



CITY OF KIRKLAND
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MEMORANDUM

To: Kurt Triplett, City Manager

From: Marilynne Beard, Assistant City Manager
Robin Jenkinson, City Attorney

Date: June 8, 2011

Subject: KIRKLAND CODE OF ETHICS AND CODE OF CONDUCT

RECOMMENDATION:

The City Council review the following materials regarding adopting a Code of Ethics and/or a Code of Conduct and provide direction to staff regarding next steps.

BACKGROUND DISCUSSION:

The purpose of this memo is to provide a summary of activities to date related to a Code of Ethics and to provide further options for Council consideration.

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. On November 16, 2010, the Ethics Task Force presented their draft Code of Ethics and a process for adoption and implementation. A copy of the staff report including the draft Code of Ethics is included as Attachment A. At the November 16 meeting, 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 after January 1, 2011.

A variety of questions, issues and concerns were raised by individual Council members about the draft Code of Ethics as presented by the task force.

- Several Council members had specific edits to offer to the draft document. Edits were provided by Councilmember Asher (see Attachment B). Other members of the Council indicated that they also would have suggested edits when the appropriate time came for that level of input. The City Council did not discuss any specific edits at the November 16 study session.
- There was support for the task force recommendation about education as an important step in the implementation process.
- At least one Council member asked for a companion document that was more "aspirational" in nature such as a code of conduct that describes expectations for how

Kirkland public officials work together and treat each other. A draft code of conduct is discussed later in this memo.

- There was some discussion about the proposed enforcement mechanism described in the draft Code of Ethics (the Council-appointed Board of Ethics). City Council requested that staff research options for having an external entity conduct inquiries for ethics complaints filed against the City Council. Options are discussed later in this memo.

At the conclusion of the Study Session, the City Council asked the Council subcommittee to meet and return with a recommendation regarding next steps for consideration of the draft Code of Ethics. The Council subcommittee met on March 4, 2011 and primarily discussed the Ethics Board options. Councilmember Marchione reported the results of the meeting to the full Council on March 15. A summary of their discussion and needed follow-up follows:

The committee meeting focused on three options for an ethics board.

Option 1: Accept the Task Force's recommendation per the draft Ethics Policy and appoint an Ethics Board.

Option 2: For complaints against advisory board and commission members, the City Council will make a threshold determination of the sufficiency of the complaint. If the City Council finds sufficient evidence of a possible ethics violation, they will refer the matter to be heard by the Hearing Examiner. The facts of the case will be prepared by an outside individual or group (to be determined) and the opinion of the Hearing Examiner will be presented to the City Council for action.

For complaints against City Council members, an outside individual or group (to be determined) will make a threshold determination of the sufficiency of the complaint. If the outside review finds sufficient evidence of a possible ethics violation, they will refer the matter to be heard by the Hearing Examiner. The facts of the case will be prepared by an outside individual or group (to be determined) and the findings of the Hearing Examiner will be presented to the City Council for action.

Option 3: Do not include an enforcement mechanism in the Code of Ethics, but have individuals sign an oath to uphold the policy.

The committee also discussed the importance of training and of developing a code of conduct that speaks to how Council relates to one another. The committee suggested that a code of conduct be fairly brief.

The City Attorney was asked to research outside resources for ethics investigations including the City of Seattle Board of Ethics, King County Ombudsman, Municipal Research and Services Center (MRSC) and/or attorneys from other cities that may be able to provide assistance in investigating the complaint and presenting to the Hearing Examiner. The research would also determine related costs of each option. The City Attorney would prepare a report to Council outlining process options for City Council and board and commission ethics complaints (see discussion later in this memo).

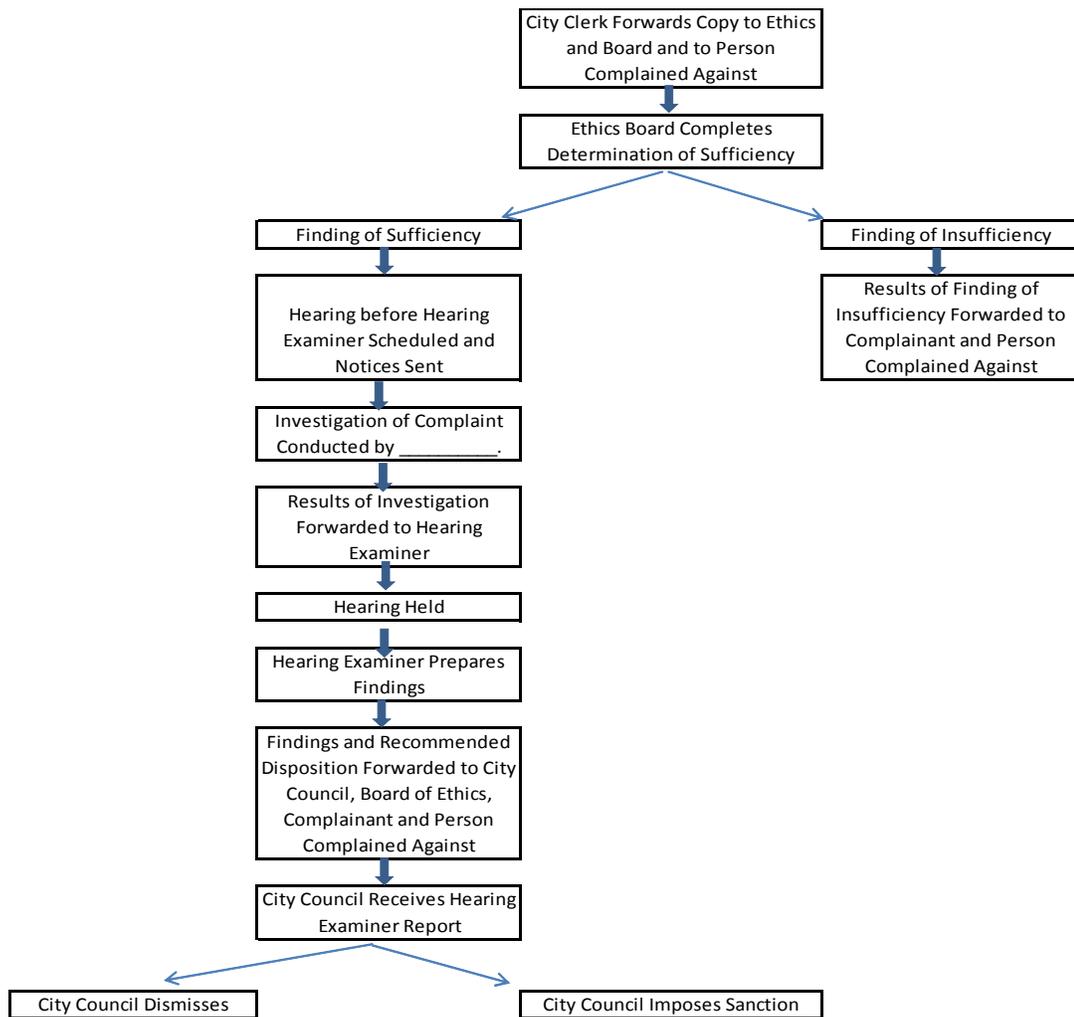
The Assistant City Manager was to research codes of conduct and develop a draft that does not duplicate the draft Code of Ethics.

