

Code Ordinance

By: Council Member Brown, City Clerk, City Attorney

Introduced: April 25, 2022

Public Hearing: May 9, 2022

Amended: May 9, 2022

Postponed to May 23, 2022: May 9, 2022

Postponed to June 13, 2022: May 23, 2022

Amended: June 13, 2022

Adopted: June 13, 2022

Yes: Brown, Graham, Johnson, Rubeo, Sullivan-Leonard, Velock

No: None

Absent: None

City of Wasilla

Ordinance Serial No. 22-13 (AM)

An Ordinance Of The Wasilla City Council Amending Wasilla Municipal Code (WMC) Title 2 Administration, By Adding Chapter 2.01 Code Of Ethics And Chapter 2.02 Ethics Complaints, To Enact A Code Of Ethics And An Ethics Complaint Process; Amending WMC 2.76.040 Duties, To Authorize Hearing Officers To Determine Ethics Complaints For The Purpose Of Implementing A Code Of Ethics And Enforcement Process For City Officials; Amending WMC 3.90.050 Conflicting Interests Prohibited And WMC 3.90.060 Prohibited Acts, To Apply Chapter 2.01 Code Of Ethics, "Conflict Of Interest" Definitions To Employee Conduct; Repealing WMC Chapter 2.12 City Officers Generally, WMC 2.44.100 Conflict Of Interest, WMC 5.08.200 Ethics Of Contracting And Purchasing, And Incorporating Parts Of These Provisions Into Chapter 2.01 Code Of Ethics; Repealing WMC 5.14.040 Ethics And Conflicts Of Interest, In Its Entirety; And Consolidating Ethical Rules And Definitions Applicable To City Officers In A Single Chapter.

WHEREAS, effective and independent local governance requires that elected officials and employees alike act in the interest of and responsible to the public they serve, ensuring that public office is not used for personal gain or political advantage and that elected and appointed officials act without personal bias or agenda;

WHEREAS, the Wasilla City Council desires to assure that the Wasilla community, including its individuals, businesses, and organizations, have a fair and equal opportunity to participate in City government; and

WHEREAS, clear, uniform, and unequivocal standards of transparency, conduct, and disclosure in local government reduce actual and apparent conflicts of interest and facilitate fair and equal participation and public trust.

NOW, THEREFORE, BE IT ORDAINED:

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Section 1. Classification. This ordinance is of a general and permanent nature and shall become part of the city code.

Section 2. Amendment of Title. WMC Title 2, "Administration," is hereby amended to add Chapter 2.01, Code of Ethics, to read as follows:

Chapter 2.01

CODE OF ETHICS

Sections:

2.01.010 Definitions.

2.01.020 Scope and short title.

2.01.030 Statement of purpose.

2.01.040 Conflict of interest-council members and the mayor.

2.01.050 Conflict of interest-board and commission members.

2.01.060 Prohibited acts.

2.01.070 Employment of city officials.

2.01.080 Partiality in quasi-judicial matters.

2.01.090 Financial disclosure.

2.01.100 Ethics of contracting and purchasing.

2.01.110 Electronic facilities agreement.

2.01.120 Protection of public interest.

2.01.130 Ethics training.

2.01.140 Advisory opinions.

2.01.150 Violation and penalty.

2.01.160 Application of state statutes.

2.01.010 Definitions.

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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 is a commission member. “City official” also includes the city clerk and city attorney.

“Commission” means a board or commission established by city council via ordinance.

“Commission member” means a member of a commission whose appointment is subject to confirmation by city council.

“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.

“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

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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 the spouse or domestic partner of the person, or a parent, child, including a stepchild and an adopted child, and sibling of a person if the parent, child, or sibling resides with the person, is financially dependent on the person, or shares a substantial financial interest with the person.

“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 the 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; or

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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 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 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.

2.01.020 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

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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.

2.01.030 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:

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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.

2.01.040 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 person 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. At a regular or special meeting, the mayor and each council member shall declare any financial interest in a matter appearing on the agenda before consideration of that item 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 through an affirmative vote of the council. Neither a council member nor the mayor shall participate

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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 both the discussion and 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.

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.

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.

2.01.050 - Conflict 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.

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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.

2.01.060 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

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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 \$75 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 \$75 in value; or
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

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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 contact the employer of other city officials or threaten financial harm to other city officials in an attempt to influence their actions, votes or positions.

