

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF MERCER ISLAND**

In the Matter of the)	No. HEA-001
)	
December 7, 2023, Ethics Complaint)	
Against Councilmember Jake Jacobson)	
_____)	FINDINGS, CONCLUSIONS, DECISION, AND RECOMMENDATION

SUMMARY OF DECISION AND RECOMMENDATION

A preponderance of evidence supports a determination that Councilmember Jake Jacobson (Respondent) violated RCW 42.17A.555, MICC 2.20.120, and MICC 2.60.030.D by including a link within the signature block of his City-issued email address that redirected users to his election campaign website. Because the Respondent has removed the offending website link from his City-issued email address, and due to other facts and circumstances leading to the violations as addressed in this decision, the Hearing Examiner recommends that the City Council dispose of the complaint without imposing any sanctions or penalties on the Respondent.

SUMMARY OF PROCEEDINGS

Hearing Date:

The Hearing Examiner convened a hearing on the ethics complaint on January 30, 2024.

Testimony:

The following individuals presented testimony under oath at the ethics complaint hearing:

Jake Jacobson, Respondent

Attorney John S. Riper represented the Respondent at the hearing.
Complainant Richard D. Erwin Jr. represented himself at the hearing.

Exhibits:

The following documents were admitted as exhibits in this matter:

1. Determination of Sufficiency, dated December 14, 2023
2. Ethics Complaint, dated December 7, 2023
3. Email from Ali Spietz to Salim Nice, dated August 1, 2023, with email string
4. Email from Jake Jacobson to Salim Nice, Jessi Bon, and David Rosebaum, dated September 12, 2023, with email string
5. Email from Jake Jacobson to Christina Riffle, dated September 26, 2023, with email string

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6. “Council voted to find Mayor in violation of code of ethics” *Mercer Island Reporter*, dated September 18, 2019

Respondent’s Exhibits

- R-1. “Rich Erwin elected chair of King County Democrats” *Bothell-Kenmore Reporter*, dated December 8, 2014
- R-2. Public Disclosure Commission Report – Richard Erwin Ethics Complaint against Lisa Anderl (Case No. 96486), dated July 29, 2021
- R-3. Richard Erwin Ethics Complaint against Seth Landau, dated October 25, 2021
- R-4. Richard Erwin Ethics Complaint against Elle Nguyen, dated July 6, 2022
- R-5. Website Screenshot – jake4.mi.com
- R-6. Archive Website Screenshot – www.jakeformi.com
- R-7. Email from City Attorney Bio Park to Patrick Allcorn, dated February 27, 2021, with email string

Orders, Motions, and Briefs

- Hearing Examiner’s Prehearing Order, dated January 2, 2024
- Hearing Examiner’s Revised Prehearing Order, dated January 3, 2024
- Respondent’s Answer to Complaint, dated January 18, 2024
- Respondent’s Witness and Exhibit List, dated January 23, 2024
- Brief of Respondent, dated January 23, 2024

The Hearing Examiner enters the following findings and conclusions based on the testimony and exhibits admitted at the hearing:

FINDINGS

Background

1. Jake Jacobson (Respondent) is a member of the City of Mercer Island City Council. He was first elected to the position in November 2019 and began serving in his position in January 2020. *Testimony of Mr. Jacobson.*
2. Shortly after taking office in January 2020, the City of Mercer Island (City) assigned to the Respondent an official councilmember email address (jake.jacobson@mercergov.org). The Respondent thereafter requested that the City Clerk include in the signature block to his City-issued email address a link to www.jakeformi.com. *Exhibit 1; Exhibits 3 through 5; Exhibit R-7; Testimony of Mr. Jacobson.*
3. As discussed further in the findings below, the www.jakeformi.com website is no longer active. An internet archive screenshot of the www.jakeformi.com website shows that, prior to its inactive status, the website contained information about why the Respondent moved to Mercer Island; why he was serving on the City Council; background information on his

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education, work, military, and volunteer experience; and key issues that he wanted to address in his role as a councilmember. The website also contained contact information and information on how to support local businesses in Mercer Island. *Exhibit R-6; Testimony of Mr. Jacobson.*

4. In February 2021, a member of the public emailed the City Council and City Attorney to inquire about whether the inclusion of the link to www.jakeformi.com in the Respondent's signature block to his City-issued email address was a potential ethics violation. City Attorney Bio Park provided a response on February 27, 2021, which stated in relevant part:
Thank you for the opportunity to address the link referenced in your email below. Because the link does not direct people to an active election campaign, the City does not consider it to be a misuse of facilities of a public office or a violation of any other provision of RCW 42.17A.555. I hope I've answered your question and addressed your concern.

