



CITY OF KIRKLAND

City Attorney's Office

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www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Robin Jenkinson, City Attorney

Date: January 6, 2012

Subject: Recommended Changes to Draft Code of Ethics

RECOMMENDATION:

The City Council receives a presentation from Wayne Barnett, Executive Director of the Seattle Ethics and Elections Commission, on recommended changes to the Draft Code of Ethics and provide input.

BACKGROUND DISCUSSION:

In 2010, the City Council initiated a process for developing a Code of Ethics. An ad hoc citizen task force was appointed that worked with a subcommittee of the City Council to draft a document for consideration by the full Council. At a Council Study Session on November 16, 2010, the Ethics Task Force presented its draft Code of Ethics and a process for adoption and implementation. The City Council determined that any further work on the draft Code of Ethics would be undertaken by the City Council with the assistance of the Council subcommittee. The subcommittee was asked to meet and return with a recommendation regarding the next steps for consideration of the draft Code of Ethics.

The subcommittee met and staff was requested to research outside resources for the conduct of ethics investigations and presentation of matters before the Hearing Examiner. On June 21, 2011, the City Council was presented with the options developed by the subcommittee and the Council opted to contract with an external party to act as an "Ethics Officer" and administer the Code of Ethics. Staff met with representatives of the Seattle Ethics and Elections Commission and King County Ombudsman's Office and determined that either agency was highly qualified to evaluate ethics complaints for sufficiency, determine the scope of investigations, conduct investigations, prepare findings and conclusions and present matters before the Hearing Examiner. In addition, both agencies could provide advisory opinions as well as training. Staff recommended the Seattle Ethics and Elections Commission and an interlocal agreement was entered between the cities.

As one of the duties under the interlocal agreement, the Seattle Ethics and Election Commission staff was asked to review the draft Code of Ethics, including any City Council amendments, to assure that the document is enforceable and contains all provisions necessary for its

administration. Mr. Barnett has completed the review and has recommended a number of changes to the draft Code of Ethics. As explained in the cover memorandum provided by Mr. Barnett, most of the changes involve reorganizing the document.

City Council direction is needed with regard to the recommended changes.

Memo

To: Robin Jenkinson, Kirkland City Attorney

From: Wayne Barnett, Executive Director, Seattle Ethics and Elections Commission

Date: January 5, 2012

Re: Recommended changes to draft Ethics Code

I have completed my review of the draft Ethics Code. While at first blush the proposed changes seem extensive, on closer review I trust you will see that most of the changes involve reorganizing the document. This memo provides an overview of my recommendations.

1. Draw a bright line between those provisions that are enforceable by the Ethics Officer and those provisions that are aspirational.

A good Ethics Code does two things: it inspires individuals to strive to be their very best, and establishes rules for individuals to follow. When there are questions whether or not an individual has followed the rules, those questions can be resolved through an investigation. But questions about whether an individual is “behaving their very best” should not be resolved through an investigation.

To that end, I recommend dividing the provisions in the Code between two sections: the first called “prohibited conduct,” and the second entitled “code of conduct.” Under “prohibited conduct,” I have grouped those provisions that are elements of ethics codes adopted by the federal government and countless state and local governments. The Ethics Code I recommend would prohibit officials from (1) participating in decisions in which they or someone close to them had a financial interest, (2) misusing their position or public resources for private gain, (3) representing others before their own agency, (4) soliciting charitable contributions from City employees, (5) accepting certain gifts and favors, and (6) sharing confidential information. It would also require disclosure of information before participating in a decision when that information would cause a reasonable person to question the official’s judgment.

Under the heading “Code of Conduct,” I recommend placing those provisions that involve subjective judgments – i.e., whether an official’s conduct is “above reproach” – as well as provisions that do not necessarily raise ethical concerns. If an official is cited for speeding, he or she has violated state law, but not in a way that should be the subject of an investigation by the Ethics Officer.

2. Empower the Ethics Office to provide advice regarding, and investigations of, only the enforceable provisions of the Ethics Code.

The Ethics Code should authorize the Ethics Officer to investigate and advise on only the enforceable provisions of the Code. Whether or not an official has represented a third party before his or her agency, or shared confidential information, are questions of fact that can ideally be determined after interviewing witnesses and reviewing records. Whether or not an official has based his or her decisions on the merits is likely a question that cannot be resolved definitively with an investigation. Reasonable minds will still disagree on the interpretation of the “facts” gleaned through an investigation regarding the basis for an official’s decision.

Limiting the Ethics Officer’s investigative powers also diminishes the opportunity for the Ethics Officer to be drawn into election contests or for the Ethics Code to be abused for other ends. It also reserves to the public decisions that should not be entrusted to a civil servant. Whether or not an official has “worked for the common good” is a question that should be reserved to the people of Kirkland, not to an Ethics Officer.

3. Embrace an Ethics Code that will work under the best of circumstances as well as the worst.

The draft code that I reviewed presumes that violations of the Code can best be resolved informally, and specifically calls for the formal complaint process to be employed only “when informal processes fail.” I would submit that there may come a time – hopefully not this year, or within the next five years, or ever – when an official will violate the Code in a way that demands a more formal resolution. You should adopt a Code that will be useful if and when a violation occurs that is intentional, and greatly offends the people of Kirkland. My proposed changes to the enforcement section make it clear that inadvertent and minor violations of the Ethics Code are to be dismissed. Beyond that, though, I strongly encourage you to adopt neutral language that makes no assumptions about the nature of the violation.

I also recommend that you provide for complaints to be made to the Ethics Officer and not to the City Clerk. My concern is that requiring that complaints be filed with a City employee will deter individuals from filing complaints. To be sure, some of those complaints would be frivolous, but not necessarily all of them. Approximately five years ago, my office received a complaint regarding an official’s execution of a contract with a consultant on a date that the official was the guest of that consultant at the consultant’s vacation condominium. I doubt very much that complaint ever would have been filed with the City Clerk.

CONCLUSION

The vast majority of my recommended changes to the draft Ethics Code fit under one of these three overarching themes. I look forward to the discussion on the 17th, and again want to make myself available to meet with you or anyone else in the weeks prior to that meeting or afterward as well. It is rare for a community to take up the adoption of an Ethics Code in the absence of a monumental breach – Watergate spawned federal ethics rules, and scandals at the Seattle Police Department spawned the City’s adoption of a code – so Kirkland deserves a tremendous amount of credit for its proactive approach to this issue.

ATTACHMENT A
CITY OF KIRKLAND
CODE OF ETHICS

SECTION 1 - POLICY

Policy Purpose

The Kirkland City Council has adopted a Code of Ethics for members of the City Council and the City's boards and commissions to ~~ensure~~ promote public confidence in the integrity of local government and fair operation. This policy will provide the basis for education and training for city officials, both elected and appointed, to ensure that the highest standards and best practices with regard to ethics will be followed.

Intent

The citizens and businesses of Kirkland are entitled to have fair, ethical and accountable local government that has earned the public's full confidence for integrity. In keeping with the City of Kirkland commitment to excellence, the effective functioning of democratic government therefore requires that:

- public officials, both elected and appointed, comply with the laws and policies affecting the operations of government;
- public officials be independent, impartial and fair in their judgment and actions;
- public office be used for the public good, not for personal gain; and
- public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.