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.

2.01.070 Employment of city officials.

A. During the term for which elected or appointed, 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 from the board or commission before commencing city employment.

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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.

2.01.080 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.

2.01.090 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 4.12.020 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.

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2.01.100 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 business 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.

C. 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.

D. 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.

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

2.01.110 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.

2.01.120 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

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or hinder a city official's right and duty to vote or otherwise participate on any issue before the body or in performing their duties. The provisions of this chapter are not subject to collective bargaining.

2.01.130 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.

2.01.140 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.

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.

2.01.150 Violation and penalty.

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Any official who violates any of the provisions of this chapter shall be guilty of a violation subject to punishment pursuant to WMC Chapter 2.02, Ethics Complaints. A violation of the Code of Ethics constitutes misconduct.

2.01.160 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 3. Amendment of Title. WMC Title 2, Administration, is hereby amended to add Chapter 2.02, Ethics Complaints, to read as follows:

Chapter 2.02

ETHICS COMPLAINTS

Sections:

- 2.02.010 Filing an ethics complaint.**
- 2.02.020 Preliminary sufficiency review.**
- 2.02.030 Consideration of sufficient complaints.**
- 2.02.040 Function and authority.**
- 2.02.050 Disclosure of complaint prohibited.**
- 2.02.060 Deliberations and final decision.**
- 2.02.070 Sanctions, civil penalties, and remedies**
- 2.02.080 Conflict of interest-hearing officer**
- 2.02.090 Duty of cooperation.**
- 2.02.100 Settlement of complaints.**
- 2.02.110 Record of proceedings and public record.**
- 2.02.120 Limitation period.**

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2.02.010 Filing an ethics complaint.

A. Any person who believes that a violation of any portion of the Code of Ethics in WMC Chapter 2.01 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.

2.02.020 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 2.02.010(B). If the city clerk determines that the complaint is not complete and lacks information required by WMC 2.02.010(B), the city clerk shall return the complaint and identify in

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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.

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2. Issue a notice of confidential hearing to both the person submitting the complaint and the person that is the subject of the complaint 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.

F. If a complaint is filed against the city clerk, the mayor or the mayor's designee shall serve as the city clerk for purposes of this chapter. A person filing a complaint against the city clerk may file the complaint with the mayor's office. If a complaint is filed against the city attorney, the city clerk may retain outside legal counsel to serve as the city attorney for purposes of this chapter.

2.02.030 Consideration of sufficient complaints.

A. The city clerk shall appoint a hearing officer to decide and investigate all sufficiently filed complaints under WMC 2.02.020. Except as provided in WMC 2.02.020, 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 2.02.020, the hearing officer shall be the sole decision-maker and shall comply with the procedures and requirements of this chapter.

2.02.040 Function and authority.

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

1. Investigate reported violations of the Code of Ethics.

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2. Hear and decide written complaints of violations of the Code of Ethics.
3. Hear and decide on requests for exceptions as specified in the Code of Ethics.
4. Make findings and recommendations concerning sanctions, civil penalties and remedies for violations as provided in this chapter and the Code of Ethics.
5. 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.
6. Administer oaths and receive testimony from witnesses appearing before the hearing officer.
7. Request city departments, employees, consultants, agents, and officials to cooperate with the hearing officer in the exercise of the hearing officer's jurisdiction.
8. Request the advising attorney to seek assistance of the Superior Court to enforce the hearing officer's subpoena.
9. Conduct investigative hearings confidentially, pursuant to notifications alleging violations of matters within the authority of the hearing officer.

2.02.050 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,

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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.

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2.02.060 Deliberations and final decision.

A. Deliberations of the hearing officer shall be conducted in a confidential hearing, which may be 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.

2.02.070 Sanctions, civil penalties, and remedies.

A. Upon conviction for any violation of the Code of Ethics in WMC Chapter 2.02, 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:

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1. A public or private reprimand may be given to the city official.
2. The city official may be ordered to refrain from voting, deliberating, or participating in any matter in violation of the Code of Ethics.
3. A city official's privilege to travel at city expense on city business may be revoked or restricted.
4. 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.
5. 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.
6. A fine of \$1,000 per violation may be imposed.

