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*DIVISION 2. CODE OF ETHICS<sup>1</sup>*

**Subdivision I. Declaration of Policy**

**Sec. 2-142. 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 officers and employees and others whose actions inevitably affect public faith in city government, such as former city officers and employees, candidates for public office, and persons doing business with the city. 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 officers and employees are stewards of the public trust. They have a responsibility to the citizens of Kyle to enforce and adhere to the City Charter and the associated ordinances and codes. To ensure and enhance public confidence in city government, each city officer 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.

**Sec. 2-143. 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:

*Acceptance.* A written or verbal indication that someone agrees [to]; "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.

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<sup>1</sup>Editor's note(s)—Ord. No. 961 , § 1, adopted Aug. 22, 2017, repealed the former div. 2, subdivs. I—IX, §§ 2-142, 2-143, 2-171—2-182, 2-201—2-204, 2-221—2-224, 2-241, 2-242, 2-251—2-257, 2-271—2-282, 2-301—2-308, 2-321—2-323, and exh. 1 to § 2 thereof enacted a new div. 2 as set out herein. The former div. 2 pertained to similar subject matter and derived from Ord. No. 581, § 2(Exh. A, Parts A—I), adopted Aug. 18, 2009, which itself superseded Ord. No. 431, § 2(Exh. A, Parts A—I), adopted Sept. 2, 2003.

Charter reference(s)—Ethics and conflicts, art. XII.

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

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

*Allegation.* The act of declaring something to be true, something declared or asserted as a matter of fact, formal statement of a factual matter as being true or provable, without its having yet been proved.

*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 officer or employee.

*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.

*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.

*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 an application for a place on a ballot;
- (2) 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;
- (3) 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
- (4) The soliciting or accepting of a campaign contribution or the making of a campaign expenditure.

*City.* "City" means the City of Kyle, Texas.

*Code of ethics.* "Code of ethics," "ethics code," "the code" or "this code" means subdivisions I through IX of this division, its amendment(s) and/or enhanced definitions.

*Complainant.* "Complainant" means an individual who has filed a sworn complaint with the city secretary.

*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.

*Consanguinity.* Relationship by "consanguinity" (by blood) is defined in V.T.C.A., Government Code §§ 573.022 and 573.023.

*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 V.T.C.A., Local Government Code § 252.022 or those contracts not involving an exercise of judgment or choice.

*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 nominal value. Service by a city officer 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 officer 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.

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*Employee.* 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.

*Employment.* The term "employment" means the performance of work or services for remuneration and includes work or services performed by independent contractors.

*Former city officer or employee.* A "former city officer" or "former city employee" is a person whose city duties terminate on or after the effective date of this code.

*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.

*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.

*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.

*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.

*Officer.* The term "officer" or "city officer" includes, but is not limited to, the following persons:

- (1) Mayor and city council members;
- (2) City manager;
- (3) Municipal judge;
- (4) Members of all standing boards and commissions appointed by the city council;
- (5) Department heads; and
- (6) Sworn law enforcement personnel.

*Official action.* "Official action" includes:

- (1) Any affirmative act (including the making of a recommendation) within the scope of, or in violation of, an officer or employee's duties; and
- (2) Any failure to act, if the officer or employee is under a duty to act and know that inaction is likely to affect substantially an economic interest of the officer or employee.

*Official information.* "Official information" includes information gathered pursuant to the power or authority of city government.

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

*Partner.* 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.

*Person.* "Person" means any individual, human being or business entity, excluding the City of Kyle.

*Personally and substantially participated.* "Personally and substantially participated" means to have taken action as an officer or employee through decision, approval, disapproval, recommendation, giving advice,

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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.

*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.

*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.

*Respondent.* "Respondent" means an individual identified in a sworn complaint to have allegedly violated the Ethics Code of the City of Kyle.

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

*Sponsor.* The "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.

*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.