SECTION 2 - ~~Definitions~~DEFINITIONS

~~"Material financial interest" means (1) remuneration from outside employment or services as an independent contractor in excess of \$1,000 per year from any person or entity; (2) ownership of a non-managerial equity interest in excess of \$10,000 in any privately held entity or one percent or greater of any publicly traded entity; (3) a managerial interest in any for-profit entity doing business with the City, whether compensated or not; (4) an interest as a trustee, director or officer in any entity doing business with the City, and (5) status as a creditor of a person or entity that has a City contract, sale, lease, purchase or grant and where the face of the debt is \$10,000 or more.~~

"Official" means a ~~members~~ of the City Council or a ~~and~~ ~~members~~ of Council--appointed City boards and commissions and other Council-appointed task groups or committees, including youth members.

“Relative” means spouse or domestic partner, child, step-child, parent, step-parent, parent-in-law, grandparent, grandchild, sibling, aunt, uncle, niece, nephew, son- or daughter-in law, brother- or sister-in law.

~~SECTION 3 - for the purposes of this Code means: persons related by blood, marriage, or legal adoption (including grandparent, parent, spouse, domestic partner, brother, sister, child, grandchild or any person with whom the Official has a close personal relationship such as a fiancée or co-habitant).~~

INTENT

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- ~~• public officials, both elected and appointed, comply with the laws and policies affecting the operations of government;~~
- ~~• public officials be independent, impartial and fair in their judgment and actions;~~
- ~~• public office be used for the public good, not for personal gain; and~~
- ~~• public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.~~

~~A. COMPLY WITH THE LAW AND CITY POLICY~~

~~Officials shall comply with the laws of the nation, the State of Washington and the City of Kirkland in the performance of their public duties. These laws include, but are not limited to: the United States and Washington constitutions; laws pertaining to conflicts of interest, election campaigns, financial disclosures and open processes of government; and City ordinances and policies. See Appendix A.~~

~~B. ACT IN THE PUBLIC INTEREST~~ PROHIBITED CONDUCT

~~Recognizing that stewardship of the public interest must be their primary concern, Officials will work for the common good of the people of Kirkland and not for any private or personal interest, and they will ensure fair and equal treatment of all persons, claims and transactions coming before the Kirkland City Council, boards and commissions. Officials need to be mindful that making special requests of staff — even when the response does not benefit the Official personally, puts staff in an awkward position:~~

1. Conflicts of Interest. In order to ensure their independence and impartiality on behalf of the common good, Officials shall not participate in government decisions in which any of the following has a financial interest: (i) the Official, (ii) a Relative, (iii) an individual with whom they reside, or (iv) an entity that they serve as an officer, director, trustee, partner or employee. Officials shall abstain from participating in deliberations and decision-making where conflicts exist. This section shall not apply to decisions regarding taxes and fees, or if the

financial interest is shared with more than ten percent of the City's population, or if the financial interest exists solely because of the official's ownership of less than one percent of the outstanding shares of a publicly traded corporation.

2. *Appearance of Conflict.* If it could appear to a reasonable person, having knowledge of the relevant circumstances, that the Official's judgment is impaired because of either (1) a personal or business relationship not covered under the foregoing paragraph, or (2) a transaction or activity engaged in by the Official, the Official shall make a public, written disclosure of the facts giving rise to the appearance of a conflict before participating in the matter .

3. *Misuse of Public Position or Resources.* Except for infrequent use at little or no cost to the City, Officials shall not use public resources that are not available to the public in general, such as City staff time, equipment, supplies or facilities, for other than a City purpose.

4. *Representation of Third Parties.* Except in the course of official duties, Officials shall not appear on behalf of the financial interests of third parties before the Council or any board, commission or proceeding of the City, or in interaction with staff.

5. *Solicitations of Charitable Contributions.* No Official may make direct personal solicitations for charitable contributions from City employees.

6. ~~7.~~ *Gifts and Favors.* Officials shall not take any special advantage of services or opportunities for personal gain, by virtue of their public office, which are not available to the public in general. They may not solicit or receive any thing of monetary value from any person or entity where the thing of monetary value has been solicited, or received or given or, to a reasonable person, would appear to have been solicited, received or given with intent to give or obtain special consideration or influence as to any action by the Official in his or her official capacity; provided, that nothing shall prohibit campaign contributions which are solicited or received and reported in accordance with applicable law. They shall not accept or solicit any gifts, favors or promises of future benefits except as allowed by Kirkland Municipal Code 3.80.140.

1. *Confidential information.* Officials shall not disclose or use any confidential information gained by reason of their official position for other than a City purpose.

SECTION 4 – FINANCIAL DISCLOSURE STATEMENTS

~~2. *Use of Public Resources.* Generally, except for infrequent use at little or no cost to the City, Officials shall not use public resources that are not available to the public in general, such as City staff time, equipment, supplies or facilities, for private gain or personal purposes.~~

~~3. *Representation of Third Parties.* Officials shall not appear on behalf of the private interests of third parties before the Council or any board, commission or proceeding of the City, or in interaction with staff.~~

~~4. *Campaign Solicitation.* As required by RCW 42.17.750, no Official shall knowingly solicit or encourage, directly or indirectly, any political contribution from any City employee.~~

~~5. Campaign Activities. As required by RCW 42.17.130, no Official may use or authorize the use of the facilities of the City for the purpose of assisting a campaign for the election of any person to any office, or for the promotion of or opposition to any ballot proposition in a manner not available to the general public on the same terms.~~

~~6. Nepotism. The City Council will not appoint Relatives of City Council Members to boards or commissions or other appointed positions.~~

~~7. Solicitations of Charitable Contributions. No Official may make direct personal solicitations for charitable contributions from City employees.~~

~~D. CONFLICT OF INTEREST~~

~~In order to ensure their independence and impartiality on behalf of the common good, Officials shall not use their positions to influence government decisions in which they or their Relatives have a material financial interest or have a relationship which may give the appearance of a conflict of interest.~~

All Officials shall file a City of Kirkland Disclosure Statement annually. In accordance with Chapter 42.17 RCW, members of the Kirkland City Council shall also disclose investments, interests in real property, sources of income, and creditors through the filing of a Public Disclosure Commission Form F-1, "Personal Financial Affairs Statement." Members of boards and commissions shall be advised as part of the application process, that they will be required to file the applicable City of Kirkland Disclosure Statement within ten days of appointment. ~~Officials shall abstain from participating in deliberations and decision-making where conflicts exist.~~

~~SECTION 5 – CODE OF CONDUCT~~ ETHICAL STANDARDS

~~In addition to Section 3 of the Ethics Code of Ethics, which shall be administered by the Ethics Officer, Officials are also encouraged to comply with the following standards:~~

~~Officials shall make public any conflict of interest the Official has with respect to any issue under consideration by the body. The nature of such conflict need only be described in terms that make clear the existence of a conflict. The Official shall leave the meeting room, not participate in discussions of the subject and shall not vote on it if:~~

