

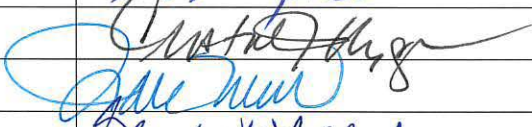
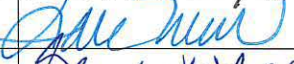
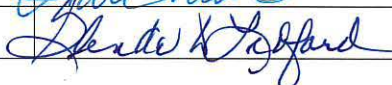
Date Presented to Council: May 9 + June 13, 2022
Verified By: Jamie Newman
Clerk's Note: NA

**City of Wasilla
Informational Memorandum No. 22-05**

Proposed Code Of Ethics Presentation From The April 25, 2022, City Council Meeting.

Originator: Jamie Newman, City Clerk
Date: 4/26/2022

Agenda of: 5/9/2022

Route to:	Department Head	Signature	Date
X	Finance Director		4-27-22
X	Deputy Administrator		4/26/22
X	City Clerk		4/26/2022
X	Mayor		4/26/2022

Attachments: Proposed Code of Ethics Presentation, Dated April 25, 2022 (15 pages)

Summary Statement: For informational purposes, attached are the slides from the City Attorney's presentation on the proposed Code of Ethics (Ordinance Serial No. 22-13) at the April 25, Regular City Council meeting.

Legislative History:

- Resolution Serial No. 21-12
- IM No. 21-14
- Ordinance Serial No. 22-13

CITY OF WASILLA

PROPOSED CODE OF ETHICS



APRIL 25, 2022

CODE OF ETHICS WORKING GROUP

Council Member Simon Brown II, City Clerk Jamie
Newman, and City Attorney Holly Wells

Overview

Why is an ethics code necessary?

PUBLIC CONFIDENCE: the city expects all officials to serve with equality, honesty, and transparency.

LOYALTY : the public has a right to service by elected officials free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing, concealment, bribery, fraud, and corruption.

UNIFORM GUIDANCE: the Code of Ethics is intended to provide clear guidance to city officials of the ethical procedures and standards of the city.

INDEPENDENCE OF OFFICIALS: the Code of Ethics allows city officials to retain their rights to personal and financial interests while maintaining fairness in city transactions.

Application

Who does the Ethics Code apply to?

Applies to:	Doesn't Apply to:
City Council members	City employees
Commission members	Directors
Board members	
City Clerk	
City Attorney	

The conduct of City employees and directors is governed by ethics provisions embodied elsewhere in the Wasilla Municipal Code, by personnel policies and procedures, by collective bargaining agreements, and by state and federal law.

The Basics

What conduct falls within the scope of the code?

OVERARCHING PRINCIPLE: no city council member, mayor, or board or commission member shall participate in a matter in which that member or mayor has a substantial financial interest.”

- A substantial financial interest is presumed if an official experiences a gain or loss of **\$1,000 in a single transaction.**
- For other conflicts, consider:
 - Whether the financial interest is a ***substantial part of the consideration***;
 - Whether the financial interest will ***be significantly impacted or changed by the outcome*** of the official action;
 - Whether the financial interest is ***immediate and known*** or attenuated and dependent on factors beyond the official action; and
 - 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.

Prohibited Conduct

Are there any acts that are always prohibited?

Unethical Acts	Unethical Speech
Representing private interests for compensation	False statements
Accepting gratuities greater than \$75 in value other than lawful campaign contributions	Disclosing confidential information relating to city and government affairs
Using city property for non-city purposes	Influencing another official's vote by contacting their employer or threatening harm
Taking part in political activity while on duty	Engaging in harassment, retaliation, and discrimination
Failing to act impartially	

Understanding Changes to Conflict of Interest Provisions

Highlight Changes

Different Procedure for Council Members than for Commission Members

- Council members are elected to serve the city, and therefore ***must participate in every conflict-free vote.***
- Commission members are volunteers and may decline to vote when the member ***believes*** he or she has a conflict.

The Mayor or commission/board chair generally determines whether a conflict exists. However, where the financial interest exceeds the specified dollar amounts, the Council, Board, or Commission must find specifically that no substantial financial interest exists.

Understanding Changes To Conflict Of Interest Provisions

EXISTING DEFINITION OF “SUBSTANTIAL FINANCIAL INTEREST”

“Substantial financial interest” means a direct or indirect pecuniary or material benefit, privilege, interest, or contractual relationship accruing as a result of the city’s consideration of a matter.

1. A financial interest includes:
 - a. Any pecuniary interest of a member of a city officer’s immediate family or employer.
 - b. Any pecuniary interest in an entity in which a city officer or a member of the city officer’s immediate family has an ownership interest, or is a director, officer, or employee.
 - WMC 2.12.005.

