



## Legislation Passed August 4, 2009

The Tacoma City Council, at its regular City Council meeting of August 4, 2009, adopted the following resolutions and/or ordinances. The summary of the contents of said resolutions and/or ordinances are shown below. To view the full text of the document, click on the bookmark at the left of the page.

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### **Resolution No. 37838**

Setting Tuesday, September 15, 2009, at approximately 5:30 p.m., as the date for a public hearing by the City Council to consider the acceptance of a Community Development Block Grant Section 108 Guarantee Loan, in the amount of \$3.6 million, from the United States Department of Housing and Urban Development, to assist with the development of Phase I of the Harold E. LeMay Museum.

### **Resolution No. 37839**

Authorizing the execution of an interlocal agreement between Tacoma Rail and the Washington State Department of General Administration, in the amount of \$15,000, for the installation and maintenance of an Americans with Disabilities Act compliant pedestrian crossing at Heritage Park in Olympia, Washington through 2029; and authorizing the administrative authority of the Director of Utilities to approve term extensions and contract renewals for all items up to \$35,000.

### **Purchase Resolution No. 37840**

Awarding a contract to:

Northwest Cascade, Inc., on its bid of \$402,705.64, plus a 10 percent contingency, for a projected total of \$442,976.21, including sales tax, budgeted from the Wastewater Fund, for sanitary sewer replacement work in the alley between South 9th Street and South 10th Street from Puget Sound Avenue to Warner Street, and 27 spot repairs of sanitary sewer mains and manholes at various locations throughout the City – Specification No. PW09-0285F.

### **Resolution No. 37841**

Granting a 4,518-square-foot easement, located north and south of 112th Street East, and a 1,349-square-foot slope easement, located on either side of 112th Street East over Tacoma Water's Pipeline No. 4, to Pierce County for road widening, for a total amount of \$3,080.18.

### **Resolution No. 37842**

Ratifying the agreement for a 15-year, interest-free loan, in the amount of \$250,000, from the Washington State Department of Transportation, to reconfigure and upgrade the locomotive servicing facility, to be repaid by July 1, 2023.

### **Resolution No. 37843**

Ratifying the agreement for a 15-year, interest-free loan, in the amount of \$26,386, from the Washington State Department of Transportation, for the installation of idle reduction technology on two locomotives, to be repaid by July 1, 2023.

**Ordinance No. 27802**

Vacating the east 130 feet of North 15th Street between North Fir and North Juniper Streets for the development of a driveway, additional landscaping, and a yard area. (Daniel Jones; File No. 124.1307)

**Ordinance No. 27824**

Amending Chapter 1.46 of the Municipal Code, relating to the Code of Ethics, to allow the Board of Ethics to make recommendations to the City Manager and the City Council for amendments and other legislation affecting this chapter, and deleting references regarding the alternate member.

## **RESOLUTION NO. 37838**

A RESOLUTION relating to the Harold E. LeMay Museum; setting Tuesday, September 15, 2009, as the date for a public hearing to consider the acceptance of a loan from the U.S. Department of Housing and Urban Development for a \$3.6 million Community Development Block Grant Section 108 Guarantee Loan to assist with the development of Phase I of the Harold E. LeMay Museum.

WHEREAS, on April 28, 2009 the City Council adopted Resolution No. 37784, authorizing the submittal of an application to the U.S. Department of Housing and Urban Development (“HUD”) to lend funds, in the amount of \$3.5 million, plus closing costs, to the Harold E. LeMay Museum, LLC, or to the American Car Museum, LLC (collectively “LeMay Museum”), to assist in the development of Phase I of the LeMay Museum, and

WHEREAS the loan will be secured by real estate, the pledging of capital campaign receipts, and automobiles, and

WHEREAS the implementation of the development of Phase I will result in the creation of approximately 90 direct jobs, and

WHEREAS HUD reviewed the loan application and determined, in a letter dated June 18, 2009, that the loan, in the amount of \$3.6 million, meets the public benefit, the national objective, and the eligibility requirements, and

WHEREAS a second public hearing is a requirement of the loan application and approval process; Now, Therefore,

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:**

Section 1. That Tuesday, September 15, 2009, at the hour of approximately 5:30 p.m. thereof, is hereby scheduled as the time, and the City

Council Chambers in the Tacoma Municipal Building, Tacoma, Washington, as the place where the City Council will hold a public hearing to consider the acceptance of a loan from the U.S. Department of Housing and Urban Development for a \$3.6 million Community Development Block Grant Section 108 Guarantee Loan to assist with the development of Phase I of the Harold E. LeMay Museum.