- ~~1. The Official has a material financial interest in the subject,~~
- ~~2. The Official is a Relative of or has a close personal or professional relationship with a person who has a material financial interest in the subject, or~~
- ~~3. The ordinances of the City of Kirkland or Chapter 42.23 RCW prohibit the Official's involvement.~~

~~If the Official has only a casual association with the subject or the parties, the Official must state the relationship, and then may fully participate.~~

~~E. CONDUCT OF OFFICIALS~~

~~1. — Personal integrity. The professional and personal conduct of Officials must be above reproach and avoid even the appearance of impropriety. Officials shall refrain from abusive conduct, threats of official action, personal accusations or verbal attacks upon the character or motives of other members of Council, boards and commissions, the staff or public. Officials shall maintain truthfulness and honesty and not compromise them for advancement, honor, or personal gain. Additionally, Officials shall not directly or indirectly induce, encourage or aid anyone to violate the Code of Ethics and it is incumbent upon Officials to make a good faith effort to address apparent violations of this Code of Ethics, as provided in Section 3.A.~~

~~2. — Respect for Process. Officials shall perform their duties in accordance with the processes and rules of order established by the City Council and board and commissions governing the deliberation of public policy issues, meaningful involvement of the public, and implementation of policy decisions of the City Council by City staff.~~

~~3. — Conduct of Public Meetings. Officials shall prepare themselves for public issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand. They shall refrain from interrupting other speakers; making personal comments not germane to the business of the body; or otherwise interfering with the orderly conduct of meetings.~~

~~4. — Decisions Based on Merit. Officials shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations.~~

~~5. — Ex parte Communications. In quasi-judicial matters, Officials shall publicly disclose substantive information that is relevant to a matter under consideration by the Council or boards and commissions, which they may have received from sources outside of the public decision-making process.~~

~~6. — Attendance. As provided in RCW 35A.12.060, a Council Member shall forfeit his or her office by failing to attend three consecutive regular meetings of the Council without being excused by the Council. Unless excused, members of boards and commissions are expected to attend all meetings. It is a violation of this Code of Ethics for members of boards and commissions to be absent without excuse from more than 20 percent of meetings in a twelve-month period.~~

~~F. — CONFIDENTIAL INFORMATION~~

~~Officials shall keep confidential all written materials and verbal information provided to them during executive sessions to ensure that the City's position is not compromised. Confidentiality also includes information provided to Officials outside of executive session when the information is considered to be exempt from disclosure under exemptions set forth in the Revised Code of Washington. Questions about whether or not information is confidential should be referred to the City Attorney. The release of confidential or disclosure-exempt information must be considered and approved by the full Council prior to disclosure.~~

1. *Compliance with other laws.* Officials shall comply with the laws of the nation, the State of Washington and the City of Kirkland in the performance of their public duties.

These laws include, but are not limited to: the United States and Washington constitutions; laws pertaining to conflicts of interest, election campaigns, financial disclosures and open processes of government; and City ordinances and policies. See Appendix A. As required by RCW 42.17.750, no Official shall knowingly solicit or encourage, directly or indirectly, any political contribution from any City employee. Except under limited circumstances described in RCW 42.17.130, no Official may use or authorize the use of the facilities of the City for the purpose of assisting a campaign for the election of any person to any office, or for the promotion of or opposition to any ballot proposition in a manner not available to the general public on the same terms.

2. *Personal integrity.* The professional and personal conduct of Officials must be above reproach and avoid even the appearance of impropriety. Officials shall refrain from abusive conduct, threats of official action, personal accusations or verbal attacks upon the character or motives of other members of Council, boards and commissions, the staff or public. Officials shall maintain truthfulness and honesty and not compromise them for advancement, honor, or personal gain. Additionally, Officials shall not directly or indirectly induce, encourage or aid anyone to violate the Code of Ethics and it is incumbent upon Officials to make a good faith effort to address apparent violations of this Code of Ethics.

3. *Working for the Common Good.* Recognizing that stewardship of the public interest must be their primary concern, Officials will work for the common good of the people of Kirkland and not for any private or personal interest, and they will ensure fair and equal treatment of all persons, claims and transactions coming before the Kirkland City Council, boards and commissions. Officials need to be mindful that making special requests of staff – even when the response does not benefit the Official personally, puts staff in an awkward position.

4. *Respect for Process.* Officials shall perform their duties in accordance with the processes and rules of order established by the City Council and board and commissions governing the deliberation of public policy issues, meaningful involvement of the public, and implementation of policy decisions of the City Council by City staff.

5. *Commitment to Transparency.* Transparency, openness, and accountability are fundamental values of the City of Kirkland – and are also required by the laws of the state of Washington. The public has a right to inspect and copy public records unless exempt by law from disclosure. All materials relating to the conduct of City government that are prepared, possessed, used or retained by any Official, including email and other electronic records, are subject to requirements for retention, protection, and disclosure. Officials may assume that all copies of materials received from City staff have already been archived and do not need to be retained. Officials shall not discard, damage, or destroy the original copy of any public record unless directed by the City Public Records Officer (the City Clerk), who has responsibility to ensure that the City complies with the record retention schedules established under Chapter 40.14 RCW. Officials shall promptly provide any records requested by the Public Records Officer in response to a disclosure request under the Public Records Act, Chapter 42.56 RCW. It is the responsibility for the Public Records Officer, together with the City Attorney, to decide which records meet the definition of “public record” and whether or not they are exempt from disclosure; Officials must not take it upon themselves to decide whether a record meets the

definition of a public record, that a record is exempt from disclosure, or to otherwise conceal a record.

6. *Conduct of Public Meetings.* Officials shall prepare themselves for public issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand. They shall refrain from interrupting other speakers; making personal comments not germane to the business of the body; or otherwise interfering with the orderly conduct of meetings.

7. *Decisions Based on Merit.* Officials shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations.

8. *Ex parte Communications.* In quasi-judicial matters, Officials shall publicly disclose substantive information that is relevant to a matter under consideration by the Council or boards and commissions, which they may have received from sources outside of the public decision-making process.

9. *Attendance.* As provided in RCW 35A.12.060, a Council Member shall forfeit his or her office by failing to attend three consecutive regular meetings of the Council without being excused by the Council. Unless excused, members of boards and commissions are expected to attend all meetings.

10. *Nepotism.* The City Council will not appoint Relatives of City Council Members to boards or commissions or other appointed positions.

