

Ordinance 581

AN ORDINANCE OF THE CITY OF KYLE, TEXAS, AMENDING THE CODE OF ETHICS IN ITS ENTIRETY; PROVIDING A DECLARATION OF POLICY; PROVIDING ADDITIONAL DEFINITIONS; PROVIDING FOR APPLICATION TO CITY OFFICIALS, OFFICERS AND EMPLOYEES; PROVIDING EXCEPTIONS; PROVIDING FOR THE ETHICS COMMISSION; REQUIRING OPEN MEETINGS; PROVIDING ADMINISTRATIVE PROVISIONS; PROVIDING FOR ENFORCEMENT; PROVIDING PENALTIES; AND PROVIDING FOR RELATED MATTERS

Whereas, it is useful and necessary for good government that the City of Kyle amend and update the Code of Ethics to provide additional definitions, require open meetings and related matters.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KYLE, TEXAS, THAT:

Section 1. Adoption and Amendment of Code of Ethics. The City Council hereby adopts this ordinance clarifying, amending and re-adopting the City's Code of Ethics in its entirety.

Section 2. Code of Ethics. The City Council hereby amends the Code of Ethics in its entirety to read as set forth in Exhibit "A" attached to and incorporated in this ordinance for all purposes.

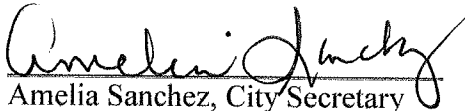
Section 3. Effective Date. This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the City Charter of the City.

Section 4. Open Meetings. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

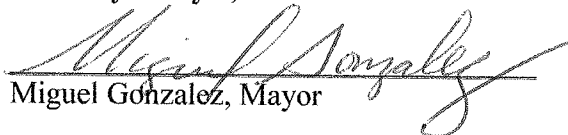
PASSED AND APPROVED on this the 18th day of August, 2009.

FINALLY PASSED AND APPROVED on this the 18th day of August 2009.

Attest:


Amelia Sanchez, City Secretary

The City of Kyle, Texas


Miguel Gonzalez, Mayor

**CODE OF ETHICS ORDINANCE
OF THE
CITY OF KYLE**

September 1, 2003 [Amended September 2009]

CODE OF ETHICS ORDINANCE

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CODE OF ETHICS

PART A. DECLARATION OF POLICY

SECTION 1. STATEMENT OF PURPOSE

It is essential in a democratic system that the public have confidence in the integrity, independence, and impartiality of those who act on their behalf in government. Such confidence depends not only on the conduct of those who exercise official power, but on the availability of aid or redress to all persons on equal terms and on the accessibility and dissemination of information relating to the conduct of public affairs. For the purpose of promoting confidence in the government of the City of Kyle and thereby enhancing the city's ability to function effectively, this code of ethics is adopted. The code establishes standards of conduct, disclosure requirements, and enforcement mechanisms relating to city officials and employees and other whose actions inevitably affect public faith in city government, such as former city officials and employees, candidates for public office, persons doing business with the city, and lobbyists. By prohibiting conduct incompatible with the city's best interests and minimizing the risk of any appearance of impropriety, this code of ethics furthers the legitimate interests of democracy.

Appearance of Impropriety: Public service is a public trust. All city officials and employees are stewards of the public trust. They have a responsibility to the citizens of Kyle to enforce the city Charter and the associated ordinances and codes. The appearance of impropriety may itself be a conflict of interest. To ensure and enhance public confidence in City Government, each city official must not only adhere to the principles of ethical conduct set forth in this code and technical compliance therewith, but they must scrupulously avoid the appearance of impropriety at all times.

SECTION 2. DEFINITIONS

As used in this code of ethics, 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 code apply:

- (a) **Acceptance.** A written or verbal indication that someone agrees; "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. An agreement, either by express act or by implication from conduct, to the terms of an offer so that a binding contract is formed.
- (b) **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.
- (c) **Affinity.** Relationship by "affinity" (by marriage) is defined in Section 573.024 and 573.025 of the Texas Government Code.
- (d) **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. Representation "before the city" does not include representation before a board where members of said board are not wholly appointed by the City Council.
- (e) **Benefit.** "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.

- (f) **Business Entity.** "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.
- (g) **Candidate.** "Candidate" means a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office or for the purpose of satisfying financial obligations incurred by the person in connection with the campaign for nomination or election. Examples of affirmative action include:
- (1) the filing of a campaign treasurer appointment, except that the filing does not constitute candidacy or an announcement of candidacy for purposes of automatic resignation provisions of Article XVI, Section 65, or Article XI, Section II of the Texas Constitution;
 - (2) the filing of an application for a place on a ballot;
 - (3) the making of a public announcement of a definite intent to run for public office in a particular election, regardless of whether the specific office is mentioned in the announcement;
 - (4) before a public announcement of intent, the making of a statement of definite intent to run for public office and the soliciting of support by letter or other mode of communication; and
 - (5) the soliciting or accepting of a campaign contribution or the making of a campaign expenditure.
- (h) **City.** "City" means the City of Kyle, Texas.
- (i) **Code of Ethics.** "Code of ethics," "ethics code," or "this code" means Parts A through J of this Chapter, its amendment(s) and/or enhanced definitions.
- (j) **Complainant.** "Complainant" means an individual who has filed a sworn complaint with the City Secretary as provided in Part G, Section 4 (Complaints).
- (k) **Confidential Government Information.** "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.
- (l) **Consanguinity.** Relationship by "consanguinity" (by blood) is defined in Sections 573.022 and 573.023 of the Texas Government Code.
- (m) **Discretionary Contract.** "Discretionary contract" means any contract other than those which by law must be awarded on a low or high qualified bid basis. Discretionary contracts do not include those contracts subject to Section 252.022(a)(7) of the Texas Local Government Code or those contracts not involving an exercise of judgment or choice.
- (n) **Economic Interest.** "Economic Interest" includes, but is not limited to, legal or equitable property interest 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.

- (o) **Employee.** Except as provided in section 10 of Part B (Prohibited Interests in Contracts), Section 4(c) of Part C (Discretionary Contracts), and Part F (Financial Disclosure), the term “employee or “city employee” is any person listed on the City of Kyle payroll as an employee, whether part-time or full-time.
- (p) **Former City Official or Employee.** A “former city official” or “former city employee” is a person whose city duties terminate on or after the effective date of this code.
- (q) **Gift.** “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.
- (r) **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.
- (s) **Intentionally.** A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.
- (t) **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 to cause the result.
- (u) **Official.** The term “official” or city official” includes but is not limited to the following person:
- The Mayor;
 - Members of the City Council;
 - Municipal Court Judges and Magistrates;
 - The City Manager;
 - Deputy or Assistant City Managers;
 - Assistants to the City Manager;
 - City Secretary or Assistant City Secretary;
 - City Secretary or Assistant City Secretary;
 - All department heads and assistant department heads;
 - Secretary to the City Manager;
 - Executive Secretaries;
 - Public Utilities Supervisor; and
 - Members of all boards, commissions, committees, and other bodies created by the City Council pursuant to federal or state law or City ordinance, excluding entities that may advisory only in nature; and board members of any entity who are appointed by the city council to such board membership.
- The term “officer: is defined in Section 10(c)(2) of Part B (Prohibited Interests in Contracts) and Section 4(c)(2) of Part C (Discretionary Contracts) and is not synonymous with any use of the term “official” in this code.