Ethics Investigations and Sanctions

Members of the City Council expressed concerns about the formation of a Council-appointed Board of Ethics as described in the draft Code of Ethics. The staff support needed to keep a Board of Ethics current and active given the infrequent number of anticipated complaints was questioned as to its efficiency. The three options mentioned above are described in greater detail below with regard to the investigation and disposition process.

Option 1: Accept the Task Force’s recommendation per the draft Ethics Policy and appoint an Ethics Board

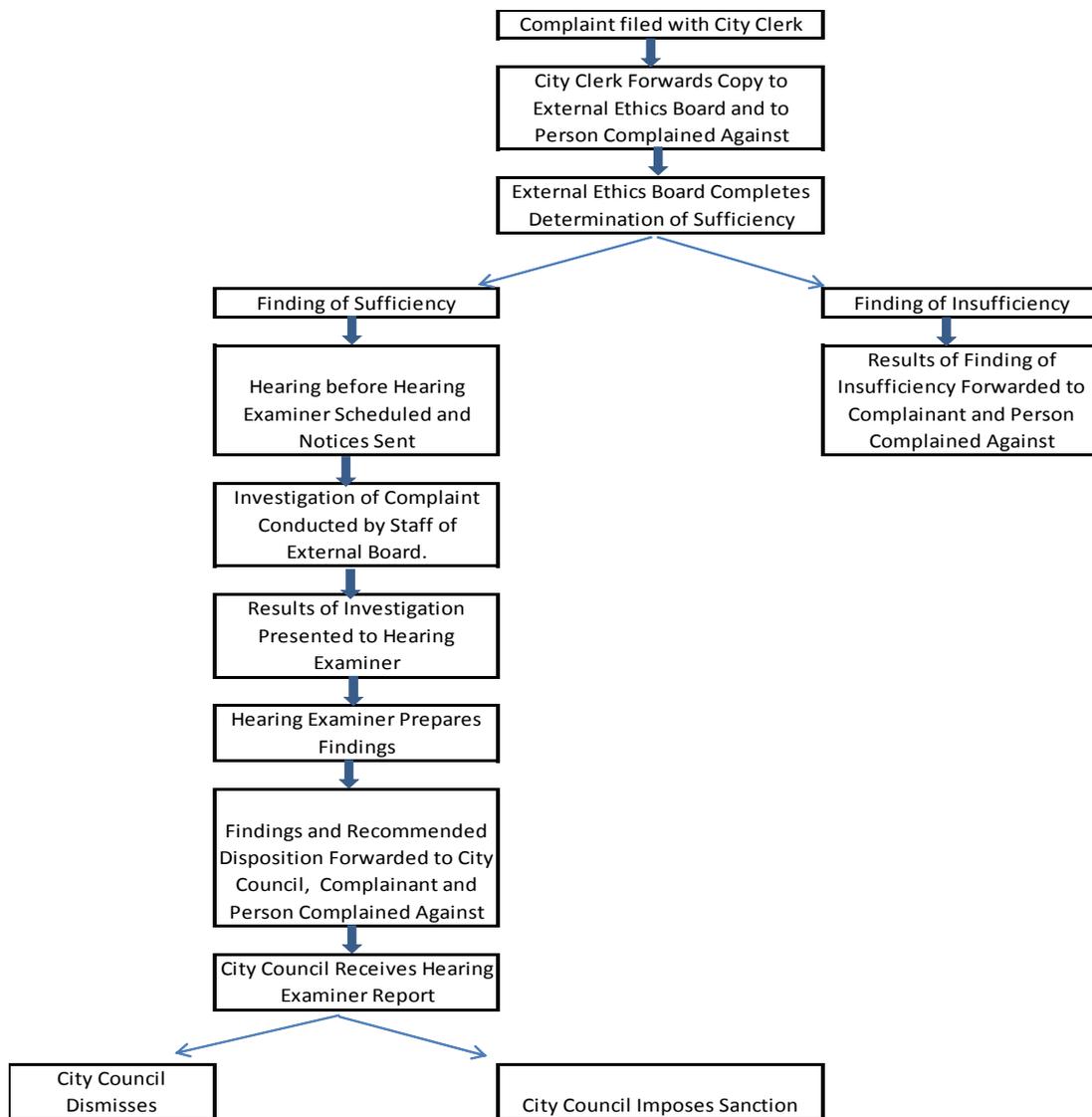
Under this option, the Ethics Board’s role is to make a determination of sufficiency and, if sufficient evidence of a possible violation exists, forward the complaint to the Hearing Examiner for review. The flow chart below shows the general series of events.



Note that the draft Code of Ethics does not designate the person or agency responsible for investigating the complaint and preparing testimony for the Hearing Examiner.

Option 2: Contract with an external party to act as an Ethics Board to screen complaints against City Council members.

In this case, an outside individual or group (e.g. The Seattle Ethics and Elections Commission or the King County Ombudsman) would make a threshold determination as to the sufficiency of the complaint. If the outside review finds sufficient evidence of a possible ethics violation, they will refer the matter to be heard by the Hearing Examiner. The facts of the case will be prepared by an outside individual or group (e.g. staff of the Seattle Ethics and elections Commission) and presented to the Hearing Examiner as testimony. The opinion of the Hearing Examiner will then be presented to the City Council for action. The following flow chart depicts this process.



For complaints against advisory board and commission members, the City Council would make a threshold determination as to the sufficiency of the complaint. If the City Council finds sufficient evidence of a possible ethics violation, they will refer the matter to be heard by the Hearing Examiner. The facts of the case will be prepared by an outside individual or group and the opinion of the Hearing Examiner will be presented to the City Council for action. This process would be very similar to the previous example, except that the City Council would act as the first point of review for a finding of sufficiency.

Option 3: Do not include an enforcement mechanism in the Code of Ethics, but have individuals sign an oath to uphold the policy.

In this case, there would be no formal enforcement process or sanctions and individuals would be accountable to the public to take some action to address the complaint. It should be noted that in all of these options, the draft Ethics Code provides for informal resolution of complaints through proactive action of the person the complaint is made against. A matrix of other cities' ethics investigation processes and sanctions is included as an attachment to the November 16 staff report (Attachment A).

One important consideration in any model relates to the person responsible for conducting an investigation and/or preparing testimony for the Hearing Examiner. If City staff were to undertake this role, it creates a situation where the staff person would be risking their current or future relationship with the City Council or a Board or Commission member. At best, it creates an awkward situation for future interactions. For this reason, staff recommends that an outside entity or individual be responsible for conducting investigations and presenting testimony to the Hearing Examiner. This provides an "arms length" review of the issue and mitigates against the appearance of partiality or allegiance to one's superiors.

The City Attorney followed up with the Seattle Ethics and Elections Commission and the King County Ombudsman's Office to determine if either entity was able to provide ethics violations investigation for Kirkland (it was determined that Municipal Research and Services would not be an appropriate resource for this activity). Both Seattle and King County responded affirmatively that they would be able to provide this service on an as-needed basis to the City of Kirkland. Both agencies could perform all of the functions of a Board of Ethics including evaluating complaints for sufficiency, determining the scope of investigations, conducting investigations, preparing findings and conclusions, and presenting matters before the Hearing Examiner. In addition, both agencies could provide advisory opinions as well as training. The staff of either agency could also perform an annual review of the Code of Ethics and report to the City Council any suggested changes. The City of Seattle quoted an hourly rate of \$105 to perform its duties on behalf of the City of Kirkland. Depending on the scope of the work performed, charges could range anywhere from \$210 for a finding of insufficiency to \$5,000 for a full-scale intake, investigation, hearing and preparation of findings. King County quoted a similar range of services with hourly rates ranging from \$56 to \$94 depending on the staff person working on it. Whether the City has its own ethics board or contracts for services, the Hearing Examiner would be billed at a rate of \$105 per hour.