B. The hearing officer has the inherent authority to recommend any of the sanctions, civil penalties, and remedies described in subsection (A) of this section and may, without approval of the city council, impose fines, attorney fees, and monetary consequences. However, non-monetary consequences, including but not limited to removal from membership in a board, commission, or committee; public or private reprimand; and an order to refrain from voting, deliberating, or participating in a matter must be affirmatively approved by the city council prior to imposition.

2.02.080 Conflict of interest - hearing officer.

A hearing officer shall disclose any conflict of interest or ex parte communications with the person filing a complaint, the person that is the subject of the complaint or any witnesses 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 business 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.

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2.02.090 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.

2.02.100 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 WMC Chapter 2.01; 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 a 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.

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C. Except as otherwise provided in this chapter, the proposed resolution and settlement become public record upon final approval by the hearing officer.

2.02.110 Record of proceedings and public record.

Permanent records 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 except as expressly required to be held confidential by law. Except as required under this chapter or by the hearing officer, every finding and recommendation shall be directed to city council within 10 business days of issuance or before the next regularly scheduled city council meeting, whichever is later.

2.02.120 Limitation period.

Notwithstanding any other section of this chapter or the Code of Ethics, a complaint must be filed within two years of the date of the alleged violation.

Section 4. Amendment of Section. WMC 2.76.040, Duties, is hereby amended to read as follows:

- A. Administrative hearing officers shall have jurisdiction over the following:
1. Appeals of a planning commission decision pursuant to WMC Title 16; and
 2. Classification, written orders and forfeiture of animals pursuant to WMC Title

7; and

3. Code of Ethics violations and complaints filed alleging Code of Ethics violations.

Section 5. Amendment of Section. WMC 3.90.050, Conflicting interests prohibited, is hereby amended to read as follows:

No employee shall be employed by or engage in work for an employer other than the city, including but not limited to self employment, during the employee's work hours. Additionally, an employee may not do business with the city during ~~their~~ his/her nonwork

Bold & Underline, added. ~~Strikethrough, deleted~~

hours unless **they** s/he obtains advance written approval from the mayor. The mayor shall not approve conducting any business with the city that would constitute a substantial conflict of interest **as defined in WMC Chapter 2.01.**

Section 6. Amendment of Section. WMC 3.90.060, Prohibited acts, is hereby amended to read as follows:

A. It shall be the responsibility of each city employee to remain free from indebtedness or favors which create a substantial conflict of interest **as defined in WMC Chapter 2.01,** between personal and official interest, or might reasonably be interpreted as affecting the impartiality of the individual employee.

B. An employee should not accept a gift or gratuity given to the employee in an attempt to bribe, influence or to encourage special consideration with respect to municipal operations. Any such offer shall be reported without delay to the employee's immediate superior, who will in turn inform the department head.

C. Any employee who has a financial interest **as defined in WMC Chapter 2.01,** direct or indirect, in the sale of any land, materials, supplies or services to the city or to a contractor supplying the city, shall make known that interest to the mayor.

D. No person who seeks appointment or promotion to any city position may, directly or indirectly, give, render or pay any money, service or other valuable thing to any person for, or in connection with, his or her tests, appointment, proposed appointment, promotion or proposed promotion.

E. An employee may not participate in an official action in which the employee has a substantial financial interest **as defined in WMC Chapter 2.01.**

F. Failure to comply with this section may result in discipline, up to and including termination.

Bold & Underline, added. Strikethrough, deleted

Section 7. Repeal of Chapter. WMC 2.12, City Officers Generally, incorporated as Attachment A, is hereby repealed in its entirety.

Section 8. Repeal of Section. WMC 2.44.100, Conflict of interest, is hereby repealed in its entirety.

~~2.44.100 Conflict of interest.~~

~~No member of a commission shall vote on any question upon which he has a substantial direct or indirect financial interest. No member shall represent any person before the commission of which he is a member.~~

Section 9. Repeal of Section. WMC 5.08.200, Ethics of contracting and purchasing, is hereby repealed in its entirety.