Exhibit R-7; Testimony of Mr. Jacobson.

5. In April 2023, the Respondent began using a website to promote his election campaign, www.jake4mi.com. The Respondent was reelected to his councilmember position in November 2023. *Exhibit R-5; Testimony of Mr. Jacobson.*

Complaint

6. On December 7, 2023, Richard D. Erwin Jr. (Complainant) filed an ethics complaint alleging that the Respondent's inclusion of a link to www.jakeformi.com in the signature block of his City-issued email address constituted a violation of the City's ethics code. Specifically, the Complainant alleged that the Respondent's conduct violated Mercer Island City Code (MICC) 2.60.030.D, which provides:

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.

The City ethics code notes that City officials are also subject to the Washington State and local laws pertaining to elections campaigns. *MICC 2.60.010.C.* As relevant to the complaint, Revised Code of Washington (RCW) 42.17A.555 provides:

No elective official, nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationary, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office

space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities:

...

(3) Activities which are part of the normal and regular conduct of the office or agency.

MICC 2.20.120 contains nearly identical language as RCW 42.17A.555. *Exhibit 1; Exhibit 2.*

7. The Complainant submitted with his complaint three sets of email communications from the Respondent's City-issued email address, which showed that his signature block contained the link to www.jakeformi.com in July, August, and September 2023. *Exhibits 3 through 5.*

Determination of Sufficiency

8. The City ethics code provides that the City Ethics Officer must review ethics complaints to make an initial determination of whether the complaint "precisely alleges and reasonably describes acts that constitute a prima facie showing of a violation of MICC 2.60.030, including RCW Chapter 42.23." *MICC 2.60.070.A.2. Exhibit 1.*
9. The City Ethics Officer reviewed the complaint and issued a determination of sufficiency on December 14, 2023, which concluded that the complaint was sufficient to show prima facie violations of RCW 42.17A.555, MICC 2.20.120, and MICC 2.60.030.D. The City Ethics Officer's determination of sufficiency contains a footnote, which states that the www.jakeformi.com website link redirected users to the Respondent's election campaign website, www.jake4mi.com. *See Exhibit 1, page 4, fn. 4.*

In determining that the complaint was sufficient to show a prima facie violation of RCW 42.17A.555 and MICC 2.20.120, the City Ethics Officer reasoned that a City-issued email address qualified as a "facility of a public office" under applicable case law¹ and that the Respondent's use of his City-issued email address to provide a link to his election campaign website, as alleged in the complaint, would constitute use of the facility for the purpose of assisting his campaign for election.

In determining that the complaint was sufficient to show a prima facie violation of MICC 2.60.030.D, the City Ethics Officer reasoned that a City-issued email address is among the "public resources that are not available to the public in general" and that directing email recipients to an election campaign website constitutes something "other than a public purpose." *Exhibit 1.*

¹ See *Herbert v. Washington State Pub. Disclosure Comm'n*, 136 Wn. App. 249, 148 P.3d 1102 (2006).

Ethics Complaint Hearing

10. The matter was referred to the Hearing Examiner to conduct a hearing on the ethics complaint under MICC 2.60.070.B. The Hearing Examiner issued a prehearing order on January 2, 2024, which provided instructions for the submission of documentary evidence and witness lists, set a briefing schedule, and scheduled the ethics complaint hearing for January 30, 2024. *Hearing Examiner's Prehearing Order, dated January 2, 2024.* The next day, the Respondent submitted a request to extend the deadline for filing an answer to the complaint, which the Hearing Examiner granted in a revised prehearing order. *Revised Prehearing Order, dated January 3, 2024.*

11. On January 18, 2024, Attorney John S. Riper filed an answer to the complaint on behalf of the Respondent in accordance with the revised prehearing order. The Respondent's answer to the complaint states:
 1. The Complaint asserts that in violation of Mercer Island's ethic code Councilmember Jacobson included in his signature block for government emails a url link to his reelection campaign website.
 2. The Complaint's assertion is false. Council man Jacobson denies it, and looks forward to further addressing at the Hearing scheduled for January 30, 2024.

Respondent's Answer to Complaint, dated January 18, 2024.