## **Secs. 2-143—2-170. Reserved.**

### **Subdivision II. Present City Officers and Employees**

#### **Sec. 2-171. Improper economic benefit.**

- (a) *General rule.* To avoid the appearance and risk of impropriety, a city officer or employee shall not take any official action that he or she knows is likely to affect the economic interests of:
- (1) The officer or employee;
  - (2) His or her partner, 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 officer or employee or of his or her parent, child, or spouse;
  - (6) A business entity in which the officer or employee knows that any of the persons listed in subsection (a)(1) or (a)(2) holds an economic interest;
  - (7) A business entity which the officer or employee knows is an affiliated business or partner of a business entity in which any of the persons listed in subsection (a)(1) or (a)(2) holds an economic interest;
  - (8) A business entity or nonprofit entity for which the city officer or employee serves as an officer or director or in any other policy making position; or

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- (9) A person or business entity from whom, within the past twelve months, the officer or employee, or his or her spouse, directly or indirectly has:
    - a. Solicited an offer of employment;
    - b. Received and not rejected an offer of employment; or
    - c. Accepted an offer of employment; or
  - (10) A person or business entity with whom the officer or employee, or his or her spouse, directly or indirectly is engaged in negotiations pertaining to business opportunities.
- (b) *Recusal and disclosure.* A city officer 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 a disclosure stating the nature of the conflict.
- In addition:
- (3) A supervised employee shall promptly bring the conflict to the attention of his or her supervisor, who will then, if necessary, reassign responsibility for handling the matter to another person; and
  - (4) A member of a board or commissioner shall promptly disclose the conflict to other members of the board or commission and shall not vote on the matter.
- (c) *Definitions.* For purposes of this section:
- (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.

## **Sec. 2-172. 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 officer 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 officer who represents to a person that he or she may provide an advantage to that person based on the officer's position violates this rule.

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- (b) *Special rules.* The following special rules apply in addition to the general rule:
- (1) *Acquisition of interest in impending matters.* A city officer or employee shall not acquire an interest in or affected by, any contract, transaction, zoning decision, or other matter, if the officer or employee knows, or has reason to know, that the interest will be directly or indirectly affected by impending official action by the city.
  - (2) *Reciprocal favors.* A city officer or employee may not enter into an agreement or understanding with any other person that official action by the officer or employee will be rewarded or reciprocated by the other person, directly or indirectly.
  - (3) *Appointment of relatives.* A city officer 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 officer or employee shall be permitted to be in the line of supervision of a relative within 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 officer or employee whose conduct would otherwise violate subsection (b)(3), "Appointment of relatives," shall adhere to the recusal and disclosure provisions provided in section 2-171(b) (improper economic benefit) of subdivision II.

## **Sec. 2-173. Gifts.**

- (a) *General rule.*
- (1) A city officer or employee shall not solicit, accept, or agree to accept any gift or benefit for himself or herself of his or her business:
    - a. That reasonably tends to influence or reward official conduct; or
    - b. That the officer or employee knows or should know is being offered with the intent to influence or reward official conduct.
  - (2) A city officer or employee shall not accept, or agree to accept any gift or benefit, save and except for items or meals received that are of nominal value.
  - (3) A city officer or employee shall not solicit any gift or benefit in conjunction with city business.
- (b) *Special applications.* Subsections (a)(1) and (a)(2) do not include:
- (1) A gift to a city officer or employee relating to a special occasion, such as a wedding, anniversary, graduation, birth, illness, death, or holiday, provided that is commensurate with the occasion and the relationship between the donor and recipient;
  - (2) Reimbursement of reasonable travel-related expenses 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 considering 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;

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- (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 officer 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 officer or employee is participating in connection with his or her spouse's position;
  - (9) Ceremonial and protocol gifts presented to city officers from other governmental entities 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 officer or employee, if:
    - a. The officer or employee participates in the event as a speaker or panel participant by presenting information related to matters before the city; or
    - b. The officer 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 officer or employee;
  - (11) Admission to a charity event provided by the sponsor of the event, where the offer is unsolicited by the city officer or employee; or
  - (12) Admission to a training or education program, including meals and refreshments furnished to all attendees, if such training is related to the officer or employee's official duties.
- (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 officer or employee shall:
- (1) Take reasonable steps to persuade 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 officer's or employee's official conduct, or not accept any gift that the officer or employee knows or should know is being offered with the intent to influence or reward the city officer's or employee's discharge of official duties.
- If a city officer or employee required to file a financial disclosure report under this ethics code knows that a gift or benefit meeting the requirements of this rule has been accepted and retained by a person identified in subsection (d)(1) of this rule, the officer 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 officer or employee filing the report.

## **Sec. 2-174. Confidential information.**

Public servants shall not disclose confidential or proprietary information, or any information they have acquired or obtained in the course of their official duties and that may 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

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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.

- (1) *Improper access.* A city officer 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.
- (2) *Improper disclosure.* A city officer or employee shall not intentionally, knowingly, or recklessly disclose any confidential information gained because of said officer's or employee's position. 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.