~~WMC 5.08.200, Ethics of contracting and purchasing.~~

~~A. All city purchases and contracts shall be made solely for the public benefit of the city. In accordance with this policy:~~

~~1. A city officer or employee who has a direct or indirect financial interest in any bid or proposal for a city contract shall disclose that interest by filing a written notice of the interest with the clerk not less than 10 days before submission of the bid or proposal in which the officer or employee has an interest. The clerk shall post the written notice at the place maintained for the posting of public notices at City Hall.~~

~~2. No city officer or employee who has a direct or indirect financial interest in any bid or proposal for a city contract may participate in the city's decision to award the contract.~~

~~3. No city officer or employee may solicit or receive any form of compensation from any party other than the city in connection with the awarding of a city contract.~~

~~B. A city officer or employee who willfully violates subsection (A) of this section is guilty of malfeasance in office, and shall forfeit office with the city. A contract entered into in violation of subsection (A) of this section is voidable by the council.~~

Bold & Underline, added. Strikethrough, deleted

Section 10. Repeal of Section. WMC 5.14.040, Ethics and conflicts of interest, is hereby repealed in its entirety.

~~5.14.040 Ethics and conflicts of interest.~~

~~A. Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions. Employees and investment officials shall:~~

~~1. Disclose confidentially to the mayor any material financial interests in financial institutions with which they conduct business.~~

~~2. Refrain from undertaking personal investment transactions with the same individual with whom business is conducted on behalf of the city, particularly with regard to the timing of purchases and sales.~~

Section 11. Effective Date. This ordinance shall take effect upon adoption.

ADOPTED by the Wasilla City Council on June 13, 2022.



Glenda D. Ledford, Mayor

ATTEST:



Jamie Newman, MMC, City Clerk

[SEAL]

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Ordinance Serial No. 22-13 – Attachment A

Clerk's Note: Section 7 of Ordinance Serial No. 22-13, repeals WMC Chapter 2.12, in its entirety, as captured below. A strikethrough version demonstrating the repeal of Chapter 2.12, is not presented to ensure interested persons have the tools to make a user-friendly comparison.

Chapter 2.12 CITY OFFICERS GENERALLY

Sections:

- 2.12.005 Definitions.**
- 2.12.010 Conflict of interest.**
- 2.12.015 Employment of city officers.**
- 2.12.020 Financial disclosure.**
- 2.12.030 Officers and employee bonds.**
- 2.12.040 Use of city electronic communication and information processing facilities.**

2.12.005 Definitions.

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

“Appointed officer” means the city clerk and city attorney.

“Board or commission member” means a person appointed to a city board or commission under WMC 2.44.030.

“City officer” means:

1. An appointed officer;
2. A board or commission member;
3. An elected officer; and
4. An employee.

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

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

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

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

“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.
2. A determination that a city officer has a substantial financial interest in a matter shall be considered on a case-by-case basis evaluating these factors:
 - a. Whether the financial interest is a substantial part of the matter under consideration.
 - b. Whether the financial interest directly and substantially varies with the outcome of the matter under consideration.
 - c. Whether the financial interest is known and not dependent on factors beyond the matter.
 - d. Whether the financial interest is monetarily significant.

- e. Whether the financial interest is beyond the type typically possessed by the public at large or a large class of persons to which the city officer belongs.
3. Substantial financial interest does not include:
 - a. A financial interest of such limited magnitude that it would not influence an average, reasonable person.
 - b. A financial interest in which the outcome of a decision would have only an insignificant or conjectural effect.
 - c. A financial interest which is obtained through a competitive process. (Ord. 16-13 § 2, 2016; Ord. 14-16(AM) § 9, 2014; Ord. 08-34(AM) § 2, 2008; Ord. 04-29 § 2, 2004)

2.12.010 Conflict of interest.

A. City Council.

1. A member of the city council shall declare a substantial financial interest the member has in an official action and ask to be excused from consideration of the matter.
 - a. In the event that a council member believes that subsection (A)(1) of this section has not been met, and when there is a reasonable belief that a conflict exists, a council member shall announce a potential conflict of interest on behalf of another council member.
2. The mayor shall rule on a request for a council member to be excused from consideration of a matter.
3. The decision of the mayor on a request for a council member to be excused from consideration of a matter may be overridden by a majority vote of the council upon a motion by a non-implicated council member and without participation by the implicated council member.
4. A council member who has been excused from consideration of a matter under this subsection shall also abstain from any action related to the matter, including council discussion of the matter, except that the council member may speak on the matter as a member of the public if public comments are being heard on the matter. The excused council member shall not sit with the council during its consideration of the matter in which the member has a conflict after a conflict of interest has been determined.

B. City Officers. A city officer, other than a member of the city council, may not participate in an official action in which the officer has a substantial financial interest.