12. Attorney Riper also filed a witness list that identified Mr. Jacobson as the sole witness for the Respondent and submitted several proposed exhibits that included a newspaper article about the Complainant, multiple ethics complaints filed by the Complainant against other individuals, a screenshot from the www.jake4mi.com website, and an internet archive screenshot of the www.jakeformi.com website. The Complainant did not submit a witness list or any proposed exhibits. *Respondent's Witness and Exhibit List, dated January 23, 2024; Exhibits R-1 through R-7.*

13. On January 23, 2024, Attorney Riper filed a hearing brief, which asserts:
 - The Complainant is a political activist with a history of filing ethics complaints against perceived political opponents.
 - Several years before deciding to run for reelection, Councilmember Jacobson asked the City to include in the signature block to his City email account a URL link to his non-political website, www.jakeformi.com.
 - The www.jakeformi.com website contained generic biographical information about Councilmember Jacobson and about information of general interest to Mercer Island residents.
 - Two years prior to Mr. Erwin's complaint, the City Attorney reviewed the www.jakeformi.com URL link and approved it as part of Councilmember Jacobson's signature block.

- In 2023, Councilmember Jacobson successfully campaigned for reelection to the City Council. As part of his campaign, he maintained a campaign website, www.jake4mi.com. The signature block to Councilmember Jacobson's City-issued email address did not contain a link to the www.jake4mi.com website.
- Including a URL link to a non-political website in a City official's government emails does not represent any violation of applicable law and, therefore, the complaint should be dismissed.

Brief of Respondent, dated January 23, 2024.

Argument and Testimony²

14. Attorney Riper presented a brief opening statement in which he asserted that the Respondent had maintained two different websites, www.jakeformi.com, which was a nonpolitical website, and www.jake4mi.com, which was the Respondent's election campaign website. He argued that, because the signature block within the Respondent's City-issued email address contained a link only to the nonpolitical website and not to the election campaign website, the facts underlying the complaint did not support a determination that the Respondent had violated the City ethics code by misusing governmental resources.
Argument of Attorney Riper.
15. Councilmember Jake Jacobson testified that he was first elected to the City Council in November 2019 and took office in January 2020. He stated that he created the www.jakeformi.com website at that time, which provided an explanation of who he was and what his priorities were while serving as councilmember. Mr. Jacobson noted that he would periodically update the www.jakeformi.com website to support Mercer Island businesses. He explained that the City provided him with an official councilmember email address shortly after taking office and that he asked the City Clerk to include within his signature block a link to the www.jakeformi.com website. He further explained that, following an inquiry about the appropriateness of the link within his City-issued email signature block, the City Attorney reviewed the matter and determined that there were no ethics concerns. Mr. Jacobson stated that he decided to seek reelection in April 2023, at which time he created the www.jake4mi.com campaign website, which he stressed was unrelated to and did not provide a link to his nonpolitical website. He testified that the nonpolitical website did not fulfill its purpose of providing him with a communication link with Mercer Island residents and that he therefore decided to let the website expire by not paying the fee required to maintain it. Mr. Jacobson stated that he was unsure of when the website ultimately stopped functioning but that he attempted to remove the link to the website from his signature block in early 2023. He stated that, when he was unable to remove the link himself, he requested

² The Hearing Examiner noted at the outset of the hearing that the Complainant's participation would be limited to presenting argument and cross-examining the Respondent's witness because the Complainant did not submit a witness list prior to the hearing in accordance with the Hearing Examiner's prehearing order. *Hearing Examiner's Prehearing Order, dated January 2, 2024; Hearing Examiner's Revised Prehearing Order, dated January 3, 2024.*

assistance from the City Clerk and from the City IT Manager. Mr. Jacobson testified that the link was eventually removed from his signature block in early December of 2023, shortly before he received a copy of the ethics complaint and the determination of sufficiency.

In response to questioning from the Complainant on cross-examination, Mr. Jacobson testified that, to his knowledge, the www.jakeformi.com website never redirected users to his www.jake4mi.com election campaign website. He stated that, if after becoming defunct, the www.jakeformi.com website redirected users to his election campaign website, he had not designed it to do so.

