

To: Joe Deets
Chair, Bainbridge Island Ethics Board

From: Val Tollefson
Bainbridge Island City Council, North Ward / Mayor

cc: Lisa Marshall, City Attorney
Council

Date: January 20, 2016

Re: 1. Request for Ethics Opinion
2. Request for Ethics Board recommendations of Bainbridge Island Ethics Program

Mr. Deets:

I am writing to request an advisory opinion of the Ethics Board with regard to whether I have a Conflict of Interest under the existing Bainbridge Island Ethics Program.

Regardless of what that opinion is, I also request that the Ethics Board review the Bainbridge Island Ethics Program in light of Washington State law, Court decisions, Attorney General opinions, and the Conflict of Interest rules applied in other cities, and forward any proposed changes and revisions to the City Council for consideration and possible action.

Background.

In addition to their direct service to the City, members of the City Council serve on a variety of regional Committees, Boards and Commissions which by their respective by-laws or other organizing documents require that seats be filled by certain elected officials. For example, I currently serve on the Boards of Kitsap County Consolidated Housing Authority (Housing Kitsap) and Kitsap Transit, and on the Executive Board of Kitsap Regional Coordinating Council (KRCC). Councilmember Sarah Blossom serves on the Board of the Kitsap County Health District. Councilmember Wayne Roth is Vice-Chair of the Executive Board of KRCC. Councilmember Mike Scott is on the Growth Management Policy Board of the Puget Sound Regional Council.

Prior to adopting the Council-Manager form of government in 2009, many (but not necessarily all) of these positions were held by the elected Mayor. Without an elected Mayor the positions are all now held by Councilmembers.

Since 2014, the City Council has been actively discussing whether to dispose of a piece of real property known as the Suzuki property. In September, 2015 the City issued a Request for Proposals with regard to that property. One of the priorities the City said that it would consider in evaluating responses to the RFP was whether the proposal provided affordable housing. When he learned of the RFP, the Executive Director of the organization suggested that Housing Kitsap should explore submitting a proposal.

Being uncertain what the ramifications might be for my participation in the discussion and evaluation of proposals when they came before the City Council, and believing that my City Council responsibilities were paramount, I recused myself from all Housing Kitsap discussions and decisions regarding Suzuki. As a result, I did not know what its plans were until proposals were received by the City last month. At the same time, my recusal prevented me from representing the best interests of Bainbridge Island as Housing Kitsap worked on this project. Housing Kitsap, as it turns out, is a participant in three out of the four proposals received by the City.

At the December 8, 2015 meeting of the City Council, a citizen and resident of a neighborhood bordering the Suzuki property publicly requested that I recuse myself from all participation in the Suzuki discussions by reason of my position with Housing Kitsap. I responded to that individual after the meeting by private email, indicating that I did not intend to recuse myself, since I did not believe that service on a governmental board which was required by my position as a Bainbridge City Councilmember should or did create a legal conflict of interest. I promised that citizen a detailed explanation of my reasoning, which I told him I would make public.

When I sat down to write that detailed public explanation of my reasoning, I found the following language in the Code of Ethics (Resolution 2011-07, Art. II.D.1):

1. Applications of Conflict of Interest

Except as permitted in subsection (b) below, an elected official or member of a City Committee or Commission shall not directly, or indirectly through a subordinate or fellow officer, official or employee, take any direct official action on a matter on behalf of the City if he or she, or a member of the immediate family:

- a. Has any substantial direct or indirect contractual employment related to the matter;
- b. Has other **financial or private interest** in that matter (which includes serving on a Board of Directors **for any organization**); or

* * * *

Request for Opinion.

I respectfully request that the Ethics Board provide its opinion as to whether I have a conflict of interest affecting my participation in discussion and decisions pertaining to the Suzuki property under the existing Bainbridge Island Ethics Program by reason of my role as a Commissioner of Housing Kitsap.

If the Board determines that I do have a conflict, I request the Board's opinion as to whether that conflict precludes my participation in discussions surrounding Suzuki, precludes my voting on any

decision pertaining to disposition of Suzuki to a developer with which Housing Kitsap is associated, or both.

Since Council discussion of Suzuki will occur periodically over the next several months, I ask that the Board give this request its attention as soon as reasonably possible.

Request for Review.

I request that the Ethics Board review the Bainbridge Island Ethics Program. While I hope that the Board will take this occasion to review the entire Program, I ask that specific attention be given to the following:

1. Revising language to make perfectly clear the intent of the Program with regard to elected officials who by reason of their office also hold office on other governmental or quasi-governmental committees, boards and commissions.
2. Considering whether it is good policy for the City to discourage the participation of elected officials in the civic life of our community by creating potential conflicts of interest if those officials serve on the boards of non-profit organizations.
3. Considering whether Article II.D.2.a is properly included in the Code of Ethics. The “rule of necessity” only has application in judicial matters, governed by the Appearance of Fairness Doctrine.
4. Reviewing the Program for internal consistency. For instance, it appears that the reference to “subsection (b) below” in Article II.D.1 of the Code of Ethics should properly read “paragraph [or, subsection] 2 below”.

In conducting this Review, I urge the Board to carefully craft any changes to avoid the perception that having opinions, positions, even biases concerning a topic before the Council does not create a Conflict of Interest.

References.

While I am sure that the Board is perfectly capable of doing its own research, I offer the following as either necessary, or as potentially useful to the Board’s work.

- Exhibit A City of Bainbridge Island Resolution 2011-07 (Ethics Program)
- Exhibit B City of Bainbridge Island Resolution 2011-13 (Amending the Ethics Program)
- Exhibit C Conflict of Interest Form and attached Policy
- Exhibit D Excerpt from Manual of City Governance, Section 4.6 (Conflict of Interest)
- Exhibit E MRSC – Ethics and Conflicts of Interest
- Exhibit F MRSC – Conflict of Interest Court Decisions and Attorney General Opinions
- Exhibit G MRSC – Local Codes of Ethics

Thank you so much for your help and your service to the City.



RESOLUTION NO. 2011-07

A RESOLUTION of the City Council of Bainbridge Island, Washington, adopting a revised Ethics Program for the City of Bainbridge Island in accordance with BIMC Chapter 2.07.

WHEREAS, BIMC Chapter 2.07 provides that the City Council shall establish by resolution or ordinance an ethics program for the City of Bainbridge Island; and

WHEREAS, on May 11, 2006, City Council adopted an ethics program for the City of Bainbridge Island; and

WHEREAS, the Ethics Board has proposed the revised version of the current Ethics Program attached hereto; and

WHEREAS, City Council reviewed the proposed revisions at the March 9, 2011 City Council meeting; and

WHEREAS, the City Council finds that it is in the best interest of the City of Bainbridge Island to adopt the proposed revised Ethics Program; now therefore,

THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND WASHINGTON DOES RESOLVE AS FOLLOWS

Pursuant to BIMC 2.07.010, the revised Ethics Program attached hereto and made a part hereof by this reference is hereby approved and adopted as the Ethics Program for the City of Bainbridge Island.

PASSED by the City Council this 23rd day of March, 2011.

APPROVED by the Mayor this 23rd day March, 2011.

By: 
Kirsten Hytopoulos, Mayor

ATTEST/AUTHENTICATE:

By: 
Rosalind D. Lassoff, City Clerk

FILED WITH THE CITY CLERK:	March 15, 2011
PASSED BY THE CITY COUNCIL:	March 23, 2011
RESOLUTION NO.	2011-07

CITY OF BAINBRIDGE ISLAND
ETHICS PROGRAM
Approved 3/23/11
Resolution No. 2011-07

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CITY OF BAINBRIDGE ISLAND ETHICS PROGRAM

ARTICLE I - INTRODUCTION, PURPOSE, AND ADMINISTRATION OF PROGRAM

A. Preamble

The City of Bainbridge Island has adopted the following Core Values and Ethics Principles to promote and maintain the highest standards of personal and professional conduct among all the people who comprise the City's government. The optimal operation of democratic government requires that all of its decision-makers be fair and accountable to the people they serve.

All elected and appointed officials, City employees, volunteers, members of Commissions and Committees, and all others who participate in the City's government are expected to adhere to these Core Values and Ethics Principles, apply them to their specific responsibilities, and make them a common aspect of their work.

B. Core Values (adopted by Resolution 97-25)

1. Service, Helpfulness, Innovation

We are committed to providing service to the people of Bainbridge Island and to each other that is courteous, cost effective and continuously improving.

2. Integrity

We will treat one another and the citizens of Bainbridge Island with honesty and integrity, recognizing that the trust that results is hard won and easily lost. We pledge to promote balanced, consistent, lawful policies and directives, in keeping with that integrity and the highest standards of this community.

3. Equality, Fairness, Mutual Respect

We pledge to act with the standard of fairness and impartiality in the application of policies and directives and that of equality and mutual respect with regard to interpersonal conduct.

4. Responsibility, Stewardship, Recognition

We accept our responsibility for the stewardship of public resources, and our accountability for the results of our efforts, and we pledge to give recognition for the exemplary work.

C. Ethics Principles

1. Obligations to the Public

Following the highest standards of public service, all those associated with the government of the City of Bainbridge Island will act to promote the public good and preserve the public's trust. In practice, this principle looks like:

- a. Public meetings and other proceedings conducted in accordance with the Best Practices articulated and issued by the City's Ethics Board (http://www.ci.bainbridgeisl.wa.us/ethics_board.aspx)
- b. Transparency and honesty in all public statements and written communications.

2. Obligations to Others

In order to sustain a culture of ethical integrity, all those associated with the government of the City of Bainbridge Island will treat each other and the public with respect and be guided by applicable codes of ethics, labor agreements, and professional codes. In practice, this principle looks like:

- a. Elected and appointed officials, all City employees, and members of citizen Committees and Commissions shall familiarize themselves with the ethical rules governing them (including Washington State statute RCW 42.23 and this Code of Ethics) and obtain annual education regarding such rules.
- b. All those associated with the government of the City of Bainbridge Island shall, in all their interactions, conduct themselves in a manner that demonstrates civility and respect for others.

3. Obligations Regarding the Use of Public Resources

In recognition of the importance of stewardship, all those associated with the government of the City of Bainbridge Island will use and allocate public monies, property, and other resources in a responsible manner that takes into consideration both present and future needs of the community. In practice, this principle looks like:

- a. All those associated with the government of the City of Bainbridge Island shall, to the extent possible, seek advice regarding the use of public resources from citizens and staff experts in order to ensure that public resources are used and conserved for the public good.
- b. All those associated with the government of the City of Bainbridge Island shall ensure that paid experts and consultants who provide advice regarding the use of public resources shall be impartial and free of conflicts of interest.

D. Ethics Program

1. Purpose of the Ethics Program

All those associated with City government, including elected officials, employees, members of City Committees and Commissions, seek to earn and maintain confidence in the City's services and the public's trust in its decision-makers. Our decisions and our work must meet the most rigorous ethical standards and demonstrate the highest levels of achievement in following the Core Values and Ethics Principles. It is therefore the purpose of this program to:

- a. Articulate the Core Values and Ethics Principles that will guide the conduct of City affairs and of all people associated with City government;
- b. Establish standards of ethical conduct in a Code of Ethics for elected officials and members of City Committees and Commissions;
- c. Provide training and clarification concerning the Core Values, Ethics Principles, and the Code of Ethics;
- d. Establish a system that enables all citizens, including members of City government, to seek advice and assistance regarding possible ethical violations;
- e. Provide a process to review possible violations of the Code of Ethics by elected officials and members of City Committees and Commissions;
- f. Maintain an Ethics Board to assist with the administration of the program; and
- g. Provide a comprehensive Ethics Program for the City, ensuring that the ethics standards and the procedures for enforcing them that apply to City employees, including policies and collective bargaining agreements, are consistent with the Core Values and Ethics Principles which apply to all persons associated with City government.

2. Administration of the Ethics Program

The Core Values and Ethics Principles apply to all persons associated with City government. However, there are two sets of rule-based standards, which are separately enforced. The Code of Ethics (Article II of this document) applies to elected and appointed officials, and members of City Committees and Commissions.

The Code of Ethics is enforced by the City Council (as detailed in Article III of this document). A set of guidelines and ethical standards included in the *City of Bainbridge Island Employee Manual* applies to all City employees and is enforced by City administration.

ARTICLE II - CODE OF ETHICS

Except where specifically stated, the rules articulated in Article II apply to elected officials, and citizens serving on City Committees and Commissions.

A. Gifts and Compensation

1. Limitations on City-Related Gifts and Outside Compensation

Except as permitted under subsections (2) and (3) below, no elected official or member of a City Committee or Commission, or any member of their immediate families shall, directly or indirectly, accept any gift (as defined below) for a matter connected with or related to his or her services or duties with the City of Bainbridge Island or accept any non-City compensation for the performance or non-performance of those services or duties.

2. Exceptions to Gift Limitations

The following are exceptions to the limitation on gifts and may be accepted by an elected official:

- a. Unsolicited items of trivial value. "Items of trivial value" means items or services with a value of fifty dollars (\$50.00) or less, such as promotional tee shirts, pens, calendars, books, or other similar items.
- b. Gifts from other City officers, officials, or employees, or their family members on appropriate occasions.
- c. Gifts appropriate to the occasion and reasonable and customary in light of a familial, social or official relationship of the giver and recipient, such as weddings, funerals, illnesses, holidays and ground-breaking ceremonies.
- d. Campaign contributions as permitted and reported in accordance with law.
- e. Awards that are publicly presented by a non-profit organization in recognition for public service if the award is not extraordinary when viewed in light of the position held by the recipient.
- f. Gifts offered while visiting other cities, counties, states, or countries or hosting visitors from other cities, counties, states, or countries, when it would be a breach of protocol to refuse the gift, provided that any such gifts received shall become property of the City.
- g. Reasonable and necessary costs to attend a conference or meeting that is directly related to the official or ceremonial duties of the elected official, *provided* that any payment of substantial travel or lodging expenses by any person or entity regulated by

the City or doing or seeking to do business with City must be approved in advance by the Mayor or, if the Mayor is the recipient, by the Mayor Pro Tem.

3. Immediate Family Gift Exception

It shall not be a violation of this section for a member of an official's immediate family to accept a gift which arises from an independent relationship, if the official does not significantly benefit from the gift, and it cannot reasonably be inferred that the gift was intended to influence the official in the performance of his or her duties.