1. The mayor shall rule on a question of whether a city employee has a conflict of interest in any matter.
2. The presiding officer shall rule on a question of whether a board or commission member has a conflict of interest in any matter before the board or commission. The decision of the presiding officer may be overridden by a majority vote of the board or commission upon a motion by a non-implicated member and without participation by the implicated member. If the presiding officer has a conflict of interest, the board or commission members shall rule on the question of whether the presiding officer has a conflict of interest in any matter through an affirmative vote of the board or commission without participation of the presiding officer.
3. A board or commission member who has been excused from consideration of a matter under this subsection shall also abstain from any action related to the matter, including discussion of the matter, except that the board or commission member may speak on the matter as a member of the public if public comments are being heard on the matter. The excused board or commission member shall not sit with the commission or board during the consideration of the matter after a conflict of interest has been determined. (Ord. 16-13 § 3, 2016; Ord. 10-11 § 2, 2010; Ord. 04-29 § 3, 2004; prior code § 2.20.100)

2.12.015 Employment of city officers.

- A. During the term for which elected or appointed, and for one year after leaving office, an elected officer shall not be eligible for city employment, except with the approval of the council.

- B. A board or commission member is eligible for city employment, but must resign the board or commission appointment before commencing city employment.
- C. A city officer may not represent or advise a person in any matter pending before the department in which the city officer serves.
- D. Within one year after ceasing to be a city officer, a person may not represent or advise a person for compensation regarding the following:
 - 1. A matter in which a city officer was directly involved or had direct influence over; or
 - 2. A matter in which the city officer participated personally and substantially through the exercise of official action. (Ord. 08-34(AM) § 3, 2008)

2.12.020 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. (Ord. 16-13 § 4, 2016; Ord. 10-40 § 2, 2010; prior code § 2.20.110)

2.12.030 Officers and employee bonds.

The administrator and other municipal officers or employees which the council may designate shall give bond in the amount and with the surety prescribed by the council. Premiums on bonds are paid by the municipality. (Prior code § 2.68.010)

2.12.040 Use of city electronic communication and information processing facilities.

- A. This section governs elected city officials' use of computers and computer software, telephones, voice mail, fax machines, photocopiers, and other electronic communication and information processing facilities owned or leased by the city (collectively, "electronic facilities").
 - 1. Elected city officials may use electronic facilities to conduct city business; provided, that reasonable occasional personal use of such items is not prohibited. The city at any time may restrict or prohibit personal use of electronic facilities.
 - 2. Elected city officials shall not use electronic facilities to:
 - a. Communicate a message that might be construed as discrimination or harassment, or offensive to others based on race, color, marital or veteran status, sex, disability, age, religion, national origin, or other legally protected status;
 - b. Solicit for a private business enterprise or for other personal gain;
 - c. Conduct any illegal activity;
 - d. Promote religious or political beliefs;
 - e. Support or oppose any candidate for public office, or ballot proposition.
 - 3. Specifically, and without limiting the generality of the preceding subsections, an elected city official may not use electronic facilities to:
 - a. Create or send abusive or inappropriate email;
 - b. Use the Internet to participate in chat rooms and similar activities not related to official duties; or
 - c. Print, display, download, send or forward any sexually explicit or otherwise inappropriate or abusive images, messages, cartoons, or jokes.
 - 4. Regardless of any permission for reasonable occasional personal use of electronic facilities, no elected official has any privacy interest in their use. Email and Internet communications, and other computer files, can be retrieved and traced to the sender even after they have been "deleted." In addition, in response to public records requests or in

connection with legal proceedings, the city may be required to produce email messages, Internet communications, and other communications or files sent from, received by, or stored on electronic facilities. The city may at any time review, audit, and download email messages, Internet communications, and other communications or files that elected officials send from, receive by, or store on electronic facilities.

5. Elected officials must exercise special care in handling privileged, proprietary, confidential, or copyrighted information and communications. Any dissemination of such materials must be limited to persons with a legal right to access them. Almost all software is copyrighted.

6. Due to the city's limited network and storage capacity, elected officials shall not download any programs, or graphic, video or audio files, to electronic facilities unless it is necessary for city business purposes and authorized by the city clerk and the management information systems division.

7. All traffic to and from the Internet must travel through the city's approved Internet gateway in order to assure maximum security, virus protection, monitoring, and system management capabilities. Elected officials may be provided a city email account.