~~—G. RETENTION, DESTRUCTION, AND IMPROPER CONCEALMENT OF RECORDS~~

~~—Transparency, openness, and accountability are fundamental values of the City of Kirkland and are also required by the laws of the state of Washington. The public has a right to inspect and copy public records unless exempt by law from disclosure. All materials relating to the conduct of City government that are prepared, possessed, used or retained by any Official, including email and other electronic records, are subject to requirements for retention, protection, and disclosure. Officials may assume that all copies of materials received from City staff have already been archived and do not need to be retained. Officials shall not discard, damage, or destroy the original copy of any public record unless directed by the City Public Records Officer (the City Clerk), who has responsibility to ensure that the City complies with the record retention schedules established under Chapter 40.14 RCW. Officials shall promptly provide any records requested by the Public Records Officer in response to a disclosure request under the Public Records Act, Chapter 42.56 RCW. It is the responsibility for the Public Records Officer, together with the City Attorney, to decide which records meet the definition of "public record" and whether or not they are exempt from disclosure; Officials must not take it upon themselves to decide whether a record meets the definition of a public record, that a record is exempt from disclosure, or to otherwise conceal a record. Willful failure to act in~~

~~accordance with this subsection is a violation of the Code of Ethics and may subject the City to substantial financial penalties and costs.~~

~~H. ADVOCACY Advocacy.~~

11. When acting in an official capacity as a City of Kirkland Official representing Kirkland, Officials shall represent the official policies or positions of the City Council, board or commission to the best of their ability when the City Council, board or commission has taken a position or given an instruction. When presenting their individual opinions and positions, members shall explicitly state they do not represent their body or the City of Kirkland, nor will they allow the inference that they do. Officials have the right to endorse candidates for all Council seats or other elected offices. It is inappropriate to make or display endorsements during Council meetings, board/commission meetings, or other official City meetings. However, this does not preclude Officials from participating in ceremonial occasions, community events, or other events sponsored by civic groups.

~~I. Policy Role Of of Officials.~~

12. Officials shall respect and adhere to the council-manager structure of Kirkland City government as outlined by Chapter 35A.13 RCW. In this structure, the City Council determines the policies of the City with the advice, information and analysis provided by the public, boards and commissions, and City staff. Except as provided by state law, Officials shall not interfere with the administrative functions of the City or the professional duties of City staff; nor shall they impair the ability of staff to implement Council policy decisions.

SECTION 62 – ETHICS OFFICER

1. The City Council creates the position of Ethics Officer. The City Manager will contract with one or more agencies to fill this position. The Ethics Officer will provide for annual review of the Code of Ethics, review of training materials provided for education regarding the Code of Ethics, and advisory opinions concerning the Code of Ethics. The Ethics Officer shall also be responsible for the prompt and fair enforcement of its provisions ~~in the rare occasion when informal measures to deal with ethical lapses have failed~~when necessary.

2. The Ethics Officer, in addition to other duties may recommend changes or additions to this Code of Ethics to the City Council. The Ethics Officer shall provide input into and review the training materials and program developed for this Code of Ethics.

SECTION 7 – ADVISORY OPINIONS

A. BOARD ESTABLISHED

~~There is created the position of Ethics Officer for the City of Kirkland. The purpose of establishing an Ethics Officer position is to retain an objective third party with a high level of expertise in the conduct of ethics investigations and issuance of advisory opinions. The Ethics Officer shall issue advisory opinions on the provisions of this Code of Ethics and determine the sufficiency of complaints alleging violations of this Code of Ethics.~~

~~B. ADVISORY OPINIONS~~

1. Upon request of any Official, the Ethics Officer ~~may~~shall render written advisory opinions concerning the applicability of ~~the Sections 3 and 4 of this Code of Ethics~~ to hypothetical circumstances and/or situations solely related to the persons making the request. The Ethics Officer will not render opinions on matters that are the purview of other government agencies or officials, e.g., the Public Disclosure Commission, the City Public Records Officer, etc.

2. Upon request of any Official, the Ethics Officer may also render written advisory opinions concerning the applicability of the Code of Ethics to hypothetical circumstances and/or situations related to a matter of city-wide interest or policy.

3. The Ethics Officer will endeavor to respond to requests for advisory opinions within forty-five (45) days of submission of the request, or more rapidly if the requester expresses urgency in the request.

~~3.~~

~~C. ADVISORY OPINIONS – EFFECT ON ENFORCEMENT~~

4. A person's conduct based in reasonable reliance on an advisory opinion rendered by the Ethics Officer shall not be found to violate this Code of Ethics, as long as all material facts have been fully, completely, accurately presented in a written request for an advisory opinion, and the person's conduct is consistent with the advisory opinion. The Ethics Officer reserves the right to reconsider the questions and issues raised in an advisory opinion and, where the public interest requires, rescind, modify, or terminate the opinion, but a modified or terminated advisory opinion will not form the basis of a retroactive enforcement action against the original requestor. Advisory opinions will contain severability clauses indicating that should portions of the opinion be found to be unenforceable or not within ~~their~~the Ethics Officer's authority, the remainder of the opinion shall remain intact.

~~D. ADDITIONAL DUTIES~~

~~The Ethics Officer, in addition to other duties may recommend changes or additions to this Code of Ethics to the City Council. The Ethics Officer shall provide input into and review the training materials and program developed for this Code of Ethics.~~

SECTION 83 – COMPLAINTS, INVESTIGATIONS, HEARINGS AND ENFORCEMENT ADDRESSING ETHICAL INFRACTIONS

~~The Ethics Officer shall resolve inadvertent and minor violations of the Ethics Code of Ethics informally and may resolve inadvertent or minor violations informally, unless the Ethics Officer determines that doing so would not serve the public interest. When a violation is neither inadvertent nor minor, the Ethics Officer may initiate an action in accordance with this section. Violations or infractions of ethics codes often occur inadvertently because of a lack of knowledge of ethics code requirements. Most people intend and want to do the right thing. Officials themselves have the primary responsibility of ensuring that ethical standards are understood and met and that the public can continue to have full confidence in the integrity of~~

government. Officials have the additional responsibility of intervening by bringing any issue to another Official's attention when actions of Officials which appear to be in violation of this Code of Ethics are brought to their attention. Officials should point out infractions of this Code of Ethics to the offending Official. The formal complaint process outlined below is intended to be used when informal processes fail and to provide for the fair and effective administration and enforcement of this Code of Ethics.

A. COMPLAINT PROCESS

~~—A formal complaint should be filed if and only if all other efforts to resolve the problem have been exhausted without satisfactory resolution. A formal complaint is a serious matter and not to be made lightly.~~

~~1. *Complaint Requirements – Service.* Any person may submit a written complaint to the City Clerk~~Ethics Officer~~ alleging one or more violations of this Code of Ethics by an Official. The complaint must:~~

~~a. Set forth specific facts with enough precision and detail for the Ethics Officer to make a determination of sufficiency. ~~—A complaint is sufficient if it precisely alleges and describes acts which constitute a prima facie showing of a violation of a specified provision of this Code of Ethics that is within the purview of the Ethics Officer; and~~~~

~~b. Set forth the specific section(s) and subsection(s) of this Code of Ethics that the complaining party believes has been violated; and~~

~~c. Provide an explanation by the complaining party of the reasons why the alleged facts violate this Code of Ethics; and~~

~~1. d. It must be signed under penalty of perjury by the person(s) submitting it in a manner consistent with Chapter 9A.72 RCW; and,~~

~~e. State each complaining person's correct name, address at which mail may be personally delivered to the submitter and the telephone number and email, if available, at which each complaining person may be contacted.~~

~~*The City Clerk shall promptly mail and email a copy of the complaint to the person complained against and submit the complaint to the Ethics Officer for a determination of sufficiency.*~~

~~2. *Finding of Sufficiency.* The Ethics Officer shall ~~make~~submit a written report with a finding a determination of sufficiency ~~or insufficiency~~ within thirty five (30) 15 days of its receipt of the written complaint. A complaint shall be sufficient if the allegations, if established, would violate Section 3 or 4 of this Code. ~~Determination of sufficiency is a process as to form, required above, and determining the possibility of a violation, if the facts of the complaint are determined to be as presented.~~ The Ethics Officer's determination is not reviewable ~~finding of insufficiency by the Ethics Officer is final and binding, and no administrative or other legal appeal is available through the Ethics Officer. A finding of insufficiency due to form (Complaint Requirements 1b, c, d, and e) may be corrected and resubmitted to the City Clerk for further consideration by the Ethics Officer. A correction of a complaint by the person(s) originally submitting it must be received by the City Clerk within ten~~~~

~~days of the date of the letter of notification of the finding of insufficiency...~~ If the finding is one of sufficiency of the complaint, then the Ethics Officer shall investigate the complaint ~~shall be investigated~~ as set forth below.