B. Use of City Property by Elected Officials

1. Except for limited incidental personal use or emergency circumstances, no elected official shall request, permit, or use City vehicles, equipment, materials, or property for personal use, personal convenience or profit.
2. From the time that an elected official declares or publicly states that he or she intends to run for re-election until the conclusion of the respective general election, that elected official shall not request or direct that City funds be used to purchase any media (including newspaper, radio, television or bulk mailing) that contains the name or image of that elected official unless the names or images of all City elected officials appear in the media being purchased.

C. Confidentiality

Except as required by law, an elected official, former elected official, or current or former member of a City Committee or Commission shall not disclose or use privileged, confidential or proprietary information obtained in executive session or otherwise in the course of their duties as a result of their position.

D. Conflict of Interest - General

1. Applications of Conflict of Interest

Except as permitted in subsection (b) below, an elected official or member of a City Committee or Commission shall not directly, or indirectly through a subordinate or fellow officer, official or employee, take any direct official action on a matter on behalf of the City if he or she, or a member of the immediate family:

- a. Has any substantial direct or indirect contractual employment related to the matter;
- b. Has other financial or private interest in that matter (which includes serving on a Board of Directors for any organization); or
- c. Is a party to a contract or the owner of an interest in real or personal property that would be significantly affected by the action.

2. Conflict of Interest Exceptions for Elected Officials

Subsection (1) above shall not apply when the elected official:

- a. Is required to take or participate in an action based upon the rule of necessity;
- b. Decides to represent himself or herself before the City Council, Hearing Examiner or any other City board, commission or agency, provided that the individual does not also participate in any way in that board's deliberations or decision in an official capacity;
- c. Acquires an interest in bonds or other evidences of indebtedness issued by the City if acquired and held on the same terms available to the general public;
- d. Officially participates in the development and adoption of the City's budget; or establishes the pay or benefit plan of City officers, officials, or employees; or
- e. Makes decisions on any other legislative or regulatory action of general applicability, unless these actions directly affect, or appear to affect the official's or immediate family member's employment.

3. Conflict of Interest Exceptions for Members of City Committees and Commissions

Subsection (1) above shall not apply to a member of a City Committee or Commission provided that the member fully discloses the financial interest on the public record of the City Committee or Commission and the Committee or Commission votes to allow the person to participate in discussion or the vote.

4. Disclosure for Elected Officials

All elected officials are required to comply with the Washington State Public Disclosure Commission requirements for financial disclosure. In addition, all elected officials shall publicly disclose their financial interest in any matter that comes before them. All elected officials shall annually complete a conflict of interest statement to be submitted to the City Clerk by April 15th.

E. Conflict of Interest—After Leaving Elected City Office

1. For two (2) years after leaving elected City office, no former elected official shall obtain employment in which he or she will take direct or indirect advantage of matters on which he or she took direct official action during his or her service with the City. This includes contractual negotiations or solicitation of business unavailable to others.
2. For two (2) years after leaving elected City office, no former elected official shall engage in any action or litigation in which the City is involved, on behalf of any other person or entity, when the action or litigation involves an issue on which the person took direct official action while in elected City office.

F. Conflict of Interest - Family Members of Elected Officials

1. Appointment of Family Members

Unless he or she obtains a waiver from the Ethics Board, no elected official shall appoint or hire a member of his or her immediate family for any type of employment with the City. This includes, but is not limited to, full time employment, part time employment, permanent employment, temporary employment, and contract employment.

2. Supervision of Family Members

No elected official shall supervise or be in a direct line of supervision over a member of his or her immediate family. If an elected official is placed in a direct line of supervision of a member of his or her immediate family, he or she shall have three (3) months to come into compliance or to obtain a waiver pursuant to section (3) below.

3. Waivers

Waivers from this section may be sought from the Ethics Board to allow a member of the immediate family to be hired or to be in the direct line of supervision of a member of the immediate family. Procedures to consider such a waiver are set forth in Article (V) Section C.6 (Obtaining Waivers).

G. Conflict of Interest - Contractors

Every major contractor submitting bids to the City shall include a statement affirming that he or she has read the Code of Ethics and agrees to abide by its guiding principles and rules. Further, the contractor affirms that neither the contractor nor any agent of the contractor has made any prohibited gift to an elected official who is involved in direct official action on the bid or has a relationship to such an official that would create a conflict of interest for that official.

H. Conflict of Interest - Citizens serving on City Committees and Commissions

Citizens serving on City Committees and Commissions shall sign a conflict of interest statement upon appointment and reappointment.

I. Conduct of Public Meetings

1. Meetings involving elected officials or City Committees and Commissions should be conducted in a manner that maximizes transparency of relationships among individuals or groups that could affect decision-making.

2. Meetings of the City Council and City Committees and Commissions shall have a standing agenda item for disclosure of possible conflicts of interest. Members are encouraged to disclose relationships with persons and issues on the agenda, including potential conflicts of interests. If necessary, discussion among the members may be

undertaken to judge the significance of these relationships and whether a possible conflict of interest exists.

ARTICLE III - ENFORCEMENT OF THE ETHICS PROGRAM

A. Responsibilities of the Ethics Board

1. In considering any matter brought to its attention for action, the Ethics Board shall interpret and apply the Code of Ethics in favor of promoting the City's Core Values and Ethics Principles, protecting the public's interest in full disclosure of conflicts of interest, and promoting ethical behavior.
2. The Ethics Board shall handle the following matters:
 - a. Complaints involving alleged violations of the Code of Ethics, Article II, by elected officials, members of City Committees and Commissions, and persons who contract with the City;
 - b. Advisory opinions concerning the application of the Core Values and Ethics Principles, City policies and practices, or the applicability of the Code of Ethics to the requestor's own behavior; and
 - c. Waivers of certain restrictions, as provided in the Code of Ethics.

B. Submission of Ethics Complaints

Any person may submit to the City Clerk an ethics complaint alleging violations of the Code of Ethics, Article II, or the ethics standards contained in the City of Bainbridge Island Employee Manual. Complaints concerning an elected official, a member of a City Committee or Commission, or a major contractor will be referred to the Ethics Board. Complaints concerning the conduct of City staff will be referred to the City Manager. The Ethics Board may on its own initiative identify a possible violation and initiate its own complaint.

Complaints must include the name and address of the complainant, along with a detailed statement of facts, supported by a declaration in compliance with RCW 9A.72.085, on a form supplied by the Ethics Board (available through the City Clerk's office or on the City website: http://www.ci.bainbridge-isl.wa.us/ethics_board.aspx).

C. Review of Complaints Concerning City Employees

1. The City Manager will review any ethics complaint forwarded by the City Clerk and authorize such investigations as may be necessary to determine whether a violation has occurred, consistent with relevant policies and procedures.

2. The City Manager may request advice from the Ethics Board.
3. If the City Manager determines that no violation has occurred, a written response will be made to the complainant.
4. If a violation of ethics rules has occurred, the City Manager or other appropriate City officer will take action as guided by state law, and relevant policies and procedures.
5. In the event of a violation, the City Manager will provide a response to the complainant and to the Ethics Board outlining the substance of the violation and the action taken, subject to governing rules regarding confidentiality articulated in state law, City policy, and collective bargaining agreements.
6. Apparent violations of law will be reported to the appropriate authorities.

D. Review of Complaints by Ethics Board

1. The Ethics Board will review any complaint forwarded to it by the City Clerk.
2. In the course of reviewing a complaint, the Ethics Board may request clarification of the complaint or other additional information from the complainant.
3. After reviewing a complaint, the Ethics Board may take any of the following actions and inform the complainant, the respondent, and the City Clerk:
 - a. Determine that the complaint lacks reasonable credibility;
 - b. Determine that the facts stated in the complaint, even if true, would not constitute a violation of the Code of Ethics;
 - c. Determine that facts stated in the complaint, even if true, would not constitute a material violation of the Code of Ethics because any potential violation was inadvertent or minor or has been adequately cured, such that further proceedings on the complaint would not serve the purposes of the Code of Ethics;
 - d. Issue an advisory opinion if the subject of the complaint is more appropriate for such action;
 - e. Hold the complaint for action at a future time if the matter is the subject of litigation;
or
 - f. Make a preliminary determination that the facts stated in the complaint, if true, could potentially constitute a violation of the Code of Ethics such that further proceedings are warranted.
4. If the Ethics Board makes a preliminary determination that the facts stated in the complaint, if true, could potentially constitute a violation of the Code of Ethics such that

further proceedings are warranted, the Board will inform the respondent of its preliminary determination and provide the respondent with a reasonable period of time to submit a written response in which the respondent may provide a statement of facts, supported by a declaration in compliance with RCW 9A.72.085, in opposition to the complaint and any further explanation of the respondent's position on the complaint.

5. After receiving the written response from the respondent, the Ethics Board may take any of the following actions and inform the complainant, the respondent, and the City Clerk:

- a. Determine that the complaint lacks reasonable credibility;
- b. Determine that the facts stated in the complaint, even if true, would not constitute a violation of the Code of Ethics;
- c. Determine that facts stated in the complaint, even if true, would not constitute a material violation of the Code of Ethics because any possible violation was inadvertent or minor or has been adequately cured, such that further proceedings on the complaint would not serve the purposes of the Code of Ethics;
- d. Issue an advisory opinion if subject of the complaint is more appropriate for such action;
- e. Hold the complaint for action at a future time if the matter is the subject of litigation;
- f. Determine that the existence of a violation of the Code of Ethics would depend on whether the facts are as stated by the complaint or as stated by the respondent; or
- g. Determine that, based on the submissions of the complainant and the respondent, a material violation of the Code of Ethics has likely occurred.

6. If the Board determines either: (1) that the existence of a violation of the Code of Ethics would depend on whether the facts are as stated by the complaint or as stated by the respondent, or (2) that a material violation of the Code of Ethics has likely occurred, the Board will forward its determination, along with the complaint, response and relevant supporting materials, to the complainant and respondent. The Board may also, on its own initiative, forward such a determination to the City Council for its review.

7. Regardless of whether a particular violation of the Code of Ethics has occurred, the Ethics Board may find that City processes or policies could better reflect ethical shared values and principles, and may publish an advisory opinion to this effect.

8. In the course of reviewing any complaint, the Board shall report any apparent violation of law to the appropriate authorities.

F. Advisory Opinions

1. Any person may request an opinion from the Ethics Board as to whether their own behavior has violated or might in the future violate the Code of Ethics or shared values and principles.
2. The City Manager or City Council or any citizen may request an advisory opinion from the Ethics Board regarding City policies or practices in relation to the Code of Ethics.
3. Citizen Committees and Commissions may request an advisory opinion from the Ethics Board regarding operating rules or practices in relation to the Code of Ethics.
4. Any person may request an advisory opinion from the Ethics Board regarding operating policies of the City Council or Citizen Committees and Commissions in relation to the Code of Ethics.
5. The Ethics Board, on its own initiative may prepare and publish its own advisory opinion.
6. The Ethics Board will inform the requestor and publish its advisory opinions.

G. Waivers

Elected officials and members of City Committees and Commissions may apply to the Ethics Board for a waiver from provisions of the Code of Ethics. The Board will publish both the request and its response.

H. Effect of Advisory Opinion or Waiver

An individual who receives a waiver, or who acts in reliance on an advisory opinion, shall not later be found to have violated the Code if the individual acts in a manner consistent with that advisory opinion or waiver.

I. Reporting

1. The City Manager will meet with the Ethics Board annually to discuss the function of the Ethics Program as it applies to City employees.
2. The Ethics Board will report annually on the function of the Ethics Program.

**ARTICLE IV -
FOLLOW-UP TO ETHICS COMPLAINTS**

A. City Council Review of Complaints

1. If, after reviewing a complaint, the Ethics Board has determined: (1) that the existence of a violation of the Code of Ethics would depend on whether the facts are as stated by the complainant or as stated by the respondent, or (2) that a material violation of the Code of Ethics has likely occurred, either the complainant or the Board may submit the determination to the City Council so that the Council may decide whether further action is warranted. The City Clerk shall provide written notification to the complainant and the respondent of the time, date, and place of any City Council meeting at which the complaint will be discussed.

2. The Council shall initially review the complaint, response, and relevant supporting materials in executive session to determine whether there appears to be a sufficient factual basis to prove one or more Code of Ethics violations by clear and convincing evidence; provided, however, and consistent with RCW 42.30.110(1)(f), upon request of the respondent, the review shall be open to the public. The respondent shall have an opportunity to respond to the complaint. If Council determines that the complaint and attachments do not provide a sufficient factual basis to prove one or more Code of Ethics violations by clear and convincing evidence, the Council shall dismiss the complaint, and the complainant and the respondent shall be so informed. The action to dismiss the complaint shall be done by a majority vote of the Council in open public session; provided, that the respondent shall not participate in such a vote.

3. If the Council finds that the complaint and attachments appear to provide a sufficient factual basis to prove one or more Code of Ethics violations by clear and convincing evidence, the respondent shall be so informed. Such a finding shall be done by a majority vote of the Council present in open public session; provided, that the respondent shall not participate in such a vote. At that point, the respondent may:

- a. Admit the one or more of the Code of Ethics violations alleged in the complaint.
- b. Not admit the alleged Code of Ethics violations but expressly forego and waive any right to a hearing to contest the violations and any resulting sanction(s) imposed by City Council.
- c. Request a hearing before the City Hearing Examiner to present evidence to dispute, rebut, mitigate, explain or otherwise defend against any or all of the Code of Ethics violations alleged in the complaint.
- d. Remain silent.

4. If the respondent admits the Code of Ethics violations or remains silent, the City Council shall schedule and hold an executive session to hear from the respondent, and deliberate upon the appropriate level of civil sanctions to be imposed, except to the extent that the

respondent requests that he or she be heard in open public session. The written findings, conclusions, and sanctions shall be approved by a majority vote of the Council in open public session; provided, that the respondent shall not participate in such a vote. A copy of the findings, conclusions and sanctions shall be forwarded by registered mail to the complainant and to the respondent at addresses as given by both persons to the City Clerk.