In response to questioning from the Hearing Examiner, Mr. Jacobson testified that, apart from adding information about how to support Mercer Island businesses during the COVID-19 pandemic and perhaps about Mercer Island Youth and Family Services, the information contained on the www.jakeformi.com website remained the same and that the information depicted in the internet archive screenshot of the website as shown in Exhibit R-6 was an accurate representation of its content while the website was functional. When asked about a footnote in the City Ethics Officer's determination of sufficiency, which indicated that the now defunct www.jakeformi.com website redirected users to the www.jake4mi.com website, Mr. Jacobson responded that he had no knowledge that this had occurred and that he did not design the defunct website to redirect users to his campaign website. He stated that, after receiving the determination of sufficiency on December 14 or 15, 2023, he attempted to access the www.jakeformi.com website and that it did not redirect him to the election campaign website. Mr. Jacobson did note, however, that his internet browser asked him if he had meant to access the www.jake4mi.com website, as well as other similarly sounding websites. *Testimony of Mr. Jacobson.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to conduct hearings on ethics complaints that have been found to be sufficient by the Ethics Officer. *MICC 2.60.070.*

Review Criteria

The purpose of the City ethics code is to ensure that Mercer Island residents and businesses have a "fair, ethical and accountable local government that has earned the public's full confidence." *MICC 2.60.010.A.* To further this purpose, the City ethics code "shall be liberally construed to effectuate its purpose and policy and to supplement existing laws that relate to the same subject." *MICC 2.60.010.B.*

The stated purpose of the Washington State Code of Ethics for Municipal Officers is as follows:

It is the purpose and intent of this chapter to revise and make uniform the laws of this state concerning the transaction of business by municipal officers, as defined in

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chapter 268, Laws of 1961, in conflict with the proper performance of their duties in the public interest; and to promote the efficiency of local government by prohibiting certain instances and areas of conflict while at the same time sanctioning, under sufficient controls, certain other instances and areas of conflict wherein the private interest of the municipal officer is deemed to be only remote, to the end that, without sacrificing necessary public responsibility and enforceability in areas of significant and clearly conflicting interests, the selection of municipal officers may be made from a wider group of responsible citizens of the communities which they are called upon to serve.

Following a hearing on an ethics complaint, 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 determination of whether any violation of MICC 2.60.030, including RCW Chapter 42.23, has been established.” *MICC 2.60.070.C.*

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 recommendation of the hearing examiner to the city council for any remedial action or sanction as further described below in subsection (E): No sanctions or penalties, referral, admonition, reprimand, censure, removal, and/or civil penalties.

MICC 2.60.070.C.

If the Hearing Examiner determines that one or more violations of the City ethics code have been proven by a preponderance of the evidence, the city council “must afford deference to . . . the hearing examiner’s recommended remedial actions or sanctions.” *MICC 2.60.070.E.*

“Either the complaining party or the official complained against may, within 30 days of the city council’s action on . . . the hearing examiner’s final decision, appeal to the King County superior court by writ of certiorari pursuant to RCW Chapter 7.16.” *MICC 2.60.070.F.*

Conclusions Based on Findings

- 1. A preponderance of the evidence establishes that the Respondent violated RCW 42.17A.555 and MICC 2.20.120 by including a link within the signature block of his City-issued email address that redirected users to his election campaign website.** RCW 42.17A.555 and MICC 2.20.120, which are incorporated into the City ethics code under MICC 2.60.010.C, similarly prohibit City officials from “directly or indirectly” using or authorizing the use of any of the facilities of their public office for the purpose

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of assisting an election campaign. It is well established, and the Respondent does not appear to contest, that his City-issued email address qualifies as a facility of public office under the statute and code provision. *See e.g., Herbert v. Washington State Pub. Disclosure Comm'n*, 136 Wn. App. 249, 148 P.3d 1102 (2006) (affirming Public Disclosure Commission's order determining that public school teachers violated prohibition against the use of public resources for political advocacy by using district-issued email address to promote a ballot measure campaign). The Respondent also does not contest that he is an "elective official" subject to the requirements of RCW 42.17A.555 and MICC 2.20.120.

Here, the Respondent concedes that his www.jake4mi.com website was created for the purpose of assisting in his election campaign. He argues, however, that he did not include a link to this election campaign website within his City-issued email address and, instead, included a link only to his www.jakeformi.com website, which the City Attorney previously reviewed and determined was not in violation of RCW 42.17A.555. Although the Hearing Examiner determines that the evidence at the hearing establishes that the Respondent did not intentionally or directly provide a link to his election campaign website from his City-issued email address, the Hearing Examiner further determines that, sometime after the www.jakeformi.com website was no longer active, the link to that website within the Respondent's City-issued email address redirected users to his www.jake4mi.com election campaign website.