~~_____~~ *Dismissal.* The Ethics Officer shall dismiss the complaint if the Ethics Officer determines that the violation was inadvertent and minor; or a violation occurred, but appropriate actions have been taken to fully address the allegedly unethical conduct.

~~3. Dismissal. The Ethics Officer shall dismiss the complaint if the Ethics Officer determines the complaint is:~~

~~_____ a. _____ insufficient;~~

~~b. _____ the violation was inadvertent and minor; or~~

~~3. _____ c. _____ a violation occurred, but appropriate actions have been taken to fully address the allegedly unethical conduct.~~

~~4. _____~~ 4. _____ Notice. Notice of action by the Ethics Officer shall be provided as follows:

a. Notice of a finding of insufficiency or dismissal of a complaint by the Ethics Officer shall be ~~sent~~mailed to the person who made the complaint and the person complained against within seven (7) days of the decision by the Ethics Officer. A finding of insufficiency or dismissal of a complaint by the Ethics Officer is final and binding, and no administrative or other legal appeal is available through the Ethics Officer, ~~except a correction as to form may be submitted as provided in Section 3.a.2.~~

b. Within seven (7) days of the Ethics Officer rendering a finding of sufficiency, the City Clerk shall ~~send~~mail notice to the person who made the complaint and the person complained against, of the public hearing which will be held to determine if a violation has occurred. Notice shall be provided at least thirty (30) days prior to the date set for the hearing. The person complained against shall have the right to file a written answer to the charge and to appear at the hearing with or without legal counsel, submit testimony, be fully heard, and to examine and cross examine witnesses.

~~5. _____~~ 5. _____ *Stipulations.* ~~Violation of any provision of the Code of Ethics should raise questions for the Official concerned as to whether resignation, compensatory action, or a sincere apology is appropriate to promote the best interests of the City and to prevent the cost — in time, money and emotion — of an investigation and hearings.~~ At any time after a complaint has been filed with the Ethics Officer, the Ethics Officer may seek and make recommendations that the City Council enter into a stipulation with the person complained against. The recommended stipulation will include the nature of the complaint, relevant facts, the reasons the Ethics Officer thinks a stipulation is appropriate, an admission of the violation by the person complained against, a promise by the person complained against not to repeat the violation, and if appropriate, a recommended remedy or penalty. The recommended stipulation shall be ~~mailed~~sent to the person who made the complaint and the person complained against and forwarded to the City Council for action.

B. CONDUCT OF HEARINGS

1. All hearings on complaints found to be sufficient by the Ethics Officer shall be conducted by the Hearing Examiner. The hearing shall be informal, meaning that the Hearing Examiner shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The Hearing Examiner may call witnesses on his or her own motion and compel the production of books, records, papers, or other evidence as needed. To that end, the Hearing Examiner shall issue subpoenas and subpoenas duces tecum. All testimony shall be under oath administered by the Hearing Examiner. The Hearing Examiner may adjourn the hearing from time to time to allow for the orderly presentation of evidence. The Hearing Examiner 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 shall not be required to transcribe such records unless presented with a request accompanied by payment of the cost of transcription.

2. Within thirty (30) days after the conclusion of the hearing, the Hearing Examiner shall, based upon a preponderance of the evidence, make and fully record in his or her permanent records, findings of fact, conclusions of law, and his or her recommended disposition. A copy of the findings, conclusions, and recommended disposition shall be mailed to the person who made the complaint and to the person complained. Additional copies of the findings, conclusions, and recommendations shall be forwarded to the Ethics Officer and City Council.

C. CITY COUNCIL ACTION

Final City Council action to decide upon stipulations and recommendations from the Ethics Officer and findings, conclusions, and recommendations from the Hearing Examiner shall be by majority vote in a public meeting. If the proceeding involves a member of the City Council, that member will not participate in any executive session unless requested and shall not vote on any matter involving the member. Deliberations by the Council may be in executive session; however, upon request of the person against whom the complaint was made, a public hearing or public meeting before the Council will be held on the issue of penalties.

D. DISPOSITION

In the event the Hearing Examiner's finds that the person against whom the complaint was made has violated the Code of Ethics, then the City Council may take any of the following actions by a majority vote of the Council. The action of the City Council shall be final and not subject to further review or appeal except as may be otherwise provided by law or as provided in Subsection E below.

~~1.~~ ~~1.~~ *Dismissal.* Dismissal of the complaint without penalties.

~~2.~~ ~~2.~~ *Referral.* A complaint may be referred to another agency with jurisdiction over the violation, such as the Public Disclosure Commission. Final action on the complaint may be stayed pending resolution of the matter by the agency to which it was referred.

3. *Admonition.* An admonition shall be an oral non-public statement made by the Mayor, or his/her designee, or if the complaint is against the Mayor, the Deputy Mayor or his/her designee to the Official.

4. *Reprimand.* A reprimand shall be administered to the Official by a resolution of reprimand by the City Council. The resolution shall be prepared by the City Council and shall be signed by the Mayor or, if the complaint is against the Mayor, the Deputy Mayor.

~~5.~~ ~~5.~~ *Censure.* A resolution of censure shall be a resolution read personally to the person in public. The resolution shall be prepared by the City Council and shall be signed by the Mayor or if the complaint is against the Mayor, the Deputy Mayor. The person shall appear at a City Council meeting at a time and place directed by the City Council to receive the resolution of censure. Notice shall be given at least twenty (20) calendar days before the scheduled appearance at which time a copy of the proposed resolution of censure shall be provided to the person. The resolution of censure shall be read publicly, and the person shall not make any statement in support of, or in opposition thereto, or in mitigation thereof. The resolution of censure shall be read at the time it is scheduled whether or not the Official appears as required.

~~6.~~ ~~6.~~ *Removal.* Member of Board or Commission or Other Appointed Task Group or Committee. In the event the individual against whom the complaint was made is currently a member of a City board or commission or other task group or committee, appointed by the City Council, the City council may, in addition to other possible penalties set forth in this section, and notwithstanding any other provision of the Kirkland Municipal Code, by a majority vote remove the individual from such board or commission effective immediately.