B. Hearing before City Hearing Examiner

1. Hearings conducted by the Hearing Examiner shall be informal. The respondent may be represented by legal counsel. The City Attorney shall designate special counsel to present the Code of Ethics violations charges and case. The respondent and special counsel may present and cross examine witnesses and give evidence before the Hearing Examiner. The Hearing Examiner may also call witnesses and compel the production of books, records, papers, or other evidence needed. To that end, the Hearing Examiner may issue subpoenas and subpoenas duces tecum at the request of the respondent, special counsel, or on his or her own initiative. All testimony shall be under oath administered by the Hearing Examiner. The Hearing Examiner may adjourn the hearing from time to time in order to allow for the orderly presentation of evidence.

The Hearing Examiner or designee shall prepare an official record of the hearing, including all testimony, which shall be recorded by mechanical device, and exhibits; provided that the Hearing Examiner or designee shall not be required to transcribe such records unless presented with a request accompanied by payment of the cost of transcription.

2. Within 30 days after the conclusion of the hearing, the Hearing Examiner shall, based upon a standard of proof of clear and convincing evidence, make findings of fact and conclusions of law. If the Hearing Examiner determines that the alleged Code of Ethics violation(s) have not been proven, the Hearing Examiner shall dismiss the complaint. If the Hearing Examiner determines that one or more Code of Ethics violation are proven, the Hearing Examiner shall forward the matter to City Council for a determination regarding the appropriate level of sanctions to be imposed for the Code of Ethics violations. In either event, a copy of the findings and conclusions shall be forwarded to the City Council, by registered mail to the person who made the complaint, and to the respondent at addresses as given by both persons to the Hearing Examiner.

C. Action by City Council upon Hearing Examiner's Findings and Conclusion

1. Upon receipt of the Hearing Examiner's findings and conclusions that sustain a Code of Ethics violation, the City Council shall schedule an executive session to consider the findings and conclusions, hear from the respondent, and deliberate upon the appropriate level of civil sanction(s) to be imposed, except to the extent that the respondent requests that he or she be heard in open public session. The written findings, conclusions, and sanctions shall be approved by a majority vote of the Council in open public session; provided, that the respondent shall not participate in said vote. A copy of the findings, conclusions and sanctions shall be forwarded by registered mail to the person who made the complaint and to the respondent at addresses as given by both persons to the City Clerk.

2. In the event that the City Council concludes that a Code of Ethics violation(s) has occurred, the Council may impose any of the following sanctions:

- a. Admonition: An admonition shall be a verbal non-public statement made by the Mayor or Mayor Pro Tem to the official who has violated the Code.
- b. Reprimand: A reprimand shall be a letter prepared by the City Council, signed by the Mayor or Mayor Pro Tem, and directed to the official who has violated the Code.
- c. Censure: A censure shall be a written statement administered personally by the Mayor or Mayor Pro Tem to the official who has violated the Code violation. The individual shall appear at a time and place directed by the City Council to receive the censure. The censure shall be given publicly and the official who has violated the Code shall not make any statement in support or opposition thereto or in mitigation. A censure shall be deemed administered at the time it is scheduled whether or not the member appears as required.
- d. Other sanctions: Any sanction imposed under this Ethics Program is in addition to and not in lieu of any other penalty, sanction or remedy which may be imposed or sought according to law or equity.

ARTICLE V - ETHICS BOARD

A. Purpose of the Ethics Board

Maintaining an Ethics Board will help to ensure that City government adheres to the highest standards of public service. The Board is responsible for:

1. Training all elected officials, and members of City Committees and Commissions covered by the Code of Ethics.
2. Working with City Administration so that major contractors and employees (even though they are not covered by this document) read and are familiar with the Code of Ethics in this document and other applicable City documents regarding ethical behavior.
3. Providing responses to complaints, advisory opinions and requests for waivers regarding the Code of Ethics.

The Ethics Board shall promote an understanding of ethical standards for City officials, officers, and contractors working with the City, and the general public. Respect for all citizens, including elected officials, will be one of the highest priorities of the Ethics Board. The Board's responsibilities are described below, along with a description of the membership of the Ethics Board.

B. Training

The Ethics Board shall perform the following training related duties:

1. At least biannually, the Ethics Board shall prepare and distribute a pamphlet describing this Code of Ethics to all covered persons, after obtaining the City Attorney's review.
2. The Ethics Board shall disseminate any change in policy that results from a finding of the Board.
3. The Ethics Board shall ensure that all new elected officials and members of City Committees and Commissions receives a pamphlet on this Code of Ethics.
4. The Ethics Board shall develop and present a training course on the Code of Ethics to be presented to all elected officials and members of City Committees and Commissions on a biannual basis.

C. Annual Report

By February 15 of each year, the Ethics Board shall submit an annual report to the Mayor and the City Council summarizing its activities during the previous calendar year. The report shall include any recommendations for modifying the Code of Ethics.

D. Creation, Terms, and Appointments

1. Membership of Ethics Board

The Ethics Board consists of five members appointed in accordance with this section.

2. Qualifications of Board Members

- a. Members of the Board shall represent a diverse set of backgrounds and interests.
- b. No more than one officer or official of the City may serve on the Board.
- c. At least one member of the Ethics Board shall be a former judicial officer or have expertise in ethics acquired through education or experience.

3. Method of Appointment

- a. The Mayor shall nominate Board members for confirmation by the City Council. Members shall be nominated individually, not in groups of two or more persons. Confirmation of each member shall require a unanimous vote of the City Council.
- b. The Mayor and City Council shall work cooperatively to ensure that any person who is nominated enjoys the required support of the City Council. Nominations shall be presented at meetings of the City Council where all seven Councilmembers are present.

4. Terms of Appointment

- a. Board members shall be appointed to terms of three years; however, the first two members nominated by the Mayor and confirmed by the City Council shall initially serve one year terms to achieve staggered ending dates.
- b. If a member is appointed to fill an unexpired term, that member's term shall end at the same time as the term of the person being replaced.
- c. Each member shall continue to serve until a successor has been appointed, unless the member is removed or resigns.

5. Removal of Board Members

- a. The absence of any member of the Board from three (3) official consecutive meetings, unless the Board has excused the absence for good and sufficient reasons as determined by the Board, shall constitute a resignation from the Board.
- b. The appointing authority may remove a member for inappropriate conduct before the expiration of the member's term. Before removing a member, the appointing authority shall specify the cause for removal and shall give the member the opportunity to make a personal explanation. Before removing the member who is jointly appointed, either the Mayor or the Council shall specify the cause for removal and shall give the member the opportunity to make a personal explanation.

6. Compensation

Members of the Ethics Board shall serve without compensation. A member who is an officer or employee of the City shall not receive any additional compensation for serving on the Ethics Board. Members may be reimbursed for reasonable expenses pursuant to the rules of the City.

7. Rules

The City Council shall approve all rules, which have been adopted by the Ethics Board, by resolution.

8. Consultation with City Attorney

The Ethics Board may consult with the City Attorney or special counsel appointed by the City Attorney regarding legal issues which may arise in connection with the Board's duties and functions under this Ethics Program.

ARTICLE VI - DEFINITIONS

For purposes of the Ethics Program, the following definitions shall apply.

"Confidential Information" means (a) specific information, rather than generalized knowledge, that is not available to the general public on request or (b) information made confidential by law.

"Direct official action" means any action which involves:

1. Negotiating, approving, disapproving, administering, enforcing, or recommending for or against a contract, purchase order, lease, concession, franchise, grant, or other similar instrument in which the City is a party. With regard to "recommending," direct official action occurs only if the person making the recommendation is in the formal line of decision-making;
2. Enforcing laws or regulations or issuing, enforcing, or regulating permits;
3. Selecting or recommending vendors, concessionaires, or other types of entities to do business with the city;
4. Appointing and terminating employees, temporary workers, and independent contractors.
5. Doing research for, representing, or scheduling appointments for an officer, official, or employee, provided that these activities are provided in connection with that officer's, official's, or employee's performance of 1 through 4 above.

Direct official action does not include acts that are purely ministerial (that is, acts which do not affect the disposition or decision with respect to the matter). With regard to the approval of contracts, direct official action does not include the signing by the Mayor, City Manager, or other official as required by law, unless the official initiated the contract or is involved in selecting the contractor or negotiating or administering the contract. A person who abstains from a vote is not exercising direct official action.

"Direct line of supervision" means the supervisor of an employee and the supervisor of an employee's supervisor.

"Elected Official" means the members of the City Council.

"Gift" means any favor, reward, or gratuity and any money, good, service, travel, event ticket lodging, dispensation, or other thing of value that is given, sold, rented or loaned to a person without reasonable compensation and that is not available to the general public on the same terms and conditions. Any honoraria or payment for participation in an event will be considered a gift.

"Immediate family" means husband, wife, son, daughter, mother, father, grandmother, grandfather, grandchildren, brother, sister, domestic partner and spouse of the above. The term includes any minor children for whom the person, or his or her domestic partner, provides day-to-day care and financial support. A "domestic partner" is an unmarried adult, unrelated by blood, with whom an unmarried officer, official, or employee has an exclusive committed relationship, maintains a mutual residence, and shares basic living expenses.

"Major Contractor" means any person, corporation, company, firm, business or other entity doing business over \$5,000 with the City under one contract or annually.

"Rule of Necessity" shall be interpreted and defined in accordance with RCW 42.36.090, which provides: In the event of a challenge to a member or members of a decision-making body which would cause a lack of a quorum or would result in a failure to obtain a majority vote as required by law, any such challenged member(s) shall be permitted to fully participate in the proceeding and vote as though the challenge had not occurred, if the member or members publicly disclose the basis for disqualification prior to rendering a decision. Such participation shall not subject the decision to a challenge by reason of violation of the appearance of fairness doctrine.

RESOLUTION NO. 2011-13

A **RESOLUTION** of the City Council of Bainbridge Island, Washington, approving correction of a minor error in the Ethics Program for the City of Bainbridge Island in accordance with BIMC Chapter 2.07.

WHEREAS, BIMC Chapter 2.07 provides that the City Council shall establish by resolution or ordinance an ethics program for the City of Bainbridge Island; and

WHEREAS, on March 23, 2011, City Council adopted a revised Ethics Program for the City of Bainbridge Island; and

WHEREAS, the Ethics Board has identified a small error in the newly-approved Ethics Program and recommended a specific correction; and

WHEREAS, the City Council finds that it is in the best interest of the City of Bainbridge Island to approve the correction recommended by the Ethics Board; now therefore,

THE CITY COUNCIL OF THE CITY OF BAINBRIDGE ISLAND WASHINGTON DOES RESOLVE AS FOLLOWS

Pursuant to BIMC 2.07.010, the following amendment to Article II of the Ethics Program approved on March 23, 2011 is approved.

A. Gifts and Compensation

1. Limitations on City-Related Gifts and Outside Compensation

Except as permitted under subsections (2) and (3) below, no elected official or member of a City Committee or Commission, or any member of their immediate families shall, directly or indirectly, accept any gift (as defined below) for a matter connected with or related to his or her services or duties with the City of Bainbridge Island or accept any non-City compensation for the performance or non-performance of those services or duties.

2. Exceptions to Gift Limitations

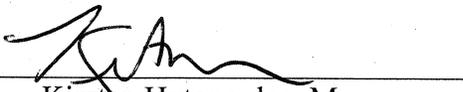
The following are exceptions to the limitation on gifts and may be accepted by ~~elected officials~~ those subject to subsection (1) above:

- a. Unsolicited items of trivial value. "Items of trivial value" means items or services with a value of fifty dollars (\$50.00) or less, such as promotional tee shirts, pens, calendars, books, or other similar items.

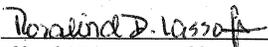
- b. Gifts from other City officers, officials, or employees, or their family members on appropriate occasions.
- c. Gifts appropriate to the occasion and reasonable and customary in light of a familial, social or official relationship of the giver and recipient, such as weddings, funerals, illnesses, holidays and ground-breaking ceremonies.
- d. Campaign contributions as permitted and reported in accordance with law.
- e. Awards that are publicly presented by a non-profit organization in recognition for public service if the award is not extraordinary when viewed in light of the position held by the recipient.
- f. Gifts offered while visiting other cities, counties, states, or countries or hosting visitors from other cities, counties, states, or countries, when it would be a breach of protocol to refuse the gift, provided that any such gifts received shall become property of the City.
- g. Reasonable and necessary costs to attend a conference or meeting that is directly related to the official or ceremonial duties of the elected official, *provided* that any payment of substantial travel or lodging expenses by any person or entity regulated by the City or doing or seeking to do business with City must be approved in advance by the Mayor or, if the Mayor is the recipient, by the Mayor Pro Tem.

PASSED by the City Council this 18th day of May, 2011.

APPROVED by the Mayor this 18th day May, 2011.

By: 
Kirsten Hytopoulos, Mayor

ATTEST/AUTHENTICATE:

By: 
Rosalind D. Lassoff, City Clerk

FILED WITH THE CITY CLERK:	May 9, 2011
PASSED BY THE CITY COUNCIL:	May 18, 2011
RESOLUTION NO.	2011-13

**CITY OF BAINBRIDGE ISLAND
ETHICS PROGRAM**

Approved 3/23/11

Resolution No. 2011-07

Revised 5/18/11

Resolution No. 2011-13

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CITY OF BAINBRIDGE ISLAND ETHICS PROGRAM

ARTICLE I - INTRODUCTION, PURPOSE, AND ADMINISTRATION OF PROGRAM

A. Preamble

The City of Bainbridge Island has adopted the following Core Values and Ethics Principles to promote and maintain the highest standards of personal and professional conduct among all the people who comprise the City's government. The optimal operation of democratic government requires that all of its decision-makers be fair and accountable to the people they serve.

All elected and appointed officials, City employees, volunteers, members of Commissions and Committees, and all others who participate in the City's government are expected to adhere to these Core Values and Ethics Principles, apply them to their specific responsibilities, and make them a common aspect of their work.

B. Core Values (adopted by Resolution 97-25)

1. Service, Helpfulness, Innovation

We are committed to providing service to the people of Bainbridge Island and to each other that is courteous, cost effective and continuously improving.

2. Integrity

We will treat one another and the citizens of Bainbridge Island with honesty and integrity, recognizing that the trust that results is hard won and easily lost. We pledge to promote balanced, consistent, lawful policies and directives, in keeping with that integrity and the highest standards of this community.

3. Equality, Fairness, Mutual Respect

We pledge to act with the standard of fairness and impartiality in the application of policies and directives and that of equality and mutual respect with regard to interpersonal conduct.