If the City Council chose this option, staff recommends that the external entity chosen have an opportunity to review the draft Code of Ethics including any City Council amendments to assure that the document is enforceable and contains all of the provisions necessary for their administration. The Seattle Ethics and Elections Commission staff would need to take any

proposed contract to the Commission for review and approval. This could occur as early as July 2011.

Code of Conduct

In January 2010, the City Council received a briefing on the development of a Code of Ethics and/or a Code of Conduct and a description of the distinction between these two types of documents:

Codes of ethics set forth principles of conduct that guide decision making and behavior, with the emphasis on ethical and accountable local government. An example of a statement often included in a code of ethics is 'Council members shall make public any conflict of interest the Member has with respect to any issue under consideration by the Council. The Council member shall not participate in discussions of the subject and shall not vote on it if the Council member has a personal, financial or property involvement in the subject.'

Beyond the notion of a code of ethics is a code of conduct. Codes of conduct also concern behavior, but have more to do with describing the manner in which Council members should treat one another, city staff, citizens, and others with whom they come in contact. An example of a statement that might be included in a code of conduct is 'Council members are respectful of other people's time and stay focused and act efficiently during public meetings.'

The City Council was also provided a sample code of conduct from the City of Evans, Colorado. After reviewing codes of conduct for other cities, staff determined that most had all of the same basic elements and language and that they all seemed to be based on the same original document created by a California city.

A draft Code of Conduct for Kirkland city officials is included as Attachment C. The draft was developed by taking the Evans Colorado code and comparing it to the draft Code of Ethics. Staff attempted to eliminate sections that duplicated the draft Code of Ethics and made it more consistent with current Kirkland policy and practice. There is still some overlap in the two documents. If the City Council determines that a code of conduct is an appropriate supplement to the Code of Ethics (instead of a substitute), staff would want to eliminate redundancies and work with Council to determine which document should contain which sections. Council may also want to clarify that the Code of Conduct applies to the City Council and board and commission members. Once a Code of Conduct is finalized, a common practice is to have all applicable officials sign a copy signifying their agreement to comply. There is typically no enforcement mechanism or sanction for not complying with a Code of Conduct. Rather, it is designed to provide a mutually-agreed standard of behavior.

Policy Questions and Next Steps

Staff is requesting direction from the City Council on the following items:

1. Who should serve as the Ethics Board for board and commission ethics complaints?
Who should serve as the Ethics Board for City Council ethics complaints?

Staff recommends that the City utilize the services of either the King County Ombudsman or the Seattle Ethics and Elections Commission. Either agency could evaluate ethics complaints for sufficiency, determine the scope of investigations, conduct investigations, prepare findings and conclusions, and present matters before the Hearing Examiner. Either agency could provide advisory opinions, ethics training, and an annual review of the Code of Ethics. This option acknowledges the infrequent need for these services and provides an "arm's length" resource for investigations.

If the Council accepts this recommendation, staff suggests that a committee of the Council be asked to evaluate what each of these agencies could bring to City and make a recommendation to the full Council.

2. Does the City Council want to adopt a Code of Conduct as a supplement to the Code of Ethics or as a substitute?
3. Depending on the answer to the previous question, what further edits are needed to the draft Code of Ethics and/or draft Code of Conduct?
4. Should additional work on any of these products be worked through the full City Council or through the subcommittee with another draft presented to the full Council later?



CITY OF KIRKLAND

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MEMORANDUM

To: Kurt Triplett, City Manager
From: Ethics Task Force
Date: November 8, 2010
Subject: DRAFT CODE OF ETHICS

RECOMMENDATION:

City Council accepts the draft Code of Ethics presented by Ethics Task Force and discusses next steps in Council process.

BACKGROUND:

In February 2010, the City Council decided to begin the process of developing a code of ethics which would apply to the City Council and boards and commissions. The City Council created a Council Subcommittee for the Development of an Ethics Policy composed of Mayor Joan McBride, Council Member Dave Asher, and Council Member Doreen Marchione.

The Council Subcommittee met and proposed a process and timeline for developing a community-based ethics code which were accepted by the City Council. The Council Subcommittee then solicited applicants for an Ethics Task Force, screened applications, and provided its recommendation for the Task Force Members to the City Council. In April 2010, the Council appointed Mary-Alice Burleigh, Kathy Gilles, Carolyn Hayek, Toby Nixon, and Sharon Sherrard to the Ethic Task Force. The Council also identified topics it would like to see included in a code of ethics.

The Ethics Task Force began its process of developing a code of ethics in April 2010. The Task Force established a webpage on the City's website. The webpage includes meeting times and locations, agendas, background materials, and email address for the Ethics Task force to enable community members to provide the Task Force with input and follow the progress of the Task Force. The Ethics Task Force held regular meetings, open to the public, on the first and third Monday of each month. The Task Force received input from community members and board and commission members. The initial meeting of the Task Force was held jointly with the Council Subcommittee and the Task Force subsequently met three times with the Subcommittee to receive feedback on the Task Force work.

To ensure a fully informed discussion and consideration of a range of alternatives, the Task Force reviewed the ethics codes or codes of conduct from the following jurisdictions: Bremerton, Evans (CO), Federal Way, Firebaugh (CA), King County Public Hospital District No. 2

(Evergreen), Lynnwood, Mountain View (CA), Richland, Santa Clara (CA), Seattle, Sumner, Sunnyvale (CA), Tacoma, and Woodinville. (Links to some of these codes appear below.) In addition, the Task Force created a table summarizing the administrative processes and sanctions outlined in the ethics codes of various Washington cities. (Attachment B.) Finally, the Task Force developed a comprehensive list of ethics topics from various codes, recognizing that it would not want to include all the topics, but wanted to discuss which topics were worthy of including. (Attachment C.)

In reviewing the codes from other jurisdictions, the Task Force observed that the codes of some jurisdictions were very detailed, oftentimes including many pages of specific rules with terminology so complex as to defy understanding (or even reading) by all but lawyers. The Task Force wanted an ethics code that was succinct and written in "plain English." Another consideration was that some of the codes examined were aspirational codes or codes which encouraged ethical behavior through general principles without an enforcement mechanism. After much discussion, the Task Force concluded that it was important to have a code that provided for fair and effective administration and enforcement.

The Task Force worked to draft a Code of Ethics which provides clear standards of ethical conduct, clear guidance with respect to the standards, and consideration of potential ethical problems before they arise. The Task Force started from the premise that most people intend and want to do the right thing. As stated in the draft Code of Ethics:

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. The chairs of boards and commissions and the Mayor and City Council have the additional responsibility of intervening 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. . .

Draft Code of Ethics (Attachment A), Section 3, "Addressing Ethical Infractions," p. 7. The draft Code of Ethics provides for the establishment of a Board of Ethics which Council Members and members of boards and commissions may request to provide advisory opinions about the application of the Code of Ethics. Section 2, B. "Advisory Opinions," p. 6. The Board of Ethics would also be responsible for helping to develop training materials and a training program for the Code of Ethics and make recommendations for future amendments to the Code. Section 2, D. "Additional Duties," p. 7.

