

## **CHAPTER 2.60 CODE OF ETHICS**

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### **2.60.010 Purpose and Intent**

A. Preamble. The city of Mercer Island's residents and businesses are entitled to have fair, ethical and accountable local government that has earned the public's full confidence. To that end, the city encourages all city officials to:

1. Honor and respect the principles and spirit of representative government and comply with all laws and policies affecting the operations of government;
2. Conduct their official and personal affairs in such a manner as to maintain public confidence in city government and give the clear impression that they cannot be improperly influenced in the performance of their official duties;
3. Be independent, impartial, and fair in their judgment and actions;
4. Use the power and resources of public office to advance the best interests of the City of Mercer Island and its residents, not for personal gain;
5. Conduct public deliberations and processes openly, unless legally confidential, in an atmosphere of respect and civility; and
6. Be honest, fair, and respectful and avoid conduct creating an appearance of impropriety.

In recognition of these goals, the city of Mercer Island has adopted this code of ethics to strengthen the quality of government through ethical principles that shall govern the conduct of all officials.

B. Liberal Construction. This code of ethics shall be liberally construed to effectuate its purpose and policy and to supplement existing laws that relate to the same subject.

C. Supplemental to Existing Law. This chapter is intended to supplement Washington State law, including but not limited to chapter 42.23 RCW, the United States and Washington State Constitutions, laws pertaining to conflicts of interests and elections campaigns, and city ordinances.

## **2.60.020 Definitions**

For the purpose of this Chapter:

**BENEFICIAL INTEREST** means any direct or indirect monetary or material benefit accruing to an official as a result of contracts or transactions which are or may be the subject of an official act or action by or with the city, except contracts or transactions which confer similar benefits to all other persons and/or property similarly situated.

**CONFIDENTIAL INFORMATION** means (1) specific information, rather than generalized knowledge, that is not available to a person who files a public records request, and (2) information made confidential by law. Information obtained during properly convened executive sessions and information subject to the attorney-client and/or work product privilege is deemed confidential.

**CONFLICT OF INTEREST** exists when any of the following stands to incur financial gain or loss related to a government decision: (1) the official, (2) the official's spouse, (3) an individual with whom the official resides, or (4) an entity that the official serves as an employee, officer, director, trustee, partner or owner. An "owner" for purposes of this definition is an individual who owns one percent or more of the entity.

**CONTRACT** includes any contract, sale, lease, or purchase.

**CONTRACTING PARTY** includes any person, partnership, association, cooperative, corporation, or other business entity which is a party to a contract with the city.

**FINANCIAL GAIN OR LOSS** means any material financial gain or loss that an individual or entity stands to incur as a result of a decision under consideration by the city. **FINANCIAL GAIN OR LOSS** does not include (1) payment of generally applicable taxes or fees or (2) financial interests shared with more than ten percent of the city's population.

**OFFICIAL** means all members of the city council, the city's boards and commissions, and other council-appointed task groups or committees of the city of Mercer Island who are currently serving their positions.

**REMOTE INTEREST** means: (1) that of a nonsalaried officer of a nonprofit corporation; (2) that of an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary; (3) that of a landlord or tenant of a contracting party; or (4) that of a holder of less than one percent of the shares of a corporation or cooperative which is a contracting party.

## **2.60.030 Prohibited conduct**

In addition to the requirements applicable under chapter 42.23 RCW, which establishes the minimum standards for officials, officials shall be subject to the following:

A. Conflicts of Interest. In order to ensure their independence and impartiality, officials shall recuse themselves from participation in government deliberations or decisions where they have a conflict of interest.

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

C. Interest in Contracts. Officials shall not be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such person, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity, or reward in connection with such contract from any other person beneficially interested therein. The foregoing shall not apply to the exemptions specified in RCW 42.23.030 which are incorporated herein as if fully set forth. An official may not vote in the authorization, approval, or ratification of a contract in which he or she is beneficially interested even though one of the exemptions allowing the awarding of such a contract applies. The interest of the official must be disclosed and noted in the city's official minutes or similar records before the formation of the contract. RCW 42.23.040 shall apply to conflicts or potential conflicts with respect to remote interests in city decisions involving the awarding of a contract.

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

E. Representation of Third Parties. Except in the course of official duties, officials shall not appear on behalf of the financial interests of third parties before the bodies on which the officials serve or in interaction with assigned staff. Furthermore, the members of the city council shall not appear on behalf of the financial interest of third parties before the council or any board, commission or proceeding of the city, or in interaction with staff.