## **Sec. 2-175. Representation of private interests.**

- (a) *Representation prohibited.* A city officer or employee who is a member of a board, commissioner 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 the city council if the council has jurisdiction over the board or body of which the city officer or employee is a member, if any issue relates to the officer's or employee's official duties.
- (b) *Representation before the city.*
  - (1) *General rule.* A member of the council or a city employee shall not represent for compensation any person, group, or entity, other than himself or herself or his or her spouse or minor children, before the city. For purposes of this subsection, the term "compensation" means money or any other thing of value that is received, or is to be received for such representation.
- (c) *Representation in litigation adverse to the city.*
  - (1) *Officers and employees.* A member of the council or city employee 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 officer 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 officer's duties to the city.



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### **Sec. 2-176. Conflicting outside employment.**

- (a) *General rule.* A city officer 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 officer or employee shall not provide services to an outside employer related to their official duties as a city officer 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 officers and employees, including requirements for obtaining prior approval of outside employment as applicable.

### **Sec. 2-177. Public property and resources.**

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

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

### **Sec. 2-178. Political activity.**

Limitations on the political activities of city officers 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:

- (1) *Influencing subordinates.* A city officer or employee shall not, directly or indirectly, induce or attempt to induce any city subordinate of the officer or employee:
  - a. To participate in an election campaign, contribute to a candidate or political committee, or engage in any other political activity relating to a political party, candidate, or issue; or
  - b. To refrain from engaging in any lawful political activity.
  - c. A general statement merely encouraging another person to vote does not violate this subsection.
- (2) *Paid campaigning.* A city officer or employee shall not accept payment or other consideration, 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. Payment or other consideration does not include a meal or other item of nominal value.
- (3) *Official vehicles.* A city officer 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 2-177 (public property and resources) of subdivision II.

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## **Sec. 2-179. Actions of others.**

- (a) *Violations by other persons.* A city officer 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 officer or employee shall not violate the provisions of this code of ethics through the acts of another.

## **Sec. 2-180. 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 services 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 contracting 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 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 in accordance with the Texas Open Meetings Act 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:

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- (1) A city "employee" is any employee of the city who is required to file a financial disclosure statement pursuant to the ethics code.
  - (2) A city "officer" is:
    - a. The mayor or any council member;
    - b. A municipal court judge appointed by the council;
    - c. A member of any board, committee or commission.
  - (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.

#### **Sec. 2-181. Persons required to report; time to report; place to report.**

- (a) A city officer or employee who has knowledge of a violation, supported by evidence, of any of the provisions of this ethics code shall report this violation as provided below within 15 business days after the person has knowledge of a violation. A city officer or employee shall not delegate to, or rely on, another person to make the report. Any failures to report a violation pursuant to this subsection are governed by subdivision VIII, section 2-308, and the criteria set forth therein.
- (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 investigating 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 officer 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 and/or ethics compliance officer 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 above all others when performing official duties;

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- (4) Preserve and protect attorney client privilege;
  - (5) Conduct such civil investigations as appropriate to comply with the duties of the city attorney and the ethics compliance officer; and
  - (6) Advise any officer or employee that makes a report to the city attorney or ethics compliance officer in confidence, of a possible violation of this code of ethics, to report the matter to the ethics commission.

**Secs. 2-182—2-200. Reserved.**

### **Subdivision III. Former City Officers and Employees**

#### **Sec. 2-201. Continuing confidentiality.**

A former city officer or employee shall not use or disclose confidential government information acquired during service as a city officer or employee. 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.

#### **Sec. 2-202. Subsequent representation.**

- (a) *Representation by a former city officer.* A person who was a member of a city body shall not represent for compensation any person, group or entity for a period of two 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 the city council which has appellate jurisdiction over the board or body of which the former city officer or employee was a member, if any issue relates to his or her former duties.
- (b) *Representation before the city.* A former city officer 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 of two years after termination of his or her official duties. This subsection does not apply to a person who was classified as a city officer 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 officer or employee shall not state or imply that he or she is able to influence city action on any basis other than the merits.

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### **Sec. 2-203. Prior participation in negotiating or awarding of contracts.**

A former city officer or employee may not, within two years of the termination of official duties, perform work for compensation relating to discretionary contract, if he or she personally and substantially participated in the negotiation or awarding of the contract. A former city officer or employee, within two 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 officer only because he or she was an appointed member of a board or other city body.