8. Any executable files, programs or utilities downloaded or received (by email, disk or other media) from the Internet or other external source must be scanned for viruses and licensed prior to launching. All files shall be scanned with anti-virus prevention software provided by the city. If the elected city official requires assistance in scanning for viruses or licensing software, please contact the city clerk and the management information systems division. Elected city officials are prohibited from using the city's systems for transmission of destructive programs such as viruses or self-replicating code.

9. The city may assign passwords to elected officials for access to electronic facilities. Passwords are the property of the city, and elected city officials have no right of privacy in a password, or in the information to which the password gives access. For example, assigning an elected official a password to log on to a computer does not mean that the elected official's use of that computer is in any way private; the city retains the right, at all times, to access data on the computer.

10. An elected city official shall promptly notify the city clerk of any loss or damage to electronic facilities for which the elected official is responsible, and pay the cost of repair or replacement of the lost or damaged electronic facilities.


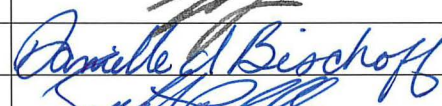

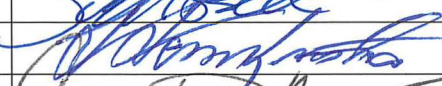
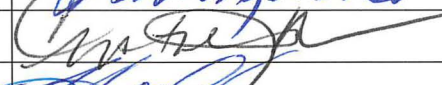
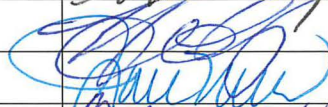
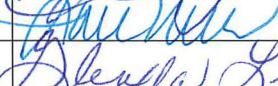
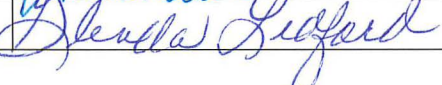
11. The management information systems division will notify the city clerk of any misuse of electronic facilities by an elected city official. Upon a first report the city clerk will give the elected city official oral notice of the misuse. Upon a second report, the city clerk will give the elected official written notice of the misuse, and provide a copy of the notice to all other elected city officials. Upon a third report, the city clerk will ask for an executive session with the city council and mayor to discuss the matter and take action as needed. (Ord. 07-57 § 2, 2007)

City of Wasilla
Legislative Staff Report
Ordinance Serial No. 22-13
 (Code Ordinance)

Amending Wasilla Municipal Code (WMC) Title 2 Administration, By Adding Chapter 2.01 Code Of Ethics And Chapter 2.02 Ethics Complaints, To Enact A Code Of Ethics And An Ethics Complaint Process; Amending WMC 2.76.040 Duties, To Authorize Hearing Officers To Determine Ethics Complaints For The Purpose Of Implementing A Code Of Ethics And Enforcement Process For City Officials; Amending WMC 3.90.050 Conflicting Interests Prohibited And WMC 3.90.060 Prohibited Acts, To Apply Chapter 2.01 Code Of Ethics, "Conflict Of Interest" Definitions To Employee Conduct; Repealing WMC Chapter 2.12 City Officers Generally, WMC 2.44.100 Conflict Of Interest, WMC 5.08.200 Ethics Of Contracting And Purchasing, And Incorporating Parts Of These Provisions Into Chapter 2.01 Code Of Ethics; Repealing WMC 5.14.040 Ethics And Conflicts Of Interest, In Its Entirety; And Consolidating Ethical Rules And Definitions Applicable To City Officers In A Single Chapter.

Originator: City Attorney for Code of Ethics Working Group
 Date: 3/28/2022

Agenda of: 4/25/2022

Route to:	Department Head	Signature	Date
X	Chief of Police		4/29/2022
X	Public Works Director		4/19/22
X	Recreational Services Director		4-19-22
X	Finance Director		4-19-22
X	Deputy Administrator		4/19/22
X	City Attorney		4/22/22
X	City Clerk		4/19/2022
X	Mayor		4/19/2022

Fiscal Impact: yes or no

Attachments:

- Ordinance Serial No. 22-13 (31 pages)
- Memorandum from the Code of Ethics Working Group (4 pages)
- PowerPoint Presentation – Draft Code of Ethics, presented on January 24, 2022 (8 pages)

