

Nov. 8, + 22, 2021
 Date Presented to Council: Dec. 13, 2021 + Jan. 10 + 24, 2022
 Verified By: Jamie Newman
 Clerk's Note: NA

**City of Wasilla
 Informational Memorandum No. 21-14**

Draft Code Of Ethics Review And Discussion

Originator: Jamie Newman, City Clerk
 Date: 10/25/2021

Agenda of: 11/8/2021

Route to:	Department Head	Signature	Date
X	Finance Director		10-27-21
X	Deputy Administrator		10/27/21
X	City Clerk		10/27/2021
X	Mayor		10/27/21

Attachments: Memorandum From The Code Of Ethics Working Group (3 pages)
 Draft Code of Ethics (16 pages)

Summary Statement: Through the adoption of Resolution 21-12, the City Council authorized Council Member Brown, the City Clerk, and City Attorney (Code of Ethics Working Group) to draft a Code of Ethics (COE).

Attached to this IM is a memorandum from the Code of Ethics Working Group and the draft COE.

At the November 8, Council Meeting, the City Attorney will walk the Council through the differences between the current Code and the draft COE. An in-depth discussion by the Council will follow in Committee of the Whole.

If review on the draft COE is not completed at the November 8, Council Meeting, the item may be postponed to the next regular meeting through an affirmative vote of the Council.

Once the draft COE has been thoroughly reviewed by the Council, the proposed COE will be introduced via ordinance.

MEMORANDUM

TO: WASILLA CITY COUNCIL

FROM: CODE OF ETHICS WORKING GROUP

RE: CODE OF ETHICS ORDINANCE

CLIENT: CITY OF WASILLA

FILE NO.: 505780

DATE: OCTOBER 11, 2021

Introduction

The Code of Ethics Working Group, comprised of sponsor Council member Simon Brown, the City Clerk, and the City Attorney, completed the first draft of the City of Wasilla Code of Ethics. Ultimately, the proposed Code of Ethics will be introduced to City Council via ordinance with a corresponding staff report/memorandum. Before finalizing the proposed Code of Ethics, however, Council member Brown wanted to ensure that all Council members have an opportunity to review the Code of Ethics and discuss its provisions in more depth. To this end, the working group will provide a presentation at the November 8, Council Meeting, that walks Council through the differences between the current Code and the Code of Ethics and discusses the obligations and protections afforded to the public, and the officials that serve it, in this ethics code. The purpose of this memorandum is to provide Council a brief introduction to some of the most significant provisions in the Code of Ethics to assist it with committee of the whole discussions. Please note that changes to the Wasilla Municipal Code in the Code of Ethics are referred to as "PWMC" in this memo while existing Code provisions are referred to as "WMC."

Basic Provisions of the Proposed Code of Ethics

When adopting a code of ethics, communities take many different approaches. Some codes apply to all municipal employees and officials while others only apply to council or assembly members. Similarly, some ethics codes only address financial conflicts or biases while others govern a broad spectrum of conduct impacting public trust. The proposed Code of Ethics attempts to strike a balance between these approaches, tailored to meet the realities, objectives, and needs specific to Wasilla and its community members.

The Code of Ethics proposes several revisions, the most substantive of which:

- 1) Require City Council members, Commission members, Board members, the City Clerk, and the City Attorney to comply with applicable Wasilla workplace policies and procedures. This primarily includes anti-discrimination and harassment provisions.
- 2) Clarify and consolidate definitions. The Code of Ethics provides definitions for “financial interest” and “substantial financial interest”, as well as for “partial” and “impartial.” The following is a brief discussion of some of the changes made:
 - A. “Financial Interest:” In 2016, the City repealed its definition of “financial interest” but retained restrictions and prohibitions based upon the mere existence of a “financial interest.” (See WMC 5.08.200). For this reason, the proposed Code of Ethics definitions include a definition for both a “financial interest” and a “substantial financial interest.”
 - B. “Substantial financial interest” definition is expanded to include both the balancing test applied by the courts and also a presumption of substantial financial interest at a specific dollar amount, namely \$1000 per transaction or \$5000 in the aggregate for a year. While the Mayor or the chair of a board or commission generally determines conflict of interest, the entire body must determine that a financial interest is not substantial when the transaction involves \$1000 in a single transaction or \$5000 over a year. (PWMC 2.02.010).
 - C. A definition of “impartial” is added to explain the obligations of City Officials to act in the City and public’s best interest and not for personal or financial interests, providing Council and the Administration a basis for raising concerns when this line is crossed. Similarly, the proposed Code of Ethics defines “partiality” as that term is used in quasi-judicial proceedings where the city official’s ability to act impartially is impaired or a reasonable person would conclude that the official’s ability to act impartially would be impaired. (PWMC 2.02.010).
 - D. The definition of “electronic facilities” was moved from the body of that current provision and into definitions, and is expanded and updated to address changes in electronic formats. (PWMC 2.02.010).
- 3) Implement an ethics complaint process as well as an advisory opinion process so there is accountability for ethics complaints, a means for City Officials to protect themselves from good faith violations, and the authority for hearing officers to issue sanctions and penalties. The advisory opinion provides a mechanism to protect City Officials and City official actions from allegations arising from actions or omissions taken in reliance on advice from the City Attorney. (PWMC 2.04 entitled “Ethics Complaints”; PWMC 2.02.140 entitled “Advisory Opinions”).