4. Responsibility, Stewardship, Recognition

We accept our responsibility for the stewardship of public resources, and our accountability for the results of our efforts, and we pledge to give recognition for the exemplary work.

C. Ethics Principles

1. Obligations to the Public

Following the highest standards of public service, all those associated with the government of the City of Bainbridge Island will act to promote the public good and preserve the public's trust. In practice, this principle looks like:

- a. Public meetings and other proceedings conducted in accordance with the Best Practices articulated and issued by the City's Ethics Board (http://www.ci.bainbridge-isl.wa.us/ethics_board.aspx)
- b. Transparency and honesty in all public statements and written communications.

2. Obligations to Others

In order to sustain a culture of ethical integrity, all those associated with the government of the City of Bainbridge Island will treat each other and the public with respect and be guided by applicable codes of ethics, labor agreements, and professional codes. In practice, this principle looks like:

- a. Elected and appointed officials, all City employees, and members of citizen Committees and Commissions shall familiarize themselves with the ethical rules governing them (including Washington State statute RCW 42.23 and this Code of Ethics) and obtain annual education regarding such rules.
- b. All those associated with the government of the City of Bainbridge Island shall, in all their interactions, conduct themselves in a manner that demonstrates civility and respect for others.

3. Obligations Regarding the Use of Public Resources

In recognition of the importance of stewardship, all those associated with the government of the City of Bainbridge Island will use and allocate public monies, property, and other resources in a responsible manner that takes into consideration both present and future needs of the community. In practice, this principle looks like:

- a. All those associated with the government of the City of Bainbridge Island shall, to the extent possible, seek advice regarding the use of public resources from citizens and staff experts in order to ensure that public resources are used and conserved for the public good.
- b. All those associated with the government of the City of Bainbridge Island shall ensure that paid experts and consultants who provide advice regarding the use of public resources shall be impartial and free of conflicts of interest.

D. Ethics Program

1. Purpose of the Ethics Program

All those associated with City government, including elected officials, employees, members of City Committees and Commissions, seek to earn and maintain confidence in the City's services and the public's trust in its decision-makers. Our decisions and our work must meet the most rigorous ethical standards and demonstrate the highest levels of achievement in following the Core Values and Ethics Principles. It is therefore the purpose of this program to:

- a. Articulate the Core Values and Ethics Principles that will guide the conduct of City affairs and of all people associated with City government;
- b. Establish standards of ethical conduct in a Code of Ethics for elected officials and members of City Committees and Commissions;
- c. Provide training and clarification concerning the Core Values, Ethics Principles, and the Code of Ethics;
- d. Establish a system that enables all citizens, including members of City government, to seek advice and assistance regarding possible ethical violations;
- e. Provide a process to review possible violations of the Code of Ethics by elected officials and members of City Committees and Commissions;
- f. Maintain an Ethics Board to assist with the administration of the program; and
- g. Provide a comprehensive Ethics Program for the City, ensuring that the ethics standards and the procedures for enforcing them that apply to City employees, including policies and collective bargaining agreements, are consistent with the Core Values and Ethics Principles which apply to all persons associated with City government.

2. Administration of the Ethics Program

The Core Values and Ethics Principles apply to all persons associated with City government. However, there are two sets of rule-based standards, which are separately enforced. The Code of Ethics (Article II of this document) applies to elected and appointed officials, and members of City Committees and Commissions.

The Code of Ethics is enforced by the City Council (as detailed in Article III of this document). A set of guidelines and ethical standards included in the *City of Bainbridge Island Employee Manual* applies to all City employees and is enforced by City administration.

ARTICLE II - CODE OF ETHICS

Except where specifically stated, the rules articulated in Article II apply to elected officials, and citizens serving on City Committees and Commissions.

A. Gifts and Compensation

1. Limitations on City-Related Gifts and Outside Compensation

Except as permitted under subsections (2) and (3) below, no elected official or member of a City Committee or Commission, or any member of their immediate families shall, directly or indirectly, accept any gift (as defined below) for a matter connected with or related to his or her services or duties with the City of Bainbridge Island or accept any non-City compensation for the performance or non-performance of those services or duties.

2. Exceptions to Gift Limitations

The following are exceptions to the limitation on gifts and may be accepted by an those subject to subsection (1) above:

- a. Unsolicited items of trivial value. "Items of trivial value" means items or services with a value of fifty dollars (\$50.00) or less, such as promotional tee shirts, pens, calendars, books, or other similar items.
- b. Gifts from other City officers, officials, or employees, or their family members on appropriate occasions.
- c. Gifts appropriate to the occasion and reasonable and customary in light of a familial, social or official relationship of the giver and recipient, such as weddings, funerals, illnesses, holidays and ground-breaking ceremonies.
- d. Campaign contributions as permitted and reported in accordance with law.
- e. Awards that are publicly presented by a non-profit organization in recognition for public service if the award is not extraordinary when viewed in light of the position held by the recipient.
- f. Gifts offered while visiting other cities, counties, states, or countries or hosting visitors from other cities, counties, states, or countries, when it would be a breach of protocol to refuse the gift, provided that any such gifts received shall become property of the City.
- g. Reasonable and necessary costs to attend a conference or meeting that is directly related to the official or ceremonial duties of the elected official, *provided* that any payment of substantial travel or lodging expenses by any person or entity regulated by

the City or doing or seeking to do business with City must be approved in advance by the Mayor or, if the Mayor is the recipient, by the Mayor Pro Tem.

3. Immediate Family Gift Exception

It shall not be a violation of this section for a member of an official's immediate family to accept a gift which arises from an independent relationship, if the official does not significantly benefit from the gift, and it cannot reasonably be inferred that the gift was intended to influence the official in the performance of his or her duties.

B. Use of City Property by Elected Officials

1. Except for limited incidental personal use or emergency circumstances, no elected official shall request, permit, or use City vehicles, equipment, materials, or property for personal use, personal convenience or profit.
2. From the time that an elected official declares or publicly states that he or she intends to run for re-election until the conclusion of the respective general election, that elected official shall not request or direct that City funds be used to purchase any media (including newspaper, radio, television or bulk mailing) that contains the name or image of that elected official unless the names or images of all City elected officials appear in the media being purchased.

C. Confidentiality

Except as required by law, an elected official, former elected official, or current or former member of a City Committee or Commission shall not disclose or use privileged, confidential or proprietary information obtained in executive session or otherwise in the course of their duties as a result of their position.

D. Conflict of Interest - General

1. Applications of Conflict of Interest

Except as permitted in subsection (b) below, an elected official or member of a City Committee or Commission shall not directly, or indirectly through a subordinate or fellow officer, official or employee, take any direct official action on a matter on behalf of the City if he or she, or a member of the immediate family:

- a. Has any substantial direct or indirect contractual employment related to the matter;
- b. Has other financial or private interest in that matter (which includes serving on a Board of Directors for any organization); or
- c. Is a party to a contract or the owner of an interest in real or personal property that would be significantly affected by the action.

2. Conflict of Interest Exceptions for Elected Officials

Subsection (1) above shall not apply when the elected official:

- a. Is required to take or participate in an action based upon the rule of necessity;
- b. Decides to represent himself or herself before the City Council, Hearing Examiner or any other City board, commission or agency, provided that the individual does not also participate in any way in that board's deliberations or decision in an official capacity;
- c. Acquires an interest in bonds or other evidences of indebtedness issued by the City if acquired and held on the same terms available to the general public;
- d. Officially participates in the development and adoption of the City's budget; or establishes the pay or benefit plan of City officers, officials, or employees; or
- e. Makes decisions on any other legislative or regulatory action of general applicability, unless these actions directly affect, or appear to affect the official's or immediate family member's employment.

3. Conflict of Interest Exceptions for Members of City Committees and Commissions

Subsection (1) above shall not apply to a member of a City Committee or Commission provided that the member fully discloses the financial interest on the public record of the City Committee or Commission and the Committee or Commission votes to allow the person to participate in discussion or the vote.

4. Disclosure for Elected Officials

All elected officials are required to comply with the Washington State Public Disclosure Commission requirements for financial disclosure. In addition, all elected officials shall publicly disclose their financial interest in any matter that comes before them. All elected officials shall annually complete a conflict of interest statement to be submitted to the City Clerk by April 15th.

E. Conflict of Interest-After Leaving Elected City Office

1. For two (2) years after leaving elected City office, no former elected official shall obtain employment in which he or she will take direct or indirect advantage of matters on which he or she took direct official action during his or her service with the City. This includes contractual negotiations or solicitation of business unavailable to others.
2. For two (2) years after leaving elected City office, no former elected official shall engage in any action or litigation in which the City is involved, on behalf of any other person or entity, when the action or litigation involves an issue on which the person took direct official action while in elected City office.

F. Conflict of Interest – Family Members of Elected Officials

1. Appointment of Family Members

Unless he or she obtains a waiver from the Ethics Board, no elected official shall appoint or hire a member of his or her immediate family for any type of employment with the City. This includes, but is not limited to, full time employment, part time employment, permanent employment, temporary employment, and contract employment.

2. Supervision of Family Members

No elected official shall supervise or be in a direct line of supervision over a member of his or her immediate family. If an elected official is placed in a direct line of supervision of a member of his or her immediate family, he or she shall have three (3) months to come into compliance or to obtain a waiver pursuant to section (3) below.

3. Waivers

Waivers from this section may be sought from the Ethics Board to allow a member of the immediate family to be hired or to be in the direct line of supervision of a member of the immediate family. Procedures to consider such a waiver are set forth in Article (V) Section C.6 (Obtaining Waivers).

G. Conflict of Interest – Contractors

Every major contractor submitting bids to the City shall include a statement affirming that he or she has read the OCBI ethics code and agrees to abide by its guiding principles and rules. Further, the contractor affirms that neither the contractor nor any agent of the contractor has made any prohibited gift to an elected official who is involved in direct official action on the bid or has a relationship to such an official that would create a conflict of interest for that official.

H. Conflict of Interest - Citizens serving on City Committees and Commissions

Citizens serving on City Committees and Commissions shall sign a conflict of interest statement upon appointment and reappointment.

I. Conduct of Public Meetings

1. Meetings involving elected officials or City Committees and Commissions should be conducted in a manner that maximizes transparency of relationships among individuals or groups that could affect decision-making.

2. Meetings of the City Council and City Committees and Commissions shall have a standing agenda item for disclosure of possible conflicts of interest. Members are encouraged to disclose relationships with persons and issues on the agenda, including potential conflicts of interests. If necessary, discussion among the members may be

undertaken to judge the significance of these relationships and whether a possible conflict of interest exists.

ARTICLE III - ENFORCEMENT OF THE ETHICS PROGRAM

A. Responsibilities of the Ethics Board

1. In considering any matter brought to its attention for action, the Ethics Board shall interpret and apply the Code of Ethics in favor of promoting the City's Core Values and Ethics Principles, protecting the public's interest in full disclosure of conflicts of interest, and promoting ethical behavior.
2. The Ethics Board shall handle the following matters:
 - a. Complaints involving alleged violations of the Code of Ethics, Article II, by elected officials, members of City Committees and Commissions, and persons who contract with the City;
 - b. Advisory opinions concerning the application of the Core Values and Ethics Principles, City policies and practices, or the applicability of the Code of Ethics to the requestor's own behavior; and
 - c. Waivers of certain restrictions, as provided in the Code of Ethics.

B. Submission of Ethics Complaints

Any person may submit to the City Clerk an ethics complaint alleging violations of the Code of Ethics, Article II, or the ethics standards contained in the City of Bainbridge Island Employee Manual. Complaints concerning an elected official, a member of a City Committee or Commission, or a major contractor will be referred to the Ethics Board. Complaints concerning the conduct of City staff will be referred to the City Manager. The Ethics Board may on its own initiative identify a possible violation and initiate its own complaint.

Complaints must include the name and address of the complainant, along with a detailed statement of facts, supported by a declaration in compliance with RCW 9A.72.085, on a form supplied by the Ethics Board (available through the City Clerk's office or on the City website: http://www.ci.bainbridge-isl.wa.us/ethics_board.aspx).

C. Review of Complaints Concerning City Employees

1. The City Manager will review any ethics complaint forwarded by the City Clerk and authorize such investigations as may be necessary to determine whether a violation has occurred, consistent with relevant policies and procedures.

2. The City Manager may request advice from the Ethics Board.
3. If the City Manager determines that no violation has occurred, a written response will be made to the complainant.
4. If a violation of ethics rules has occurred, the City Manager or other appropriate City officer will take action as guided by state law, and relevant policies and procedures.
5. In the event of a violation, the City Manager will provide a response to the complainant and to the Ethics Board outlining the substance of the violation and the action taken, subject to governing rules regarding confidentiality articulated in state law, City policy, and collective bargaining agreements.
6. Apparent violations of law will be reported to the appropriate authorities.

D. Review of Complaints by Ethics Board

1. The Ethics Board will review any complaint forwarded to it by the City Clerk.
2. In the course of reviewing a complaint, the Ethics Board may request clarification of the complaint or other additional information from the complainant.
3. After reviewing a complaint, the Ethics Board may take any of the following actions and inform the complainant, the respondent, and the City Clerk:
 - a. Determine that the complaint lacks reasonable credibility;
 - b. Determine that the facts stated in the complaint, even if true, would not constitute a violation of the Code of Ethics;
 - c. Determine that facts stated in the complaint, even if true, would not constitute a material violation of the Code of Ethics because any potential violation was inadvertent or minor or has been adequately cured, such that further proceedings on the complaint would not serve the purposes of the Code of Ethics;
 - d. Issue an advisory opinion if the subject of the complaint is more appropriate for such action;
 - e. Hold the complaint for action at a future time if the matter is the subject of litigation; or
 - f. Make a preliminary determination that the facts stated in the complaint, if true, could potentially constitute a violation of the Code of Ethics such that further proceedings are warranted.
4. If the Ethics Board makes a preliminary determination that the facts stated in the complaint, if true, could potentially constitute a violation of the Code of Ethics such that

further proceedings are warranted, the Board will inform the respondent of its preliminary determination and provide the respondent with a reasonable period of time to submit a written response in which the respondent may provide a statement of facts, supported by a declaration in compliance with RCW 9A.72.085, in opposition to the complaint and any further explanation of the respondent's position on the complaint.