- (v) **Official Action.** “Official action” include:

- (1) any affirmative act (including the making of a recommendation) within the scope of, or in violation of, an official or employee's duties, and
 - (2) any failure to act, if the official or employee is under a duty to act and know that inaction is likely to affect substantially an economic interest of the official or employee or any person or entity listed in Subsections 1(a)(2) through (9) of Part B (Improper Economic Benefit).
- (w) **Official Information.** "Official information" includes information gathered pursuant to the power or authority of city government.
 - (x) **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.
 - (y) **Partner.** Someone who engages in an activity or undertaking with another; "Partner" includes partners in general partnerships, limited partnerships, and joint ventures. One who shares or takes part with another especially in a venture with shared benefits and shared risks.
 - (z) **Person.** Means any individual, human being or business entity, excluding the City of Kyle
 - (aa) **Personally and Substantially Participated.** "Personally and Substantially Participated" means to have taken action as an official or employee through decision, approval, disapproval, recommendation, giving advice investigation or similar action. 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.
 - (bb) **Recklessly.** A person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.
 - (cc) **Representation.** "Representation" is a presentation of fact - either by words or by conduct - made to induce someone to act. Representation does not include appearance as a witness in litigation or other official proceedings.
 - (dd) **Respondent.** "Respondent" means an individual identified in a sworn complaint to have allegedly violated the Ethic Code of the City of Kyle.
 - (ee) **Solicitation.** "Solicitation" of subsequent employment of business opportunities includes all forms of proposals and negotiations relating thereto.
 - (ff) **Public Servant(s).** "Public servant(s)" means the elected and the appointed officers of the City, the members of boards, commissions and committees appointed or created by the City Council, and all volunteer and paid employees of the City.

PART B. PRESENT CITY OFFICIALS AND EMPLOYEES

SECTION 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 affect the economic interests of:

- (1) the official or employee;
- (2) his or her part, 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 official or employee or of his or her parent, child (unless the child is a minor), or spouse;
- (6) a business entity in which the official or employee knows that any of the persons listed in Subsections (a)(1) or (a)(2) holds an economic interest;
- (7) a business entity which the official or employee knows is an affiliated business or partner of a business entity in which any of the persons listed in Subsections (a)(1) or (a)(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) form whom, within the past twelve months, the 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 official or employee, or his or her spouse, directly or indirectly is engaged in negotiations pertaining to business opportunities.

(b) **Recusal and Disclosure.** A city official or employee whose conduct would otherwise violate Subsection (a) must recuse himself or herself. From the time that the conflict is or should have been recognized, he or she shall:

- (1) immediately refrain from further participation in the matter, including discussions with any person likely to consider the matter; and
- (2) promptly file with the City Secretary the appropriate form from disclosing the nature and extent of the prohibited conduct.

In addition:

- (3) a supervised employee shall promptly bring the conflict to the attention of this or her supervisor, who will than, if necessary, reassign responsibility for handling the matter to another person; and
- (4) a member of a board shall promptly disclose the conflict to other members of the board and shall not vote on, the matter.

(c) **Definitions.** For purposes of this rule:

- (1) An action is likely to affect an economic interest if it is likely to have an effect on that interest that is distinguishable from its effect on members of the public in general or a substantial segment thereof; and
- (2) The term client includes business relationships of a highly personalized nature, but not ordinary business-customer relationships.

(d) Non-profit board membership. A member of the Council who serves in an unpaid position with, or on the board of, a public or private non-profit organization shall have a voice but no vote on any funding request or contract with the City by that organization, unless the organization has a board of directors or trustees appointed in whole or in part by the city council; provided further that members of the Council appointed to serve on the board of a non-profit corporation or other legal entity created by the City shall, unless another conflict exists, have the authority and duty to fully participate in any discussion and vote at the city council regarding the organization .

SECTION 2. UNFAIR ADVANCEMENT OF PRIVATE INTERESTS

(a) **General Rule.** Except when performing a duty or responsibility of the position held, to serve

the health, welfare or public safety of the City, to accomplish a public purpose, or to benefit the public in general, 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. A city official who represents to a person that he or she may provide an advantage to that person based on the official's position on a board or commission violates this rule.

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

- (1) **Acquisition of Interest in Impending Matters.** A city official or employee shall not acquire an interest in or affected by, any contract, transaction, zoning decision, or other matter, if the official or employee knows, or has reason to know, that the interest will directly or indirectly affected by impending official action by the city.
- (2) **Reciprocal Favors.** A city official or employee may not enter into an agreement or understanding with any other person that official action by the official or employee will be rewarded or reciprocated by the other person, directly or indirectly.
- (3) **Appointment of Relatives.** A City official or employee shall not appoint or employ or vote to appoint or employ any relative within the third degree of consanguinity or affinity to any office or position of employment within the city.
- (4) **Supervision of Relatives.** No official or employee shall be permitted to be in the line of supervision of a relative with in the third degree of

consanguinity or second degree of affinity. Department heads are responsible for enforcing this policy. If an employee, by reason of marriage, promotion, reorganization, or otherwise, is placed into the line of supervision of a relative, one of the employees will be reassigned or other appropriate arrangements will be made for supervision.

- (c) **Recusal and Disclosure.** A city official or employee whose conduct would otherwise violate Subsection (b)(3) of this Part shall adhere to the recusal and disclosure provisions provided in Section 1(b) of Part B (Improper Economic Benefit).

SECTION 3. GIFTS

(a) **General Rule.**

- (1) A city official or employee shall not solicit, accept, or agree to accept any gift or benefit for himself or herself or his or her business:

- (A) that reasonably tends to influence or reward official conduct; or
(B) that the official or employee knows or should know is being offered with the intent to influence or reward official conduct.

(2) A city official or employee shall not solicit, accept, or agree to accept any gift or benefit, save and except for items received that are of nominal value and meals in an individual expense of \$50 or less at any occurrence, or meals with no more than a cumulative value of \$250 in a single calendar year, from a single source, from:

- (A) any individual or business entity doing or seeking to do business with the City; or
(B) any registered lobbyist or public relations firm advocating on behalf of clients doing or seeking to business with the City; or
(C) any person seeking or advocating on zoning or platting matters before a city body. Doing business with the city includes, but is not limited to, individuals and business entities that are parties to a discretionary contract, individuals and business entities that are subcontractors to a discretionary contract, and partners and/or parents and/or subsidiary business entities of any individuals and business entities that are parties to a discretionary contract.

(b) **Special Applications.** Subsections (a)(1) and (a)(2) 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 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;
- (6) admission to an event in which the city official or employee is participating in connection with official duties;
- (7) any solicitation for civic or charitable causes;
- (8) admission to an event in which the city official or employee is participating in connection with his or her spouse's position;
- (9) ceremonial and protocol gifts presented to city officials from a foreign government or international or multinational organization and accepted for the City of Kyle;
- (10) admission to a widely attended event, such as a convention, conference, symposium, forum, panel discussion, dinner, viewing, reception or similar event, offered by the sponsor of the event, and unsolicited by the City official or employee, if
 - (A) the official or employee participates in the event as a speaker or panel participant by presenting information related to matters before the City; or
 - (B) the official or employee perform a ceremonial function appropriate to that individual's position with the City; or
 - (C) attendance at the event is appropriate to the performance of the official duties or representative function of the official or employee;
- (11) admission to a charity event provided by the sponsor of the event, where the offer is unsolicited by the City official or employee;
- (12) admission to training or education program, including meals and refreshments furnished to all attendees, if such training is related to the official or employee accepts as a guest and, if the donee is required by law to report those items, reported by the donee in accordance with that law, up to \$500 from a single source in a calendar year.

(c) **Campaign Contribution Exception.** The general rule stated in Subsection (a) 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 an outside business associate not to solicit, accept, or agree to accept any gift or benefit; that reasonably tends to influence or reward the city official's or employee's official conduct, or
- (2) that the official or employee knows or should know is being offered with the intent 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 Part F

(Financial Disclosure) knows that a gift or benefit meeting the requirements of Subsection (d)(2) of this rule has been accepted and retained by a person identified in Subsection (d)(1) of this rule, 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 or employee filing the report.

(e) **Definition.**

- (1) For purposes of this rule, a person is an "outside business associate" if both that person and the city official or employee own, with respect to the same business entity:
 - (A) ten (10) percent or more of the voting stock or shares of the business entity, or
 - (B) ten (10) percent or more of the fair market value of the business entity.
- (2) For purposes of this rule, a "sponsor" of an event is the person or persons primarily responsible for organizing the event. A person who simply contributes money or buys tickets to an event is not considered a sponsor.

SECTION 4. CONFIDENTIAL INFORMATION

Public servants shall not disclose confidential or proprietary information, or any information they have acquired or obtained in the course of any fiduciary capacity or relationship, that could adversely influence the property, government, or affairs of the City, nor directly or indirectly use his or her position to secure official information about any person or entity, for the financial benefit or gain of such public servant or any third party. Public servants shall not release confidential, proprietary or privileged information for any purpose other than the performance of official responsibilities. It shall be a defense to any complaint under this section that the release of information served a legitimate public purpose, as opposed to the private financial or political interest of the public servant or any third party or group.