- 4) Identify and prohibit improper conduct and provides a process for addressing these issues before they lead to litigation or undermines the public's faith in its local government. (PWMC 2.02.070 entitled "Prohibited Acts").
- 5) Consolidate all conflict of interest provisions applicable to City officials into a single chapter and clarifies the language regarding the conflict of interest declaration process. (PWMC 2.02.040; PWMC 2.02.050).
- 6) Remove prohibitions and limitations on City official use of electronic facilities from the Code and instead requires City officials to enter into and comply with a City Official Electronic Facility Agreement that must be approved by Council before it is adopted or amended. This permits Council to adapt to changes in technology without constantly revising the Code. (PWMC 2.02.110).
- 7) Codify a common law rule called the "Rule of Necessity," which permits a governing body to take action even when its members have a conflict of interest but only where: 1) conflicts on the Council result in too few uninterested members to take action; 2) no other commission or body has jurisdiction to hear the issue; and 3) there is no way to postpone or reschedule the action to a time where there would be a majority of members without a conflict. The rule of necessity, however, has not been extended to City commissions and boards. Instead, a provision was proposed in the Code of Ethics permitting a hearing officer to take action on matters before City commissions/boards where the rule of necessity would otherwise apply to an action before a City commission or board. (See PWMC 2.02.040(F) and PWMC 2.02.040(G)).

Conclusion

The working group would greatly appreciate any thoughts Council members may have on the scope and purpose of the Code, the types of acts prohibited under it, and any recommended additions or revisions to it. Once the group has received Council member feedback, the Code of Ethics will be updated and placed in an ordinance for adoption.

CHAPTER 2.02 CODE OF ETHICS

- 2.02.010 Definitions.**
- 2.02.020 Scope and short title.**
- 2.02.030 Statement of purpose.**
- 2.02.040 Conflict of interest-council members and the mayor.**
- 2.02.050 Conflict of interest-board and commission members.**
- 2.02.060 Conflicts of interest-city employees and city fund management.**
- 2.02.070 Prohibited acts.**
- 2.02.080 Employment of city officials.**
- 2.02.085 Partiality in quasi-judicial matters.**
- 2.02.090 Financial disclosure.**
- 2.02.095 Financial interest in contracting and purchasing prohibited.**
- 2.02.110 Use of city electronic communication and information processing facilities.**
- 2.02.120 Protection of public interest.**
- 2.02.130 Ethics training.**
- 2.02.140 Advisory opinions.**
- 2.02.150 Violation and penalty.**
- 2.02.160 Application of state statutes.**

2.02.010 Definitions.

The following words or phrases, when used in this chapter, shall have the meanings set forth in this section:

“Applicant” means any person that is applying for an official action by any official, employee, or body of the City including but not limited to:

1. Any person authorized to act for the applicant;
2. If the applicant is an organization, any person who has an ownership interest in the organization or serves as an officer, director or manager of the organization.

“City official” means a person who holds elective office under the ordinances of the city or who is a member of a board or commission whose appointment is subject to confirmation by city council. “City official” also includes the city clerk and city attorney.

“Elected officer” means the mayor and each council member, whether elected or appointed to the office.

“Electronic facilities” means computers, computer software, cell phones, telephones, voice mail, fax machines, photocopiers, tablets, and other electronic communication and information processing facilities owned or leased by the city.

“Employee” means any person who is employed by the city as described in WMC Title 3.

CITY OF WASILLA WORKING DRAFT CODE OF ETHICS AND ETHICS COMPLAINT PROCESS

“Financial interest” means an interest in or control of an asset or debt or a position in an organization or business held by a person or a member of that person’s household which may produce or has produced monetary gain or loss. A “financial interest” does not include any interest or control that is the equivalent of or arises from an interest held by all members of the public or a substantial class of persons to which that person belongs as a member of a profession, occupation, industry, or region. An interest in a membership, appointment or unpaid volunteer position with a nonprofit or public entity is not a “financial interest” unless the position is compensated. A mere stipend for meeting attendance or expenses associated with a volunteer position does not constitute compensation.