A preponderance of the evidence at the hearing demonstrates that the Respondent: (1) allowed the www.jakeformi.com website to expire by no longer paying the fees required to maintain the website; (2) attempted to remove a link to the website from his City-issued email address in early 2023, (3) and was unable to remove the link to that website from his City-issued email address until December 2023. Although the Respondent testified that he was unsure about when the www.jakeformi.com website ultimately stopped functioning, it is reasonable to infer that it was no longer functional at some point between the time in early 2023 that the Respondent attempted to remove the link to the website from his email address and December 2023. The Hearing Examiner determines that, during this period, users clicking on the www.jakeformi.com link included in the signature block of Respondent's email were redirected to his campaign website and that this constituted a violation of RCW 42.17A.555 and MICC 2.20.120.

The Hearing Examiner finds credible the Respondent's testimony that he did not design his expired www.jakeformi.com website link to redirect users to his www.jake4mi.com election campaign website or that he was aware that this may have occurred. The ethics provisions under RCW 42.17A.555 and MICC 2.20.120, however, explicitly prohibit City officials from "directly or indirectly" using the facilities of their public office for the purpose of assisting in an election campaign. Moreover, the City ethics code directs the Hearing Examiner to liberally construe its provisions to effectuate its purpose. In this

regard, the Hearing Examiner notes that the purpose of the City ethics code is not only to require compliance with “all laws and policies affecting the operations of government,” but also to “avoid conduct creating an appearance of impropriety.” *MICC 2.60.010.A.1 and .6*. The inclusion of a website link within a City-issued email address that redirects users to an election campaign website creates an appearance of impropriety, regardless of whether the website link was designed for this purpose.

In short, a City official utilizing a public facility to provide a link to a website address bears the continuing responsibility of ensuring that the website’s content complies with all requirements of the City ethics code. And, as related to the violations here, the City official further assumes the responsibility of ensuring that a no longer functioning website link disseminated from a public facility of office does not redirect users to content prohibited under the ethics code. Accordingly, the Hearing Examiner determines that a preponderance of evidence establishes that the Respondent violated RCW 42.17A.555 and *MICC 2.20.120. Findings 1 – 15*.

2. **A preponderance of the evidence establishes that the Respondent’s conduct was also in violation of *MICC 2.60.030.D*.** *MICC 2.60.030.D* provides, “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.” As discussed above in Conclusion 1, a preponderance of the evidence at the hearing establishes that, at some point after the www.jakeformi.com website became inactive, the link to that website included within the Respondent’s City-issued email address until December 2023 redirected users to his election campaign website. A City-issued email address is a public resource that is not available to the public in general, and the inclusion of a website link that redirects users to an election campaign website is not a “public purpose.” In addition, the Hearing Examiner determines that this prohibited conduct was not “infrequent” because the link was included in every communication transmitted from the Respondent’s City-issued email address during that period. Accordingly, the Hearing Examiner determines that a preponderance of evidence establishes that the Respondent violated *MICC 2.60.030.D*.

3. **In light of the facts and circumstances surrounding the proven violations described above, the Hearing Examiner recommends that the City Council dispose of the complaint without imposing sanctions or penalties on the Respondent.** As discussed in Conclusion 1 above, the Hearing Examiner finds credible the Respondent’s testimony that he did not design the website link included in his City-issued email address to redirect users to his active election campaign website. After reviewing the evidence in this matter, the Hearing Examiner finds it likely that users were redirected to the Respondent’s campaign website due to a technological effect of the www.jakeformi.com website becoming inactive. In light of these facts and circumstances, and because the Respondent has removed the website link from the signature block of his City-issued

email address, the Hearing Examiner recommends that the City Council not impose any sanctions or penalties on the Respondent.

DECISION AND RECOMMENDATION

A preponderance of evidence supports the determination that the Respondent violated RCW 42.17A.555, MICC 2.20.120, and MICC 2.60.030.D by including a link within the signature block of his City-issued email address that redirected users to his election campaign website. Because the Respondent has removed the offending website link from his City-issued email address, and due to other facts and circumstances leading to the proven violations, the Hearing Examiner recommends that the City Council dispose of the complaint without imposing any sanctions or penalties on the Respondent.

So ordered this 27th day of February 2024.

A handwritten signature in black ink, appearing to read "Peregrin Sorter", written in a cursive style.

PEREGRIN K. SORTER
Hearing Examiner
On behalf of Sound Law Center