public, according to the same terms.

(d) A business entity or nonprofit entity may be disqualified from contracting based on the conduct of an employee or agent, if the conduct occurred within the scope of the employment or agency.

**ARTICLE IX.
ADMINISTRATIVE PROVISIONS**

1. Other obligations.

This Ordinance is cumulative of and supplemental to applicable state and federal laws and regulations. Compliance with the provisions of this Ordinance shall not excuse or relieve any person from any obligation imposed by state or federal law regarding ethics, financial reporting, or any other issue addressed herein.

Even if a city official or employee is not prohibited from taking official action by this Ordinance, action may be prohibited by duly promulgated personnel rules, which may be more stringent.

2. Distribution and training.

(a) The city attorney or designated ethics compliance officer shall provide information about the Ordinance to every official and employee of the city, and copies of the Ordinance shall be made readily available to city officials, employees, and the public. Within thirty (30) days after entering upon the duties of his or her position, every new official or employee shall be furnished with information about this Ordinance. The failure of any person to receive a copy of this Ordinance shall have no effect on that person's duty to comply with this Ordinance or on the enforcement of its provisions. Upon appointment to a board or commission, such official shall be provided with a copy of the ethics Ordinance.

(b) The city attorney or designated ethics compliance officer, in consultation with the ethics review board, shall develop educational materials and conduct educational programs for the officials and employees of the city on the provisions of this Ordinance, Section 12.01 of the City Charter, and V.T.C.A., Local Government Code ch. 171. Such materials and programs shall be designed to maximize understanding of the obligations imposed by these ethics laws.

3. Criminal Sanctions.

Any person violating any provisions of this ordinance shall, upon conviction, if convicted in the Municipal Court of the City of Live Oak shall be subject to a fine not to exceed Five Hundred Dollars (\$500.00). This provision shall not, however, be preclusive of any criminal prosecutions which may involve violations prosecutable only in either the District Courts or County Courts at Law of Bexar County, Texas.

This Ordinance is cumulative of all other laws addressing conflicts of interest and the prohibitions and sanctions that may be imposed under other laws relating to the subjects covered hereunder.

No person shall intentionally or knowingly induce, attempt to induce, conspire with, aid or assist, or attempt to aid or assist another person to engage in conduct which violates this ethics Ordinance.