### **Sec. 2-204. 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 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 percent or more of the capital stock of a corporation; or
  - b. Ten percent or more of the voting stock or shares of another business entity; or
  - c. Ten 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 (a)(1), (2) or (3) is:
  - a. A subcontractor on a city contract;
  - b. A partner; or
  - c. A parent or subsidiary business entity.

(b) *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 this ethics code.
- (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 was required to file a financial disclosure statement pursuant to this ethics code.

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

**Secs. 2-205—2-220. Reserved.**

## **Subdivision IV. Persons Doing Business with the City**

### **Sec. 2-221. 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 V.T.C.A., Local Government Code ch. 176.

### **Sec. 2-222. Persons seeking discretionary contracts.**

- (a) *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, all political contributions totaling \$100.00 or more within the previous 24 months made directly or indirectly to any current or former member of 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 this subsection. 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 lobbyists of the entity.
- (b) *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 subsection (a) 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.

**Secs. 2-223—2-240. Reserved.**

## **Subdivision V. Members of the Public and Others**

### **Sec. 2-241. 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 subdivisions II (Present

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City Officers and Employees), III (Former City Officers and Employees), and/or IV (Persons Doing Business with the City) of this ethics code.

**Secs. 2-242—2-250. Reserved.**

## **Subdivision VI. Financial Disclosure**

### **Sec. 2-251. Financial disclosure report.**

- (a) *Persons required to file disclosure form.* The mayor and members of the city council and designated city employees. After accepting appointment or assuming the duties of office, the city officers defined in this Code, are required to file with the city secretary a complete sworn financial disclosure report annually.

Designated city employees include:

- (1) The city manager;
  - (2) Deputy or assistant city managers;
  - (3) Assistants to the city manager;
  - (4) City secretary; and
  - (5) All department heads.
- (b) *Record keeping.* Financial disclosure reports, notwithstanding the city's population, shall be maintained in accordance with the V.T.C.A., Local Government Code § 145.007.
- (c) *Annual filing date.* Annual financial disclosure reports must be received by the city secretary on the last business day of January. 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 15 business 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 officer or employee resumes his city duties.
- (d) *Reporting periods.* Each annual financial disclosure filed by an individual, shall disclose information relating to the prior calendar year.
- (e) *City secretary.* The city secretary shall:
- (1) Prior to January 15 of each year, notify the mayor and members of the city council and employees specified in subsection (a) of their obligation to file financial disclosure reports and those forms to be completed;
  - (2) 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 subdivision VI;
  - (3) Review reports for completeness and timeliness;
  - (4) Upon determining that the mayor, a member of city council, a candidate for city council, or the city manager has failed to timely file a financial disclosure report, or has filed incomplete or unresponsive information, notify the individual that failure to file or correct the filing with 15 days after the original

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deadline. If the person in question fails to file a completed report within 15 days of the original deadline, a report of non-compliance shall be forwarded to each member of the city council.

#### **Sec. 2-252. Financial disclosure reports.**

The financial disclosure report form is hereby approved as attached to the ordinance from which this section derives as Exhibit A.

#### **Sec. 2-253. 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 sworn statement on a form provided by the city, attached to the ordinance from which this section derives as Exhibit B, 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 years. The sworn 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. If any material changes have taken place, the financial disclosure report form (Exhibit A) shall be submitted.

#### **Sec. 2-254. Travel reporting requirements.**

- (a) Any persons listed in subsection (b) of this section 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 manager, city secretary, assistant city managers, 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 manager.

#### **Sec. 2-255. Items received on behalf of the city.**

A city officer 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.



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**Secs. 2-256—2-270. Reserved.**

## **Subdivision VII. Ethics commission**

### **Sec. 2-271. Definitions.**

As used in subdivision VII (Ethics commission), the term "ethics laws" include this code of ethics, Article 12 of the City Charter, and V.T.C.A., Local Government Code ch. 171. The term "ethical violation" includes violations of any of those enactments. Other terms used in subdivision VII (Ethics commission) are defined in Section 2 (Definitions) of subdivision I.