In the event informal processes do not resolve ethical issues, the Code of Ethics sets forth a process for the filing, screening, and enforcement of ethics complaints. In the best case, the enforcement provisions will never need to be used. Section 3, Addressing Ethical Infractions, A – D, pp. 7 - 10.

The Task Force suggests a copy of any ethics code that the City Council may ultimately approve be distributed to all Council Members and board and commission members. Training and training materials should be developed and included in an orientation program for Council

Members and board and commission members. The Task Force further suggests that all new Council Members and board and commission members sign a statement that they have read and understood the responsibilities explained in the code of ethics the Council ultimately adopts.

Thank you for this opportunity to serve the City of Kirkland.

Attachment:

- A. Draft Code of Ethics
- B. Survey of Ethic Code Processes
- C. List of Ethics Topics from Various Codes
- D. Annual Disclosure Statement

Examples of Codes of Ethics

Bremerton Municipal Code Ch.2.96 – Code of Ethics

<http://www.codepublishing.com/wa/Bremerton/html/Bremerton02/Bremerton0296.html#2.96>

Federal Way Code of Ethics for City Councilmembers, City Managers and City Employees

<http://www.mrsc.org/GovDocs/F4CodeEthics.pdf>

Lynnwood Municipal Code 2.94 – Code of Ethics

<http://www.mrsc.org/mc/lynnwood/Lynnwood02/lynnwood0294.html>

Richland Municipal Code Ch. 2.26 – Conduct of Public Officials and Public Employees – Code of Ethics

http://www.mrsc.org/ords/r5c2_26.aspx

Seattle Municipal Code Ch. 4.16 – Code of Ethics

<http://clerk.ci.seattle.wa.us/~scripts/nph->

[brs.exe?s1=4.16&s2=&S3=&Sect4=AND&l=20&Sect3=PLURON&Sect5=CODE1&d=CODE&p=1&u=%2F%7Epublic%2Fcode1.htm&r=1&Sect6=HITOFF&f=G](http://clerk.ci.seattle.wa.us/~scripts/nph-brs.exe?s1=4.16&s2=&S3=&Sect4=AND&l=20&Sect3=PLURON&Sect5=CODE1&d=CODE&p=1&u=%2F%7Epublic%2Fcode1.htm&r=1&Sect6=HITOFF&f=G)

Sumner Code of Ethics/Conflicts of Interest

<http://www.mrsc.org/policyprocedures/S93o2256.pdf>

Tacoma Municipal Code, Ch. 1.46- Code of Ethics

<http://cms.cityoftacoma.org/cityclerk/Files/MunicipalCode/Title01-AdministrationAndPersonnel.PDF>

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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 public confidence in the integrity of local government and its effective 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.

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 an 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 members of the City Council and members of City boards and commissions, including youth members.

"Relative" 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).

A. INTENT

The citizens and businesses of Kirkland are entitled to have fair, ethical and accountable local government which 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 both the letter and spirit of the laws and policies affecting the operations of government;

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- 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.

B. 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.*

C. ACT IN THE PUBLIC INTEREST

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. 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 shall not accept or solicit any gifts, favors or promises of future benefits except as allowed by Kirkland Municipal Code 3.80.140.

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.

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.

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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 where they have an organizational responsibility or personal 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.

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.

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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. Communication. 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.

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

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

H. ADVOCACY

When acting in an official capacity as a City of Kirkland Official, 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 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 2 – BOARD OF ETHICS

The establishment of a citizen Board of Ethics 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 Board also has a role in the prompt and fair enforcement of its provisions in the rare occasion when informal measures to deal with ethical lapses have failed.

A. BOARD ESTABLISHED

There is created a Board of Ethics for the City of Kirkland. The purpose of this Board of Ethics is to issue advisory opinions on the provisions of this Code of Ethics and to determine the sufficiency of complaints alleging violations of this Code of Ethics, as set forth below.

1. The Board of Ethics shall be composed of three members, and one alternate member ("first alternate") none of whom shall be an Official or City employee. The board members shall be appointed by the City Council. The alternate member may attend all meetings of the Board of Ethics, but shall have no voting rights except as otherwise provided. The term of each board member shall be three years. The first three members shall be appointed for one, two or three year terms, respectively, to be determined by lot. No board member may serve more than six years.

2. The Board of Ethics shall determine and elect its Chair. The Chair shall serve for a period of one year, unless reelected. The Chair may serve no more than two consecutive

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terms as Chair. In the event a Board member must recuse himself or herself or otherwise be unavailable to conduct Board business, the first alternate member shall serve in his/her place. If a second alternate member is required, the Board shall select such alternate member from prior Board members who have served during the preceding six years ("second alternate"). The second alternate Board member shall be chosen by agreement of the remaining Board members. In the event no former Board members are available, the City Council shall appoint an alternate Board member. In filling any vacancy or making an appointment to the Board of Ethics, the City Council shall strive to select members with diverse perspectives and areas of expertise appropriate to the review of ethical matters, and who are of good general reputation and character.

3. Any action by the Board of Ethics shall require the affirmative vote of two Board members.

4. The Board of Ethics shall meet no less than one time per year to recommend updates to the Code of Ethics and training materials as set forth below. The Board of Ethics shall meet as-needed to respond to requests for advisory opinions and complaints as set forth in Subsection D.

B. ADVISORY OPINIONS

1. Upon request of any Official, the Board of Ethics may render written advisory opinions concerning the applicability of the Code of Ethics to hypothetical circumstances and/or situations solely related to the persons making the request. The Board of Ethics 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 Board of Ethics 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 Board of Ethics 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.

C. ADVISORY OPINIONS – EFFECT ON ENFORCEMENT

A person's conduct based in reasonable reliance on an advisory opinion rendered by the Board of Ethics 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 Board of Ethics 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 authority, the remainder of the opinion shall remain intact.

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D. ADDITIONAL DUTIES

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

SECTION 3 – ADDRESSING ETHICAL INFRACTIONS

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. The chairs of boards and commissions and the Mayor and City Council have the additional responsibility of intervening 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 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 Board of Ethics 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; 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
- d. 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 at which each complaining person may be contacted.

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

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2. Finding of Sufficiency. The Board of Ethics shall submit a written report with a finding of sufficiency or insufficiency within fifteen (15) days of its receipt of the written complaint. The finding of insufficiency by the Board of Ethics is final and binding, and no administrative or other legal appeal is available. If the finding is one of sufficiency of the complaint, then the complaint shall be investigated as set forth below.

3. Dismissal. The Board of Ethics shall dismiss the complaint if the Board of Ethics determines the complaint is insufficient:

- a. The violation was inadvertent and minor; or
- b. A violation occurred, but appropriate actions have been taken to fully address the allegedly unethical conduct.

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

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

b. Within seven (7) days of the Board of Ethics rendering a finding of sufficiency, the City Clerk shall 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. 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 Board of Ethics, the Board of Ethics may seek and enter into a stipulation with the person complained against. The stipulation will include the nature of the complaint, relevant facts, the reasons the Board of Ethics 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 stipulation shall be mailed 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 Board of Ethics 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

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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 Board of Ethics and City Council.