“Immediate family” means any of the following: a spouse, parent, uncle, aunt, sibling, spouse’s parent or sibling, child (including stepchild or adopted child), and anyone who lives in the person’s household.

“Impartial” means acting in a manner that the city official believes is in the public’s best interest and not acting to benefit a financial or personal interest of the city official.

“Matter” means a case, proceeding, application, contract, determination, ordinance, resolution, or other legislative measure, or the proposal, consideration, or adoption of an administrative regulation.

“Meal” includes dinner, breakfast, lunch, snacks, desserts, cocktails, or other beverages intended to be consumed in a single sitting.

“Official action” means a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction (when it is the equivalent of decision to take negative action), made while serving in the capacity of city official, whether such action or inaction is administrative, legislative, quasi-judicial, advisory, or otherwise.

“Partiality” applies only in quasi-judicial proceedings and means:

1. The ability of a member of the quasi-judicial body to make an impartial decision is actually impaired; or

2. The circumstances are such that reasonable persons would conclude the ability of the member to make an impartial decision is impaired and includes, but is not limited to, instances in which:

- a. The member has a personal bias or prejudice for or against a party to the proceeding including a party’s lawyer;

- b. The member or an immediate family member is a party, material witness to the proceeding or represents a party in the proceeding.

“Person” means a natural person, corporation or an organization.

“Political activity” means any act for the purpose of influencing the nomination or election of any person to public office, or for the purpose of influencing the outcome of any ballot proposition or question. Informing the public about a ballot proposition or question without attempting to influence the outcome of the ballot proposition or question is not political activity.

“Substantial financial interest” means a financial interest that the presiding officer or governing body determines is substantial after weighing the following factors:

1. Whether the financial interest is a substantial part of the consideration;
2. Whether the financial interest will be significantly impacted or changed by the outcome of the official action;
3. Whether the financial interest is immediate and known or attenuated and dependent on factors beyond the official action; and
4. Whether a reasonable person would consider the financial interest significant and would expect a person to take actions and make decisions to protect that financial interest.

Notwithstanding these factors, a financial interest that would result in a pecuniary gain or loss exceeding \$1,000 in a single transaction or more than \$5,000 in the aggregate in 12 consecutive months is presumed to be “substantial” unless city council or the board or commission taking the official action determines that the financial interest under the specific circumstances is not substantial and identifies why and how the specific circumstances rebut the presumption that the financial interest is substantial.

2.02.020 Scope and short title.

A. This chapter shall be known as the Code of Ethics.

B. Except as otherwise provided in this chapter, this chapter applies to the conduct of city officials. The conduct of city employees, including but not limited to prohibitions against harassment and discrimination, conflicts of interest, and misuse of city property, are governed by city personnel policies and procedures.

C. Enforcement proceedings may be commenced and continue to completion after a person is no longer a city official for conduct that occurred during the time the person was serving or engaged in such a capacity for the city.

2.02.030 Statement of purpose.

A. The city expects all city officials to serve the public with equality, honesty, and transparency, and to take actions that the official believes best serve the public and city. The public has a right to conscientious, loyal, faithful, and unbiased service by its officials, performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud, and corruption.

B. The city has an obligation to the public and city officials to establish standards of ethical conduct; promote ethics education for all city officials; provide clear guidance to city officials of the ethical procedures and standards of the city; recommend procedures that promote ethical behavior and hold city officials responsible and accountable for their behavior; and promote procedures that protect city officials, employees, and members of the public from harassment or retribution should they raise concerns about activities that do not appear to be in line with ethical behavior.

C. Any effort to benefit a substantial financial interest through official action is a violation of the public trust. The city finds that, so long as it does not interfere with the full and faithful discharge of a city official's public duties and responsibilities, this Code of Ethics does not prevent an official from following other independent pursuits. The city further recognizes that:

1. In a representative democracy, the representatives are drawn from society, and therefore cannot and should not be without personal and financial interests in the decisions and policies of city government;
2. People who serve as city officials retain their rights to personal and financial interests; and
3. Standards of ethical conduct for city officials need to distinguish between those minor and insubstantial conflicts that are unavoidable in a free society, and those conflicts of interests that are substantial and material.