### **Sec. 2-272. Structure of the ethics commission.**

- (a) *Establishment.* There is hereby established an ethics commission, which shall have the powers and duties specified in subdivision VII (Ethics commission).
- (b) *Composition.* The ethics commission shall consist of seven members and each member of the council shall recommend for appointment one member of the commission, subject to the approval by a majority vote of the council. The members of the commission are supervised by and may be removed by the city council pursuant to section 12.01 of the Kyle City Charter.
- (c) *Terms of office.* commission members shall be appointed to three-year terms to serve concurrently with the recommending council member's term. Upon a council member vacating his/her seat, the corresponding appointment immediately expires. No member shall serve for more than two three-year terms.
- (d) *Qualifications.* Members of the commission shall have good moral character and shall be residents of the city. No member of the commission shall be:
  - (1) A salaried city officer or employee;
  - (2) An elected public official\*;
  - (3) A candidate for elected city office;
  - (4) An officer of a political party; or
  - (5) A member of a governing body of a taxing entity.
- \* Any elected official who currently serves on the ethics commission will be allowed to complete his or her term but will not be eligible for reappointment.
- (e) *Removal.* Members of the ethics commission 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.* The council member who recommended for appointment the vacating member of the ethics commission shall recommend for appointment another to serve the remainder of the vacated term, subject to approval by a majority vote of the city council.

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- (g) *Recusal.* A member of the ethics commission 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 matter that has been referred to the commission by a member of the city council does not create a presumption of impartiality for a council member's recommended appointee. A commission member is not required to recuse themselves from a matter that has been referred by the council member who recommended them for appointment unless the matter being referred is a request for declaratory ruling or other official action on a matter where the referring member of the city council or their actions are the subject of the referral. A commission member also may not participate in official action on any complaint:
    - (1) That the member initiated;
    - (2) During the pendency of an indictment or information charging the member with an offense, or after a finding of guilt of such an offense.
  - (h) *Chair and vice-chair.* Each year, the commission 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 commission shall meet upon a complaint or grievance being filed and at the request of the council or the city manager. The chair of the commission may call a meeting of the commission. The chair shall preside at meetings of the ethics commission 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 shall not be compensated but shall be reimbursed for reasonable expenses incurred in the performance of their official duties.

## **Sec. 2-273. Jurisdiction and powers.**

- (a) *Jurisdiction.* If a complaint is filed pursuant to section 2-274 (Complaints) of subdivision VII within two years of the date of an alleged violation of the ethics laws, the ethics commission 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 officers and employees, former city officers and employees, and persons doing business with the city; or
  - (2) Any alleged violation by any person subject to the provisions of V.T.C.A., Local Government Code ch. 171.
  - (3) The commission shall not consider any alleged violation that occurred more than two years prior to the date of the filing of the complaint.
- (b) *Termination of city officer's or employee's duties.* The termination of a city officer's or employee's duties does not affect the jurisdiction of the ethics commission with respect to alleged violations occurring prior to the termination of official duties.
- (c) *Powers.* The ethics commission has power:
  - (1) To establish, amend, and rescind rules and procedures governing its own internal organization and operations;
  - (2) To meet as often as necessary to fulfill its responsibilities;
  - (3) To render decisions on complaints or issue advisory opinions;

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- (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 officers and employees with respect to their ethical responsibilities;
  - (9) To prepare reports, as needed, 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 subdivision VII (Ethics Commission) of this ethics code.

## **Sec. 2-274. Complaints.**

- (a) *Filing.* Any person (including a member of the ethics commission) acting personally or on behalf of the commission 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, is subject to criminal 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 complained 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 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.
  - (8) An Ethics Violation Complaint Form is hereby approved as attached to the ordinance from which this section derives as Exhibit C. This form is optional; as long as the requirements of this section are included in a complaint it will be deemed sufficient. The form may be modified at the discretion of the ethics commission as long as the contents substantially comply with this section.

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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 complainant 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 commission.

(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 for the purpose of harassment.
- (2) By a vote of at least two-thirds of those present, the commission may order a complainant to show cause why the commission should not determine that the complaint filed by the complainant is a frivolous complaint.
- (3) In deciding whether a complaint is frivolous, the commission may 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 commission;
  - 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 commission 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 (c)(5) of this section, the commission 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 commission shall consider the following factors:

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- a. The seriousness of the violation, including the nature, circumstance, consequences, extent, and gravity of the harm caused to persons or entities named in the frivolous complaint;
    - b. The sanction necessary to deter future violations; and
    - c. Any other matters that justice may require.
  - (2) The commission may recommend the following sanctions:
    - a. A civil penalty of not more than \$500.00.
    - b. Prosecution for perjury.
    - c. Any other sanction permitted by law.
  - (3) The commission may notify the appropriate regulatory or supervisory agency for their appropriate action.
- (e) *Confidentiality.* No city officer 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.
  - (6) If the city officer or employee is also an accused individual within the complaint, nothing in this subsection prohibits the accused city officer or employee from exercising their rights afforded to them by the United States Constitution.
- (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 subdivision VII, section 2-274(b) (form) above. A complaint that is not sworn as required by subdivision VII, section 2-274(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 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 from adjudicating the complaint;

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- (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 days of receipt, respond by 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 officers and employees have a duty to cooperate with the ethics commission, pursuant to section 2-766(e) (duty to cooperate) of subdivision VII.
- (g) *Assistance.* The city secretary shall provide information to persons who inquire about the process for filing a complaint.