C. CITY COUNCIL ACTION

Final City Council action to decide upon stipulations and recommendations from the Board of Ethics 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. Dismissal. Dismissal of the complaint without penalties.
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. 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

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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.

5. Removal – Member of Board or Commission. In the event the individual against whom the complaint was made is currently a member of a City board or commission, 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.

6. 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.

7. 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.

8. Other penalties. The City Council may impose a budget reduction or 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 Board of Ethics.

G. PUBLIC RECORDS

Records filed with the Board of Ethics become public records that may be subject to inspection and copying by members of the public, unless an exemption in law exists. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by RCW 42.56.230(2), identifying details may be redacted when an unsubstantiated complaint is made available in response to a public records request; however, in each case, the justification for the redaction shall be explained fully in writing. A finding by the Board of Ethics determining that a complaint is sufficient shall contain at the beginning the following specific language:

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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 BOARD OF ETHICS. THE BOARD OF ETHICS 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 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 _____.

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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

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CITY	PROCESS	SANCTIONS
Bremerton (Mayor-Council)	Complaint filed with City Clerk. Mayor refers to City Auditor. City Auditor makes preliminary investigation to determine whether reasonable cause exists to believe violation of Code of Ethics has occurred. If so, City Auditor presents matter to Hearing Examiner at public hearing. City Auditor is represented by City Attorney. Civil penalties may be appealed to Municipal Court. For other sanctions, challenges may be pursued through applicable labor agreement provisions, Civil Service Rules, or whatever remedies exist at law or equity.	Hearing Examiner may order: civil penalty, cease and desist, discipline, or removal from employment (elected official excluded from removal). For contractors, Hearing Examiner may recommend debarment (exclusion from bidding) or termination of contract.
Federal Way (Mayor-Council)	Complaint filed with City Clerk. Clerk submits to three-member Ethics Board for determination of sufficiency. If a finding of sufficiency is made, the complaint is investigated by the Board. The City Council may issue subpoenas at the Board's request. The Board issues a written opinion and delivers to the City Council. If the Board concludes the Code of Ethics has been violated and the City Council adopts the opinion by majority vote, the City Council may take action to sanction, also by majority vote. (Complaints against employees are handled under Personnel Policy Manual.)	<i>Admonition</i> – a verbal non-public statement made by the Mayor to the individual. <i>Reprimand</i> – administered to the individual by letter. <i>Censure</i> – written statement administered personally to the individual. <i>Removal</i> – if the individual is a member of a City board, commission, committee, or multi-member body, appointed by the City Council, the City Council, by majority vote, may remove.
Fircrest (Council-Manager)	None.	Contract made in violation of Code of Ethics is void and any officer violating the provisions of the Code of Ethics is liable to City for \$500.00 penalty. Violation by any public officer may result in forfeiture of office.

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<p>Grandview (Mayor-Council)</p>	<p>Complaint filed with three-member Ethics Board. If, the complaint is not dismissed after preliminary investigation, the Ethics Board holds a hearing and issues a written determination. If the Board determines that a City employee has violated the Ethics Code, the Board may recommend to the City Council that the employee be subject to disciplinary action.</p> <p>(Silent as to what happens if elected official determined to have violated Ethics Code.)</p>	<p>In addition to any other penalty provided by law, violation of the Ethics Code is cause for suspension, discharge or removal from office, or such other disciplinary action as consistent with City Personnel Manual. Violation of the Ethics Code is an infraction. A knowing violation is punishable by a fine not to exceed \$1,000.</p>
<p>Lynnwood (Mayor-Council)</p>	<p>Complaint filed with Finance Director. Counsel for the three-member Ethics Board makes a determination of sufficiency. If appropriate, the complaint is investigated by a third party. After investigation, the Board Counsel may attempt to settle and enter an appropriate administrative order or enter an administrative order that dismisses or determines sufficiency. A determination of sufficiency may be appealed to the Ethics Board for hearing. If the Board's administrative order determines that Ethics Code has been violated, the City Council may take action to sanction by majority vote.</p> <p>(Complaints against employees shall be brought to the employee's supervisor or the Mayor. The supervisor or appropriate individual shall investigate and recommend appropriate action to the Mayor.)</p>	<p><i>Admonition</i> – a verbal non-public statement made by the City Council President to the individual. <i>Reprimand</i> – administered to the individual by a resolution of reprimand by the City Council. <i>Censure</i> – a resolution of censure read personally to the individual in public. <i>Removal</i> – if the individual is a member of a City board, commission, committee, or multi-member body, nominated by the Mayor and confirmed by the City Council, the City Council, by majority vote, may remove.</p>
<p>Marysville (Mayor-Council)</p>	<p>Complaints filed with the three-member Board of Ethics which investigates complaint and, if it deems necessary, conducts a hearing. Upon its own motion, the Board may investigate any suspected or alleged violation of the Ethics Code and, if it deems necessary, conduct a hearing. At the conclusion of each</p>	<p>Any person willfully violating the Code of Ethics is guilty of a misdemeanor and subject to civil penalties. Any employee found guilty of a negligent violation of the Code of Ethics is subject to</p>

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<p><i>Marysville (Mayor-Council) cont.</i></p>	<p>investigation, the Board renders written findings of fact and recommendations for review by the City Council.</p>	<p>civil penalties up to and including termination from employment and/or loss of pay not to exceed one month's salary. Any elected official found guilty of violating the Code of Ethics is subject to a civil penalty of loss of pay not to exceed one month's salary. Contracts may be cancelled and city contractors unable to bid for two years.</p>
<p>Pacific (Mayor –Council)</p>	<p>None.</p>	<p>Any person violating the Code of Ethics shall be guilty of a misdemeanor and punished by a fine of not more than \$1,000, or by imprisonment not to exceed 90 days, or both. The City may initiate appropriate civil actions. Any employee whose conduct is determined by the Mayor to be in violation of the Code of Ethics may be terminated from employment and/or temporarily suspended with a loss of pay up to 30 days. Any contract in violation of the Code of Ethics is voidable.</p>
<p>Renton (Mayor-Council)</p>	<p>None.</p>	<p>Any person who willfully, knowingly and intentionally violates any provisions of the Code of Ethics, shall be guilty of a misdemeanor and upon</p>

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<p><i>Renton (Mayor-Council) cont.</i></p>		<p>conviction, fined a sum not to exceed \$500 or jailed for a period not to exceed 90 days, or both. In addition, any public official found guilty of violating the Code of Ethics shall forfeit right to office, whether elective or appointive, as may be determined by the court at the time of sentencing.</p>
<p>Richland (Council-Manager)</p>	<p>Any Council Member who believes another Council Member or member of Council-appointed board, commission, or committee, has violated the Code of Ethics, or any member of a board, commission or committee who believes another member has violated the Code of Ethics submits a written statement to the Council Ethics and Administration Committee. The Committee reviews the violation to determine whether adequate reason exists to bring formal charges. The Committee concludes one of the following: 1) there is insufficient evidence and the records are kept confidential; 2) there may have been a violation and the Committee may call for full review by the Council in executive session. If the Committee concludes there may have been a violation, the Council shall classify as major or minor in executive session. If the Council concludes a minor violation has occurred, it passes an appropriate motion of censure at a public meeting. A major violation results in a public hearing by the Council. The Council selects a member to present its findings at the hearing. The Council gives the accused Council Member or board, commission or committee member adequate time to prepare and present the case at the public hearing. Both Council and accused present their own cases, but they may be accompanied</p>	<p>The Council establishes a commensurate penalty. May remove the violator from the positions of Mayor or Mayor Pro Tem.</p> <p>If findings of the committee disclose a violation of the Code of Ethics, the City Attorney initiates appropriate action unless violation is by City Manager or City Attorney. In this case Mayor initiates appropriate action and the Council may convene an ad hoc citizen's committee to advise the City Council.</p> <p>Any public official or employee who knowingly and violates any provision of the Code of Ethics, except disclosure of confidential information, is guilty of a misdemeanor. In addition, violation may constitute a cause</p>