F. Gifts and Favors.

1. Officials shall not take any special advantage of services or opportunities for personal gain, by virtue of their public office, which are not available to the public in general. They may not solicit or receive any thing of monetary value from any person or entity where the thing of monetary value has been solicited, or received or given or, to a reasonable person, would appear to have been solicited, received or given with intent to give or obtain special consideration or influence as to any action by the official in their official capacity; provided, that nothing shall prohibit campaign contributions which are solicited or received and reported in accordance with applicable law. Officials shall not

accept or solicit any gifts, favors or promises of future benefits except as allowed by subsection (2).

2. For the purposes of this code of ethics, the following items are presumed not to influence the vote, action, or judgment of the official, or be considered as part of a reward for action or inaction, and may be accepted:

- a. Unsolicited flowers, plants, and floral arrangements;
- b. Unsolicited advertising or promotional items of nominal value, such as pens and note pads;
- c. Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;
- d. Unsolicited items received by an official for the purpose of evaluation or review, if the official has no personal beneficial interest in the eventual use or acquisition of the item;
- e. Informational material, publications, or subscriptions related to the recipient's performance of official duties;
- f. Food and beverages consumed at hosted receptions where attendance is related to the official's official duties;
- g. Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization;
- h. Unsolicited gifts from dignitaries from another city, state or a foreign country which are intended to be personal in nature;
- i. Food and beverages on infrequent occasions in the ordinary course of meals where attendance by the official is related to the performance of official duties; and
- j. Items from family members or friends where it is clear beyond a reasonable doubt that the gift was not made as part of any design to gain or maintain influence in the city or with the recipient in connection with city matters.

3. The presumption in subsection (2) of this section is rebuttable and may be overcome based on the circumstances surrounding the giving and acceptance of the item.

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

#### **2.60.040 Signed Acknowledgment.**

All officials, upon taking office or being appointed, shall sign a statement acknowledging they have received, read, and agree to be bound by this code of ethics and chapter 42.23 RCW. This requirement shall also apply to currently-serving officials at the time of adoption of this code of ethics and any time there are material changes thereto.

#### **2.60.050 Ethics Officer.**

A. The position of ethics officer is hereby created. The city manager shall contract with one or more agencies to fill this position. The ethics officer shall be responsible for the prompt and fair enforcement of this code of ethics when called upon to do so.

B. The ethics officer, in addition to other duties, may recommend changes or additions to this code of ethics to the city council. The ethics officer shall provide input into and review the training materials and program developed for this code of ethics if requested by the city manager or city council.

### **2.60.060 Advisory opinions.**

A. Officials subject to this code of ethics may request, and the ethics officer may render at the city's expense, written advisory opinions concerning the applicability of MICC 2.60.030 to hypothetical circumstances and/or situations solely related to the official making the request. The ethics officer shall not render opinions on matters that are the purview of other government agencies or officials, e.g., the public disclosure commission, the city's public records officer, et al. The ethics officer retains sole discretion to determine in which cases an advisory opinion will be issued. Factors the ethics officer may consider when determining in which cases an advisory opinion will be issued include, but are not limited to, whether the issue presented has been recently addressed by the ethics officer, whether the issue presented is likely to be the subject of controversy or dispute, and the extent to which the requesting official has made prior requests for advisory opinions. The advisory opinion process is not intended to serve as a substitute for an official's own understanding of, and exercise of reasonable judgment with respect to, the prohibitions addressed in MICC 2.60.030.

B. The ethics officer shall endeavor, except for good cause shown, to respond to requests for advisory opinions within forty-five days of submission of the request, and may respond more rapidly if the requester expresses urgency in the request.

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

### **2.60.070 Complaints, investigations, hearings and enforcement.**

A. Complaint Process.

1. **Complaint Requirements—Service.** Any person may submit a written complaint to the ethics officer alleging one or more violations of this code of ethics by an official, by filing it with the city clerk. The complaint must set forth specific facts with enough

precision and detail for the ethics officer to make a determination of sufficiency and must set forth the specific subsection(s) of MICC 2.60.030 that the complaining party believes have been violated. The complaint must be signed under penalty of perjury by the person(s) submitting it in a manner consistent with Chapter 9A.72 RCW.

2. Finding of Sufficiency. Based on the contents of the written complaint, the ethics officer shall make a determination of sufficiency within thirty days of receipt of the complaint. A complaint shall be sufficient if it precisely alleges and reasonably describes acts that constitute a prima facie showing of a violation of MICC 2.60.030, including chapter 42.23 RCW. In rendering sufficiency determinations under this subsection, the ethics officer shall consider the purpose and intent section contained in MICC 2.60.010 and the declaration of purpose in RCW 42.23.010.

3. Confidentiality. Except as otherwise provided by law, and subject to MICC 2.60.070(H), the city will maintain as confidential the fact that a complaint has been filed, the contents of the complaint, the identity of the person making the complaint, and the identity of the official complained against during the open and active investigation conducted by the ethics officer until such time as the ethics officer has made a determination of sufficiency.