2.02.040 Conflict of interest-council members and the mayor.

A. Except as otherwise provided in this section, no council member or the mayor shall participate in a matter in which that member or mayor has a substantial financial interest. Participation in a matter includes voting, debating or discussing that matter with council members or any person authorized to act on the matter.

B. Immediately before council approves the agenda at a regular or special meeting, the mayor and each council member shall declare any financial interest in a matter appearing on the agenda and ask to be excused from participating in the matter if the disclosed financial interest is substantial. Any member may question whether another council member or the mayor has a substantial financial interest in a matter appearing on the agenda.

C. Except as otherwise provided in this chapter, once a financial interest has been disclosed by a council member, the mayor shall determine whether or not the interest exists and, if so, if it is substantial. If the mayor or a council member discloses a financial interest held by the mayor, the city council shall determine if the mayor has a substantial financial interest.

D. A determination of the mayor under this section may be overridden by council via motion. Neither a council member nor the mayor shall participate in a vote determining the existence of a substantial financial interest held by that council member or the mayor.

E. If the mayor is found to have a substantial financial interest in a matter, the mayor shall yield the chair to the deputy mayor during discussion and the vote on the matter.

F. Rule of Necessity. Exceptions to a ruling excusing a Council member from participation shall be made in cases where:

1. By reason of being excused for conflicts of interest, the number of council members is reduced to less than the minimum number required to approve the official action;
2. No other body of the city has jurisdiction and authority to take the official action on the matter; and
3. The official action cannot be set aside to a later date, within a reasonable time, when council could obtain the minimum number of members to take action who are not excused for conflicts of interest.

G. Unless otherwise prohibited by law, a hearing officer has jurisdiction and authority to take official action on a matter before a commission or body if the rule of necessity would otherwise apply to an action by that commission or body.

When Council determines this exception applies, then all members, regardless of conflict, except the applicant when the applicant is a Council member, shall participate in the official action.

2.02.050 - Conflicts of interest—Board and commission members.

A. Except as otherwise provided in this section, a city board or commission member may not participate in a matter in which the member has a substantial financial interest. Participation in a matter includes voting, debating or discussing a matter with members of the body or any person authorized to take official action on the matter.

B. Immediately before a city board or commission approves the agenda at a meeting, each member having a financial interest in a matter appearing on the agenda shall declare the financial interest and ask to be excused from discussing and voting on the matter if the disclosed financial interest is substantial. Any member may question whether another member has a substantial financial interest in a matter appearing on the agenda.

C. Once a financial interest has been disclosed by a commission or board member, the presiding officer shall determine if the financial interest exists and, if so, whether or not it is substantial.

D. The determination of the presiding officer under this section may be overridden by a vote of the board or commission. A board or commission member shall not participate in a vote determining the existence of a substantial financial interest held by that member.

E. A board or commission member who has been ruled to have a substantial financial interest in a matter before the board or commission shall not participate in the discussion of the matter or vote on the matter.

2.02.070 Prohibited acts.

A. False Statements. City officials shall not knowingly make false statements to influence official action.

B. Inappropriate Use of Title or Authority. No City official shall use the implied authority of office or position for the purposes of unduly influencing the decisions of others, or promoting a personal interest within the community. Unless duly appointed by Council to represent the interests of the full Council, Council members shall refrain from implying their representation of the whole by the use of their title.

C. Representing Private Interests. No City official shall, for compensation, represent or assist those representing private business or personal interests before Council, administration, or any City board, commission or agency. Nothing in this subsection shall prevent an official from making verbal or written inquiries on behalf of constituents or the general public to elements of city government or from requesting explanations or additional information on behalf of such constituents. No official may solicit or accept a benefit or anything of value from any person for having performed this service.

D. Confidential Information. No City official may disclose information that official knows to be confidential concerning employees of the city, city property, city government, or other city affairs, including but not limited to confidential information disclosed during an executive session, unless authorized or required by law to do so.

E. Gratuities. No city official shall accept a gratuity from any person engaging in business with the city or having a financial interest in a decision pending with the city. No city official shall give a gratuity to another city official for the purpose of influencing that person's opinion, judgment, action, decision or exercise of discretion as a city official. This subsection does not prohibit accepting:

1. A meal under \$150 in value;
2. Discounts or prizes that are generally available to the public or large sections of the public;
3. Gifts presented by an employer to its employees in recognition of meritorious service, or civic or public awards;
4. A lawful campaign contribution made to a candidate for public office;

5. An occasional nonpecuniary gift less than \$150 in value;

6. Any gift which would have been offered or given to them if they were not a city official.

F. Use of City Property. No city official may use, request or permit the use of city vehicles, equipment, materials or property for any non-city purpose, including but not limited to private financial gain, unless that use is available to the general public on the same terms or unless such use is included in the compensation package provided to the specific official. This subsection does not prohibit de minimis personal use.