Section 2. That the Clerk of the City of Tacoma shall give proper notice of the time and place of said hearing.

Adopted \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

## **RESOLUTION NO. 37839**

A RESOLUTION relating to the Department of Public Utilities, Beltline Division; authorizing the Beltline Division to enter into an interlocal agreement with the Washington State Department of General Administration for installation and maintenance of an Americans With Disabilities Act-compliant pedestrian crossing at Heritage Park in Olympia, Washington.

WHEREAS the City of Tacoma, Department of Public Utilities, Beltline Division (d.b.a. "Tacoma Rail"), operates a rail line in Olympia, Washington, near Heritage Park, and

WHEREAS the Washington State Department of General Administration ("GA") desires to install a pedestrian crossing that will meet requirements of the Americans With Disabilities Act at Heritage Park that crosses Tacoma Rail's tracks, and

WHEREAS chapter 39.34 RCW authorizes Tacoma Rail and the GA to enter into an interlocal agreement upon approval of the Utility Board and the City Council that will reimburse Tacoma Rail for the construction and maintenance of the pedestrian crossing until 2029, and

WHEREAS, under the terms of the interlocal agreement, the GA shall reimburse Tacoma Rail for the actual cost of time and materials, in an amount not to exceed \$10,000, for the installation of the pedestrian crossing; and the GA shall reimburse Tacoma Rail for the actual cost of time and materials, in an amount not to exceed \$1,000 per year, for maintenance of the crossing, as required, to maintain the integrity of the tracks, with total maintenance amount not to exceed \$15,000 unless approved by the parties, and

WHEREAS Tacoma Rail requests the Director of Utilities be granted authority under Section 1.06.269 of the Tacoma Municipal Code to administratively amend the agreement, increase the contract up to \$35,000, and approve term extensions and contract renewals of all items, and

WHEREAS Tacoma Rail requests that the Utility Board approve the interlocal agreement with the GA and forward it to the City Council for concurrence with the approval; Now, Therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

Section 1. That the City of Tacoma, Department of Public Utilities, Beltline Division (d.b.a. "Tacoma Rail"), is approved to enter into an interlocal agreement with the Washington State Department of General Administration ("GA") for the installation and maintenance of an Americans With Disabilities Act-compliant pedestrian crossing at Heritage Park in Olympia, Washington, through 2029, and that the proper City officers are authorized to execute said agreement, said document to be substantially in the form of the interlocal agreement on file in the office of the City Clerk and as approved by the Office of the City Attorney.

Section 2. That the Director of Utilities is granted authority under Section 1.06.269 of the Tacoma Municipal Code to approve term extensions and contract renewals of all items.

Section 3. That the City Council is requested to concur in the approval authorizing Tacoma Rail to enter into the interlocal agreement with the GA and for the proper City officers to execute said agreement.

Adopted

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

Requested by Public Utility Board  
Resolution No. U-10309



## RESOLUTION NO. 37840

1 A RESOLUTION related to the purchase of materials, supplies or equipment,  
2 and the furnishing of services; authorizing the appropriate City officials to  
3 enter into contracts and, where specified, waiving competitive bidding  
4 requirements, authorizing sales of surplus property, or increasing or  
5 extending existing agreements.

6 WHEREAS the City has complied with all applicable laws governing the  
7 acquisition of those supplies, and/or the procurement of those services,  
8 inclusive of public works, set forth in the attached Exhibit "A," which Exhibit is  
9 incorporated herein as though fully set forth, and

10 WHEREAS the Board of Contracts and Awards has reviewed the  
11 proposals and bids received by the City, and the Board has made its  
12 recommendation as set forth in Exhibit "A," and

13 WHEREAS the Board of Contracts and Awards has also made its  
14 recommendations as to entering into purchasing agreements with those  
15 governmental entities identified in Exhibit "A"; Now, Therefore,

16 BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

17 That the Council of the City of Tacoma does hereby concur in the  
18 findings and recommendations of the Board of Contracts and Awards set forth  
19 in the attached Exhibit "A," and does hereby approve and authorize the:

20 (X) A. Procurement of those supplies, services, and public works  
21 recommended for acceptance in the attached Exhibit "A";

22 ( ) B. Rejection of those bids and/or proposals that are recommended  
23 for rejection in the attached Exhibit "A";  
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( ) C. Entry into the proposed purchasing agreement with those governmental entities identified in the attached Exhibit "A," which proposed agreement is on file in the office of the City Clerk;

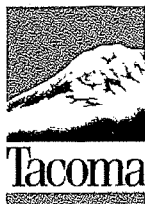
( ) D. Waiver of competitive bidding procedures in those instances, as set forth in Exhibit "A," in which it is impracticable to obtain supplies or public works improvements by competitive bid, or in those instances in which supplies and/or public works are available from a single source.