5. After receiving the written response from the respondent, the Ethics Board may take any of the following actions and inform the complainant, the respondent, and the City Clerk:

- a. Determine that the complaint lacks reasonable credibility;
- b. Determine that the facts stated in the complaint, even if true, would not constitute a violation of the Code of Ethics;
- c. Determine that facts stated in the complaint, even if true, would not constitute a material violation of the Code of Ethics because any possible violation was inadvertent or minor or has been adequately cured, such that further proceedings on the complaint would not serve the purposes of the Code of Ethics;
- d. Issue an advisory opinion if subject of the complaint is more appropriate for such action;
- e. Hold the complaint for action at a future time if the matter is the subject of litigation;
- f. Determine that the existence of a violation of the Code of Ethics would depend on whether the facts are as stated by the complaint or as stated by the respondent; or
- g. Determine that, based on the submissions of the complainant and the respondent, a material violation of the Code of Ethics has likely occurred.

6. If the Board determines either: (1) that the existence of a violation of the Code of Ethics would depend on whether the facts are as stated by the complaint or as stated by the respondent, or (2) that a material violation of the Code of Ethics has likely occurred, the Board will forward its determination, along with the complaint, response and relevant supporting materials, to the complainant and respondent. The Board may also, on its own initiative, forward such a determination to the City Council for its review.

7. Regardless of whether a particular violation of the Code of Ethics has occurred, the Ethics Board may find that City processes or policies could better reflect ethical shared values and principles, and may publish an advisory opinion to this effect.

8. In the course of reviewing any complaint, the Board shall report any apparent violation of law to the appropriate authorities.

F. Advisory Opinions

1. Any person may request an opinion from the Ethics Board as to whether their own behavior has violated or might in the future violate the Code of Ethics or shared values and principles.
2. The City Manager or City Council or any citizen may request an advisory opinion from the Ethics Board regarding City policies or practices in relation to the Code of Ethics.
3. Citizen Committees and Commissions may request an advisory opinion from the Ethics Board regarding operating rules or practices in relation to the Code of Ethics.
4. Any person may request an advisory opinion from the Ethics Board regarding operating policies of the City Council or Citizen Committees and Commissions in relation to the Code of Ethics.
5. The Ethics Board, on its own initiative may prepare and publish its own advisory opinion.
6. The Ethics Board will inform the requestor and publish its advisory opinions.

G. Waivers

Elected officials and members of City Committees and Commissions may apply to the Ethics Board for a waiver from provisions of the Code of Ethics. The Board will publish both the request and its response.

H. Effect of Advisory Opinion or Waiver

An individual who receives a waiver, or who acts in reliance on an advisory opinion, shall not later be found to have violated the Code if the individual acts in a manner consistent with that advisory opinion or waiver.

I. Reporting

1. The City Manager will meet with the Ethics Board annually to discuss the function of the Ethics Program as it applies to City employees.
2. The Ethics Board will report annually on the function of the Ethics Program.

**ARTICLE IV -
FOLLOW-UP TO ETHICS COMPLAINTS**

A. City Council Review of Complaints

1. If, after reviewing a complaint, the Ethics Board has determined: (1) that the existence of a violation of the Code of Ethics would depend on whether the facts are as stated by the complaint or as stated by the respondent, or (2) that a material violation of the Code of Ethics has likely occurred, either the complainant or the Board may submit the determination to the City Council so that the Council may decide whether further action is warranted. The City Clerk shall provide written notification to the complainant and the respondent of the time, date, and place of any City Council meeting at which the complaint will be discussed.

2. The Council shall initially review the complaint, response, and relevant supporting materials in executive session to determine whether there appears to be a sufficient factual basis to prove one or more Code of Ethics violations by clear and convincing evidence; provided, however, and consistent with RCW 42.30.110(1)(f), upon request of the respondent, the review shall be open to the public. The respondent shall have an opportunity to respond to the complaint. If Council determines that the complaint and attachments do not provide a sufficient factual basis to prove one or more Code of Ethics violations by clear and convincing evidence, the Council shall dismiss the complaint, and the complainant and the respondent shall be so informed. The action to dismiss the complaint shall be done by a majority vote of the Council in open public session; provided, that the respondent shall not participate in such a vote.

3. If the Council finds that the complaint and attachments appear to provide a sufficient factual basis to prove one or more Code of Ethics violations by clear and convincing evidence, the respondent shall be so informed. Such a finding shall be done by a majority vote of the Council present in open public session; provided, that the respondent shall not participate in such a vote. At that point, the respondent may:

- a. Admit the one or more of the Code of Ethics violations alleged in the complaint.
- b. Not admit the alleged Code of Ethics violations but expressly forego and waive any right to a hearing to contest the violations and any resulting sanction(s) imposed by City Council.
- c. Request a hearing before the City Hearing Examiner to present evidence to dispute, rebut, mitigate, explain or otherwise defend against any or all of the Code of Ethics violations alleged in the complaint.
- d. Remain silent.

4. If the respondent admits the Code of Ethics violations or remains silent, the City Council shall schedule and hold an executive session to hear from the respondent, and deliberate upon the appropriate level of civil sanctions to be imposed, except to the extent that the

respondent requests that he or she be heard in open public session. The written findings, conclusions, and sanctions shall be approved by a majority vote of the Council in open public session; provided, that the respondent shall not participate in such a vote. A copy of the findings, conclusions and sanctions shall be forwarded by registered mail to the complainant and to the respondent at addresses as given by both persons to the City Clerk.

B. Hearing before City Hearing Examiner

1. Hearings conducted by the Hearing Examiner shall be informal. The respondent may be represented by legal counsel. The City Attorney shall designate special counsel to present the Code of Ethics violations charges and case. The respondent and special counsel may present and cross examine witnesses and give evidence before the Hearing Examiner. The Hearing Examiner may also call witnesses and compel the production of books, records, papers, or other evidence needed. To that end, the Hearing Examiner may issue subpoenas and subpoenas duces tecum at the request of the respondent, special counsel, or on his or her own initiative. All testimony shall be under oath administered by the Hearing Examiner. The Hearing Examiner may adjourn the hearing from time to time in order to allow for the orderly presentation of evidence.

The Hearing Examiner or designee shall prepare an official record of the hearing, including all testimony, which shall be recorded by mechanical device, and exhibits; provided that the Hearing Examiner or designee shall not be required to transcribe such records unless presented with a request accompanied by payment of the cost of transcription.

2. Within 30 days after the conclusion of the hearing, the Hearing Examiner shall, based upon a standard of proof of clear and convincing evidence, make findings of fact and conclusions of law. If the Hearing Examiner determines that the alleged Code of Ethics violation(s) have not been proven, the Hearing Examiner shall dismiss the complaint. If the Hearing Examiner determines that one or more Code of Ethics violation are proven, the Hearing Examiner shall forward the matter to City Council for a determination regarding the appropriate level of sanctions to be imposed for the Code of Ethics violations. In either event, a copy of the findings and conclusions shall be forwarded to the City Council, by registered mail to the person who made the complaint, and to the respondent at addresses as given by both persons to the Hearing Examiner.

C. Action by City Council upon Hearing Examiner's Findings and Conclusion

1. Upon receipt of the Hearing Examiner's findings and conclusions that sustain a Code of Ethics violation, the City Council shall schedule an executive session to consider the findings and conclusions, hear from the respondent, and deliberate upon the appropriate level of civil sanction(s) to be imposed, except to the extent that the respondent requests that he or she be heard in open public session. The written findings, conclusions, and sanctions shall be approved by a majority vote of the Council in open public session; provided, that the respondent shall not participate in said vote. A copy of the findings, conclusions and sanctions shall be forwarded by registered mail to the person who made the complaint and to the respondent at addresses as given by both persons to the City Clerk.

2. In the event that the City Council concludes that a Code of Ethics violation(s) has occurred, the Council may impose any of the following sanctions:

- a. Admonition: An admonition shall be a verbal non-public statement made by the Mayor or Mayor Pro Tem to the official who has violated the Code.
- b. Reprimand: A reprimand shall be a letter prepared by the City Council, signed by the Mayor or Mayor Pro Tem, and directed to the official who has violated the Code.
- c. Censure: A censure shall be a written statement administered personally by the Mayor or Mayor Pro Tem to the official who has violated the Code violation. The individual shall appear at a time and place directed by the City Council to receive the censure. The censure shall be given publicly and the official who has violated the Code shall not make any statement in support or opposition thereto or in mitigation. A censure shall be deemed administered at the time it is scheduled whether or not the member appears as required.
- d. Other sanctions: Any sanction imposed under this Ethics Program is in addition to and not in lieu of any other penalty, sanction or remedy which may be imposed or sought according to law or equity.

ARTICLE V - ETHICS BOARD

A. Purpose of the Ethics Board

Maintaining an Ethics Board will help to ensure that City government adheres to the highest standards of public service. The Board is responsible for:

1. Training all elected officials, and members of City Committees and Commissions covered by the Code of Ethics.
2. Working with City Administration so that major contractors and employees (even though they are not covered by this document) read and are familiar with the Code of Ethics in this document and other applicable City documents regarding ethical behavior.
3. Providing responses to complaints, advisory opinions and requests for waivers regarding the Code of Ethics.

The Ethics Board shall promote an understanding of ethical standards for City officials, officers, and contractors working with the City, and the general public. Respect for all citizens, including elected officials, will be one of the highest priorities of the Ethics Board. The Board's responsibilities are described below, along with a description of the membership of the Ethics Board.

B. Training

The Ethics Board shall perform the following training related duties:

1. At least biannually, the Ethics Board shall prepare and distribute a pamphlet describing this Code of Ethics to all covered persons, after obtaining the City Attorney's review.
2. The Ethics Board shall disseminate any change in policy that results from a finding of the Board.
3. The Ethics Board shall ensure that all new elected officials and members of City Committees and Commissions receives a pamphlet on this Code of Ethics.
4. The Ethics Board shall develop and present a training course on the Code of Ethics to be presented to all elected officials and members of City Committees and Commissions on a biannual basis.

C. Annual Report

By February 15 of each year, the Ethics Board shall submit an annual report to the Mayor and the City Council summarizing its activities during the previous calendar year. The report shall include any recommendations for modifying the Code of Ethics.

D. Creation, Terms, and Appointments

1. Membership of Ethics Board

The Ethics Board consists of five members appointed in accordance with this section.

2. Qualifications of Board Members

- a. Members of the Board shall represent a diverse set of backgrounds and interests.
- b. No more than one officer or official of the City may serve on the Board.
- c. At least one member of the Ethics Board shall be a former judicial officer or have expertise in ethics acquired through education or experience.

3. Method of Appointment

- a. The Mayor shall nominate Board members for confirmation by the City Council . Members shall be nominated individually, not in groups of two or more persons. Confirmation of each member shall require a unanimous vote of the City Council.
- b. The Mayor and City Council shall work cooperatively to ensure that any person who is nominated enjoys the required support of the City Council. Nominations shall be presented at meetings of the City Council where all seven Councilmembers are present.

4. Terms of Appointment

- a. Board members shall be appointed to terms of three years; however, the first two members nominated by the Mayor and confirmed by the City Council shall initially serve one year terms to achieve staggered ending dates.
- b. If a member is appointed to fill an unexpired term, that member's term shall end at the same time as the term of the person being replaced.
- c. Each member shall continue to serve until a successor has been appointed, unless the member is removed or resigns.

5. Removal of Board Members

- a. The absence of any member of the Board from three (3) official consecutive meetings, unless the Board has excused the absence for good and sufficient reasons as determined by the Board, shall constitute a resignation from the Board.
- b. The appointing authority may remove a member for inappropriate conduct before the expiration of the member's term. Before removing a member, the appointing authority shall specify the cause for removal and shall give the member the opportunity to make a personal explanation. Before removing the member who is jointly appointed, either the Mayor or the Council shall specify the cause for removal and shall give the member the opportunity to make a personal explanation.

6. Compensation

Members of the Ethics Board shall serve without compensation. A member who is an officer or employee of the City shall not receive any additional compensation for serving on the Ethics Board. Members may be reimbursed for reasonable expenses pursuant to the rules of the City.

7. Rules

The City Council shall approve all rules, which have been adopted by the Ethics Board, by resolution.

8. Consultation with City Attorney

The Ethics Board may consult with the City Attorney or special counsel appointed by the City Attorney regarding legal issues which may arise in connection with the Board's duties and functions under this Ethics Program.

ARTICLE VI - DEFINITIONS

For purposes of the Ethics Program, the following definitions shall apply.

“Confidential Information” means (a) specific information, rather than generalized knowledge, that is not available to the general public on request or (b) information made confidential by law.

“Direct official action” means any action which involves:

1. Negotiating, approving, disapproving, administering, enforcing, or recommending for or against a contract, purchase order, lease, concession, franchise, grant, or other similar instrument in which the City is a party. With regard to "recommending," direct official action occurs only if the person making the recommendation is in the formal line of decision-making;
2. Enforcing laws or regulations or issuing, enforcing, or regulating permits;
3. Selecting or recommending vendors, concessionaires, or other types of entities to do business with the city;
4. Appointing and terminating employees, temporary workers, and independent contractors.
5. Doing research for, representing, or scheduling appointments for an officer, official, or employee, provided that these activities are provided in connection with that officer's, official's, or employee's performance of 1 through 4 above.

Direct official action does not include acts that are purely ministerial (that is, acts which do not affect the disposition or decision with respect to the matter). With regard to the approval of contracts, direct official action does not include the signing by the Mayor, City Manager, or other official as required by law, unless the official initiated the contract or is involved in selecting the contractor or negotiating or administering the contract. A person who abstains from a vote is not exercising direct official action.

“Direct line of supervision” means the supervisor of an employee and the supervisor of an employee's supervisor.

“Elected Official” means the members of the City Council.

“Gift” means any favor, reward, or gratuity and any money, good, service, travel, event ticket lodging, dispensation, or other thing of value that is given, sold, rented or loaned to a person without reasonable compensation and that is not available to the general public on the same terms and conditions. Any honoraria or payment for participation in an event will be considered a gift.

“Immediate family” means husband, wife, son, daughter, mother, father, grandmother, grandfather, grandchildren, brother, sister, domestic partner and spouse of the above. The term includes any minor children for whom the person, or his or her domestic partner, provides day-to-day care and financial support. A "domestic partner" is an unmarried adult, unrelated by blood, with whom an unmarried officer, official, or employee has an exclusive committed relationship, maintains a mutual residence, and shares basic living expenses.