G. Political Activities – Limitations of Individuals. A city official may not take an active part in a political campaign or other political activity when on duty. Nothing in this subsection shall be construed as preventing city officials from exercising their right to vote, contribute to a campaign or candidate or expressing that official's political views when they are not on duty or engaging with the public in their capacity as a city official.

H. Improper Influence Over Another City Official's Vote. A city official may not attempt to influence another city official's vote or position on a particular item through contact with the city official's employer or by threatening financial harm to another city official.

I. Duty of Impartiality. City officials shall act impartially when conducting City business.

J. Prohibition against Harassment and Discrimination and Retaliation. At all times during performance of their official duties, city officials shall comply with the City's personnel policies against harassment, retaliation, and discrimination. A copy of these policies and procedures shall be provided to all city officials when elected or appointed. City officials shall be provided with any updates or revisions to these policies and procedures.

2.02.080 Employment of city officials.

A. During the term for which elected, and for one year after leaving office, city council members and the mayor shall not be eligible for city employment, except with the approval of city council.

B. A board or commission member must resign the board or commission appointment before commencing city employment.

C. An elected or appointed commission or council member may not represent or advise a person in any matter pending before a city body during their term.

2.02.085 Partiality in quasi-judicial matters.

A. A city official who has partiality concerning a quasi-judicial matter shall not advise on the matter, adjudicate the matter or serve as a member of a body adjudicating the matter.

B. A member of a quasi-judicial body who has or may have partiality concerning a matter before that body shall disclose to it and the parties in the action before it the facts concerning the official's possible partiality before any discussion or action by the body on

that matter. Any member of the body, and any party to a matter before the body, may raise a question concerning a member's partiality, in which case the member in question shall disclose facts concerning the official's possible partiality in the matter.

C. After such disclosure, the city official may excuse themselves for partiality without a vote of the body, otherwise the body (including a body comprised of city council members when serving in a quasi-judicial capacity) shall vote if the official has partiality concerning the matter.

2.02.090 Financial disclosure.

A. Under AS 39.50, municipal officers of the city shall file a statement giving income sources and business interests.

B. Candidates for elected city office shall comply with AS 39.50, which requires a candidate for public office to file a disclosure statement of financial and business interests at the time of filing a declaration of candidacy under WMC 4.12.030 or at the time of filing a letter of intent to be a write-in candidate under WMC 4.12.045. The clerk shall not accept a declaration of candidacy or a letter of intent unless the candidate either files the disclosure statement or has one on file for the current calendar year.

2.02.095 Ethics of contracting and purchasing.

A. All city purchases and contracts shall be made solely for the public benefit of the city.

B. A city official who has a financial interest in any bid or proposal for a city contract shall disclose that interest by filing a written notice of it with the purchasing officer not less than 10 days before submission of the bid or proposal in which the official has an interest. The purchasing officer shall post the written notice at the place maintained for the posting of public notices at City Hall.

1. No city official who has a financial interest in any bid or proposal for a city contract may participate in the city's decision to award the contract.

2. No city official may solicit or receive any form of compensation from any party other than the city in connection with the awarding of a city contract.

C. A member of city council or a commission or board who willfully violates subsection (A) of this section is guilty of misconduct in office and a violation of the oath of office. A contract entered into in violation of subsection (A) of this section is voidable by council.

2.02.110 electronic facilities agreement.

A. City officials shall enter into an electronic facilities agreement with the city upon election or appointment.

B. The city official electronic facilities agreement and any changes to that agreement shall be approved by city council by resolution.

C. Violation of the terms of the agreement shall constitute a violation of this section.

2.02.120 Protection of public interest.

This Code of Ethics shall be liberally construed in favor of protecting the public's interest in full disclosure of conflicts of interest and promoting high standards of ethical conduct for city government. However, the code shall be narrowly construed where it would limit or hinder an elected city official's right and duty to vote or otherwise participate on any issue before the elected body or in performing their duties. The provisions of this chapter are not subject to collective bargaining.

2.02.130 Ethics training.

The city shall provide training to all persons covered by this Code of Ethics who shall sign an acknowledgement that they have received the training and understand the Code of Ethics.

2.02.140 Advisory opinions.

A. A city official may request a written opinion from the city attorney regarding the application of the Code of Ethics to action or conduct by that official. Requests must be submitted to the city clerk in writing and should contain a clear statement of the city official's questions and the underlying facts. The request must clearly state it is a request for an advisory opinion under this section of the Code of Ethics.