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<p><i>Richland (Council-Manager) cont.</i></p>	<p>by counsel. Witnesses may be presented. After hearing, the Council determines whether a violation occurred and whether major or minor.</p>	<p>for suspension, removal from office or employment, or other disciplinary action, which may include restitution or judicial action for recovery of any loss to the City that resulted from violation. [It is unclear how these penalties relate to the Council establishing commensurate penalties as first listed above.]</p>
<p>Seattle (Mayor-Council)</p>	<p>The Seattle Ethics and Elections Commission, an independent seven-member commission, administers and enforces four codes covering Ethics, Elections, Whistleblower Protection, and Lobbying. The Commission is aided by a six-member staff which investigates all allegations of wrongdoing. The Mayor and City Council each appoint three Commissioners, and the Commissioners select the seventh. All are confirmed by the City Council. The Commission and its Executive Director may initiate and investigation. An investigation may also be initiated by filing a complaint with the Executive Director. The Executive Director reviews the complaint to determine whether, if true, it would constitute a violation of the Code of Ethics. The Executive Director may dismiss the complaint or ask the Commission to do so. Otherwise a hearing is conducted by the Commission.</p>	<p>The Commission has authority to impose fines for violations of the Ethics, Elections, and Lobbying Disclosure Codes.</p> <p>For violations of the Code of Ethics, the Commission may: recommend prosecution; impose a fine up to \$5,000; require reimbursement for damages up to \$10,000; require reimbursement for costs; recommend to the Mayor and the appropriate agency that they request City Attorney bring an action to cancel or rescind the result of the action taken by the violator; and, in the case of the member of an advisory committee, the Commission may recommend that the advisory committee member be censured or removed from his or her</p>

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<i>Seattle (Mayor-Council) cont.</i>		position. Fines may be appealed to the Seattle Municipal Court.
Sumner (Mayor-Council)	None.	If employment or service performed outside the City is deemed by the department director to pose a conflict of interest, failure of the employee to immediately stop is grounds for dismissal.
Tacoma (Council-Manager)	<p>Complaint filed with five-member Board of Ethics. The Board reviews the complaint and, if necessary, designates an individual to conduct an investigation. The investigator provides the Board with written findings, conclusions, and recommended disposition. The Board reviews and: dismisses the complaint; determines no violation occurred; determines that the complaint alleges fact sufficient; or determines more information needed. After the Board makes its final determination, the Board issues written findings of fact, conclusions, and recommended disposition.</p> <p>The Hearing Examiner hears appeals of decisions of the City Council to remove a member of a City board, commission, committee, task force, or other multi-member body from office.</p>	<p>If the Boards determines that an existing contract is in violation of the Code of Ethics, the City may void or seek termination of the contract if legally permissible.</p> <p>The City Manager, Director of Public Utilities, Tacoma Public Utility Board, or City Council, as appropriate may impose any combination of the following penalties: a cease and desist order; any order to disclose any reports or other documents; discipline, up to and including termination or removal from position paid or unpaid, excluding elected positions; exclusion from bidding on City contracts for up to five years; and termination or invalidation of contract. In addition to other penalties, the City Council, by majority vote, may remove any</p>

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<p><i>Tacoma (Council-Manager) cont.</i></p>		<p>member of a City board, commission, committee, task force or other multi-member body. Prior to removal, the City Council shall provide notice and a public hearing.</p> <p>In addition, upon majority vote of the City Council, any current or former City-elected official may be subject to one or more of the following:</p> <p><i>Admonition</i> – verbal statement approved by the City Council and made to the individual by the Mayor.</p> <p><i>Reprimand</i> – administered to the individual by a resolution of the City Council.</p> <p><i>Censure</i> – a resolution of censure shall be read personally to the individual in public.</p> <p>Other penalties for elected officials: budget reduction or restriction; loss of seniority; loss of a committee assignment; or loss of appointment as a representative of the City on any board, commission, committee, task force, or other multi-member bodies which require an appointment or confirmation by the City Council.</p>
<p>Yakima (Council-Manager)</p>	<p>Complaint filed with three-member Ethics Board. The</p>	<p>The Board may recommend to</p>

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	<p>Ethics Board conducts a preliminary investigation. If the complaint is not dismissed, the Ethics Board holds hearing and issues a written determination stating whether the Code of Ethics has been violated and setting forth the facts and provisions of law upon which this determination is based.</p>	<p>the City Council that the employee, including elected officials, be subject to disciplinary action. In addition to any other penalty, a violation shall be cause for suspension, discharge or removal from office, consistent with the City personnel manual and state law. Violation of the Ethics Code is an infraction. Any person who knowingly violates any provision of the Ethics Code shall be punished by a fine not to exceed \$1,000.</p>
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**ATTACHMENT A
ATTACHMENT C**

List of Ethics Topics from Various Codes

Abuse of Position

Compensation for Official Duties or
Nonperformance (*see*, RCW 42.52.110; RCW 42.23.070(2))
Compensation for Outside Activities (*see*, RCW 42.52.120)
Improper Influence
Solicitation of Charitable Donations
Special Privileges or Exemptions (*see*, RCW 42.52.070; RCW 42.23.070)
Transactions with Subordinates

Campaign Activities

Limits on Contributions (*see*, KMC Ch. 3.12)
Political Solicitation
Patronage; Offering Position (even if unpaid)
Political Endorsements
Restrictions on Mailings (*see*, RCW 42.52.185)
Use of Public Resources for Political Campaigns (*see*, RCW 42.52.180;
RCW 42.17.130)

Confidential Information

Disclosure of Confidential Information (*see*, RCW 42.52.050; 42.23.070)
Improperly Concealed Records (*see*, RCW 42.50.050)

Compliance, Enforcement, and Sanctions (*see*, RCW 42.52.310 - .540)

Advisory Opinions
Appeals
Complaint Process
Complicity with or Knowledge of Others' Violations
Ethics Board
False Charge
Frivolous Complaints
Reprisals; Whistle Blower
Sanctions
Subpoena Powers
Training and Education
Void Contracts (*see*, RCW 42.23.050)

Conflict of Interest

Assisting in Transactions (*see*, RCW 42.52.040)
Financial Interests in Transactions (*see*, RCW 42.52.030)
Financial or Personal Interest – Disclosure Required
Influence in Contract Selection
Interest in City Contracts (*see*, RCW 42.23.030)
Interest in City Legislation

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Recusal
Serving on Boards of Local Nonprofit Organization

Employment

Council Members Employed by City
Incompatible Employment or Activity (*see*, RCW 42.50.020; RCW 42.23.070(3))
Restrictions after Leaving City (*see*, RCW 42.52.080)