PROPOSED DEFINITION OF “SUBSTANTIAL FINANCIAL INTEREST”

“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 with a value greater than \$1,000 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.

Disclosing Conflicts

How do I disclose potential or actual conflicts?

Duty to disclose conflicts relating to:

- **Matters at issue in Council meetings**
 - Declare any financial interest in agenda matters and ask to be excused.
 - Mayor will determine whether financial interests exists and whether it is substantial.
 - Mayor's determination may be overridden by motion.

- **Matters at issue in quasi-judicial proceedings**
 - Disclose any partiality concerning a matter before any discussion or action.
 - Consider: can I make an impartial decision? Is bias, prejudice, or family involved?
 - Official may excuse themselves with or without a vote of the body.

- **Bids or proposals for city contracts**
 - Must file a written notice of any financial interest in the bid or proposal, which will be posted.
 - May not participate in the city's decision to award the contract.

Rule of Necessity

What if there aren't enough conflict-free votes?

Governing bodies may take action even where conflicts exist, but **ONLY** when:

- 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.

All three elements must be present for the rule of necessity to apply.

The rule of necessity does not apply to City commissions and boards but if the rule of necessity would apply, the Code of Ethics authorizes the use of a hearing officer to take action on behalf of the commission or board.

Ethics Hearing Procedure

How will allegations of ethics violations be adjudicated?

1. A written complaint is filed.
 - Person filing the complaint may request preliminary advisory opinion from the city attorney.
2. City Clerk will review for completeness and city attorney will review to determine whether a potential violation exists.
3. If the City Clerk is the subject of the complaint, it will be filed and role of the City Clerk will be completed by the Deputy Administrator. If the City Attorney is the subject of the complaint, outside counsel may be retained to serve as the City Attorney for purposes of adjudicating that complaint.
4. A hearing officer is appointed to investigate the complaint, decide whether the Code was violated, and to make findings and recommendations for sanctions, civil penalties, and remedies.
 - Deliberations shall be conducted in a confidential hearing attended by the complainant, the person who is the subject of the complaint, and other necessary parties and witnesses.
 - Complaints are confidential until the hearing officer issues a final written decision.
 - Decisions of the hearing officer are public records unless confidentiality is required by law.

Procedure

What other steps are involved in adjudicating ethics violations?

- **Limitation period**
 - Hearing officers may only act on complaints within two years of the alleged violation.
 - **Council recommendations resulted in a change of the limitation period from five to two years and the removal of language which tolled the two-year period for any time during which the violation was not discovered.**

- **Duty of cooperation**
 - Failure to appear or respond is a breach of a city official's duties.
 - May result in a "summary finding" of violation and automatic imposition of discipline and penalties.

- **Settlement of complaints**
 - City officials may propose settlement of ethics complaints once the complaint has been found to be sufficient.
 - Must include admitting to violating Code of Ethics.
 - Must be approved by the hearing officer.

Sanctions, Civil Penalties, and Remedies

How are ethics code violations addressed?

The hearing officer may impose any or all of the following:

- Public or private reprimand;
- An order to refrain from voting, deliberating, or participating in matters in violation of the Code of Ethics;
- Revocation or restriction of privilege to travel at city expense on city business;
- Voiding of contracts, transactions, or appointments;
- Forfeiture or restitution of financial benefits; or
- Civil fines of up to \$1,000 per violation.

Council member recommendations resulted in the removal of the hearing officer's authority to order the removal or appointment of a commission member.

Council Member Recommended Revisions

Understanding Council's recommendations

1. "Immediate family" definition was revised to mirror the State of Alaska definition of "immediate family" used in AS 24.60.090(a)(6).
2. "Substantial financial interest" definition was revised to change the rebuttable presumption of a substantial financial interest to mirror State of Alaska definition from 2 AAC 50.865(d)(1), which considers \$1,000 "substantial."
3. Permitted gratuity also reduced at the request of Council from the \$150 limit contained in the initial draft Code of Ethics to \$75. The State of Alaska gratuity limit is \$250, per AS 24.60.080.
4. Statute of limitation period was reduced from five years to two years.
5. Hearing officer's authority to remove appointed officials was removed.

Prevention

How can I ensure that no ethics violation occurs?

The Code of Ethics is “liberally construed” to protect “the public’s interest in full disclosure of conflicts of interest and promoting high standards of ethical conduct for city government.”

However, the Code cannot be used to avoid a duty to vote or participate in the work of the electorate.

- When in doubt, disclose!
- Ask for an advisory opinion from the City Attorney.
- Request ethics training.

CONCLUSION

- Draft Code of Ethics consolidates all ethical rules into cohesive code chapters.
- Adopts clear and much-needed definitions for “partiality,” “substantial financial interest,” “family member,” and other terms.
- Provides uniform procedures for preventing, investigating, and resolving ethical issues as they arise.