B. Such opinion, until amended or revoked, shall be binding on the city in any subsequent actions concerning the city official who sought the opinion and acted on it in good faith, unless material facts were omitted or misstated in the request for the advisory opinion. An advisory opinion shall be applicable and binding only to the particular set of facts and instances of conduct for which it was requested.

C. Any act or omission taken by a city official in their official capacity based upon the advice of the city attorney provided in writing, during a council or commission meeting or acknowledged by the city attorney in response to a complaint shall not be subject to an ethics complaint under this chapter.

2.02.150 Violation and penalty.

Any official who violates any of the provisions of this chapter shall be guilty of a violation subject to punishment pursuant to Chapter 1 of this Code. A violation of the Code of Ethics constitutes misconduct.

2.02.160 Application of state statutes.

Nothing in this chapter is intended to curtail, modify, or otherwise circumvent the application of the Alaska Statutes to any conduct involving bribery or other offenses against public administration.

Section 8. Amendment of Title. WMC Title 2, “Administration,” is hereby amended to add Chapter 2.04 “Ethics Complaints” to read as follows:

Chapter 2.04

ETHICS COMPLAINTS

Sections:

- 2.04.010 Filing an ethics complaint.**
- 2.04.020 Preliminary sufficiency review.**
- 2.04.030 Consideration of sufficient complaints.**
- 2.04.040 Function and authority.**
- 2.04.050 Disclosure of complaint prohibited.**
- 2.04.060 Deliberations and final decision.**
- 2.04.070 Sanctions civil penalty and remedies**
- 2.04.080 Conflict of interest-hearing officer**
- 2.04.090 Duty of cooperation.**
- 2.04.070 Settlement of complaints.**
- 2.04.080 Record of proceedings and public record.**
- 2.04.090 Limitation period.**

2.04.010 Filing an ethics complaint.

A. Any person who believes that a violation of any portion of the Code of Ethics in Chapter 2.02 of WMC has occurred may file a written complaint of potential violation with the city clerk’s office.

B. All written complaints of potential violation submitted under this chapter shall be signed by the person submitting the complaint. A written complaint shall state the address and telephone number of the person filing the complaint, identify the city official that is being accused of a violation of the Code of Ethics, and affirm to the best of the person’s knowledge and belief the facts alleged in the complaint are true. The person filing the complaint shall identify the provisions of the Code of Ethics the person believes to have been violated, state why the person signing the complaint believes the facts alleged constitute a Code of Ethics violation, and identify any documentary or testimonial evidence the person filing the complaint believes shows a violation occurred or is occurring.

2.04.020 Preliminary sufficiency review.

A. Each written complaint of a violation of the Code of Ethics received by the city clerk’s office shall be assigned an identification number, which shall be used in lieu of names when referring to the complaint to maintain confidentiality. The city clerk, city attorney, and the hearing officer shall keep all written complaints of potential violation confidential during investigation and the hearing officer’s deliberative process. Complaints of potential violation may be disclosed only to the staff member of the city clerk’s office providing administrative support to the hearing officer and legal counsel.

B. Upon receipt of a notification of potential violation, the city clerk shall review the complaint for completeness and inclusion of the information required in WMC 2.04.010(B). If the city clerk determines that the complaint is not complete and lacks information required by WMC 2.04.010(B), the city clerk shall return the complaint and identify in writing the deficiencies on which the return is based. The city clerk shall notify the person filing the complaint of the return and the reasons for it. A person may amend and refile a complaint but a complaint filed by the same person against the same city official with the same deficiencies shall not be accepted. The city clerk may recommend to the person filing the complaint that it be amended and refiled. Notifications of potential violation returned without further action shall remain confidential.

C. The city attorney shall review the sufficiency of the statement of violation in the complaint. If the city attorney determines the facts alleged in the notification of potential violation, even if proven, could not constitute a violation, or that the hearing officer lacks jurisdiction to address the complaint of potential violation, the city attorney shall instruct the city clerk to return the complaint and identify in writing the deficiencies on which the return is based. The city clerk shall notify the person filing the complaint of the return and the reasons for it. A person may amend and refile a complaint but a complaint filed by the same person against the same city official with the same deficiencies shall not be accepted. The city clerk may recommend to the person filing the complaint that it be amended and refiled. Notifications of potential violation returned without further action shall remain confidential.

D. If the city attorney determines the allegations in a complaint of potential violation, if proven, may constitute a violation of a matter within the hearing officer's jurisdiction, the city attorney shall provide written notice to the city clerk.