Financial Disclosure

Investments (*see*, RCW 42.52.190)
Listing or Real Property
Statements of Financial Interests

- Annual
- When a conflict arises (transactional)
- When someone bids for business or requests permit (applicant)

General Prohibitions

Appearance of Fairness in Quasi-Judicial Matters
Endorsements of Products or Services
Failing to Perform Duties (lack of attendance)
False Statements
Falsely Impugning Reputation
Honesty in Applications for Positions (Boards and Commissions)
Incompatible Offices (*see*, RCW 35A.13.020)
Induce or Coerce Someone to Violate Ethics Code

Gifts

Acceptance of Gifts or Favors (*see*, RCW 42.52.140; KMC 3.80.140)
Fees and Honorariums (*see*, RCW 42.52.130)
Limitations on Gifts (*see*, RCW 42.52.150; KMC 3.80.140)

Nepotism

Purpose Statement

Statement of Principles (*see*, RCW 42.52.900)

Representation

Appearances (*see*, Representation of Private Person at City Proceeding)
Conduct with Other Public Agencies
Representation of Private Person at City Proceeding
Meeting with Representatives of Unions

Use of City Resources for Private Gain

Improper Use of City Personnel (*see*, RCW 42.52.160)
Improper Use of City Property (*see*, RCW 42.52.160)

**ATTACHMENT A
ATTACHMENT D
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:

<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: _____

Marilynne Beard

From: Dave Asher
Sent: Tuesday, November 16, 2010 12:36 AM
To: Robin Jenkinson
Cc: Kurt Triplett; Joan McBride; Doreen Marchione; Marilynne Beard
Subject: Ethics Code comments: Would appreciate your thoughts

Robin,

I would appreciate your thoughts on some comments that I have on the Code of Ethics. (Feels like I am about to critique the tablets from the mount, and I don't like criticizing another person's view of "ethics.")

The objective of this code is: to provide "clear standards of ethical conduct, clear guidance with respect to the standards, and consideration of potential ethical problems before they arise." Given that, I am not clear on the following:

1. Section 1 Policy Purpose includes the words "to ensure public confidence in the integrity of local government and its effective and fair operation." I don't see how an ethics policy does anything to ensure "effective" operations. Now, "confidence in the integrity" and "fair operations" of local government, I can see where the policy can aid in those arenas. I would delete "its effective and".
2. In defining "Official" we have left out the judge and even those that might be on a similar committee to the Ethics Task Force. I would suggest that the definition of "Official" be rewritten as follows: "Official" means any City of Kirkland elected incumbent and members of Council-appointed City boards, commissions, and other Council-appointed task groups or committees."
3. In defining "Relative:" does "related by marriage" bring into the definition of "Relative" those that are "step-" relationships of the many that are enumerated?
4. We didn't get "and spirit" deleted from Officials will "comply with both the letter and spirit of the laws and policies . . ." My "spirit" of a law may differ significantly from another person's "spirit" of the same law. If we can't write it, I don't see how we can enforce it. Am I missing something here?
5. E-page 8 #3: Representation of Third Parties:
Does this prohibition include advocacy to staff for a 3d party? That kind of action is called (above in the introduction in "C") "special requests of staff," but it does not seem to be enumerated in #3.
6. We seem to capitalize Official throughout to indicate it means those in the definition. I would think it would be easier to read and internally consistent to capitalize "Relative" for the same purpose.
7. I think "conflict of interest" is much more nuanced than what is stated here. I would refer you to the Sumner policy on Conflict of Interest that spells out situations more clearly. The policy laid out here seems to ask if a broad relationship exists and by that fact defines it as a conflict of interest.
Does there have to be a "conflict" to have a "conflict of interest"? Some agencies and organizations carry out things that the City has expressed are part of our goals. If a person has in an "organizational responsibility" as a member of an agency or organization that us SUPPORTING the things the City is trying to do, I don't know if I agree that a "conflict" exists.
Does being a member or a board member of the Chamber of Commerce, KDA or KPC automatically create a "conflict"?
8. E-page 10. #5 Communications. "Officials shall publicly disclose substantive information that is relevant to a matter under consideration . . ." Does that mean that all considerations weighing on an Official's position must be disclosed and "on the record"? If I want to agree with a development that has great density because I am concerned about meeting our housing targets that I learned about at a public meeting a couple of months before, am I required to articulate that consideration because I am required to "disclose substantive information that is relevant to a matter under consideration?"
9. #6, immediately following the preceding, discusses absences: With reference to "excusals" from meetings. We have no criteria for when an absence is "excused" or not. Does merely informing the presiding officer that one

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will be absent from a meeting constitute the basis for an excusal. Does it still constitute the basis for an excusal the 3d, 4th, and 5th time it occurs?

How about a situation where a member has an "excuse," what if you miss half of the meetings in a year? I don't see a discernable standard that a prudent person could rely upon.

10. E-page 10 #G: There are provisions for working papers and notes on our Council packets that make them non-releasable, so I would just like to know the specifics of these provisions.
11. E-page 11, #H, Advocacy: There are times when City of Kirkland Officials act as representatives of organizations; e.g., SCA; where they are required to express the organization's position that they are representing. This situation needs to be addressed in this discussion.
12. E-page 12 A #2. Need to add a start-up safety valve to take care of a need for a "second alternate." I would add a new sentence after: "If a second alternate member is required, the Board shall select such alternate member from prior Board members who have served during the preceding six years ("second alternate")." To wit: "During the initial six years the Board may select a second alternate from prior board members or members of the Ethics Task Force that developed the initial Code of Ethics proposal."
13. E-page 13, In the sentence: "The chairs of boards and commissions and the Mayor and City Council have the additional responsibility of intervening when actions of Officials which appear to be in violation of this Code of Ethics are brought to their attention." Change that to read: "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."
14. On E-page 13, A1a: line 4 The Code of Ethics includes citations of our state law that are the purview of other bodies to enforce. We cannot determine those types of violations as "sufficient." So, after "this Code of Ethics" I would add: "that is within the purview of the Board of Ethics."
15. E-page 13, A1e: After "telephone number", add "and email, if available,"
16. E-page 13, after A1e: After "mail", add "and email"
17. E-page 14, #2 Finding of Sufficiency. Line 3 and 4, after "The finding of insufficiency by the Board of Ethics is final and binding, and no administrative or other legal appeal is available." I would add, "through the Board of Ethics." I believe there should be a local safety valve. We can't stop someone from taking this to superior court by this wording, so local consideration would seem to be best. The question here is whether the Board of Ethics is the stated final say, or can the Council can be looked to as a community-based place to ask for reconsideration and possible review of the Board's action when the determine insufficiency?
18. E-page 14, #2 "Finding of Sufficiency." To keep things from being tossed out because of administrivia, I think a bit of a leeway needs to be inserted for those making complaints. There are 5 precise requirements that must be met in a complaint for it to be found to be sufficient, see E-page 13, A1 a thru e. We should certainly require that the facts presented be right, but the other elements could form the basis of insufficiency if
 - a. the wrong section of the Code of Ethics was cited, or
 - b. the complainant didn't "properly" indicate why the facts constituted a violation, or
 - c. the perjury statement could be in the wrong form, or
 - d. an address or phone number of a complainant might be misprinted.

We don't want those administrative mistakes to create the basis for a "final and unappealable decision by the Board of Ethics. So, after the first sentence add the following sentence:

"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."