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

SECTION 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 official 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 this 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) **Exception for Board Members.** The rule stated in subsection b(1) does not apply to a person who is classified as a city official only because he or she is an appointed member of a board or other city body.
 - (3) **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.
- (c) **Representation in Litigation Adverse to the City.**
- (1) **Officials and Employees (Other than Board Members).** A city official or employee, other than a person who is classified as an official only because he or she is an appointed member of a board or other city body, shall not represent any person, group, or entity, other than himself or herself, or his or her spouse or minor children, in any litigation to which the city is a party, if the interests of that person, group, or entity are adverse to the interests of the city.
 - (2) **Board Member.** A person who is classified as a city official only because he or she is an appointed member of a board or other city body shall not represent any person, group, or entity, other than himself or herself, or his or her spouse or minor children, in any litigation to which the city is a party, if the

interests of that person, group, or entity are adverse to interests of the city and the matter is substantially related to the official's duties to the city.

SECTION 6. CONFLICTING OUTSIDE EMPLOYMENT

- (a) **General Rule.** A city official or employee shall not solicit, accept, or engage in concurrent outside employment which could reasonably be expected to impair independence of judgment in, or faithful performance of, official duties.
- (b) **Special Application.** The following special rule applies in addition to the general rule: A city official or employee shall not provide services to an outside employer related to their official duties as a city official or employee. This special rule does not apply to law enforcement employees provided that the employees are the subject of a properly adopted personnel policy authorizing such employment.
- (c) **Other Rules.** The general rule stated above applies in addition to all other rules relating to outside employment of city officials and employees, including requirements for obtaining prior approval of outside employment as applicable.

SECTION 7. 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 purpose (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.

SECTION 8. POLITICAL ACTIVITY

Limitations on the political activities of city officials and employees are imposed by state law, the City Charter, and city personnel rules and are incorporated into this provision by reference. 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:
 - (1) to 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) to 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.

Limitations on the use of public property and resources for political purposes are imposed by Section 7 of Part B (Public Property and Resources).

SECTION 9. ACTIONS OF OTHERS

- (a) **Violations by Other Persons.** A city official or employee shall not intentionally or knowingly assist or induce, or attempt to assist or induce, any person to violate any provision in this code of ethics
- (b) **Using Others to Engage in Forbidden Conduct.** A city official or employee shall not violate the provisions of this code of ethics through the acts of another.

SECTION 10. PROHIBITED INTERESTS IN CONTRACTS

- (a) **Charter Provision.** The Charter of the City of Kyle, in Section 12.03, states "No officer or employee of the City shall have a financial interest, direct or indirect, or by reason of ownership of stock in any corporation in any contract with the City, or be financially interested, directly or indirectly in the sale to the City of any land, materials, supplies, or service, except on behalf of the City as an officer or employee; provided however, that the provision of this section (Section 12.03 of the Charter) shall only be applicable when the stock owned by the officer or employee exceed one percent of the total capital stock of the corporation. Any violation of this section with the knowledge, express or implied, of the person or corporation contacting with the City shall render the contract voidable."
- (b) **Financial Interest.** No officer or employee of the City shall have a financial interest direct or indirect, or by reason of ownership of stock in a corporation, in a contract with the City, or be financially interested directly or indirectly in the sale to the City of land, materials, supplies or services except on behalf of the City as an officer or employee; provided, however, that the provision of this section shall only be applicable when the stock or interests owned by the officer or employee exceeds one (1%) percent of the total capital stock of the corporation, or the City is taking an interest in property by eminent domain. Any violation of this shall render the contract voidable.

This subsection does not permit any officer or employee to fail to comply with the requirements for giving notice of conflict, recusal and filing the required conflict forms with the city secretary.

- (c) If an officer or employee has or may potentially have a presumed prohibited financial interest in a contract with the city, or in the sale to the city of land, materials,

supplies or service under subsection (b), the officer or employee may apply to the Ethics Commission established under section 12.01 of the City Charter for determination and decision on whether the officer or employee has an actual direct or indirect financial interest in that contract or transaction.

The Ethics Commission will make this assessment using a standard of "clear and convincing" evidence at a hearing. A request for such a determination cannot be made confidentially. The hearing must be posted two weeks in advance clearly stating the officer or employee with the presumed prohibited financial interest, the contract or transaction at issue, and the individual or business entity that is the party to the contract or transaction at issue.

(d) Any contract or transaction already in place at the time the individual becomes an officer or employee subject to the prohibitions in Section 12.03 of the City Charter or those ascribed in this section may remain in place until the contract expires or the transaction is completed without creating a prohibited financial interest for the officer or employee.

(e) Definitions. For purposes of enforcing Section 12.03 of the City Charter and the provisions of this Section:

(1) a city "employee" is any employee of the city who is required to file a financial disclosure statement pursuant to Section 1 (a) of Part F (Financial Disclosure Report).

(2) a city "officer" is:
(A) the Mayor or any Council member;
(B) a Municipal Court Judge or Magistrate;
(C) a member of any board, committee or commission which is more than advisory in nature. 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.

(f) An officer or employee that has an interest prohibited by this Section, shall give notice of the conflict, recuse himself or herself from participation in any discussions at any public meeting, or with the city staff concerning the interest or matter in which a conflict exists, and file the required disclosure with the city secretary; provided that, if the matter involves an eminent domain proceeding with respect to a property interest of the officer or employee, the officer or employee may announce the conflict, file the disclosure and thereafter in the same manner as any private citizen represent his/her property interests.

SECTION 11. CITY COUNCIL CONTRACT PERSONNEL

(a) A member of the City Council who, in the course of official duties, has direct supervisory authority over contract personnel shall make reasonable efforts to ensure that the conduct of contract personnel is compatible with the obligations imposed on city officials and employees by this code of ethics.

- (b) Contract personnel employed by a member of the city council shall comply with all obligations imposed by this code of ethics on city employees, except for restrictions on political activity imposed on city employees by the City Charter or the City's Personnel Rules under Part B, Section 8 of this Code. Contract personnel, though, may not engage in political activity using City resources or during duty hours.
- (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 code on city employees.

SECTION 12. PERSONS REQUIRED TO REPORT; TIME TO REPORT; PLACE TO REPORT

- (a) A City official or employee who has knowledge of a violation of any of the provisions of this Ethics Code shall report this violation as provided below within a reasonable time after the person has knowledge of a violation. A City official or employee shall not delegate to, or rely on, another person to make the report.
- (b) Unless waived in writing by the person making the report, the identity of an individual making a report under this section is confidential and may be disclosed only to the proper authorities for the purposes of conducting an investigation of the report; provided that such confidentiality shall terminate if the matter is placed on an agenda of the Ethics Commission.
- (c) A report made under this Section shall be made to:
 - (1) the Ethics Compliance Officer or his or her designee; or
 - (2) the Ethics Commission.
- (d) A report shall state:
 - (1) the name of the City official or employee who believes that a violation of a provision of the Ethics Code has been or may have been committed;
 - (2) the identity of the person or persons who allegedly committed the violation;
 - (3) a statement of the facts on which the belief is made; and
 - (4) any other pertinent information concerning the alleged violation.
- (e) The city attorney is not a city official or employee for the purposes of this Code of Ethics. The city attorney shall: (1) comply at all times with the Texas Rules of Professional Responsibility when representing the City, or any officer or employee of the City, including, but not limited to, the requirement to promptly disclose in writing any possible conflict when requested to participate in any matter in which he/she may have a conflict of interest; (2) avoid any and all conflicts of interest with the City; (3) place the interests of the City as an organization above all others when performing the duties of city attorney; (4) preserve and protect attorney client privilege; (5) conduct such civil and criminal investigations as appropriate to comply with the duties of the city attorney and the Ethics Compliance Officer; and (6) advise any official or employee that makes a report to the city attorney in confidence, of a possible violation of this Code of Ethics, to report the matter to the Ethics Commission.

PART C: FORMER CITY OFFICIALS AND EMPLOYEES

SECTION 1. CONTINUING CONFIDENTIALITY

A former city official or employee shall not use or 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.