E. If the city attorney and city clerk find the complaint sufficient under this section, the city clerk shall:

1. Retain a hearing officer appointed and qualified under WMC 2.76.010 and provide that officer with a copy of the complaint of potential violation and a copy of the outline of the hearing officer process under this chapter.
2. Issue a notice of confidential hearing to both the person submitting the complaint of and the accused informing them that the complaint has been reviewed for procedural and preliminary sufficiency and submitted to a hearing officer for consideration. This notice shall include the name of the hearing officer, a statement reiterating the confidentiality of the hearing process, and notice of the hearing procedure and preliminary schedule.

2.04.030 Consideration of sufficient complaints.

A. The city clerk shall appoint a hearing officer to decide and investigate all sufficiently filed complaints under WMC 2.04.020. Except as provided in WMC 2.04.020, the hearing officer shall have sole jurisdiction to decide the merits of a complaint filed under this chapter.

B. A hearing officer designated by the city clerk under this chapter shall have sole authority to investigate the complaint that hearing officer has been retained to hear and to make procedural decisions regarding the investigation and hearing of that complaint. Except as otherwise provided in WMC 2.04.020, the hearing officer shall be the sole decision-maker and shall comply with the procedures and requirements of this chapter.

2.04.040 Function and authority.

A hearing officer appointed under this chapter has authority to perform the following functions:

- A. Investigate reported violations of the Code of Ethics.
- B. Hear and decide written complaints of violations of the Code of Ethics.
- C. Hear and decide on requests for exceptions as specified in the Code of Ethics.
- D. Make findings and recommendations concerning sanctions, civil penalties and remedies for violations as provided in this chapter and the Code of Ethics.
- E. ^{upon} Upon application by the person who is the subject of the complaint and/or the person filing the complaint, or when the hearing officer determines it is necessary in that hearing officer's sole discretion, may compel by subpoena the appearance and sworn testimony, at a specified time and place, of a person that may be able to provide information relating to a matter under investigation or produce documents, records or other items related to the matter under consideration.
- F. Administer oaths and receive testimony from witnesses appearing before the hearing officer.
- G. Request city departments, employees, consultants, agents, and officials to cooperate with the hearing officer in the exercise of the hearing officer's jurisdiction.
- H. Request the advising attorney to seek assistance of the Superior Court to enforce the hearing officer's subpoena.
- I. Conduct investigative hearings confidentially, pursuant to notifications alleging violations of matters within the authority of the hearing officer.

2.04.050 Disclosure of complaint prohibited.

- A. Except as otherwise provided in this section or required by law, a person filing a complaint of potential violation under the Code of Ethics and this chapter shall keep confidential the fact that the person has filed the complaint and the allegations made in it until the hearing officer issues a final written decision.
- B. Except as otherwise provided in this section, no person, including the person who filed the complaint, shall knowingly disclose to another person, or otherwise make public, the

contents of a complaint of potential violation unless the city official that is the subject of the complaint files a written request for the complaint and hearing on the complaint to be open to the public.

C. It shall not be a violation of confidentiality to disclose allegations raised in a complaint to public safety employees or state or federal agencies in order to protect the safety or health of any person or to report a violation of law to the governing authority.

D. If the person filing a complaint is uncertain if disclosure of allegations in the complaint would violate this section, that person may request a decision regarding the confidentiality of the information from the city attorney if the complaint is under preliminary review or from the hearing officer if one has been appointed. A determination under this subsection by the city attorney or the hearing officer is a final decision and is not subject to appeal.

E. If the hearing officer finds probable cause to believe that the person filing the notice of complaint violation has violated confidentiality under this chapter, the hearing officer shall immediately dismiss the complaint. Dismissal under this subsection does not affect the right of another person to initiate a proceeding on the same factual allegations by filing a complaint of potential violation.

F. Public disclosure resulting from corrective action under this chapter is not a violation of this section.

G. A person who files a complaint may request that their identity be protected throughout the complaint process and in all decisions or documents issued during or as a result of the hearing. A request for full confidentiality under this subsection should be filed with the complaint.

2.04.060 Deliberations and final decision.

A. Deliberations of the hearing officer shall be conducted in a confidential hearing attended by the person who filed the complaint, the person that is the subject of the complaint, and other necessary parties and witnesses identified by the hearing officer.

B. Using the identification number of the complaint of potential violation to protect confidentiality, the hearing officer shall issue a written decision addressing these questions:

1. Whether the hearing officer finds by a preponderance of the evidence one or more violations within the jurisdiction of the hearing officer;
2. Whether the hearing officer recommends further administrative or remedial actions; and
3. What specific sanctions, corrective actions or referrals, if any, the hearing officer recommends pursuant to this chapter.