~~7.~~ ~~7.~~ *Civil Penalties.* The City Council may assess a civil penalty of up to One Thousand Dollar (\$1,000.00) or three (3) times the economic value of anything received in violation of this Code of Ethics or three times (3) the economic value of any loss to the City, whichever is greater. Any monetary penalty assessed civilly shall be placed in the City's general fund.

~~8.~~ ~~8.~~ *Contract void.* As provided by RCW 42.23.050, any contract made in violation of Chapter 42.23 RCW, "Code of ethics for municipal officers – contract interests," is void.

~~9.~~ ~~9.~~ *Other penalties.* The City Council may impose a restriction, loss of a committee assignment, or loss of appointment as a representative of the City for any regional or multi-jurisdictional body or membership on any board or commission which requires an appointment or confirmation of an appointment by the City Council.

E. REVIEW OF CIVIL PENALTIES

If the City Council orders a person to pay a civil penalty, the person may seek a writ of review from the superior court pursuant to Ch. 7.16 RCW, within thirty (30) days of the City Council's order.

F. PROTECTION AGAINST RETALIATION

Neither the City nor any Official may take or threaten to take, directly or indirectly, official or personal action, including but not limited to discharge, discipline, personal attack, harassment,

intimidation, or change in job, salary, or responsibilities, against any person because that person files a complaint with the Ethics Officer.

G. PUBLIC RECORDS

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NOTICE: ANY PORTION OF THIS FINDING DETERMINING SUFFICIENCY OF ANY PORTION OF A COMPLAINT DOES NOT DETERMINE THE TRUTH OR FALSITY OF THE ALLEGATIONS CONTAINED IN THE COMPLAINT FILED WITH THE ETHICS OFFICER. THE ETHICS OFFICER HAS ONLY DETERMINED THAT IF CERTAIN FACTS CONTAINED IN THE COMPLAINT ARE FOUND TO BE TRUE DURING A LATER HEARING TO BE CONDUCTED BY THE HEARING EXAMINER, THEN VIOLATION(S) OF THE ~~ETHICS~~-CODE OF ETHICS MAY BE FOUND TO HAVE OCCURRED.

The City shall release copies of any written reports resulting from an investigation of a sustained complaint, any Hearing Examiner orders, and any written censures or reprimands issued by the City Council, in response to public records requests consistent with Chapter 42.56 RCW and any other applicable public disclosure laws.

H. LIBERAL CONSTRUCTION – LIMITATION PERIOD – EFFECTIVE DATE

- a. This Code of Ethics shall be liberally construed to effectuate its purpose and policy and to supplement existing laws that relate to the same subject.
- b. Any action taken under this Code of Ethics must be commenced within three years from the date of violation.
- c. This Code of Ethics shall take effect _____.

CITY OF KIRKLAND
CODE OF ETHICS

SECTION 1 - POLICY

Purpose

The Kirkland City Council has adopted a Code of Ethics for members of the City Council and the City's boards and commissions to promote public confidence in the integrity of local government and fair operation. This policy will provide the basis for education and training for city officials, both elected and appointed, to ensure that the highest standards and best practices with regard to ethics will be followed.

Intent

The citizens and businesses of Kirkland are entitled to have fair, ethical and accountable local government that has earned the public's full confidence for integrity. In keeping with the City of Kirkland commitment to excellence, the effective functioning of democratic government therefore requires that:

- public officials, both elected and appointed, comply with the laws and policies affecting the operations of government;
- public officials be independent, impartial and fair in their judgment and actions;
- public office be used for the public good, not for personal gain; and
- public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.

SECTION 2 - DEFINITIONS

"Official" means a member of the City Council or a member of Council-appointed City boards and commissions and other Council-appointed task groups or committees, including youth members.

"Relative" means spouse or domestic partner, child, step-child, parent, step-parent, parent-in-law, grandparent, grandchild, sibling, aunt, uncle, niece, nephew, son- or daughter-in law, brother- or sister-in law.

SECTION 3 - PROHIBITED CONDUCT

1. *Conflicts of Interest.* In order to ensure their independence and impartiality on behalf of the common good, Officials shall not participate in government decisions in which any of the following has a financial interest: (i) the Official, (ii) a Relative, (iii) an individual with whom they reside, or (iv) an entity that they serve as an officer, director, trustee, partner or

employee. Officials shall abstain from participating in deliberations and decision-making where conflicts exist. This section shall not apply to decisions regarding taxes or fees, if the financial interest is shared with more than ten percent of the City's population, or if the financial interest exists solely because of the official's ownership of less than one percent of the outstanding shares of a publicly traded corporation.

2. *Appearance of Conflict.* If it could appear to a reasonable person, having knowledge of the relevant circumstances, that the Official's judgment is impaired because of either (1) a personal or business relationship not covered under the foregoing paragraph, or (2) a transaction or activity engaged in by the Official, the Official shall make a public, written disclosure of the facts giving rise to the appearance of a conflict before participating in the matter .

3. *Misuse of Public Position or Resources.* Except for infrequent use at little or no cost to the City, Officials shall not use public resources that are not available to the public in general, such as City staff time, equipment, supplies or facilities, for other than a City purpose.

4. *Representation of Third Parties.* Except in the course of official duties, Officials shall not appear on behalf of the financial interests of third parties before the Council or any board, commission or proceeding of the City, or in interaction with staff.

5. *Solicitations of Charitable Contributions.* No Official may make direct personal solicitations for charitable contributions from City employees.

6. *Gifts and Favors.* Officials shall not take any special advantage of services or opportunities for personal gain, by virtue of their public office, which are not available to the public in general. They may not solicit or receive any thing of monetary value from any person or entity where the thing of monetary value has been solicited, or received or given or, to a reasonable person, would appear to have been solicited, received or given with intent to give or obtain special consideration or influence as to any action by the Official in his or her official capacity; provided, that nothing shall prohibit campaign contributions which are solicited or received and reported in accordance with applicable law. They shall not accept or solicit any gifts, favors or promises of future benefits except as allowed by Kirkland Municipal Code 3.80.140.

Confidential information. Officials shall not disclose or use any confidential information gained by reason of their official position for other than a City purpose.

SECTION 4 – FINANCIAL DISCLOSURE STATEMENTS

All Officials shall file a City of Kirkland Disclosure Statement annually. In accordance with Chapter 42.17 RCW, members of the Kirkland City Council shall also disclose investments, interests in real property, sources of income, and creditors through the filing of a Public Disclosure Commission Form F-1, "Personal Financial Affairs Statement." Members of boards and commissions shall be advised as part of the application process, that they will be required to file the applicable City of Kirkland Disclosure Statement within ten days of appointment.

SECTION 5 – ETHICAL STANDARDS

In addition to Section 3 of the Code of Ethics, which shall be administered by the Ethics Officer, Officials are also encouraged to comply with the following standards:

1. *Compliance with other laws.* Officials shall comply with the laws of the nation, the State of Washington and the City of Kirkland in the performance of their public duties. These laws include, but are not limited to: the United States and Washington constitutions; laws pertaining to conflicts of interest, election campaigns, financial disclosures and open processes of government; and City ordinances and policies. See Appendix A. As required by RCW 42.17.750, no Official shall knowingly solicit or encourage, directly or indirectly, any political contribution from any City employee. Except under limited circumstances described in RCW 42.17.130, no Official may use or authorize the use of the facilities of the City for the purpose of assisting a campaign for the election of any person to any office, or for the promotion of or opposition to any ballot proposition in a manner not available to the general public on the same terms.