SECTION 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 any person, group or entity for a period of two (2) years 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 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.** A former city official or employee shall not represent for compensation any person, group, or entity, other than himself, or his or her spouse or minor children, before the city for a period two (2) years after termination of his or her official duties. This subsection does not apply to a person who was classified as a city official only because he or she was an appointed member of a board or other city body. 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.

- (1) In connection with the representation of private interests before the city, a former city official or employee shall not state or imply that he or she is able to influence city action on any basis other than the merits.

- (c) **Representation in Litigation Adverse to the City.** A former city official or employee shall not, absent consent from the city, represent any person, group, or entity, other than himself or herself, or his or her spouse or minor children, in any litigation to which the city is a party, if the interests of that person, group, or entity are adverse to the interests of the city and the matter is one in which the former city official or employee personally and substantially participated prior to termination of his or her official duties.

SECTION 3. PRIOR PARTICIPATION IN NEGOTIATING OR AWARDING OF CONTRACTS

- (a) A former city official or employee may not, within two (2) years of the termination of official duties, perform work on a compensated basis relating to 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 two (2) years 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 or award. This subsection does not apply to a person who was classified as city official only because he or she was an appointed member of a board or other city body.

SECTION 4. DISCRETIONARY CONTRACTS

(a) Impermissible Interest in Discretionary Contract or Sale. This Subsection applies only to contracts or sales made on a discretionary basis, and does not apply 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 neither have a financial interest, direct or indirect, in any discretionary contract with the City, nor have a financial interest, direct or indirect, in the sale to the City of any land, materials, supplies, or service. Any violation of this Section, with the knowledge, expressed or implied, of the individual or business entity contracting with the Council shall render the contract involved voidable by 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:
 - (A) one (1) percent or more of the capital stock of a corporation, or
 - (B) ten (10) percent or more of the voting stock or shares of another business form, or
 - (C) ten (10) percent or more of the fair market value of any business entity; or
- (4) a business entity of which any individual or entity listed in Subsection (1), (2) or (3) is:
 - (A) a subcontractor on a city contract;
 - (B) a partner, or
 - (C) a parent or subsidiary business entity.

(b) **Exception: Prior Employment or Status.** Notwithstanding subsection (a) of this Section 4 (Discretionary Contracts) and Section 3 (Prior Participation in Negotiation or Awarding of Contracts), 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.

(c) **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 1(a) of Part F (Financial Disclosure Report).
- (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 Court Judge or Magistrate; or
- (C) a member of any committee, board or commission

which is more than advisory in nature. 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.

PART D: PERSONS DOING BUSINESS WITH THE CITY

SECTION 1. VENDORS, SUPPLIERS AND CONTRACTORS. All vendors, suppliers, contractors and persons contacting the City for the purpose of selling any product or service to the City, or bidding on any City works, whether by competitive bid process or a discretionary contract, shall comply with the requirements of Chapt. 176, Tex. Loc. Gov't Code.

SECTION 2. PERSONS SEEKING DISCRETIONARY CONTRACTS

- (a) **Disclosure of Parties, Owners, and Closely Related Persons.** For the purpose of assisting the city in the enforcement of provisions contained in the City Charter and this code of ethics, an individual or business entity seeking a discretionary contract from the city is required to disclose in connection with a proposal for a discretionary contract on a form provided the city:

- (1) the identity of any individual who would be a party to the discretionary contract;
- (2) the identity of any business entity that would be a party to the discretionary contract and the name of:
 - (A) any individual or business entity that would be a subcontractor on the discretionary contract; and
 - (B) any individual or business entity that is known to be a parent or subsidiary business entity, of any individual or business entity who would be a party to the discretionary contract; and
- (3) the identity of any lobbyist or public firm employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract

An individual or business entity seeking a discretionary contract is required to supplement this filing on a form provided by the city in the event there is any change in the information required of the individual or business entity under Part D, Section 1, (a)(1), (a)(2), (a)(2)(A), (a)(2)(B), or (a)(3). The individual or business entity seeking a discretionary contract must supplement this filing before the discretionary contract is the subject of council action, and no later than five (5) business days after any change

about which information is required to be filed.

- (b) **Political Contributions.** Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract, on a form provided by the city, all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any current or former member City Council any candidate for City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under Subsection (a). Indirect contributions by an individual include, but are not limited to, contributions made by an individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.
- (c) **Briefing Papers and Open Records.** Briefing papers prepared for the city council concerning any proposed discretionary contract to be considered for action shall reveal the information disclosed in compliance with Subsections (a) and (b), and that information shall constitute an open record available to the public. Such briefing papers shall become a public record when the proposed contract is included on a posted agenda for a city council meeting.

SECTION 3. DISCLOSURE OF ASSOCIATION WITH CITY OFFICIAL OR EMPLOYEE

- (a) **Disclosure During Appearances.** A Person appearing before a city board or other city body shall disclose to it any known facts which, reasonably understood, raise a question as to whether any member of the board or body would violate Section 1 of Part B (Improper Economic Benefit) by participating in official action relating to a matter pending before the board or body.
- (b) **Disclosures in Proposals.** Any individual or business entity seeking a discretionary contract with the city shall disclose, on a form provided by the city, any known facts which, reasonably understood, raise a question as to whether any city official would violate Section 1 of Part B (Improper Economic Benefit) by participating in official action relating to the discretionary contract.
- (c) **Definition.** For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

SECTION 4. DISCLOSURE OF BENEFIT TO CITY OFFICIAL OR EMPLOYEE

If a person who requests official action on a matter knows that the requested action will confer an economic benefit on any city official or employee that is distinguishable from the effect that the action will have members of the public in general or a substantial segment thereof, he or she shall disclose that fact in a signed writing to the city official, employee, or body that has been requested to act in the matter, unless the interest of the city official or employee in the matter is apparent. The disclosure shall also be made in a signed writing filed with the City Secretary.

PART E. MEMBERS OF THE PUBLIC AND OTHERS

Part E (Members of the Public and Others) applies to current and former city officials and employees, persons doing business with the city, and lobbyists, as well as to members of the public and any other person (including business entities and nonprofit entities).

SECTION 1. FORMS OF RESPONSIBILITY

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 violative of the obligations imposed by Part B (Present City Officials and Employees), C (Former City Officials and Employees), D (Persons Doing Business with the City) of this ethics code.

PART F. FINANCIAL DISCLOSURE

SECTION 1. FINANCIAL DISCLOSURE REPORT

(a) Persons Required to File Disclosure Form.

(1) **City Officials and Designated City Employees.** No later than thirty (30) after accepting appointment or assuming the duties of office, and annually thereafter, the city officials defined in Section 2 of Part A (Definitions), are required to file with the City Secretary a complete sworn financial disclosure report.

(2) **Candidates for City Council.** A non-incumbent candidate for a place on the City Council shall file a sworn financial disclosure report with the City Secretary containing all information required by Subsections (a) through (m) of Section 2 of Part F (Contents of Financial Disclosure Reports) within fifteen (15) days from the date of filing as a candidate.

(b) **Open Records.** Financial disclosure reports are open records subject to the Texas Open Records Act, and shall be maintained in accordance with the Local Government Records Act.

(c) **Annual Filing Date.** Annual financial disclosure reports filed by City officials who are City employees and by City employees who are required to report must be received by the City Secretary by 4:30 p.m. on the 31st day of January. Annual financial disclosure reports filed by the City officials who are not City employees and who are required to report must be received by the City Secretary by 4:30 p.m. on the 1st day of March. When the deadline falls on a Saturday or Sunday, or on an official city holiday as established by the City Council, the deadline for receipt by the City Secretary is extended to 4:30 p.m. of the next day which is not a Saturday or Sunday or official city holiday. The City Secretary shall grant an extension of time in which to file a report upon written request submitted in advance of the deadline. The extension shall not exceed fifteen (15) days.

Unforeseen Circumstances. In the event of an unforeseen circumstance, including, but not limited to military service abroad or acute illness, the deadline for receipt by the City Secretary is extended until such time as the city official or employee resumes his city duties.