C. If the hearing officer does not find a Code of Ethics violation, the hearing officer shall prepare a confidential statement of closure listing the person who filed the complaint, the person or persons the complaint is filed against, the assigned identification number, the allegations, the hearing date, and the finding that no allegation was substantiated by the hearing officer in whole or in part, and the date of the closure. At the sole discretion of the person subject to the complaint, the hearing officer may release the statement of closure as a public document.

2.04.070 Sanctions, civil penalties and remedies.

A. Upon conviction for any violation of the Code of Ethics in Chapter 2.02 WMC, the hearing officer may impose as a sanction, penalty, or remedy any or all of the following, as appropriate to the seriousness of the violation:

1. A member of a board or commission may be removed from the board or commission.
2. A public or private reprimand may be given to the official.
3. The city official may be ordered to refrain from voting, deliberating, or participating in any matter in violation of the Code of Ethics.
4. The committee assignments of a city official may be revoked.
5. A city official's privilege to travel at city expense on city business may be revoked or restricted.
6. A contract, transaction or appointment, which was the subject of an official act or action of the city that involved the violation of a provision of the Code of Ethics may be voided.
7. The city official may be required to forfeit or make restitution of any financial benefit received as a consequence of a violation of the Code of Ethics.
8. A civil fine of not more than \$1,000 per violation may be imposed.

2.04.080 Conflict of interest-hearing officer.

A hearing officer shall disclose any conflict of interest or ex parte communications with the person filing a complaint or a person responding to it before conducting an investigation or holding a hearing under this chapter. The person filing the complaint or a person responding to it has 10 days from the date the written disclosure is sent to the parties to file an objection to the hearing officer with the City Clerk. Upon receiving an objection, the City Clerk shall appoint a new hearing officer.

2.04.090 Duty of cooperation.

A city official subject to a complaint shall work cooperatively with the city clerk to establish a hearing date and shall appear at the place and time set for the hearing,

regardless of that city official's intentions concerning defense or exercise of other rights. Failure to appear, except when failure results from a serious condition or event that prevents the appearance of that city official, is a breach of that city official's duties under this chapter and in itself may result in a summary finding of violation by the hearing officer and imposition of remedies, penalties and disciplinary action under this chapter. For the purposes of this section, a "serious condition or event" may include a medical condition, a family emergency requiring the presence of the party, a death in the family, or other similar cause that prevents the city official's attendance at the hearing. Nothing in this section shall prevent the rescheduling of a hearing for cause upon request of the person filing the complaint or the city official whom the complaint has been filed against.

2.04.100 Settlement of complaints.

A. The city official subject to a complaint may propose a resolution of the complaint once the complaint has been found sufficient. A proposed resolution and settlement will include the admitted violation of the Code of Ethics in chapter 2.02 WMC; the remedial actions agreed to by the accused city official subject to the hearing officer's concurrence; any proposed preventive actions to be undertaken to avoid similar violation by the city official or others in the future; and other matters required by the hearing officer.

B. A proposed resolution and settlement are subject to approval by the hearing officer and have no effect unless approved by the hearing officer. The hearing officer will give the complaining person the opportunity to review and comment on the proposed resolution and settlement prior to approving it. Until approved by the hearing officer, a proposed resolution and settlement must be kept confidential.

C. The proposed resolution and settlement become public record upon final approval by the hearing officer.

2.04.110 Record of proceedings and public record.

Permanent records and minutes shall be kept of the hearing. Every decision issued by the hearing officer shall immediately be filed in the office of the city clerk, and shall be a public record open to inspection by any person. Every finding and recommendation shall be directed to city council within 10 days of issuance or before the next ~~regularly~~ ^{regular} city council meeting, whichever is later.

2.04.120 Limitation period.

A. Notwithstanding any other section of this chapter or the Code of Ethics, and subject to subsection B of this section, the hearing officer only may investigate or otherwise act upon a complaint of a potential violation of the Code of Ethics received by the city clerk's office within five years after the date of the alleged violation.

B. After the time limitation in subsection A of this section has expired, the hearing officer may investigate or otherwise act upon a complaint of a potential violation of the Code of Ethics in Chapter 2.02 WMC that is received by the city clerk's office within one year after the date of discovery of the alleged violation,

C. The hearing officer shall complete action on a complaint within 90 days of the filing of the complaint of potential violation. By a majority vote, the hearing officer may extend the completion date for up to an additional 90 days for good cause shown or longer in the case of a declared emergency.

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