Summary Statement: This ordinance creates a Code of Ethics applicable to the City Council, City Boards, Mayor, City Attorney, and City Clerk and adopts a complaint process for asserting violations of this ethics code and enforcing its provisions. This ordinance also moves conflicts of interest and ethics provisions previously dispersed throughout the Wasilla Municipal Code into Title 2 of the Code and updates current ethics provisions to implement clear, uniform, and objective ethical standards for City Officials. Specifically, the proposed Code of Ethics clearly defines core terms such as “partiality,” “substantial financial interest,” “financial interest,” “immediate family,” and “gratuity” and expressly identifies prohibited conduct to protect the public and the City of Wasilla’s dedication to transparent and effective governance. Likewise, the chapter governing ethics complaints provides a uniform means for addressing complaints of ethical violations to ensure that such violations are addressed swiftly, uniformly, and in a manner that

maintains the public trust while ensuring public officials understand the ethical obligations imposed upon them and have the tools necessary to comply with these obligations.

Legislative History:

- Resolution Serial No. 21-12 (not attached)
- IM No. 21-14 (not attached)

Proposed Action: Introduce and set the Ordinance for public hearing.

MEMORANDUM

TO: WASILLA CITY COUNCIL

FROM: CODE OF ETHICS WORKING GROUP

RE: CODE OF ETHICS ORDINANCE

CLIENT: CITY OF WASILLA

FILE NO.: 505780.161

DATE: APRIL 11, 2022

Introduction

The Wasilla City Council has held numerous discussions regarding the proposal of the Wasilla Code of Ethics by the Wasilla Code of Ethics Working Group, comprised of sponsor Council Member Simon Brown, the City Clerk, and the City Attorney. During these discussions, Council reviewed the proposed Code of Ethics, with members expressing support for the need for and use of a code of ethics but debating the most effective way to enforce such a code and the best options for ensuring that any code of ethics is tailored to the unique needs of the Wasilla community. In February and March, 2022, the Code of Ethics Working Group compiled Council comments and revised the proposed Code of Ethics to incorporate Council member insights and suggestions. Ordinance No. 22-13 is the result of Council's input. This memorandum provides Council a summary of the proposed Code of Ethics and the revisions to the proposed Code resulting from Council discussions. This memorandum also includes an introduction to the provisions in the proposed Code of Ordinance and the proposed changes as well as a more detailed discussion of the reasons underlying the proposed Code of Ethics. 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 proposed 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 proposed 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.” (PMWC 2.01.010 “Definitions”)
 - 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 \$1,000 per transaction. 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 \$1,000 in a single transaction. Initially, the Working Group proposed a presumption of substantial financial interest at \$1,000 in a single transaction or \$5,000 accrued in a year. However, after Council member discussions, it was determined that mirroring the State of Alaska financial disclosure laws in amount streamlined State of Alaska and City of Wasilla expectations, promoting compliance and clarity. (PWMC 2.01.010 “Definitions”)
 - C. A definition for “Immediate family” has been included and revised from this definition in other Code provisions such as WMC 2.12.005, to mirror the definition used by the State of Alaska in its financial disclosure laws. This definition expands on the definition of “immediate family” in WMC 2.12.005 to include “domestic partners” but is narrower than WMC 2.12.005 in that it does not include aunts and uncles or any person that shares a household with the official. This new definition ensures that officials familiar with the financial disclosure laws that apply to them under State of Alaska law, are subject to substantially similar definitions under local law. This revision resulted from Council member discussions and

Code of Ethics Memo

Page 2 of 4

recommendations by several Council members that these definitions be streamlined as much as possible. (PWMC 2.01.010 "Definitions").

- 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 2.01.010 "Definitions" and PWMC 2.01.060(I) "Prohibited acts," which imposes a "duty of impartiality")
 - 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. (See PWMC 2.02.010 "Definitions" and PWMC 2.01.110 "Electronic facilities agreement")
- 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 2.02 "Ethics Complaints"; PWMC 2.01.140 "Advisory Opinions") Council members provided substantial input regarding the ethics complaint process and the scope penalties imposed for violations. These discussions resulted in a reduced period of time in which to file a complaint under the Code of Ethics (PWMC 2.02.120 "Limitation period" proposes two, instead of the initial five-year period to file an ethics complaint). Similarly, penalties that included the vacation of an office were removed to restrict the sanctions a hearing officer was able to impose.
 - 4) Identify and prohibit improper conduct and provide a process for addressing these issues before they lead to litigation or undermine the public's faith in its local government. (PWMC 2.01.060 "Prohibited Acts")
 - 5) Consolidate all conflict of interest provisions applicable to City officials into a single chapter and clarify the language regarding the conflict of interest declaration process. (PWMC 2.01.040 "Conflict of interest - council members and the mayor"; PWMC 2.01.050 "Conflict of interest - board and commission members")
 - 6) Remove prohibitions and limitations on City official use of electronic facilities from the Code and instead require 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 2.01.110)