#### **Sec. 2-275. Ethics compliance officer.**

- (a) *City attorney.* The city attorney shall nominate subject to council confirmation by a majority vote independent legal counsel, who does not otherwise represent the city, to serve as the ethics compliance officer.
- (b) *Ethics compliance officer.* The ethics compliance officer shall:
  - (1) Receive and promptly transmit to the ethics commission complaints and responses filed with the city secretary;
  - (2) Investigate, marshal, and present to the ethics commission the evidence bearing upon a complaint;
  - (3) Act as legal counsel to the ethics commission;
  - (4) Issue advisory opinions to city officers and employees about the requirements imposed by the ethics laws;
  - (5) Work with the city secretary in the training and education of city officers and employees with respect to their ethical responsibilities;
  - (6) Review complaints for legal sufficiency;
  - (7) Recommend acceptance or rejection of complaint within sixty (60) days of date made to the ethics commission; and
  - (8) Request additional information from complainant as needed.
- (c) *Exculpatory evidence.* The ethics compliance officer shall disclose to the ethics commission 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.

#### **Sec. 2-276. Ethics commission process.**

- (a) *Commission review.* The ethics commission shall have full power to investigate and dispose of a complaint received. The identity of the members of the ethics commission shall be made public to the person charged in the complaint who, for good cause, may request the recusal of any member of the commission, subject to subdivision VII, section 2-272(g) of this code.
- (b) *Notice of charges.* The ethics commission 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

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having been allegedly violated. However, before the ethics commission may find that a violation of a particular rule has occurred, the respondent must be on notice of which rule(s) is at 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 commission or the ethics compliance officer as a disputed issue at a hearing before the ethics commission; or if the commission or the ethics compliance officer provides the respondent with written notice of the alleged violation and a 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 commission 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 commission, or any known witness to the complaint; or
  - (2) For a member of the ethics commission to:
    - a. Knowingly entertain an ex parte communication prohibited by subsection (d)(1) of this rule; or
    - b. Communicate directly or indirectly with any person, other than a member of the ethics commission, its staff, or the ethics compliance officer, about any issue of fact or law relating to the complaint.
- (e) *Duty to cooperate.* All city officers and employees shall cooperate with the ethics commission 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.

## **Sec. 2-277. Hearings.**

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

- (1) *General rules.* A quorum of the commission must be present for the hearing. Any member of the ethics commission who is not present 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 commission or the ethics compliance officer. The ethics commission 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 commission so finds by a preponderance of the evidence.
- (2) *Evidence.* The ethics commission shall rely on evidence of which a reasonably prudent person commonly relies in the conduct of the person's affairs and may consider evidence not provided through the complaint, request for declaratory ruling, or request for advisory opinion. The ethics commission shall further abide by the following:
  - a. The commission shall hear evidence relevant to the allegations; and
  - b. The commission shall not consider hearsay unless it finds the nature of the information is reliable and useful.
- (3) *Respondent.* The respondent 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 respondent in the complaint may advise that person during the

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course of the hearing, but may not speak on his or her behalf, except with the permission of the ethics commission. The time permitted for presentation will be at the discretion of the commission.

- (4) *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 commission. Witnesses may not be presented by the complainant, except with the permission of the ethics commission.

## **Sec. 2-278. Disposition.**

- (a) *Written opinion.* The ethics commission shall issue a decision within 90 days after the filing of a complaint. The ethics commission shall state in a written opinion its finding of fact and conclusions of law within 30 days after final disposition. 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 and/or ethics compliance officer. 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 officer, council member, 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 officer 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 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 officer. A letter of censure directed to an elected city officer shall be transmitted to the city secretary and thereafter published in the official newspaper of the city;
    - f. A recommendation of criminal prosecution and/or civil remedies, in accordance with this Rule may be found;
    - g. A finding of a violation but no remedial action may be found. The commission must state why no remedial action is recommended; or



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- 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.