“Major Contractor” means any person, corporation, company, firm, business or other entity doing business over \$5,000 with the City under one contract or annually.

“Rule of Necessity” shall be interpreted and defined in accordance with RCW 42.36.090, which provides: In the event of a challenge to a member or members of a decision-making body which would cause a lack of a quorum or would result in a failure to obtain a majority vote as required by law, any such challenged member(s) shall be permitted to fully participate in the proceeding and vote as though the challenge had not occurred, if the member or members publicly disclose the basis for disqualification prior to rendering a decision. Such participation shall not subject the decision to a challenge by reason of violation of the appearance of fairness doctrine.

City of Bainbridge Island Conflict of Interest Policy

Annual Disclosure

I have read the City of Bainbridge Island’s statement of **Conflict of Interest Policy**.

I hold the position of trustee, board member, director, officer, employee with the following organizations which potentially could cause a conflict of interest with my elected position as

_____ of the City of Bainbridge Island:

ORGANIZATION

POSITION

To the best of my knowledge and belief, except as disclosed herewith, neither I nor any person with whom I have or had a personal or business relationship, is engaged in any transaction or activity or has any relationship that may represent a potential competing or conflicting interest, as defined in the statement of the **Conflict of Interest Policy**.

Further, to the best of my knowledge and belief, except as disclosed herewith, neither I nor any person with whom I have had a personal, business, or compensated professional relationship, intends to engage in any transaction, to acquire any interest in any organization or entity, or to become the recipient of any substantial gifts or favors that might be covered by the statement of **Conflict of Interest Policy**.

(A) Without exception

(B) Except as described below

Signature:

Date:

City of Bainbridge Island Conflict of Interest Policy

Background

This document outlines the City of Bainbridge Island's conflict of interest policy as it relates to elected officials. It is not the intent of this Policy to eliminate all situations which may give rise to a conflict of interest, but rather to enable citizens to recognize situations that may create a conflict of interest and therefore to ensure that such situations are properly disclosed.

Statement of Policy

No elected person shall use his or her position, or the knowledge gained therefrom, in such a manner that a conflict arises between the interests of the City of Bainbridge Island and his or her personal interests, or the interests of other organizations.

Each elected person has a duty to place the interest of the City of Bainbridge Island foremost in any dealings with City, and has a continuing responsibility to comply with the requirements of this policy.

If an elected official has an interest in: 1) a proposed transaction with the City of Bainbridge Island in the form of a significant personal financial interest in the transaction, or 2) any organization or member of an immediate family involved in such a transaction, or 3) holds a position of trustee, director, employee or officer in such an organization; then he or she must make full disclosure of such an interest before any discussion or negotiation of such transaction, and shall abstain from any vote in connection with the matter.

Disclosure

To implement this policy, elected officials will submit reports annually on the attached form. From this information a list of those organizations on which elected officials serve will be distributed annually to all members of the City Council, Planning Commission, other citizen committees, and be made available to the public at large. In addition, if such information has not been previously disclosed, members will make appropriate disclosures before any relevant board or committee action is carried out.

4.2 Standards of Conduct for Officials under Washington Law

A summary of various Washington state statutes and case law that impose duties and standards of conduct on a city's elected and non-elected officials is found in the AWC/MRSC handbook called "Knowing the Territory" (referred to herein as "KTT"). For a summary of ethical standards of conduct under City ordinance, see, for example, Section 4.9 and the sections which follow it.

4.3 Oath of Office

A Council member, when sworn into office by the City's Municipal Court Judge, swears that "I will...":

- comply with the constitution and laws of the United States and the State of Washington, and
- ...to the best of my judgment, skill, and ability, truly, faithfully, diligently, and impartially perform the duties of the office ... as such duties are prescribed by law."

The City Manager, Department Heads and certain other City employees in key positions are likewise considered city officials and, when hired or promoted to officer status, are likewise sworn in with a similar oath that calls for compliance with those constitutions and laws.

4.4 Public Trust and Fiduciary Duty

"Courts have held public office to be synonymous with public trust and that a public officer's relationship with the public is that of a fiduciary." KTT (pp 6-7). Public trust is a guiding concept in state statutes relating to avoidance of conflict of interest in contracting (RCW 42.23), and in the Open Public Meetings Act (RCW 42.30).

The people themselves, in a 1972 ballot initiative relating to public campaign law, declared trust to be the public policy of the State of Washington, stating in part: "That the people have the right to expect from their elected representatives at all levels of government the utmost of integrity, honesty and fairness in their dealings" and "That the people shall be assured that the private financial dealings of their public officials, and of candidates for those offices, present no conflict of interest between the public trust and private interests."

4.5 Stewardship of Public Funds

The state law imposes the highest of duties on public officials who are custodians of public funds, such as treasurers. (KTT, p. 7). By analogy, there are provisions of law that impose other high standards for public funds on City officials generally, such as: (i) the State Constitution's prohibition against making gifts to an individual or a for-profit or nonprofit corporation or association (KTT p. 22-24); (ii) the state law prohibitions against using public facilities or property for political campaign purposes (RCW 42.17.130); and state law requirements for bidding of public works projects (RCW 35.22.620) (MRSC, "Bidding Book for Washington Counties") and for the giving of notice when seeking suppliers for other major purchases (e.g. RCW 39.80).

4.6 Conflicts of Interest under State Law

As the state Supreme Court has ruled, a Councilmember may not vote on a matter where he or she would be especially benefitted. And, with some exceptions noted below, Washington law forbids a city

official from having a financial interest in a City contract, regardless of whether or not s/he votes on the matter. (KTT, p.9).

Furthermore, the public campaign laws require public elected officials (in addition to candidates) to make financial disclosures at least annually (through the Washington Public Disclosure Commission (PDC)) so that the public can be informed about potential conflicts. These annual disclosures are in addition to those required by COBI's Ethics Code (see below).

4.6.1 State Code of Ethics

The RCW 42.23 includes a Code of Ethics for state and local officials that generally prohibits (with some specified exceptions) four types of conduct by a City official:

- (a) using one's City official position to obtain special privileges for oneself or others;
- (b) giving or receiving a gift in connection with a City matter;
- (c) accepting employment or engaging in a business that would require disclosing confidential information gained as a City official; and
- (d) disclosing confidential information gained as a City official, or using such confidential information for personal gain.

Legal advice should be sought on such questions as:

- (a) Is a very small gift, such as a coffee, small enough as to be "de minimus" and therefore not intended to be prohibited?
- (b) Should a gift from an out of town dignitary be handed over from an official to the city as a whole?
- (c) Under what circumstances can an official accept expense-paid travel to a meeting or a fact-finding visit?

4.6.2 Prohibition Against Private Interest in a Public Contract

- (a) The RCW 42.23 also broadly prohibits the following conflicts of interest regarding a city contract (including, among other things, employment contracts):

"No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through, or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein ..."

- (b) This prohibition applies even if the official doesn't vote on or otherwise approve the contract that presents a conflict. (KTT, p. 11-13)

- (c) Unlike the COBI Ethics Code (which applies to both financial interests and other personal interests), this State conflict of interest standard prohibits only financial conflicts.
- (d) There are exceptions to the prohibition, and there is a qualified set of exceptions for certain “remote interests”. (KTT, p. 11-13)

4.6.3 Limitations on Holding Multiple Offices

There are state law prohibitions against an official appointing himself or herself to a second office or employment with the city (“dual office holding”), and there are certain combinations of public office that are considered to be incompatible and therefore not eligible to be held concurrently. (KTT, p. 16-18)

4.6.4 “Appearance of Fairness” Doctrine under State Law

- (a) The Appearance of Fairness doctrine applies only in those instances when a Councilmember is a decision-maker in a “quasi-judicial” matter (e.g. a spot rezoning, or a long-form plat development approval). It doesn’t apply to a Councilmember’s various legislative and policy decision-making. (KTT, p. 19-21)
- (b) As stated in the RCW 42.36, the “appearance of fairness” requires that the Councilmember not engage in “ex parte” communications with a party interested in the outcome of the quasi-judicial matter.
- (c) See Section 9.14 for a further discussion of the Appearance of Fairness Doctrine as applied to quasi-judicial hearings that are conducted by the Council.

4.7 Open Public Meetings under Washington Law

The Open Public Meetings Act is summarized in the KTT, and is also described in greater detail in the MRSC publication, “The Open Public Meetings Act – How it Applies to Washington Cities, Towns, and Counties, Report No. 60 (May 2008).

4.7.1 All Deliberations and Actions Must Be At Noticed Public Meetings

As stated in RCW 42.30 (Open Public Meetings Act or “OPMA”), all meetings of city governing bodies (i.e., where a quorum or more of Council members, or members of some other “governing body” of the City, assemble to discuss or otherwise act on City business) must be open and public.

4.7.2 Applies to Sub-Agencies of the City

The OPMA applies to a “subagency” of the City, which may mean that a City board, commission, or similar entity created by or pursuant to state or local legislation is subject to elements of the OPMA, such as the Planning Commission. RCW 42.30.020(2) states that a “governing body” to which the OPMA applies includes a committee of the Council or other governing body “when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.” The OPMA does not apply to court proceedings, quasi-judicial proceedings (such as Civil Service Commission hearings), or collective

Ethics and Conflicts of Interest

This page provides a basic overview of Washington State’s ethics and conflict of interest laws that apply to municipal officers, contained in [chapter 42.23 RCW \(http://apps.leg.wa.gov/rcw/default.aspx?cite=42.23\)](http://apps.leg.wa.gov/rcw/default.aspx?cite=42.23), which includes prohibited uses of public office, special privileges and exemptions, contract interests, remote interests, and exceptions.

Overview

[Chapter 42.23 RCW \(http://apps.leg.wa.gov/rcw/default.aspx?cite=42.23\)](http://apps.leg.wa.gov/rcw/default.aspx?cite=42.23) prohibits municipal officers from using their positions to secure special privileges or special exemptions for themselves or others, and from entering into certain contracts or having other personal financial interests with their jurisdictions.

These rules apply to officers in all types of municipal and quasi-municipal corporations, including cities, towns, counties, and special purpose districts. A separate chapter of state law, [chapter 42.56 RCW \(http://app.leg.wa.gov/rcw/default.aspx?cite=42.52\)](http://app.leg.wa.gov/rcw/default.aspx?cite=42.52), addresses financial conflicts and ethical issues for state officers and employees; it does not apply to local governments.

[RCW 42.23.020 \(http://apps.leg.wa.gov/rcw/default.aspx?cite=42.23.020\)](http://apps.leg.wa.gov/rcw/default.aspx?cite=42.23.020)(2) defines “municipal officer” rather broadly to include all elected and appointed officials, all deputies and assistants of such officials, and anyone exercising or undertaking to exercise the powers of those officials (such as city managers, city or county administrators, or special purpose district superintendents).

Violating these rules can bring serious penalties, including monetary fines, nullification of contracts, and possible forfeiture of office.

Common sense can be a good guide in this area of the law, but sometimes gray areas can create confusion and uncertainty. If you are concerned about a specific situation, consult your legal counsel.

Prohibited Uses of Public Office

State law, codified at [RCW 42.23.070 \(http://apps.leg.wa.gov/rcw/default.aspx?cite=42.23.070\)](http://apps.leg.wa.gov/rcw/default.aspx?cite=42.23.070), governs the ethical conduct of county, city, and special purpose district officers and prohibits them from taking four types of action while in office. Specifically, municipal officers may not:

1. Use their position to secure special privileges or exemptions for themselves or others;
2. Give, receive, or agree to receive, directly or indirectly, any compensation, gift, reward, or gratuity from a source except the employing municipality, for a matter connected with or related to the officer’s services as such an officer;
3. Accept employment or engage in business or professional activity that they might reasonably expect would require or induce them by reason of their official position to disclose confidential information acquired by reason of their official position; or

4. Disclose confidential information gained by reason of their position, nor may they otherwise use such information for their personal gain or benefit.

Only the first provision, [RCW 42.23.070](http://apps.leg.wa.gov/rcw/default.aspx?cite=42.23.070) (<http://apps.leg.wa.gov/rcw/default.aspx?cite=42.23.070>)(1), addressing special privileges and exemptions, has been interpreted by the courts and attorney general. (See [Conflicts of Interest Court Decisions and AG Opinions](/getdoc/2926706c-d9b9-4169-adab-ac70dbfb4f3b/Conflicts-of-Interest-Court-Decisions-and-AGOs.aspx#specialprivileges) (</getdoc/2926706c-d9b9-4169-adab-ac70dbfb4f3b/Conflicts-of-Interest-Court-Decisions-and-AGOs.aspx#specialprivileges>).

Prohibited Contract Interests

[RCW 42.23.030](http://apps.leg.wa.gov/rcw/default.aspx?cite=42.23.030) (<http://apps.leg.wa.gov/rcw/default.aspx?cite=42.23.030>) specifically prohibits a municipal officer, or their office, from directly or indirectly receiving a financial benefit from a contract if the contract is made by, through, or under the supervision of the municipal officer, in whole or in part. Any contract entered into by a municipality in violation of this prohibition is void.

“Contract” includes any contract, sale, lease, or purchase. [RCW 42.23.020](http://apps.leg.wa.gov/rcw/default.aspx?cite=42.23.020) (<http://apps.leg.wa.gov/rcw/default.aspx?cite=42.23.020>)(3). This includes a contract (written or unwritten) of employment. To see what courts and the attorney general have found to constitute a contract, see [Conflicts of Interest Court Decisions and AG Opinions](/getdoc/2926706c-d9b9-4169-adab-ac70dbfb4f3b/Conflicts-of-Interest-Court-Decisions-and-AGOs.aspx#contractinterest) (</getdoc/2926706c-d9b9-4169-adab-ac70dbfb4f3b/Conflicts-of-Interest-Court-Decisions-and-AGOs.aspx#contractinterest>).