After the next sentence: "The finding of insufficiency by the Board of Ethics is final and binding, and no administrative or other legal appeal is available."

Add 2 new sentences, to wit: "A finding of insufficiency due to form (Complaint Requirements 1b, c, d, e) may be corrected and resubmitted to the City Clerk for further consideration by the Board of Ethics. 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."

19. E-page 14, #3 " Dismissal." This currently reads:

"The Board of Ethics shall dismiss the complaint if the Board of Ethics determines the complaint is insufficient:

 - a. The violation was inadvertent and minor; or

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b. A violation occurred, but appropriate actions have been taken to fully address the allegedly unethical conduct.

I think this should be a series of 3 possibilities, not 2 specifications of insufficiency, because I believe the board can simply find the complaint is insufficient without a or b occurring. To that end, I would reword it to read:

“The Board of Ethics shall dismiss the complaint if the Board of Ethics determines the complaint is: a. insufficient;

b. the violation was inadvertent and minor; or

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

20. E-page 14, #4 Notice. This sentence currently reads: "A finding of insufficiency or dismissal of a complaint by the Board of Ethics is final and binding, and no administrative or other legal appeal is available." This would need to be reworded if a "correction" is allowed as in #17, above.
21. E-page 14. #5 Stipulations. Line 5: After "the Board of Ethics may seek and"
Add: "make recommendations that the City Council . . ."
22. E-page 14. #5 Stipulations. Line 5-6:
Under what circumstances might the Board seek stipulations - the situations should be consistent and enumerated. (We can learn as we go and modify the situations to those that seem most appropriate.) These circumstances must be enumerated to ensure consistency and an appearance of fairness. What will be the "finding" when a stipulation is entered into?
23. E-page 14. #5 Stipulations. Last 2 sentences, add the word "recommended" before the 2d word in each sentence. That would make it "The recommended stipulation . . ."
24. E-page 16 #5 Removal: Add: "or other appointed body"
25. E-page 16, #8 Other Penalties. Delete "budget reduction" A fiscal plan is to accomplish a public purpose, for the public good. Finding that an Official did something wrong, should not change that public purpose and in the remote chance that a reduction in resources might be desirable, that can be accomplished whether it is in the Code or not.

Thanks,

- Dave Asher

**CITY OF KIRKLAND
CODE OF CONDUCT**

The Code of Conduct is supplemental to the Kirkland Municipal Code and the Code of Ethics. The Code of Conduct describes how Kirkland officials treat each other and work together for the common good of the community. Conducting the City's business in an atmosphere of respect and civility is the underlying theme in this code. Members of the City Council are responsible for holding themselves and each other accountable for displaying actions and behaviors that consistently model the ideals expressed in the code.

Implicit in the Code of Conduct is recognition of the worth of individual members and an appreciation for their individual talents, perspectives and contributions. The Code will ensure an atmosphere where individual members, staff and the public are free to express their ideas and work to their full potential.

The City Council consistently demonstrates the principles of professionalism, respect and civility in working for the greater good of Kirkland.

Assure fair and equal treatment of all people, claims, transactions and proceedings coming before Council and staff.

Conduct themselves both personally and professionally in a manner that is above reproach and in a way that avoids even a hint of impropriety.

Refrain from abusive conduct, personal charges or verbal attacks, in public and private settings, on the character or motives of Council members, commissioners, staff and the public.

Avoid personal comments that could offend other Council members

Avoid and discourage conduct which is divisive or harmful to the best interests of Kirkland.

Show no tolerance for shouting or other physical behaviors that could be construed as threatening.

Listen courteously and attentively to all public discussions. Treat all people the way they wish to be treated.

Serve as a model of leadership and civility to the community.

Inspire public confidence in Kirkland government.

Keeping in mind the common good as the highest purpose, the City Council will focus on achieving constructive solutions for the public benefit.

Share substantive information that is relevant to a matter under consideration.

Demonstrate effective problem-solving approaches and render decisions based on the merits and substance of the matter, not on unrelated considerations.

Respect the confidentiality of information, both oral and written, concerning the property, personnel or affairs of the City.

Give their full attention to speakers.

Respect differences and views of other Council members.

Stay focused and act efficiently during public meetings.

The City Council respects the roles of the Mayor, the Deputy Mayor and their fellow Council members.

Mayor

The Mayor is responsible for leading the City Council into an effective, cohesive working team. The Mayor has the responsibility to run an efficient public meeting. The Mayor:

- Chairs All City Council meetings.
- Maintains order, decorum and the fair and equitable treatment of all speakers.
- Keeps the City Council's discussion and questions focused on the specific agenda item under consideration.
- Is acknowledged by all Council members as the recognized spokesperson for the City.
- Acts as the official head of the City for all ceremonial purposes.
- Acts as media contact and speaks on behalf of City Council policy.

Deputy Mayor

The Deputy Mayor performs the duties of the Mayor if the Mayor is absent, disabled, or has a conflict of interest and must recuse him/herself. The Deputy Mayor:

- Chairs Council meetings and Special meetings at the request of the Mayor.
- Represents the City at ceremonial functions at the request of the Mayor.

Council Members

All members of the City Council, including those serving as Mayor and Vice-Mayor, have an equal vote. All Council members:

- Prepare in advance of Council meetings and are familiar with the issues on the agenda.
- Fully participate in City Council meetings and other public forums while demonstrating respect, kindness, consideration and courtesy to others.
- Honor the efforts of the Mayor to maintain decorum and efficiency during meetings.
- Represent the official policies or positions of the Council or commissions when designated as a delegate to do so or explicitly state that they are representing their personal beliefs or opinions, not those of the Kirkland City Council.
- Respond to media inquiries on the record representing Council policy, remembering that words not said can't be quoted.
- Make a concerted effort to attend scheduled meetings with other entities and participate in community events whenever possible.
- Prepare written notes, letters, E-mails and leave voice messages with the knowledge that these types of records may become public records.

The City Council adheres to the principles and laws governing the Council/Manager form of government and treats all staff with respect and cooperation.

The City Council will refrain from interfering with the administrative functions and professional duties of staff and support the maintenance of a positive and constructive work place environment for employees, citizens and businesses.

Council and City Manager:

Council members' relationships with the City Manager will be respectful and open and reflect a participatory team effort.

Council members and the City Manager will be straightforward with one another and disclose all concerns that may detract from a productive or respectful environment.

Council members will initiate resolution of problems before they fester.

Council members will not publicly criticize individual staff but will privately communicate with City Manager any concerns about a Department or Department Head or staff person.

Individual City Council members will not negotiate or make commitments without involvement and knowledge of City Manager.

Council and Staff:

The City Council and staff consistently demonstrate mutual respect.

Council members are free to interact with any employee or groups, however, Council members may not discuss personnel issues, undermine management direction, or give or imply direction to staff.

Council members will be mindful of their role as policy-makers and that staff's desire to please/perform can create ambiguity or be misconstrued.

Council members will always be informed by staff when unusual events occur where the public may be concerned.

Council members will communicate directly with the City Manager or department directors when asking for information, assistance or follow up.

Materials supplied to a Councilmember in response to a request will be made available to all members of the Council so that all have equal access to information.

Council members and staff do not blindsides one another in public; council members contact staff prior to a council meeting with any questions or issues.

Council members will not attend meetings with City staff unless requested by staff.