4. Dismissal. The complaint shall be dismissed if the ethics officer determines that (1) the complaint is not sufficient, (2) the complaint provided too little detail for the ethics officer to reach a determination, or (3) a violation has or may have occurred, but appropriate actions have been taken to fully address the allegedly unethical conduct. In the event of dismissal, the official who was the subject of the complaint shall receive the protections under the Public Records Act afforded to a “not sustained” determination of alleged misconduct. A complaint dismissed by the ethics officer under this subsection shall be deemed to be dismissed with prejudice and will not be reconsidered if resubmitted by the complainant unless factual allegations not present in the original complaint are presented.

5. Notice. Notice of action by the ethics officer shall be provided as follows:

a. Within seven days of the ethics officer rendering a finding of insufficiency or dismissal of a complaint, the city clerk shall send notice to the person who made the complaint and the official complained against of the ethics officer’s determination. No reconsideration or appeal of a finding of insufficiency or dismissal of a complaint is available through the ethics officer or the city.

b. Within seven days of the ethics officer rendering a finding of sufficiency, the city clerk shall send notice to the person who made the complaint and the official complained against of the ethics officer’s determination. No reconsideration or appeal of a finding of sufficiency of a complaint is available through the ethics officer or the city. Following the initial notice, the city clerk shall schedule and give notice of the hearing which will be held to determine if a violation has occurred. Notice shall be provided at least thirty days prior to the date set for the hearing.

6. Stipulations. Prior to, and in-lieu-of the hearing, the ethics officer and the official complained against may upon agreement jointly submit a recommended stipulation to the city council. The recommended stipulation will include the nature of the complaint, relevant facts, the reasons the ethics officer thinks a stipulation is appropriate, an admission of the violation by the official complained against, a promise by the official complained against not to repeat the violation, and if appropriate, a recommended remedy or penalty. The recommended stipulation shall be sent to the person who made the complaint and forwarded to the city council for action.

B. Conduct of Hearings. All hearings on complaints found to be sufficient by the ethics officer shall be conducted by the hearing examiner. The hearing shall be informal, meaning that the hearing examiner shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The official complained against shall have the right to file a written answer to the charge. Each party may appear at the hearing in person or through legal counsel. Each party may present and cross examine witnesses on any matter relevant to the issues raised in the complaint and give relevant evidence before the hearing examiner. The hearing examiner may call witnesses on his or her own motion and compel the production of books, records, papers, or other evidence. To that end, upon a showing of reasonable necessity, the hearing examiner may issue subpoenas and subpoenas duces tecum at the request of the complaining party, the official complained against, or on his or her own initiative. All testimony shall be under oath administered by the hearing examiner. The hearing examiner may adjourn the hearing from time to time to allow for the orderly presentation of evidence. The hearing examiner shall prepare an official record of the hearing, including all testimony, which shall be recorded by electronic device, and exhibits; provided, that the hearing examiner shall not be required to transcribe such records unless presented with a request accompanied by payment of the cost of transcription.

C. Final Decision and Recommendations. Within thirty days after the conclusion of the hearing, the hearing examiner shall, based upon a preponderance of the evidence, issue a final decision in writing, including findings of fact, conclusions of law, and a determination of whether any violation of MICC 2.60.030, including chapter 42.23 RCW, has been established. The final written decision shall be signed and dated by the hearing examiner. In rendering a final decision, the hearing examiner shall consider the purpose and intent section contained in MICC 2.60.010 and the declaration of purpose in RCW 42.23.010. If the hearing examiner determines that the alleged code of ethics violation(s) have not been proven, the hearing examiner shall dismiss the complaint with prejudice and no further action shall be taken. If the hearing examiner determines that one or more code of ethics violation(s) are proven, the final decision shall also contain any recommendations of the hearing examiner to the city council for any remedial action or sanction that the council may find appropriate and lawful. The hearing examiner may recommend any one or more of the following remedial actions or sanctions as further described below in subsection (E): No sanctions or penalties, referral, admonition, reprimand, censure, removal, and/or civil penalties. Within fifteen days of the hearing

examiner's final decision, the city clerk shall deliver copies of the final decision to the person who made the complaint, the official complained against, the ethics officer, and the city council.

D. City Council Action. The city council in consultation with the city attorney shall, within thirty days of receipt of the hearing examiner's final decision or at the next regularly scheduled city council meeting following that thirty-day period, determine what, if any, of the hearing examiner's recommended remedial actions or sanctions to adopt. Final city council action to decide upon the ethics officer's recommended stipulation or the hearing examiner's recommended remedial actions or sanctions shall be by majority vote in a public meeting. However, if the proceeding involves a member of the city council, deliberations by the council may be in executive session pursuant to RCW 42.30.110(1)(f). The member of the city council against whom the complaint was made shall not attend or participate in any executive session and shall not vote in open session on any matter involving themselves.