2. *Personal integrity.* The professional and personal conduct of Officials must be above reproach and avoid even the appearance of impropriety. Officials shall refrain from abusive conduct, threats of official action, personal accusations or verbal attacks upon the character or motives of other members of Council, boards and commissions, the staff or public. Officials shall maintain truthfulness and honesty and not compromise them for advancement, honor, or personal gain. Additionally, Officials shall not directly or indirectly induce, encourage or aid anyone to violate the Code of Ethics and it is incumbent upon Officials to make a good faith effort to address apparent violations of this Code of Ethics.

3. *Working for the Common Good.* Recognizing that stewardship of the public interest must be their primary concern, Officials will work for the common good of the people of Kirkland and not for any private or personal interest, and they will ensure fair and equal treatment of all persons, claims and transactions coming before the Kirkland City Council, boards and commissions. Officials need to be mindful that making special requests of staff – even when the response does not benefit the Official personally, puts staff in an awkward position.

4. *Respect for Process.* Officials shall perform their duties in accordance with the processes and rules of order established by the City Council and board and commissions governing the deliberation of public policy issues, meaningful involvement of the public, and implementation of policy decisions of the City Council by City staff.

5. *Commitment to Transparency.* Transparency, openness, and accountability are fundamental values of the City of Kirkland – and are also required by the laws of the state of Washington. The public has a right to inspect and copy public records unless exempt by law from disclosure. All materials relating to the conduct of City government that are prepared, possessed, used or retained by any Official, including email and other electronic records, are subject to requirements for retention, protection, and disclosure. Officials may assume that all copies of materials received from City staff have already been archived and do not need to be retained. Officials shall not discard, damage, or destroy the original copy of any public record

unless directed by the City Public Records Officer (the City Clerk), who has responsibility to ensure that the City complies with the record retention schedules established under Chapter 40.14 RCW. Officials shall promptly provide any records requested by the Public Records Officer in response to a disclosure request under the Public Records Act, Chapter 42.56 RCW. It is the responsibility for the Public Records Officer, together with the City Attorney, to decide which records meet the definition of "public record" and whether or not they are exempt from disclosure; Officials must not take it upon themselves to decide whether a record meets the definition of a public record, that a record is exempt from disclosure, or to otherwise conceal a record.

6. *Conduct of Public Meetings.* Officials shall prepare themselves for public issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand. They shall refrain from interrupting other speakers; making personal comments not germane to the business of the body; or otherwise interfering with the orderly conduct of meetings.

7. *Decisions Based on Merit.* Officials shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations.

8. *Ex parte Communications.* In quasi-judicial matters, Officials shall publicly disclose substantive information that is relevant to a matter under consideration by the Council or boards and commissions, which they may have received from sources outside of the public decision-making process.

9. *Attendance.* As provided in RCW 35A.12.060, a Council Member shall forfeit his or her office by failing to attend three consecutive regular meetings of the Council without being excused by the Council. Unless excused, members of boards and commissions are expected to attend all meetings.

10. *Nepotism.* The City Council will not appoint Relatives of City Council Members to boards or commissions or other appointed positions.

11. *Advocacy.* When acting in an official capacity as a City of Kirkland Official representing Kirkland, Officials shall represent the official policies or positions of the City Council, board or commission to the best of their ability when the City Council, board or commission has taken a position or given an instruction. When presenting their individual opinions and positions, members shall explicitly state they do not represent their body or the City of Kirkland, nor will they allow the inference that they do. Officials have the right to endorse candidates for all Council seats or other elected offices. It is inappropriate to make or display endorsements during Council meetings, board/commission meetings, or other official City meetings. However, this does not preclude Officials from participating in ceremonial occasions, community events, or other events sponsored by civic groups.

12. *Policy Role of Officials.* Officials shall respect and adhere to the council-manager structure of Kirkland City government as outlined by Chapter 35A.13 RCW. In this structure, the City Council determines the policies of the City with the advice, information and analysis provided by the public, boards and commissions, and City staff. Except as provided by state law, Officials shall not interfere with the administrative functions of the City or the professional

duties of City staff; nor shall they impair the ability of staff to implement Council policy decisions.

SECTION 6 – ETHICS OFFICER

1. The City Council creates the position of Ethics Officer. The City Manager will contract with one or more agencies to fill this position. The Ethics Officer will provide for annual review of the Code of Ethics, review of training materials provided for education regarding the Code of Ethics, and advisory opinions concerning the Code of Ethics. The Ethics Officer shall also be responsible for the prompt and fair enforcement of its provisions when necessary.

2. The Ethics Officer, in addition to other duties may recommend changes or additions to this Code of Ethics to the City Council. The Ethics Officer shall provide input into and review the training materials and program developed for this Code of Ethics.

SECTION 7 – ADVISORY OPINIONS

1. Upon request of any Official, the Ethics Officer shall render written advisory opinions concerning the applicability of Sections 3 and 4 of this Code to hypothetical circumstances and/or situations solely related to the persons making the request. The Ethics Officer will not render opinions on matters that are the purview of other government agencies or officials, e.g., the Public Disclosure Commission, the City Public Records Officer, etc.

2. Upon request of any Official, the Ethics Officer may also render written advisory opinions concerning the applicability of the Code of Ethics to hypothetical circumstances and/or situations related to a matter of city-wide interest or policy.

3. The Ethics Officer will endeavor to respond to requests for advisory opinions within forty-five (45) days of submission of the request, or more rapidly if the requester expresses urgency in the request.

4. A person's conduct based in reasonable reliance on an advisory opinion rendered by the Ethics Officer shall not be found to violate this Code of Ethics, as long as all material facts have been fully, completely, accurately presented in a written request for an advisory opinion, and the person's conduct is consistent with the advisory opinion. The Ethics Officer reserves the right to reconsider the questions and issues raised in an advisory opinion and, where the public interest requires, rescind, modify, or terminate the opinion, but a modified or terminated advisory opinion will not form the basis of a retroactive enforcement action against the original requestor. Advisory opinions will contain severability clauses indicating that should portions of the opinion be found to be unenforceable or not within the Ethics Officer's authority, the remainder of the opinion shall remain intact.

SECTION 8 – COMPLAINTS, INVESTIGATIONS, HEARINGS AND ENFORCEMENT

The Ethics Officer shall resolve inadvertent and minor violations of the Code of Ethics informally and may resolve inadvertent or minor violations informally, unless the Ethics Officer determines

that doing so would not serve the public interest. When a violation is neither inadvertent nor minor, the Ethics Officer may initiate an action in accordance with this section.