- 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: (a) conflicts on the Council result in too few uninterested members to take action; (b) no other commission or body has jurisdiction to hear the issue; and (c) 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 2.01.040(F) and PWMC 2.01.040(G))

Conclusion

Each of these substantive components of the proposed Code of Ethics will be discussed in detail with the Council and a presentation will accompany the public hearing on the Ordinance to highlight the most substantial provisions in the Ordinance. All Working Group members will be present at the hearing to answer questions raised by Council and the public.

CITY OF WASILLA DRAFT CODE OF ETHICS



*CLARIFICATION REGARDING QUESTIONS
FROM COUNCIL*

Question 1

Definition: Immediate Family

EXISTING LAW: “Immediate family” means any of the following: a spouse, parent, uncle, aunt, sibling, spouse’s parent or sibling, child (including a stepchild or adopted child), and anyone who lives in the person’s household. WMC 2.12.005.

PROPOSED LANGUAGE: “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. PWMC 2.02.010

The Code of Ethics borrows the existing language from the portions of WMC dealing with City officers, generally.

Question 2

Definition: Substantial Financial Interest

Existing Law	Proposed Language
<p>“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.</p> <p>1. A financial interest includes:</p> <ul style="list-style-type: none">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. <p>WMC 2.12.005.</p>	<p>“Substantial financial interest” means a financial interest that the presiding officer or governing body determines is substantial after weighing the following factors:</p> <ul style="list-style-type: none">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; and4. 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. PWMC 2.02.010

New Code of Ethics also creates a rebuttable presumption that a financial interest is substantial if it 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. PWMC 2.02.010


Question 3

PWMC 2.02.070(E): Gratuities

EXISTING LAW: WMC 3.90.060 prohibits employees from accepting “a gift or gratuity given to the employee in an attempt to bribe, influence or to encourage special consideration with respect to municipal operations. ”

PROPOSED LANGUAGE: Provides clarity as to what is considered a “gift” or “gratuity”:

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. PWMC 2.02.070(E).
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Question 4

PWMC 2.02.140: Advisory Opinions

EXISTING LAW: Provides no mechanism for City officials to obtain advice regarding ethics questions.

PROPOSED LANGUAGE: 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:


- 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. PWMC 2.02.140.
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Question 5

PWMC 2.04.050: Disclosure of Complaint Prohibited

EXISTING LAW: Provides no protection or confidentiality measures for complaints before a final decision is issued by a hearing officer.

PROPOSED LANGUAGE:

- Prevents anyone from disclosing the contents of a complaint until a hearing officer issues a final written decision, unless the officer who is the subject of the complaint requests that its complaint and hearing are open to the public. PWMC 2.04.050(A-B).
 - Contents of a complaint may be revealed to public safety employees or law enforcement agencies to protect health and safety or report a violation of law. PWMC 2.04.050(C).
 - Persons who files complaints 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. PWMC 2.04.050(G).
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Question 6

PWMC 2.04.070: Sanctions, Civil Penalties, and Remedies

EXISTING LAW: Miscellaneous personnel policies provides that “[f]ailure to comply... may result in discipline, up to and including termination.” WMC 3.90.060.

PROPOSED LANGUAGE: Provides concrete list of penalties which may be imposed for ethics violations:

- 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. PWMC 2.04.070.

Question 7

PWMC 2.04.120: Limitation Period

EXISTING LAW: Provides no “statute of limitations” for ethics complaints.

PROPOSED LANGUAGE: Permits investigation of ethics complaints only within five years of the alleged violation, or within one year after the date of discovery of the alleged violation. Also provides a 90-day deadline for hearing officers to complete action on a complaint, which may be extended for up to an additional 90 days “for good cause shown or longer in the case of a declared emergency.” PWMC 2.04.120.