- (d) **Reporting Periods.** Each initial or annual financial disclosure filed by an individual designated in Section 1(a)(1) of Part F (Financial Disclosure Report), and each report filed by a candidate for City Council, shall disclose information relating to the prior calendar year, as well as any material changes in that information which occurred between the end of the prior calendar year and the date filing.
- (e) **City Secretary.** The City Secretary shall:
- (1) prior to January 15 of each year, notify city officials and employees specified in Subsection (a)(1) of their obligation to file financial disclosure reports and those forms to be completed;
 - (2) provide forms to all new City Council appointees and those filing for elective office,
and advise them of reporting requirements and deadlines;
 - (3) provide guidance and assistance on the reporting requirements for persons required to file financial disclosure reports and develop common standards, rules, and procedures for compliance with Part F (Financial Disclosure):
 - (4) review reports for completeness and timelines;
 - (5) maintain filing, coding, and cross-indexing systems to carry out the purpose of Part F (Financial Disclosure), including
 - (A) a publicly available list of all persons required to file; and
 - (B) computerized systems designed to minimize the burden of filing and maximize public access to materials filed under Part F (Financial Disclosure);
 - (6) make available for public inspection and copying at reasonable times the reports filed under Part F (Financial Disclosure);
 - (7) upon determining that such appointee who is required to file a financial disclosure report has failed to do so or has filed incomplete or unresponsive information, notify the individual by certified mail that failure to file or correct the filing within fifteen (15) days after the original deadline constitutes an automatic resignation. At the same time, the City Secretary shall publicly announce to the City council the names of those who have not filed and to whom this notification is being sent. If such an appointee fails to file a completed report within fifteen (15) days from the original deadline, the position shall be considered vacant, and a new appointment shall be made by the City Council; and
 - (8) upon determining that the Mayor, a member of City Council, a candidate for City Council, the City Manager, or a Municipal Court Judge or Magistrate has failed to timely file a financial disclosure report, or has filed incomplete or unresponsive information, notify the individual by certified mail that failure to file or correct the filing with fifteen (15) days after the original deadline will result in the matter being forwarded to the Ethics Commission (Board). If the person in question fails to file a completed report within fifteen days of the original deadline, a report of non-compliance shall be forwarded to the Ethic Commission (Board) for appropriate action.
 - (9) upon determining that a person other than as provided in subsections (7) or (8) above, has failed to timely file a financial disclosure report, or has filed

incomplete or unresponsive information, notify the individual by certified mail that failure to file or correct the filing within fifteen (15) days after the original deadline will result in the matter being forwarded to the City Manager. If the person in question fails to file a completed report within fifteen (15) days of the original deadline, a report of non-compliance shall be forwarded to the City Manager for appropriate action.

The failure of the City Secretary to provide any notification required by this Section does not bar appropriate remedial action, but may be considered on the issue of culpability.

- (f) **Exception.** A city official who is a member of a board or commission created pursuant to federal or state law, may only be removed for failing to file a financial disclosure form if allowed under federal or state law.

SECTION 2. CONTENTS OF FINANCIAL DISCLOSURE REPORTS

Each initial or annual financial disclosure report shall disclose, on a form provided by the city, the following information:

- (a) the reporting party's name;
- (b) the name of any person related as parent, child, (except a child who is a minor), or spouse to the reporting party;
- (c) the name of any member of the reporting party's household not disclosed under Subsection (b) of this rule;
- (d) the name of any employer of any person disclosed under Subsection (a) or (b) of this rule;
- (e) the name of any business entity (including self employment in the form of a sole proprietorship under a personal or assumed name) in which the reporting party or his or her spouse holds an economic interests;
- (f) the name of any business which the reporting party knows is a partner, or a parent or subsidiary business entity, of a business entity owned, operated or managed by the reporting party or his or her spouse;
- (g) the name of any person or business entity from whom the reporting party or his or her spouse, directly or indirectly;
 - (1) has received and not rejected an unsolicited offer of subsequent employment or
 - (2) has accepted an offer of subsequent employment which is binding or expected by the parties to be carried out;
- (h) the name of each nonprofit entity or business entity in which the reporting party serves as an officer or director, or in any other policy making position;

- (i) the name of each business entity which has sought city business, has a current city contract or anticipates seeking city business in which any individual listed in Subsection (a) or (b) is known to directly or indirectly own:
 - (1) one (1) percent or more of the capital stock of a corporation, or
 - (2) ten (10) percent or more of the voting stock or shares of the business entity, or
 - (3) ten (10) percent or more of the fair market value of the business entity;

- (j) the name of any business entity of which any individual or entity disclosed under Subsection 2(a) or (2)(i) is known to be:
 - (1) a subcontractor on a city contract;
 - (2) a partner; or
 - (3) a parent or subsidiary business entity.

- (k) the name of each source of income, other than dividends or interest, amounting to more than five thousand dollars (\$5000) received during the reporting period by the reporting party or his or her spouse, unless that source has been disclosed under Subsections (a) through (j) of this rule;

- (l) the identification by street address, or legal or lot-and-block description, of all real property located in Hays County, Texas in which the reporting party or his or her spouse has a leasehold interest, a contractual right to purchase, or an interest as: fee simple owner; beneficial owner; partnership owner; joint owner with an individual or corporation; or owner of more than twenty-five (25) percent of a corporation that has title to real property. There is no requirement to list any property:
 - (1) used as a personal residence of a peace officer;
 - (2) over which the reporting party has no decision power concerning acquisitions or sale;
 - (3) held through a real estate investment trust, mutual fund, or similar entity, unless the reporting party or his or her spouse participates in the management thereof;

- (m) the name of persons or entities to whom the reporting party or spouse owes an unsecured debt of more than five thousand dollars (\$5,000.00), other than debts for:
 - (1) money borrowed from a family member from his or her own resources; and
 - (2) revolving charge accounts.

- (n) the name of each person, business entity, or other organization from whom the reporting party, or his or her spouse, received a gift with an estimated fair market value in excess of one hundred dollars (\$100) during the reporting period and the estimated fair market value of each gift. Excluded from this requirement are:
 - (1) lawful campaign contributions which are reported as required by state statute;
 - (2) gifts received from family members within the second degree of affinity or consanguinity;
 - (3) gifts received among and between fellow city employees and officials; and

- (4) admission to events in which the reporting party participated in connection with official duties

SECTION 3. SHORT FORM ANNUAL REPORT

A person who is required to file an annual financial disclosure report may fulfill his or her filing obligations by submitting a short sworn statement on a form provided by the city, if there have been few or no changes in the information disclosed by that person in a complete financial disclosure report filed within the past five (5) years. The short statement shall indicate the date of the person's most recently filed complete financial disclosure report and shall state that there have been no material changes in that information or shall list any material changes that have occurred.

SECTION 4. TRAVEL REPORTING REQUIREMENTS

- (a) Any persons listed in Subsection (b) who, in connection with his or her official duties, accepts a trip or excursion involving the gratuitous provision of transportation, accommodations, entertainment, meals, or refreshments paid for by a person or entity other than a public agency must file with the City Secretary, before embarking on the travel, a disclosure statement identifying:
- (1) the name of the sponsor;
 - (2) the places to be visited; and
 - (3) the purpose and dates of the travel.

- (b) The following persons are required to report under this Section: the Mayor, members of the City Council, Municipal Court Judges and Magistrates, City Manger, Deputy City Manger, City Secretary, Assistant City Secretary, Assistant City Mangers, Assistants to the City Manger, and all department heads. Acceptance of a trip or excursion by an individual listed above other than the Mayor or a member of the City Council must receive prior written approval of the City Manger.

SECTION 5. ITEMS RECEIVED ON BEHALF OF THE CITY

A city official or employee who accepts any item by way of gift valued over \$100.00 or loan on behalf of the city must promptly report that fact to the City Manager, who shall have the item appropriately inventoried as city property.

SECTION 6. OTHER PERSONS REQUIRED TO REPORT GIFTS

In addition to the gift reporting requirements imposed by the financial disclosure rules stated in Section 2(n) of Part F (Contents of Financial Disclosure Reports), other city employees specified on a list compiled annually by the City Manager or the person(s) responsible for the human resource functions of the city and submitted to the City Secretary, and contract administrative assistants to members of City Council are also required during the previous year with a cumulative value of over one hundred dollars (\$100.00). Excluded from this requirement are gifts received from family members within the second degree of affinity or consanguinity and gifts among and between city employees and city officials.