A. COMPLAINT PROCESS

1. *Complaint Requirements – Service.* Any person may submit a written complaint to the Ethics Officer alleging one or more violations of this Code of Ethics by an Official. The complaint must set forth specific facts with enough precision and detail for the Ethics Officer to make a determination of sufficiency. It must be signed under penalty of perjury by the person(s) submitting it in a manner consistent with Chapter 9A.72 RCW.

2. *Finding of Sufficiency.* The Ethics Officer shall make a determination of sufficiency within thirty (30) days of receipt of the written complaint. A complaint shall be sufficient if the allegations, if established, would violate Section 3 or 4 of this Code. The Ethics Officer's determination is not reviewable. If the finding is one of sufficiency of the complaint, then the Ethics Officer shall investigate the complaint as set forth below.

3. *Dismissal.* The Ethics Officer shall dismiss the complaint if the Ethics Officer determines that the violation was inadvertent and minor; or a violation occurred, but appropriate actions have been taken to fully address the allegedly unethical conduct.

4. Notice. Notice of action by the Ethics Officer shall be provided as follows:

a. Notice of a finding of insufficiency or dismissal of a complaint by the Ethics Officer shall be sent to the person who made the complaint and the person complained against within seven (7) days of the decision by the Ethics Officer. A finding of insufficiency or dismissal of a complaint by the Ethics Officer is final and binding, and no administrative or other legal appeal is available through the Ethics Officer.

b. Within seven (7) days of the Ethics Officer rendering a finding of sufficiency, the City Clerk shall send notice to the person who made the complaint and the person complained against, of the public hearing which will be held to determine if a violation has occurred. Notice shall be provided at least thirty (30) days prior to the date set for the hearing. The person complained against shall have the right to file a written answer to the charge and to appear at the hearing with or without legal counsel, submit testimony, be fully heard, and to examine and cross examine witnesses.

5. *Stipulations.* At any time after a complaint has been filed with the Ethics Officer, the Ethics Officer may seek and make recommendations that the City Council enter into a stipulation with the person complained against. The recommended stipulation will include the nature of the complaint, relevant facts, the reasons the Ethics Officer thinks a stipulation is appropriate, an admission of the violation by the person complained against, a promise by the person complained against not to repeat the violation, and if appropriate, a recommended remedy or penalty. The recommended stipulation shall be sent to the person who made the complaint and the person complained against and forwarded to the City Council for action.

B. CONDUCT OF HEARINGS

1. All hearings on complaints found to be sufficient by the Ethics Officer shall be conducted by the Hearing Examiner. The hearing shall be informal, meaning that the Hearing Examiner shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The Hearing Examiner may call witnesses on his or her own motion and compel the production of books, records, papers, or other evidence as needed. To that end, the Hearing Examiner shall issue subpoenas and subpoenas duces tecum. All testimony shall be under oath administered by the Hearing Examiner. The Hearing Examiner may adjourn the hearing from time to time to allow for the orderly presentation of evidence. The Hearing Examiner 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 shall not be required to transcribe such records unless presented with a request accompanied by payment of the cost of transcription.

2. Within thirty (30) days after the conclusion of the hearing, the Hearing Examiner shall, based upon a preponderance of the evidence, make and fully record in his or her permanent records, findings of fact, conclusions of law, and his or her recommended disposition. A copy of the findings, conclusions, and recommended disposition shall be mailed to the person who made the complaint and to the person complained. Additional copies of the findings, conclusions, and recommendations shall be forwarded to the Ethics Officer and City Council.

C. CITY COUNCIL ACTION

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D. DISPOSITION

In the event the Hearing Examiner's finds that the person against whom the complaint was made has violated the Code of Ethics, then the City Council may take any of the following actions by a majority vote of the Council. The action of the City Council shall be final and not subject to further review or appeal except as may be otherwise provided by law or as provided in Subsection E below.

1. *Dismissal.* Dismissal of the complaint without penalties.
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- b. Any action taken under this Code of Ethics must be commenced within three years from the date of violation.
- c. This Code of Ethics shall take effect _____.

APPENDIX A

| | |
|-----------------|---|
| Ch. 9A.72 RCW | Perjury and interference with official proceedings |
| RCW 35A.12.060 | Vacancy for nonattendance |
| Ch. 35A. 13 RCW | Council-manager plan of government |
| RCW 35A.13.020 | Incompatible offices |
| Ch. 40.14 RCW | Preservation and destruction of public records |
| RCW 42.17.130 | Use of public office or agency facilities in campaigns – prohibition - exceptions |
| RCW 42.17.750 | Solicitation of contributions by public officials or employees. |
| Ch. 42.23 RCW | Code of ethics for municipal officers – contract interests |
| Ch. 42.36 RCW | Appearance of fairness doctrine - limitations |
| Ch. 42.56 RCW | Public records act |
| KMC 3.80.140 | Kirkland code on acceptance of gifts |
| Ch. 3.12 KMC | Limitations on campaign contribution |

City of Kirkland Annual Disclosure Statement

This form is subject to disclosure under the Public Records Act, Chapter 42.56 RCW.

I make the following disclosures regarding a financial interest, arrangement, or affiliation with one or more individuals or entities that could be perceived as a real, apparent or potential conflict of interest in the following categories on behalf of myself or members of my household: *(Attach additional sheets as needed.)*

| | |
|---|---|
| <p>1. Employment/Non-Employee Compensation</p> <p><input type="checkbox"/> No, I do not have an employment relationship with or receive other compensation for services in excess of \$1,000 from any person or entity.</p> <p><input type="checkbox"/> Yes, I do have an employment relationship with or receive other compensation for services in excess of \$1,000 from another person or entity. (Please describe):</p> | <p>2. Material Financial Interest (as defined in Policy)</p> <p><input type="checkbox"/> No, I do not have a Material Financial Interest with any entity doing business with the City of Kirkland.</p> <p><input type="checkbox"/> Yes, I have a Material Financial Interest with the following entities doing business with the City of Kirkland:</p> |
| <p>3. Board of Directors/Other Leadership Position</p> <p><input type="checkbox"/> No, I do not have a leadership position with any public, private, or non-profit entity.</p> <p><input type="checkbox"/> Yes, I have a leadership position with:</p> | <p>4. Relationship with Another Party that May Impair Judgment</p> <p><input type="checkbox"/> No, I do not have a relationship with another party, internal or external, that may impair my professional judgment.</p> <p><input type="checkbox"/> Yes: (Please describe below)</p> |
| <p>5. Consultant or Member of an Advisory Board or Review Panel</p> <p><input type="checkbox"/> No, I do not have a consultant or advisory position to disclose.</p> <p><input type="checkbox"/> Yes, I have a consultant or advisory position with:</p> | <p>6. Other Potential Conflicts:</p> <p><input type="checkbox"/> No, I do not have other potential conflicts to disclose.</p> <p><input type="checkbox"/> Yes: (Please describe below)</p> |
| <p>7. I agree to promptly (within 30 days) notify City of Kirkland of any changes that may or does result in a conflict of interest. I have attached additional pages hereto for a full and complete explanation.</p> | |

I acknowledge that I have received, read, and understand City of Kirkland's Code of Ethics; I agree to abide by the Code of Ethics; and the foregoing is true and correct.

Signature: _____

Date: _____

Printed Name: _____

Role: _____