(3) The signatory for all written opinions shall be the chair of the ethics commission.

If the ethics commission 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 commission to comply within the above time limits may result in the charge being dismissed for want of prosecution. The commission may notify the parties that additional time is needed to finalize an opinion and may extend the issuance of a decision by an additional 30 days. Prior to such dismissal, the complainant will be given notice and an opportunity to request continuance of the action.

- (b) *Notification.* Within 15 days after the issuance of an opinion, copies of the opinion shall be forwarded by the city secretary, or their designee, to the complainant, the respondent, the ethics compliance officer, and any member of the ethics commission who did not participate in the disposition of the case.
- (c) *Recommendations.* A recommendation for criminal prosecution shall be forwarded to the district attorney's office or an 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 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 commission 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) *Reliance.* If a person reasonably and in good faith acts in reliance on a legal opinion of the city attorney, or an advisory opinion issued by the ethics compliance officer or the ethics commission, that fact may be considered by the ethics commission in adjudicating a complaint filed against that person, but does not by itself bar the finding of a violation.
- (g) *Civil remedies.* The following civil remedies may be recommended by the ethics commission after a finding 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 2-303 (damages and injunctive relief) of subdivision VIII;
  - (3) Recommendation of disqualification from contracting in accordance with section 2-307 (disqualification from contracting) of subdivision VIII;
  - (4) Voiding of a contract in accordance with section 2-305 (voiding or ratification of contract) of subdivision VIII; and/or
  - (5) A fine in accordance with section 2-304 (Removal) of subdivision VIII.

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- (h) *Criminal prosecution.* The ethics commission may recommend criminal prosecution to the district attorney's office or appropriate law enforcement agency. Prosecution of any person for a violation of this ethics code shall not be undertaken until a complaint is disposed of by the ethics commission in accordance with subdivision VII, section 2-278. However, the absence of a recommendation to prosecute from the ethics commission shall not preclude prosecutorial discretion to prosecute a violation of this ethics code.
  - (i) *Council action.* If the city council receives a recommendation pursuant to subsection (a)(2)d, or subsection (g) (civil remedies) above, the city council shall dispose of a recommendation from the ethics commission within 90 days of receiving such recommendation. The recommendation(s) of the ethics commission may be accepted, rejected, modified, or recommitted to said commission 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.

### **Sec. 2-279. Petition for declaratory ruling.**

Any city officer or employee who believes that reports in the media or elsewhere have created the appearance of impropriety on the part of the city officer or employee shall have the right to file a sworn statement with the city secretary affirming his or her innocence, and to request the ethics commission to investigate and make known its findings, and make any relevant recommendations concerning the issue. Upon receipt of a request for a declaratory ruling, the ethics commission shall adhere to the process defined in subdivision VII, section 2-276 and provide a substantive review of the subject matter and circumstances identified in the sworn statement regardless of whether the perception of impropriety is the result of public allegations, statements or questions and report its findings in a written opinion in accordance with subdivision VII, section 2-278, above. The ethics compliance officer shall promptly forward the written opinion to the city secretary for posting on the internet via the City of Kyle website for a period of no less than five years.

### **Sec. 2-280. Advisory opinions.**

- (a) *Requests for advisory opinions.*
  - (1) By writing filed with the city secretary, any person 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.
  - (2) The ethics compliance officer and the commission shall issue a written advisory opinion within 45 days of referral of a request by the city secretary. During the preparation of the opinion, the commission may consult with the ethics compliance officer of the city and other appropriate persons. If the person requesting an advisory opinion requested anonymity, the advisory opinion shall not reveal the name of the person who made the request and shall be written in the form of a response to a hypothetical situation. A copy of the opinion shall be indexed and kept by the ethics commission or the ethics compliance officer, and shall be sent to the person who requested the opinion, the members of the ethics commission, and the city secretary. The city secretary shall make the opinion available as a public record in accordance with the Texas Public Information Act. The ethics compliance officer shall promptly forward the opinion to the city secretary for posting on the internet via the City of Kyle Website for a period of no less than five years.