SECTION 7. VIOLATION OF REPORTING REQUIREMENTS

Failure to timely file a report required by the rule stated in Part F (Financial Disclosure) is a violation hereof, as is the knowingly filing of a report with incorrect or incomplete report, it is his or her responsibility to file an amended report as soon as possible.

PART G. ETHICS COMMISSION (BOARD)

SECTION 1. DEFINITIONS

As used in Part G (Ethics Commission (Board)), the term “ethics laws” include this code of ethics, Article 12 of the City Charter, and Section 171 of the Texas Local Government Code. The term “ethical violation” include violations of any of those enactments. Other terms used in Part G (Ethics Commission (Board)) are defined in Section 2 of Part A (Definitions).

SECTION 2. STRUCTURE OF THE ETHICS COMMISSION (BOARD)

- (a) **Establishment.** There is hereby established an Ethics Commission (Board), which shall have the powers and duties specified in Part G (Ethics Commission (Board))
- (b) **Composition.** The Ethics Commission (Board) shall consist of seven (7) members. The Mayor and each member of the City Council shall nominate one 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 separate open meetings of the City Council.
- (c) **Terms of Office.** Board members shall be appointed to three-year terms. Initial appointments shall be made that terms are staggered and run concurrent with council members’ terms who are entitled to make appointments to the seat. No member shall serve for more than three three-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;
- (e) **Removal.** Members of the Ethics Commission (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); substantial neglect of duty; gross misconduct in office; inability to discharge the powers or duties of office; or violation of any provision in the code of ethics.
- (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 Commission (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 Commission (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 constitute, as provided for in Section 6 of Part G (Ethics Panel), the Mayor shall nominate a sufficient number of ad hoc members so that the case can be heard. Ad hoc members of the Ethics Commission (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 Commission (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 Commission (Board) shall not be compensated but shall be reimbursed for reasonable expenses incurred in the performance of their official duties.

SECTION 3. JURISDICTION AND POWERS

- (a) **Jurisdiction.** If a complaint is filed pursuant to Section 4 of Part G (Complaints) within two (2) years of the date of an alleged violation of the ethics laws, the Ethics Commission (Board) shall have jurisdiction to investigate and make findings and recommendations concerning:
- (1) any alleged violation of this code of ethics or Article 12 of the City Charter by any person subject to those provisions, including, but not limited to current city officials and employees, former city officials and employees, persons doing business with the city, and persons required to register as lobbyists; or
 - (2) any alleged violation by a Kyle city official of Section 171 of the Texas Local Government Code, the state conflict-of-interest law applicable to certain local public officials.

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.

- (b) **Termination of City Official's or Employee's Duties.** The termination of a city official's or employee's duties does not affect the jurisdiction of the Ethics Commission (Board) with respect to alleged violations occurring prior to the termination of official

duties.

- (c) **Powers.** The Ethics Commission (Board) has power:
- (1) to establish, amend, and rescind rules and procedures governing its own internal organization and operations, consistent with Part G (Ethics Commission (Board)) of this code;
 - (2) to meet as often as necessary to fulfill its responsibilities;
 - (3) to designate Ethics Panels with the power to render decisions on complaints or issue advisory opinions on behalf of the Board;
 - (4) to request from the City manager through the City Council the appointment or allocation of such staff as are necessary to carry out its duties;
 - (5) to review, index, maintain on file, and dispose of sworn complaints;
 - (6) to make notifications, extend deadlines, and conduct investigations both on complaint and as a result of an issue raised out of said complaint;
 - (7) to render, index, and maintain on file advisory opinions;
 - (8) to 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) to prepare an annual report and to recommend to the Mayor and City Council needed changes in ethical standards or procedures; and
 - (10) to take such other action as is necessary to perform its duties under Part G (Ethics Commission (Board)) of this ethics code.

SECTION 4. COMPLAINTS

- (a) **Filing.** Any person (including a member of the Ethics Commission (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.

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 Commission (Board), is subject to criminal prosecution for perjury [see Part H, Section 4 (Prosecution for Perjury)] or civil liability for the tort of abuse of process.

- (b) **Form.** A complaint filed under this section must be in writing and under oath and must set forth in simple, concise, and direct statements:
- (1) the name of the complaints;
 - (2) the street or mailing address and the telephone number of the complainant;
 - (3) the name of each person complained about;
 - (4) the position or title of each person complaint about;
 - (5) the nature of the alleged violation, including, if possible, the specific rule or provision of law alleged to have been violated;
 - (6) a statement of the facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred; and
 - (7) all documents or other material relevant to the allegation and available to the complainant but that are not in the possession of the complainant, including the location of the documents, if known; and a list of all documents or other material

relevant to the allegation but unavailable to the complainant, including the location of the documents, if known.

The complaint must be accompanied by an affidavit stating that the information contained in the complaint is either true and correct or that the complainant has good reason to believe and does believe that the facts alleged constitute a violation of the Ethics Code. If the complaint is based on information and belief, the complaint shall state the source and basis of the information and belief. The complainant shall swear to the facts by oath before a notary public or other person authorized by law to administer oaths under penalty of perjury.

The complaint must state on its face an allegation that, if true, constitutes a violation of a rule adopted by or a law administered and enforced by the Board.

(c) **Frivolous Complaint.**

(1) For purposes of this section, a "frivolous complaint" is a sworn complaint that is groundless and brought in bad faith or groundless and brought for the purpose of harassment.

(2) By a vote of at least two-thirds of those present, the Board may order a complainant to show cause why the Board should not determine that the complaint filed by the complainant is a frivolous complaint.

(3) In deciding if a complaint is frivolous, the Board will be guided by the Texas Rules of Civil Procedure, Rule 13, and interpretations of that rule, and may also consider:

(A) the timing of the sworn complaint with respect to when the facts supporting the alleged violation became known or should have become known to the complainant, and with respect to the date of any pending election in which the respondent is a candidate or is involved with a candidacy, if any;

(B) the nature and type of any publicity surrounding the filing of the sworn complaint, and the degree of participation by the complainant in publicizing the fact that a sworn complaint was filed with the Board;

(C) the existence and nature of any relationship between the respondent and the complainant before the complaint was filed;

(D) if respondent is a candidate for election to office, the existence and nature of any relationship between the complainant and any candidate or group opposing the respondent;

(E) any evidence that the complainant knew or reasonably should have known that the allegations in the complaint were groundless; and

(F) any evidence of the complainant's motives in filing the complaint.

(4) Notice of an order to show cause shall be given to the complainant, with a copy to the respondent, and shall include:

(A) an explanation of why the complaint appears to be frivolous; and

(B) the date, time, and place of the hearing to be held under this section.

(5) Before making a determination that a sworn complaint is a frivolous complaint, the Board shall hold a hearing at which the complainant may be heard; the complainant may be accompanied by counsel retained by the complainant.

(6) By a record vote of at least two-thirds of those present after the hearing under subsection (5) of this section, the Board may determine that a complainant filed a frivolous complaint and may recommend sanctions against that complainant.

(d) **Sanctions.**

(1) Before recommending a sanction for filing a frivolous complaint, the Board shall consider the following factors:

(A) the seriousness of the violation, including the nature, circumstance, consequences, extent, and gravity of the violation;

(B) the sanction necessary to deter future violations; and

(C) any other matters that justice may require.

(2) The Board may recommend the following sanctions:

(A) a civil penalty of not more than \$500.

(B) prosecution for perjury

(C) any other sanction permitted by law.

(3) The Board may notify the appropriate regulatory or supervisory agency for their appropriate action.

(e) **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.

(1) All papers and evidence related to a pending complaint are confidential during the time any investigation is being conducted by the Ethics Compliance Officer or the Commission. If the investigation is completed and a complaint is included as an agenda item to be considered in an open meeting of the Ethics Commission, the papers and evidence become public documents when the related agenda item is opened for discussion by the Ethics Commission.

(2) If an investigation is closed and no complaint is filed, all related papers and evidence become public information when the investigation is closed; provided the Commission may reopen any investigation previously closed by the Ethics Compliance Officer.

(3) If the Ethics Commission decides to investigate any allegation or complaint, the papers, evidence and documents compiled thereafter with respect to the investigation shall be and remain confidential until such time as the Ethics Commission concludes the investigation.