E. Disposition. The city council may take one or more of the following actions in disposition of the complaint. The city council's action must afford deference to the ethics officer's recommended stipulation or, in the event a violation is found by the hearing examiner, the hearing examiner's recommended remedial actions or sanctions.

1. No sanctions or penalties. The city council may dispose of the complaint without imposing sanctions or penalties.

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

3. Admonition. An admonition shall be an oral non-public statement made by the mayor, or his/her designee, or if the complaint is against the mayor, the deputy mayor or his/her designee, to the official.

4. Reprimand. A reprimand shall be administered to the official by a letter of reprimand by the city council. The letter shall be prepared by the city council and shall be signed by the mayor or, if the complaint is against the mayor, the deputy mayor.

5. Censure. A letter of censure shall be a letter read to the official in public. The letter shall be prepared by the city council and shall be signed by the mayor, or if the complaint is against the mayor, the deputy mayor. The official shall appear at a city council meeting at a time and place directed by the city council to receive the letter of censure. Notice shall be given at least twenty calendar days before the scheduled appearance at which time a copy of the proposed letter of censure shall be provided to the official. The letter of censure shall be read publicly, and the official shall not, at the time of reading, make any statement in support of, or in opposition thereto, or in mitigation thereof. The letter of censure shall be read at the time it is scheduled whether or not the official appears as required.



6. Removal—Member of Board or Commission or Other Appointed Task Group or Committee. If the official against whom the complaint was made is currently a member of a city board or commission or other city task group or committee, the city council may, in addition to other possible penalties set forth in this section, and notwithstanding any other provision of the Mercer Island City Code, by a majority vote remove the official from such board or commission effective immediately. Nothing in this subsection limits the city council's removal authority under title 3 of the MICC.

7. Removal—Councilmember Appointments. In addition to taking any actions above, if the official against whom the complaint was made is a member of the city council who serves on any city board or commission, other city task group or committee, regional or multijurisdictional body as a representative of the city, whether appointed by the mayor, mayor and deputy mayor, council, or regional body, in addition to other possible penalties set forth in this section, and notwithstanding any other provision of the Mercer Island City Code, by a majority vote the city council may remove the official from such body effective immediately.

8. Removal—Mayor or Deputy Mayor Appointment. In addition to taking any actions above, if the official against whom the complaint was made serves as mayor or deputy mayor, the city council may remove said appointment.

9. Civil Penalties. In addition to taking any actions above, the city council may also assess a civil penalty of up to one thousand dollars. Any monetary penalty assessed civilly shall be placed in the city's general fund.

F. Appeal. Either the complaining party or the official complained against may, within thirty days of the city council's action on (1) the ethics officer's recommended stipulation or (2) the hearing examiner's final decision, appeal to the King County superior court by writ of certiorari pursuant to Chapter 7.16 RCW.

G. Protection Against Retaliation. Neither the city nor any official may take or threaten to take, directly or indirectly, any action that constitutes personal attack, harassment, or intimidation, against any person because that person files a complaint with the ethics officer.

H. Public Records. Records filed with the ethics officer and/or hearing examiner, and written decisions or recommendations of the ethics officer and/or hearing examiner, become public records that may be subject to inspection and copying by members of the public, unless an exemption in law exists. If the city receives a request under the Public Records Act, RCW 42.56, to inspect or copy such information and reasonably determines that such information may be exempt from disclosure, including upon the grounds stated in MICC 2.60.070(A)(4), it will notify the complaining party and the official complained against of the request and of the date that such information will be released to the requester unless any party obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. The city will provide such notice at least ten days prior to the date that the information will be released. If no party timely obtains a court order

enjoining disclosure, the city may release the requested information on the date specified.

I. Recovery of Fees or Costs. No attorney's fees or other costs related to matters covered by this chapter incurred by any official or complainant shall be recoverable from the city, except as follows: The city shall reimburse reasonable legal fees incurred by the official relating to or arising out of the defense of an ethics complaint that results in a dismissal of the complaint by the hearing examiner. The hearing examiner shall determine the amount of the reasonable fee award.

#### **2.60.080 Limitations**

Complaints based on this code of ethics may only be brought against current officials and must be submitted within two years from the date of the alleged violation. If the official against whom the complaint was brought resigns or their term ends before the disposition of the complaint, no further action pursuant to MICC 2.60.080 shall be taken. This section shall only apply for purposes of enforcement of this code of ethics pursuant to MICC 2.60.080.