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- (b) *Opinions initiated by the commission.* On its own initiative, the ethics commission may issue a written advisory opinion with respect to the interpretation of the ethics laws as they apply to persons other than city officers 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 as part of its records for a period of not less than five years. In addition, copies of the opinion shall be forwarded by the chair of the ethics commission, 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 Texas Public Information Act. The ethics compliance officer shall promptly forward the opinion to the city secretary for posting on the internet via the City of Kyle Website for a period of no less than five years.
- (c) *Opinions issued by the ethics compliance officer.*
- (1) Requests by city officers and employees.
- a. By writing filed with the ethics compliance officer, any city officer or employee may request an advisory opinion with respect to whether proposed action by that person would violate the ethics laws.
- b. Within 30 days of receipt of the request by the ethics compliance officer, 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 situation. Copies of the opinion shall be forwarded by the ethics compliance officer to the members of the ethics commission, to the person who requested the opinion, and to the city secretary. The city secretary shall promptly post the opinion for a period of no less than five years on the internet via the City of Kyle website. The city secretary shall make the opinion available as a public record in accordance with the Texas Public Information Act.

## **Sec. 2-281. Report.**

The ethics commission shall, upon the request of the city council, prepare and submit an annual report to the mayor and city council detailing the activities of the commission during the prior year. The format for the report shall be designed to maximize public and private understanding to the commission's operations, and shall include a summary of the content of ethics opinions issued by the commission based on information gathered by the commission 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 ensure wide dissemination and availability of the report of the ethics commission.

## **Sec. 2-282. 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 subdivision VII, above. Meetings of the commission shall be open to the public, except as provided in subdivision VII, section 2-274, above and the Texas Open Meetings Act. However, information that is included in any such record that is made confidential and privileged by federal or state law shall be redacted 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.

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**Secs. 2-283—2-300. Reserved.**

## **Subdivision VIII. Enforcement Mechanisms**

### **Sec. 2-301. Purpose and intent.**

This code of ethics has been enacted to further the purposes stated in subdivision I, section 2-142, 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 of its provisions, and that such form of redress should be available in addition to any 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 in 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.

### **Sec. 2-302. Disciplinary action.**

City officers 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 made by an elected officer and the applicable facts warrant consideration of removal the city council may order recall election for such an officer.

### **Sec. 2-2-303. Damages and injunctive relief.**

This code of ethics has been enacted not only to further the purposes stated in section 2-242 (statement of purpose) of subdivision I, 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.

### **Sec. 2-304. Removal.**

Any person, whether or not an officer or employee of the city, who violates any provision of this code of ethics for which any required statement has not been filed, or for which a statement on file is incorrect,

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misleading, or incomplete, constitutes a separate offense and may be removed from their employment by the city manager, or from their appointed position of the board or commission they serve by the city council.

#### **Sec. 2-305. Prosecution for perjury.**

Any person who files a false sworn statement under subdivision VI (Financial Disclosure) or subdivision VII (Ethics Commission) is subject to criminal prosecution for perjury under the laws of the State of Texas.

#### **Sec. 2-306. Voiding or ratification of contract.**

If an ethics commission finds that there has been a violation of any provision in sections 2-171 through 2-179 of subdivision II (Present City Officers and Employees), or section 2-201 or 2-202 of subdivision III (Former City Officers 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.

#### **Sec. 2-307. Disqualification from contracting.**

- (a) Any person (including business entities and non-profit entities) who intentionally or knowingly violates any provision of subdivision IV (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 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 officer 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.

#### **Sec. 2-308. Failure to report and penalty.**

Any city officer or employee who has knowledge of a violation supported by evidence that an unreported violation of the ethics code has been committed and who intentionally fails to report such violation as provided in subdivision II, section 2-181 (persons required to report; time to report) of this code is subject to the penalties herein.

#### **Secs. 2-309—2-320. Reserved.**

## **Subdivision IX. Administrative Provisions**

### **Sec. 2-321. 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 officer 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.

### **Sec. 2-322. Distribution and training.**

- (a) The ethics compliance officer shall provide information about the code to every officer and employee of the city, and copies of the code shall be made readily available to city officers, employees, and the public. Within 30 days after entering upon the duties of his or her position, every new officer or employee shall be furnished with a copy of 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 officer shall be provided with a copy of the ethics code.
- (b) The ethics compliance officer, in consultation with the ethics commission, may develop educational materials and conduct educational programs for the officers and employees of the city on the provisions of this code of ethics, sections 12.01 through 12.05 of the City Charter, and V.T.C.A., Local Government Code ch. 171. Such materials and programs shall be designed to maximize understanding of the obligations imposed by these ethics laws.

### **Sec. 2-323. 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 circumstance 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.

### **Secs. 2-324—2-376. Reserved.**