(4) With the exception of an executive session held by the Ethics Commission with respect to an item being investigated by the Ethics Commission, all meetings of the Ethics Commission shall be posted and held as open meetings in compliance with the Open Meetings Act.

(5) When any complaint is included as an agenda item to be considered in an open meeting of the Ethics Commission, the complaint and all related papers and evidence become public documents when the related agenda item is opened for discussion by the Ethics Commission.

(f) **Notification.** A copy of a complaint shall be promptly forwarded by the City Secretary to the Ethics Compliance Officer and to the respondent(s), even if the complaint

fails to meet the filing requirements of Part G, Section 4(b) (Form) above. A complaint that is not sworn as required by Part G, Section 4(b), shall not be forwarded by the City Secretary to the Ethics Compliance Officer, but shall be returned to the complainant. The respondent(s) shall also be provided with a copy of the ethics rules and shall be informed:

- (1) that, within fourteen (14) days of receipt of the complaint, he or she may file a sworn response with the City Secretary;
 - (2) that failure to file a response does not preclude the Ethics Commission (Board) from adjudicating the complaint;
 - (3) that a copy of any response filed by the respondent(s) will be provided by the City Secretary to the complainant, who may, within seven(7) days of receipt, respond by sworn writing filed with the City Secretary, a copy of which shall be provided by the City Secretary to the respondent(s);
 - (4) that the respondent(s) may request a hearing; and;
 - (5) that city officials and employees have a duty to cooperate with the Ethics Commission (Board), pursuant to Section 6(e) of Part G (Ethics Panels).
- (g) **Assistance.** The City Secretary shall provide information to persons who inquire about the process for filing a complaint.

SECTION 5. ETHICS COMPLIANCE OFFICER

- (a) **City Attorney's Office.** The City Attorney or an Assistant City Attorney designated by the City Attorney shall serve as the Ethics Compliance Officer for the city. The Ethics Compliance Officer shall:
- (1) receive and promptly transmit to the Ethics Commission (Board) complaints and responses filed with the City Secretary;
 - (2) investigate, marshal, and present to the Ethics Commission (Board) the evidence bearing upon a complaint;
 - (3) act as legal counsel to the Ethics Commission (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 employee with respect to their ethical responsibilities;
 - (6) review complaints for legal sufficiency;
 - (7) recommend acceptance or rejection of complaint within 60 days of date made to the Ethics Commission (Board); and
 - (8) request additional information from complainant as needed.

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 Commission (Board) and the procedures for filing complaints. The Ethics Compliance Officer shall also ensure that such notices are posted.

- (b) **Outside Independent Counsel.** An independent outside attorney, who does not

otherwise represent the city, shall be appointed 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 department head or of higher rank;
- (2) when the Ethics Commission (Board), at the recommendation of the City Attorney, requests such an appointment; or
- (3) when requested by the City Attorney.

An independent outside attorney who is appointed has the same duties and authority as the Ethics Compliance Officer under Section 5(a)(1), 5(a)(2), 5(a)(3), 5(a)(6), 5(a)(7), and 5(a)(8) of Part G (Ethics Compliance Officer).

- (c) **Exculpatory Evidence.** The Ethics Compliance Officer shall disclose to the Ethics Panel and provide to the person charged with violating the ethics law evidence known to the Ethics Compliance Officer tending to negate guilt or mitigate the seriousness of the offense.

SECTION 6. ETHICS PANELS

- (a) **Assignment to an Ethics Panel.** A complaint received by the Ethics Commission (Board) from the Ethics Compliance Officer shall be promptly assigned to an Ethics Panel consisting of three (3) or more members of the Board, who shall have full power to investigate and dispose of the complaint. Each Ethics Panel shall be constituted according to procedures established by the Board. Any member of an assigned Ethics Panel who recuses himself or herself shall be replaced by another member of the Board according to established procedures if that is necessary to ensure that the Panel has at least three (3) members. The identity of the members of the Ethics Panel shall be revealed to the person charged in the complaint who, for good cause, may request the recusal of any member of the panel. Unless the Commission votes and directs otherwise, all complaints and matters coming before the Commission shall be automatically assigned to the Ethics Commission as an Ethics Panel of the entire Commission.
- (b) **Notice of Charges.** The Ethics Panel 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 Ethics Panel may find that a violation of a particular rule, the respondent 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 complainant alleged that the rule was violated; if compliance with the rule is raised by the 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 respondent with written notice of the alleged violation and a fourteen (14) day period within which to respond in writing to the charge.
- (c) **Scheduling of a Hearing.** Regardless of whether the complainant or the respondent requests a hearing, the Ethics Panel has discretion to decide whether to hold a

hearing.

- (d) **Ex Parte Communications.** It is a violation of this code:
 - (1) for the complainant, the respondent, 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 Commission (Board), or any known witness to the complaint; or
 - (2) for a member of an Ethics Panel or any other member of the Ethics Commission (Board) to:
 - (A) knowingly entertain an ex parte communication prohibited by Subsection (1) of this rule; or
 - (B) communicate directly or indirectly with any person, other than a member of the Ethics Commission (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 Commission (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 code of ethics.

SECTION 7. HEARINGS

At any hearing held by an Ethics Panel during the investigation or disposition of a complaint, the following rules apply:

- (a) **General Rules.** At least three (3) members of the Ethics Panel must be present for the hearing. Any member of the Ethics Panel who is not present ceases to be a member of the Ethics Panel 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 Ethics Panel or the Ethics Compliance Officer. The Ethics Panel 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 Ethics Panel so finds by a preponderance of the evidence.
- (b) **Evidence.** The Ethics Panel shall relay on evidence of which a reasonably prudent person commonly relies in the conduct of the person's affairs. The Ethics panel shall further abide by the following:
 - (1) The Panel shall hear evidence relevant to the allegations; and
 - (2) The Panel shall not consider hearsay unless it finds the nature of the information is reliable and useful.
- (c) **The 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. Only legal counsel 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. The time permitted for presentation will be at the discretion of the Board.

- (d) **The 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. Only legal counsel 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.

SECTION 8. DISPOSITION

- (a) **Written Opinion.** The Ethics Panel shall issue a decision within ninety (90) days after the filing of a complaint. The Ethics Panel shall state in a written opinion its finding 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) A letter of notification shall be the appropriate sanction when the violation is clearly unintentional, or when the violation was made in reliance on a written opinion of the city attorney. A letter of notification shall advise the person to whom it is directed of any steps to be taken to avoid future violations.
 - (B) A letter of admonition shall be the appropriate sanction in those cases in which the Commission finds that the violation is minor and/or may have been unintentional, but calls for a more substantial response than a letter of notification.
 - (C) A reprimand shall be the appropriate sanction when the Commission finds that a violation has been committed intentionally or through disregard of this ordinance. A copy of a reprimand directed to an employee, city official, council member, or board or commission member shall be sent to the City Manager and City Council. A reprimand directed to an employee shall be included in the employee's personnel file. A letter of reprimand directed to an elected city official shall be transmitted to the city secretary and published in the official City newspaper.
 - (D) A recommendation of removal from employment or a recommendation of suspension from employment, as well as a recommendation for length of suspension, shall be the appropriate sanction when the Commission finds that a serious or repeated violation(s) of this ordinance has been committed intentionally or through culpable disregard of this ordinance by city employees. Any such recommendation shall be made to the City Manager, unless the city official or employee is in a position filled by Council appointment.

(E) A letter of censure shall be the appropriate sanction when the Commission finds that a serious or repeated violation(s) of this ordinance has been committed intentionally or through culpable disregard of this ordinance by an elected city official. A letter of censure directed to an elected city official shall be transmitted to the city secretary and thereafter published in the official newspaper of the City.

(F) recommend criminal prosecution and/or civil remedies, in accordance with this Rule;

(G) state why no remedial action is recommended; or

(H) In appropriate cases the Commission may recommend to the City Council or City Manager that action be taken under subsections (c) and (f) below.

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. The failure of the Ethics Panel to comply within the above time limits may result in the charge being dismissed for want of prosecution. Prior to such dismissal, the complainant will be given notice and an opportunity to request continuance of the action.