A contract is made “by, through or under the supervision of the municipal officer” only when that municipal officer has the actual authority to enter into the contract on behalf of the municipality. The prohibition applies broadly to members of the governing body, who are generally responsible for approving contracts, regardless of whether they voted on the contract or not. To see how courts and the attorney general have discussed when a contract is made “by, through or under the supervision” of a municipal officer, see [Conflicts of Interest Court Decisions and AG Opinions](/getdoc/2926706c-d9b9-4169-adab-ac70dbfb4f3b/Conflicts-of-Interest-Court-Decisions-and-AGOs.aspx#supervision) (</getdoc/2926706c-d9b9-4169-adab-ac70dbfb4f3b/Conflicts-of-Interest-Court-Decisions-and-AGOs.aspx#supervision>).

Although there are some exceptions for specific situations (see below), certain contract interests are prohibited in any situation. Specifically, a municipal officer who has authority over the making of the contract may never:

- Purchase or lease property from the same municipality;
- Contract for legal services with the same municipality, except for reimbursement of expenses; or
- Enter into any contract with the same municipality if the municipality is a county of 125,000 or more, a city of 10,000 or more, or an irrigation district encompassing more than 50,000 acres.

Exceptions

Contract interests are allowed if the officer entered into the contract before assuming office. However, any future contract renewals or revisions would be subject to the restrictions of [chapter 42.23 RCW](http://app.leg.wa.gov/RCW/default.aspx?cite=42.23) (<http://app.leg.wa.gov/RCW/default.aspx?cite=42.23>), since the contract would effectively be remade at that time.

[RCW 42.23.030](http://apps.leg.wa.gov/rcw/default.aspx?cite=42.23.030) (<http://apps.leg.wa.gov/rcw/default.aspx?cite=42.23.030>) contains a number of very specific exceptions, allowing municipal officers to have contract interests with their municipalities in certain situations. Some of these exceptions apply to certain types of contracts, while others depend on the monetary value or the type and size of the municipality. The most broadly applicable exemptions are for contracts that do not exceed \$1,500 in a

calendar month, and, for officers of a town, second-class city, or a noncharter code city, and members of certain county fair boards, for contracts that do not exceed \$18,000 in a calendar year ([RCW 42.23.030](http://app.leg.wa.gov/rcw/default.aspx?cite=42.23.030) (<http://app.leg.wa.gov/rcw/default.aspx?cite=42.23.030>)(6)(a) and (b)).

If an exception applies, the municipal officer must fully disclose the contract interest to the governing body, which must note the interest in its official minutes or similar records before approving the contract, and the municipal officer may not vote on the contract under any circumstances.

Remote Interests

Certain “interests” that municipal officers have in contracts made by, through, or under their supervision are not considered to fall under the prohibition in [RCW 42.23.030](http://apps.leg.wa.gov/rcw/default.aspx?cite=42.23.030) (<http://apps.leg.wa.gov/rcw/default.aspx?cite=42.23.030>), but rather are considered “remote” interests under [RCW 42.23.040](http://apps.leg.wa.gov/rcw/default.aspx?cite=42.23.040) (<http://apps.leg.wa.gov/rcw/default.aspx?cite=42.23.040>). A municipality may enter into contracts in which an officer who has authority over the making of the contract has a remote interest, provided certain conditions are met.

There are four types of remote interests, which exist only where the municipal officer is:

1. A non-salaried officer of a nonprofit corporation which is a contracting party;
2. An employee or agent of the contracting party, where the salary consists entirely of fixed wages or salary;
3. The landlord or tenant of the contracting party; or
4. Someone who holds less than 1% of the shares of a corporation or cooperative which is a contracting party.

“Contracting party” is defined in [RCW 42.23.020](http://app.leg.wa.gov/rcw/default.aspx?cite=42.23.020) (<http://app.leg.wa.gov/rcw/default.aspx?cite=42.23.020>)(4).

A remote interest will only apply if all of the following conditions are met:

- The municipal officer discloses the remote interest to the governing body of the municipality prior to the formation of the contract;
- The remote interest is noted in the official minutes, or similar records, prior to the formation of the contract;
- The governing body, in good faith, approves the contract without counting the vote of the officer with the remote interest; and
- The officer with the remote interest did not influence or attempt to influence the decision of other municipal officers, who serve the same jurisdiction, related to the contract.

Relatives and Spouses

The prohibition in [RCW 42.23.030](http://apps.leg.wa.gov/rcw/default.aspx?cite=42.23.030) (<http://apps.leg.wa.gov/rcw/default.aspx?cite=42.23.030>) does not apply to contracts with relatives of municipal officers unless that relative, such as a spouse or a minor child, has a legal interest in the earnings of the municipal officer. However, hiring or contracting with spouses may be allowed if the municipal officer and their spouse have entered into a separate property agreement.

Some municipalities have additional, more restrictive policies regarding [nepotism](http://mrsc.org/Home/Explore-Topics/Personnel/Beginning-Employment/Nepotism.aspx) (<http://mrsc.org/Home/Explore-Topics/Personnel/Beginning-Employment/Nepotism.aspx>), the hiring of or contracting with spouses and relatives.

Penalties

The consequences of violating [chapter 42.23 RCW \(http://app.leg.wa.gov/RCW/default.aspx?cite=42.23\)](http://app.leg.wa.gov/RCW/default.aspx?cite=42.23) are severe. Any municipal officer who violates [chapter 42.23 RCW \(http://app.leg.wa.gov/RCW/default.aspx?cite=42.23\)](http://app.leg.wa.gov/RCW/default.aspx?cite=42.23) is subject to a \$500 civil penalty, on top of other possible civil and criminal penalties, and may have to forfeit their office. In addition, any contract made in violation of [chapter 42.23 RCW \(http://app.leg.wa.gov/RCW/default.aspx?cite=42.23\)](http://app.leg.wa.gov/RCW/default.aspx?cite=42.23) is void, and acting in good faith is not a defense.

Local Ethics Codes

A municipality may adopt an ethics policy that includes additional restrictions not covered by state law. Such policies cannot conflict with state law, but they can supplement it. Many municipalities throughout Washington have adopted their own [ethics codes \(http://mrsc.org/Home/Explore-Topics/Personnel/Local-Rules-and-Policies/Codes-of-Ethics.aspx\)](http://mrsc.org/Home/Explore-Topics/Personnel/Local-Rules-and-Policies/Codes-of-Ethics.aspx), and there are several good reasons for doing so. A local ethics code:

- Allows the municipality to further explain what is covered by state law;
- Can cover employees as well as officers; and
- Can address ethical issues not covered by [chapter 42.23 RCW \(http://app.leg.wa.gov/rcw/default.aspx?cite=42.23\)](http://app.leg.wa.gov/rcw/default.aspx?cite=42.23).

Other Potential Conflicts of Interest and Ethical Issues

In addition to [chapter 42.23 RCW \(http://apps.leg.wa.gov/rcw/default.aspx?cite=42.23\)](http://apps.leg.wa.gov/rcw/default.aspx?cite=42.23), state law and some local laws address other potential conflicts of interest and ethical situations, including:

- Conflicts of interest outlined in a [local ethics code \(http://mrsc.org/Home/Explore-Topics/Personnel/Local-Rules-and-Policies/Codes-of-Ethics.aspx\)](http://mrsc.org/Home/Explore-Topics/Personnel/Local-Rules-and-Policies/Codes-of-Ethics.aspx);
- Local [nepotism \(http://mrsc.org/Home/Explore-Topics/Management/HR-Management/Nepotism.aspx\)](http://mrsc.org/Home/Explore-Topics/Management/HR-Management/Nepotism.aspx) rules, which regulate the hiring of and contracting with relatives;
- The [doctrine of incompatible offices \(http://mrsc.org/Home/Stay-Informed/MRSC-Insight/April-2015/Holding-Two-Public-Offices-%E2%80%93-The-Doctrine-of-Incom.aspx\)](http://mrsc.org/Home/Stay-Informed/MRSC-Insight/April-2015/Holding-Two-Public-Offices-%E2%80%93-The-Doctrine-of-Incom.aspx), which prohibits an individual from simultaneously holding two public offices that are “incompatible” with one another;
- The [appearance of fairness doctrine \(http://mrsc.org/Home/Explore-Topics/Legal/General-Government/The-Appearance-of-Fairness-Doctrine.aspx\)](http://mrsc.org/Home/Explore-Topics/Legal/General-Government/The-Appearance-of-Fairness-Doctrine.aspx), which requires government decision-makers to conduct quasi-judicial hearings and proceedings in a way that is fair and unbiased in both appearance and fact;
- The common law conflict of interest doctrine as recognized in *Smith v. Centralia* (<http://courts.mrsc.org/mc/courts/zwashreports/O55WashReport/O55WashReport0573.htm>), 55 Wash. 573 (1909), a case in which the Washington Supreme Court found that the common law principle preventing municipal officers from adjudicating their own cause is a “a maxim as old as the law itself”; and
- [Article 11, section 8 \(http://leg.wa.gov/LawsAndAgencyRules/Documents/12-2012-WAStateConstitution.pdf#page=40\)](http://leg.wa.gov/LawsAndAgencyRules/Documents/12-2012-WAStateConstitution.pdf#page=40) and [article 30, section 1 \(http://leg.wa.gov/LawsAndAgencyRules/Documents/12-2012-WAStateConstitution.pdf#page=52\)](http://leg.wa.gov/LawsAndAgencyRules/Documents/12-2012-WAStateConstitution.pdf#page=52) of the [Washington State Constitution \(http://leg.wa.gov/LawsAndAgencyRules/pages/constitution.aspx\)](http://leg.wa.gov/LawsAndAgencyRules/pages/constitution.aspx), which prohibit mid-term or post-election pay increases for municipal officers who fix their own compensation.

Recommended Resources

- [Conflicts of Interest Court Decisions and AG Opinions \(/getdoc/2926706c-d9b9-4169-adab-ac70dbfb4f3b/Conflicts-of-Interest-Court-Decisions-and-AGOs.aspx\)](/getdoc/2926706c-d9b9-4169-adab-ac70dbfb4f3b/Conflicts-of-Interest-Court-Decisions-and-AGOs.aspx)
- [Codes of Ethics \(http://mrsc.org/Home/Explore-Topics/Personnel/Local-Rules-and-Policies/Codes-of-Ethics.aspx\)](http://mrsc.org/Home/Explore-Topics/Personnel/Local-Rules-and-Policies/Codes-of-Ethics.aspx)
- [Knowing the Territory: Basic Legal Guidelines for Washington City, County, and Special Purpose District Officials \(http://mrsc.org/getmedia/1E641718-94AO-408B-B9D9-42B2E1D818OD/ktt13.aspx#page=12\)](http://mrsc.org/getmedia/1E641718-94AO-408B-B9D9-42B2E1D818OD/ktt13.aspx#page=12)

Last Modified: October 20, 2015

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Conflicts of Interest Court Decisions and AG Opinions

This page highlights key court decisions and attorney general opinions regarding [chapter 42.23 RCW](http://apps.leg.wa.gov/rcw/default.aspx?cite=42.23) (<http://apps.leg.wa.gov/rcw/default.aspx?cite=42.23>), the conflicts of interest and ethics statute for municipal officers in Washington State. For a general overview of the statute, see [Ethics and Conflicts of Interest](http://mrsc.org/Home/Explore-Topics/Legal/General-Government/Conflicts-of-Interest.aspx) (<http://mrsc.org/Home/Explore-Topics/Legal/General-Government/Conflicts-of-Interest.aspx>).

What Constitutes a Contract Interest?

- *In re Recall of Olsen* (<http://courts.mrsc.org/mc/courts/zsupreme/154wn2d/154wn2d0606.htm>), 154 Wn.2d 606 (2005) – A commissioner of a port district cast the deciding vote to have the port retain counsel to represent the commissioners in existing and future Open Public Meetings Act litigation and to indemnify them against claims or judgments in those lawsuits. The Washington Supreme Court found that a decision by the governing body of a municipal corporation to indemnify a member thereof for an obligation arising from a claim, suit, or proceeding brought against the member does not involve a “contract” within the meaning of RCW 42.23.030. Moreover, the court also found that the commissioner had no “beneficial interest” in violation of RCW 42.23.030 in the contract between the port district and the attorney hired to represent the commissioners.
- *Citizens for Des Moines, Inc. v. Peterson* (<http://courts.mrsc.org/mc/courts/zappellate/125wnapp/125wnapp0760.htm>), 125 Wn. App. 760 (2005), *review denied*, 157 Wn.2d 1014 (2006) – Division One of the Washington Court of Appeals held that a city councilmember who was the president and majority shareholder in a local towing company that city police and other city staff preferred to use when vehicles needed to be towed from city property did not violate the conflict of interest prohibition in RCW 42.23.030. The court held that the city had no express or implied contract with the councilmember's towing firm and had no written policies regarding towing requests, and thus there was no contractual interest to implicate the statutory prohibition.
- *Barry v. Johns* (<http://courts.mrsc.org/mc/courts/zappellate/082wnapp/082wnapp0865.htm>), 82 Wn. App. 865 (1996) – A city councilmember challenged the validity of a contract entered into by the city with a nonprofit organization that limits the liability of the organization's board members for discretionary decisions made in their official capacity. The plaintiff councilmember contended that the limitation of liability gives those board members a beneficial interest in the contract. Two city councilmembers were board members. Division One of the Washington Court of Appeals held that the beneficial interest in contracts prohibited by RCW 42.23.030 is limited to financial interests. The contract at issue did not confer a financial benefit on the nonprofit organization's board members because state law provides them with the same benefit. Thus, the court concluded that the contract was not invalid under RCW 42.23.030.
- AGO 1996 No. 15 (<http://www.atg.wa.gov/ago-opinions/simultaneous-service-one-spouse-county-commissioner-while-other-spouse-administrator>) – RCW 42.23.030 does not prohibit the service of one spouse as a county commissioner (and ex officio local health board member) while the other spouse serves as

administrative officer of the health department because these positions are both public offices and the compensation for them does not arise out of contract.

- AGLO 1973 No. 6 (<http://www.atg.wa.gov/ago-opinions/beneficial-interests>) – RCW 42.23.030 does not prohibit a school district from awarding a contract to a company that employs one of the members of the school board so long as that board member does not himself benefit financially from the contract. Simply put, RCW 42.23.030 only prohibits "beneficial interests" of a pecuniary or financial nature.

When is a Contract “Made by, Through or Under the Supervision” of a Municipal Officer?

- *City of Raymond v. Runyon* (<http://courts.mrsc.org/mc/courts/zappellate/O93wnapp/O93wnapp0127.htm>), 93 Wn. App. 127 (1998), *review denied*, 137 Wn.2d 1030 (1999) – A city commissioner of public works owned a local rock quarry and sold rock to contractors holding city contracts that were supervised by the commissioner’s public works department. Division Two of the Washington Court of Appeals held that this behavior violated RCW 42.23.030 because the commissioner was ultimately responsible for supervising such contracts. The court noted that the commissioner’s good faith efforts to comply with the statute were no defense and, pursuant to RCW 42.23.050, found the offending contracts to be void and upheld a fine on the commissioner. However, the court found that the commissioner did not forfeit his public office because, as the case was pending, the citizens of the commissioner’s city voted to replace the commission form of government with a mayor-council form of government. Therefore, the court reasoned that there was no public office left to forfeit despite the fact that the commissioner was subsequently elected as a councilmember of the newly formed government.
- *Seattle v. State* (<http://courts.mrsc.org/mc/courts/zsupreme/100wn2d/100wn2d0232.htm>), 100 Wn.2d 232 (1983) – The Washington Supreme Court held that Seattle’s system of public financing of elections did not violate RCW 42.23.030. The court reasoned that RCW 42.23.030 is “directed at *self-dealing* where a public official would otherwise have the discretion to use his public office to favor his private interests over the interests of others.” In contrast, the court found that the Seattle ordinance is “administered by an independent election administrator who performs the ministerial role of executing contracts with candidates based on purely objective criteria.” Therefore, there was no self-dealing in violation of RCW 42.23.030 because the contract was made under the supervision of the independent election administrator and not by any municipal officer benefiting from the contract providing public financing for election campaigning. The court emphasized that RCW 42.23.030 deals with the "making" of a contract.
- AGO 1978 No. 17 (<http://www.atg.wa.gov/ago-opinions/offices-and-officers-county-commissioners-property-housing-authorities-sale-property>) – Except under certain special circumstances in which the normal relationship between a board of county commissioners and a county housing authority is modified, as discussed in the opinion, the sale of real property by a county commissioner to a county housing authority within the same county does not violate RCW 42.23.030 because the contract was not made by, through, or under the supervision of the board of county commissioners.
- AGLO 1972 No. 47 (<http://www.atg.wa.gov/ago-opinions/letter-opinion-1972-no-047>) – RCW 42.23.030 does not prohibit the spouse of a chief deputy sheriff from being employed as a deputy sheriff in the same county because the sole authority to appoint any deputy sheriffs for a given county is vested in the sheriff himself and not in any of his deputies. In other words, RCW 42.23.030 does not apply because there would be no contract made by, through, or under the chief deputy sheriff’s supervision.

- AGLO 1970 No. 89 (<http://www.atg.wa.gov/ago-opinions/letter-opinion-1970-no-089>) – The marriage of a county commissioner to a secretary of one of the other elected officials of the county does not pose a conflict of interest as a result of the secretary's current continuing employment. RCW 42.23.030 does not declare illegal or void any contract that preexisted the appointment or election of the officer to his position of conflict, nor any contract in which an officer acquires an interest in good faith in the contract after it has been made.

Special Privileges or Exemptions

- AGO 2010 No. 3 (<http://www.atg.wa.gov/ago-opinions/raffles-conducted-state-employees-charitable-or-benevolent-entity>) – A special privilege or exemption under RCW 42.23.070(1) is a privilege or exemption to which a person is not legally entitled. A special privilege involves being allowed to do something that would otherwise be prohibited. A special exemption involves being relieved from doing something that would be otherwise mandated.
- *In re Recall of Feetham* (<http://courts.mrsc.org/mc/courts/zsupreme/149wn2d/149wn2d0860.htm>), 149 Wn.2d 860 (2003) – The Washington Supreme Court held that a prima facie violation of RCW 42.23.070(1) is legally sufficient to support the removal of an elected official from office through a recall election. The court found prima facie violations of RCW 42.23.070(1) where the mayor directed the town building inspector not to enforce the building code, and removed the permit file regarding the mayor's own property, and directed town employees not to report the missing file.
- *Hubbard v. Spokane County* (<http://courts.mrsc.org/mc/courts/zsupreme/146wn2d/146wn2d0699.htm>), 146 Wn.2d 699 (2002) – A longtime county planner was fired because he argued with his new boss that the grant of a building permit for a new hotel violated the county's zoning and building codes. The Washington Supreme Court held that RCW 42.23.070(1) provided the necessary public policy to support the planner's tort claim for wrongful discharge in violation of public policy. Specifically, the court held that RCW 42.23.070(1), in addition to prohibiting personal conflicts of interest, creates a valid public policy in favor of prohibiting municipal officers from granting special privileges or exemptions to others.
- *Smith v. Centralia* (<http://courts.mrsc.org/mc/courts/zwashreports/O55WashReport/O55WashReport0573.htm>), 55 Wash. 573 (1909) – Washington Supreme Court held invalid a street vacation ordinance for the reason, among others, that councilmember who stood to benefit financially from its enactment cast the deciding vote on the passage of the ordinance. In essence, this case represents the common law precursor to RCW 42.23.070(1).

Last Modified: October 13, 2015

Local Codes of Ethics

This page provides examples of ethics codes adopted by cities, counties, and special purpose districts in Washington State.

Overview

While state law prohibits municipal officers from engaging in certain conflicts of interest (<http://mrsc.org/Home/Explore-Topics/Legal/General-Government/Conflicts-of-Interest.aspx>) and unethical behavior, some local governments adopt their own ethics codes that include additional restrictions. These policies cannot conflict with state law, but they can supplement it.

There are several good reasons to adopt an ethics code:

- It allows the municipality to further explain what is covered by state law;
- It can cover employees as well as officers; and
- It can address ethical issues not covered by state law.

Examples

Below are examples of ethics codes adopted by cities and counties in Washington. While they are sorted by type of government and population, any of these provisions could easily be adapted by any municipality of any size.

Cities over 50,000 population

- **Federal Way Code of Ethics**
(<http://mrsc.org/Corporate/media/MediaLibrary/SampleDocuments/PolicyProcedures/F4ethics.pdf>) (2010) - Document setting out ethics rules for city councilmembers, mayor, and employees
- **Kirkland** (<http://www.codepublishing.com/wa/kirkland/html/kirkland03/Kirkland0314.html#3.14>) **Municipal Code Ch. 3.14** (<http://www.codepublishing.com/wa/kirkland/html/kirkland03/Kirkland0314.html#3.14>) (city council) and **3.82** (<http://www.codepublishing.com/wa/kirkland/html/kirkland03/Kirkland0382.html#3.82>) (employees) - Includes limitations on conduct and use of property.
- **Marysville Municipal Code Ch. 2.80**
(<http://codepublishing.com/wa/marysville/html/Marysville02/Marysville0280.html#2.80>) - Comprehensive ordinance
- **Renton Municipal Code Title 1, Ch. 6**
(<http://www.codepublishing.com/WA/Renton/html/Renton01/Renton0106.html>) - Includes requirement for reporting expenses by candidates for elective office
- **Richland Municipal Code Ch. 2.26**
(<http://www.codepublishing.com/wa/richland/html/Richland02/Richland0226.html#2.26>) - Includes provisions for conduct of councilmembers, conduct of board committee members, incompatible employment
- **Tacoma Municipal Code Ch. 1.46** (<http://cms.cityoftacoma.org/cityclerk/Files/MunicipalCode/Title01-AdministrationAndPersonnel.PDF#page=281>) - Comprehensive and detailed code
- **Vancouver Employee Ethics Policies**
(<http://mrsc.org/Corporate/media/MediaLibrary/SampleDocuments/PolicyProcedures/V35Ethics.pdf>) (2008) - Well-written, comprehensive, easy to understand policy

Cities between 10,000 and 50,000 population

- **Bainbridge Island Ethics Board** (<http://www.bainbridgewa.gov/231/Ethics-Board>) - City's ethics website includes the ordinance and resolutions that created the board, advisory opinions, process, annual reports, and other information regarding the board's operation
- **Bremerton Municipal Code Ch. 2.96** (<http://www.codepublishing.com/wa/Bremerton/html/Bremerton02/Bremerton0296.html#2.96>) - Includes provisions on process, penalties and frivolous complaints
- **Edmonds Municipal Code Ch. 3.70** (<http://www.codepublishing.com/wa/edmonds/html/edmonds03/Edmonds0370.html#3.70>) - Includes provisions limiting future employment of city employees and prohibiting the disclosure of privileged, confidential, or proprietary information
- **Lynnwood Municipal Code Ch. 2.94** (<http://www.codepublishing.com/WA/Lynnwood/#!/lynnwood02/Lynnwood0294.html>) - Comprehensive ordinance, setting out ethics rules, process, and penalties.
- **Monroe Municipal Code Ch. 2.52** (<http://www.codepublishing.com/WA/Monroe/html/Monroe02/Monroe0252.html#2.52>) - Comprehensive and recently adopted ordinance
- **Snoqualmie Municipal Code Ch. 2.80** (<http://www.codepublishing.com/wa/snoqualmie/?Snoqualmie02/Snoqualmie0280.html>) - Well-written, comprehensive, detailed code
- **Woodinville Municipal Code Ch. 2.36** (<http://www.codepublishing.com/wa/woodinville/html/Woodinville02/Woodinville0236.html#2.36>) - Makes use of hearings examiner for enforcement, provides for civil penalties, and deals with nepotism

Cities and towns under 10,000 population

- **Chelan Municipal Code Ch. 2.62** (<http://www.codepublishing.com/WA/Chelan/html/Chelan02/Chelan0262.html>) - Rules for conflicts of interest and use of public property
- **Clarkston Municipal Code Ch. 2.26** (<http://www.codepublishing.com/WA/Clarkston/#!/clarkston02/Clarkston0226.html>) - Sets rules and establishes an office of Ethics Hearing Officer to adjudicate cases and make disciplinary recommendations
- **Concrete Municipal Code Ch. 2.56** (<http://www.codepublishing.com/WA/Concrete/html/Concrete02/Concrete0256.html>) - Ethics rules for town officials and employees, including specific complaint process
- **Fircrest Municipal Code Ch. 2.46** (<http://www.codepublishing.com/wa/fircrest/html/fircrest02/Fircrest0246.html#2.46>) - Relatively short ordinance, but includes requirements for listing of property, remote interests, abstention from voting due to conflict
- **Grandview Municipal Code Ch. 2.90** (<http://www.codepublishing.com/wa/grandview/html/grandview02/Grandview0290.html#2.90>) - Short code, sets out enforcement process, covers former city employees as well as present employees.

Counties over 125,000 population

- **Clark County Code of Ethics for Sheriffs** (<http://www.clark.wa.gov/sheriff/about/ethics.html>) - A short recitation of ethics, apparently prepared by the Washington Association of Sheriffs and Police Chiefs and used by some other counties as well
- **King County** (http://aqua.kingcounty.gov/council/clerk/code/O6_Title_3.htm#_Toc403997840) Code Ch. 3.04 (http://aqua.kingcounty.gov/council/clerk/code/O6_Title_3.htm#_Toc403997840) - Comprehensive

ethics code, see the [Code of Ethics Summary \(http://www.kingcounty.gov/employees/ethics/esummary.aspx\)](http://www.kingcounty.gov/employees/ethics/esummary.aspx) for an overview

- **Pierce County Code Ch. 3.12** (<http://www.codepublishing.com/WA/PierceCounty/#!/piercecounty03/PierceCounty0312.html>) - A comprehensive ethics code that includes provisions regarding lobbying
- **Snohomish County Code Ch. 2.50** (<http://www.codepublishing.com/wa/snohomishcounty/?snohomishcounty02/SnohomishCounty0250.html>) - Requires filing of state disclosure forms with the county, lobbyist reports, limits employment after leaving county
- **Spokane County Code of Ethics for Sheriffs** (<http://www.spokanecounty.org/Sheriff/content.aspx?c=2011>) - Simple and general code
- **Whatcom County Code Ch. 2.104** (<http://www.codepublishing.com/wa/whatcomcounty/html/whatco02/whatco02104.html>) - Comprehensive set of ethics rules and procedures

Counties under 125,000 population

- **Chelan County Code Sec. 1.20.127** (<http://www.codepublishing.com/WA/ChelanCounty/html/Chelco01/Chelco0120.html#1.20.127>) - Short code of ethics
- **Clallam County Code Ch. 3.01** (<http://www.codepublishing.com/WA/ClallamCounty/html/ClallamCounty03/ClallamCounty0301.html#3.01>) - Short code, requires financial reporting
- **Douglas County Code Ch. 2.50** (<http://www.codepublishing.com/WA/DouglasCounty/html/DouglasCounty02/DouglasCounty0250.html#2.50>) - Applies to employees who are involved in the award or administration of contracts supported by federal grant funds
- **Grant County Employment Handbook Sec. 1.3** (<http://mrsc.org/getmedia/485581aa-e461-4d1c-ba56-de9a84407fce/G76perspol.pdf.aspx#page=9>) (2006) - One-page statement of ethical guidelines set out in the county's employment handbook
- **Jefferson County Code of Ethics Policies and Procedures** (<http://mrsc.org/getmedia/3c2c8f60-a40d-4d15-bd2f-fa2f7a443ff5/J3Ethics.aspx>) (2003) - Sets out conflict of interest provisions and addresses political activities

Special Purpose Districts

- **Cross Valley Water District Code Ch. 3.50** (<http://www.codepublishing.com/WA/CrossValleyWaterDistrict/html/CrossValleyWaterDistrict03/CrossValleyWaterDistrict03350.html>) - Ethical rules for officials and employees
- **Whatcom County Cemetery District No. 10 Code of Ethics Statement** (<http://lyndencemetery.com/greenwoodcemetery/codeethics.html>) - Includes examples of potential conflicts of interest for commissioners and management employees

Recommended Resources

- **Ethics and Conflicts of Interest** (<http://mrsc.org/Home/Explore-Topics/Legal/General-Government/Conflicts-of-Interest.aspx>) - Overview of the state prohibitions for municipal officers
- **Washington State Municipal Attorneys Association: Public Law Ethics Primer** (<http://mrsc.org/Corporate/media/MediaLibrary/SampleDocuments/ArtDocMisc/EthicsPrimer2010.pdf>) (2010) - Ethical guide for municipal attorneys

Last Modified: October 30, 2015