(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 Commission (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) **Recommendations.** A recommendation for criminal prosecution shall be forwarded to the appropriate law enforcement agency. A recommendation of civil remedies shall be forwarded through the Ethics Compliance Officer to the City Council for action.

(d) **Similar Charges Barred.** If the complaint is dismissed because the evidence failed to establish a violation of the ethics laws, the Ethics Commission (Board) shall not entertain any other similar complaint based on substantially the same evidence.

(e) **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 in accordance with Section 2 of Part H (Damages and Injunctive Relief):
 - (3) disqualification from contracting in accordance with Section 6 of Part H (Disqualification from Contracting);
 - (4) voiding of a contract in accordance with Section 5 of Part H (Voiding or Ratification of Contract); and
 - (5) a fine in accordance with Section 3 of Part H (Civil Fine).
- (g) **Criminal Prosecution.** An Ethics Panel may recommend to the appropriate law enforcement agency criminal prosecution under Section 4 of Part H (prosecution for Perjury) or under Section 171 of the Texas Local Government Law. Prosecution of any person by the City Attorney for a violation of this ethics code shall not be undertaken until a complaint is disposed of in accordance with Section 8. However, the absence of a recommendation to prosecute from an Ethics Panel to the City Attorney shall not preclude the City Attorney from exercising his or her prosecutorial discretion to prosecute a violation of this ethics code.
- (h) **Council Action.** If the City Council receives a recommendation pursuant to Subsection (a)(D), or Subsection (f) above, the City Council shall dispose of a recommendation from the Ethics Commission (Board) within ninety (90) days of receiving such recommendation. The recommendation(s) of the Ethics Commission (Board) may be accepted, rejected, modified, or recommitted to said Board for further action or clarification. Failure to take action within specified time limits may result in the charge being dismissed for want of prosecution. Prior to such dismissal, the complainant will be given notice and an opportunity to request continuance of the action.

SECTION 9. 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 Commission (Board) to investigate and make known its findings, and make any relevant recommendations concerning the issue.

SECTION 10. ADVISORY OPINIONS

- (1) **Requests by Persons Other Than Officials and 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 and the chair of the Ethics Commission (Board).

(City officials and employees may request advisory opinions from the City Attorney pursuant to Subsection (B)).

(B) Within thirty (30) days of receipt by the chair of the Ethics Commission (Board) of a request for an advisory opinion the Board, acting en banc or through a designated Ethics Panel, 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 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 Commission (Board), or the Ethics Compliance Officer, to the person who requested the opinion, to the members of the Ethics Commission (Board), and to the City Secretary. The City Secretary shall make the opinion available as a public record in accordance with the Local Government Record Act. The Ethics Compliance Officer shall promptly post the opinion for a period of no less than five years on the Internet via the City of Kyle homepage.

(2) **Opinions Initiated by the Board.** On its own initiative, the Ethics Commission (Board), acting as the full board or through a designated Ethics Panel, 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 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 Commission (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 Commission (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 post the opinion for a period of no less than five years on the Internet via the City of Kyle homepage.

(3) **Reliance.** If a person reasonably and in good faith acts in reliance on an advisory opinion issued by the Ethics Commission (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 and 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 Officer 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 Commission (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 years on the Internet via the City of Kyle homepage. 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:
- (i) he or she requested the issuance of the opinion;
 - (ii) the request for an opinion fairly and
 - (iii) less than five years elapsed between the date the opinion was issued and the date of the conduct in question.

SECTION 11. ANNUAL REPORT

The Ethics Commission (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 to 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 code of ethics. The Ethics Compliance Officer of the city shall take reasonable steps to endure wide dissemination and availability of the annual report of the Ethics Commission (Board).

SECTION 12. PUBLIC RECORDS AND OPEN MEETINGS

Papers, records and evidence relating to an alleged violation or complaint pursuant to this Code of Ethics shall be and become public records as provided in Part G, Section 4, above. Meetings of the Commission shall be open to the public, except as provided in Part G, Section 4, above. However, information that is included in any such records that is made confidential and privileged by federal or state law shall be deleted from any such records before being made available to the public. The Commission may also convene into executive session for the purpose of hearing that part of any testimony or evidence that will include information made private, confidential or privileged information by federal or state law.

PART H. ENFORCEMENT MECHANISMS

This Code of Ethics has been enacted to further the purposes stated in Part A, Section 1, and to protect the City and the public from losses or increased costs incurred by the City that could result

from violation of the standards provided in this Code of Ethics. It is the intent of the City Council that this legislative enactment can and should be recognized by the courts as a proper basis for a civil cause of action by the City for damages or injunctive relief based upon a violation its provisions, and that such form of redress should be available in addition to any or penalty or remedy contained in this Code of Ethics or any other law. This Code of Ethics does not, however, create any claim or cause of action for or on behalf of any person, private party or legal entity other than the City. This Code of Ethics shall not be interpreted or construed as granting any cause of action to any third party, or the City waiving the defenses of sovereign immunity, qualified governmental immunity, or any other defense available to the City at law or in equity. In addition to other remedies provided by law, the following remedies are available with respect to violation of this code of ethics:

SECTION 1. DISCIPLINARY ACTION

City officials and employees who engage in conduct that violates this code 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 code of ethics or any other law. If a violation is an elected official and the applicable facts warrant consideration of removal the City Council may order recall election for such an official.

SECTION 2. DAMAGES AND INJUNCTIVE RELIEF

This code of ethics has been enacted not only to further the purposes stated in Section 1 of Part A (Statement of Purpose), 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 code of ethics or any other law.

SECTION 3. CIVIL FINE

Any person, whether or not an official or employee of the city, who violates any provision of this code of ethics is (Financial Disclosure) for which any required statement has not been filed, or for which a statement on file is incorrect, misleading, or incomplete, constitutes a separate offense.

SECTION 4. PROSECUTION FOR PERJURY

Any Person who files a false sworn statement under Part F (Financial Disclosure) or Part G (Ethics Commission (Board) is subject to criminal prosecution for perjury under the laws of the State of Texas.

SECTION 5. VOIDING OR RATIFICATION OF CONTRACT

If an Ethics Panel finds that there has been a violation of any provision in Section 1 through 9 of Part B (Present City Officials and Employees), Section 1 or 2 of Part C (Former City Officials and Employees), 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 code of ethics or any other law.

SECTION 6. DISQUALIFICATION FROM CONTRACTING

- (a) Any person (including business entities and non-profit entities) who intentionally or knowingly violates any provision of Part D (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 code of ethics:
 - (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 Subsection (b)(1) of this rule.
- (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 contract based on the conduct of an employee or agent, if the conduct occurred within the scope of the employment agency.

SECTION 7. FAILURE TO REPORT AND PENALTY

Any City official or employee who has knowledge that a violation of the Ethics Code has been committed and intentionally fails to report such violation as provided in Part B, Section 12 of this Code (Persons Required to Report; Time to Report) is subject to the penalties herein.

PART I. ADMINISTRATIVE PROVISIONS

SECTION 1. OTHER OBLIGATIONS

This code of ethics is cumulative of and supplemental to applicable state and federal laws and regulations. Compliance with the provisions of this code shall not excuse or relieve any persons 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 code of ethics, action may be prohibited by duly promulgated personnel rules, which may be more stringent.

SECTION 2. DISTRIBUTION AND TRAINING

- (a) Prior to the effective date of this code of ethics, and periodically thereafter as appropriate, the City Attorney or designated Ethics Compliance Officer shall provide information about the code to every official and employee of the city, and copies of the code shall be made readily available to city official, 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 code of ethics. The failure of any person to receive a copy of this code shall have no effect on the person's duty to comply with this code 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 Code.

- (b) The City Attorney or designated Ethics Compliance Officer, in consultation with the Ethics Commission (Board), shall develop educational materials and conduct educational programs for the officials and employees of the city on the provisions of this code of ethics, Section 12.01 thru 12.05 of the City Charter, and section 171 of the Texas Local Government Law. Such materials and programs shall be designed to maximize understanding of the obligations imposed by these ethics laws.

SECTION 3. SEVERABILITY

If any provision of this code is found by a court of competent jurisdiction to be invalid or unconstitutional, or if the application of this code to any person or circumstances is found to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this code which can be given effect without the invalid or unconstitutional provision or application.