Adopted \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attest:  
\_\_\_\_\_  
City Clerk

Approved as to form:  
  
\_\_\_\_\_  
City Attorney



City of Tacoma  
Public Works Department

EXHIBIT "A"

RESOLUTION NO.: 37840

ITEM NO.: 1

MEETING DATE: August 4, 2009

**DATE:** July 15, 2009  
**TO:** Board of Contracts and Awards  
**SUBJECT:** 2009 Sanitary Sewer Spot Repair Project  
Budgeted from PW Wastewater Fund 4300  
Request for Bids Specification No. PW09-0285F

**RECOMMENDATION:** Public Works, Environmental Services/Science and Engineering Division recommends that a contract be awarded to low bidder **Northwest Cascade, Inc., Puyallup, WA**, for sanitary sewer improvements at various locations throughout the City. The contract amount reflects a base award of \$402,705.64, including sales tax, plus a 10% contingency, for an aggregate total of \$442,976.21, including sales tax.

**EXPLANATION:** The project scope consists of sanitary sewer replacement work in the alley between South 9<sup>th</sup> & South 10<sup>th</sup> Streets from Puget Sound Avenue to Warner Street and twenty-seven (27) spot repairs of 8-inch diameter sanitary sewer mains and manholes at various locations throughout the City.

**COMPETITIVE BIDDING:** Request for Bids Specification No. PW09-0285F was opened July 7, 2009. In addition to normal project advertising, seven companies were notified of the request for bids advertisement. The City received five proposals from interested contractors. The Historically Under-utilized Business (HUB) participation levels, proposed by the bidder(s), are reflected as a credit against the submitted base bid to arrive at an "evaluated bid" for ranking purposes. Northwest Cascade, Inc. submitted a bid that resulted in the lowest evaluated submittal after consideration of HUB participation goals. The table below reflects the amount of the base award.

<u>Respondent</u>	<u>Location</u> <i>(city and state)</i>	<u>Submittal Amount</u> Including sales tax	<u>Evaluated Submittal</u>
<b>Northwest Cascade, Inc.</b>	<b>Puyallup, WA</b>	<b>\$ 402,705.64</b>	<b>\$ 299,513.19</b>
R/S Construction & Excavation, Inc.	Covington, WA	\$ 494,406.15	\$ 399,593.00
S & W Utility Contractors, Inc.	Lakewood, WA	\$ 496,391.65	\$ 385,227.75
RJC Construction Group, Inc.	Enumclaw, WA	\$ 525,716.94	\$ 412,057.84
Henderson Partners, LLC	Gig Harbor, WA	\$ 8,165,240.60	\$ 7,408,557.99**
	Pre-bid Estimate	\$ 406,584.69	

\*\* This bidder had math errors on the Proposal.

The recommended award is 1 percent below the pre-bid estimate.

**CONTRACT HISTORY:** New contract.

**FUNDING:** Funds for this are available in the PW Wastewater Fund 4300.

**HUB/LEAP COMPLIANCE:** The recommended contractor is in compliance with the Historically Under-utilized Business (HUB) Regulation requirements per memorandum dated July 14, 2009.

## **RESOLUTION NO. 37841**

A RESOLUTION relating to Tacoma Water; granting easements over Pipeline No. 4, located at 112th Street East, to Pierce County.

WHEREAS the City of Tacoma, Department of Public Utilities, Water Division (d.b.a. "Tacoma Water") owns land used for Pipeline No. 4 that crosses over 112th Street East in Pierce County ("County"), and

WHEREAS the County desires to purchase an easement constituting an approximate 4,518-square-foot area of Tacoma Water's property located to the north and south of 112th Street East, for purposes of widening 112th Street East, along with an easement constituting an approximate 1,349-square-foot area for a required slope, and

WHEREAS RCW 35.22.302 authorizes the City to convey for "public use any estate, right or interest in the areas above the surface of the ground for... improvements" so long as the use is not inconsistent with the public purposes for which the property was acquired, and provided further that the City may impose conditions and restrictions on the use to be made of the right or interest conveyed, and

WHEREAS the County will pay Tacoma Water the fair market value of \$2,371.95 for the approximate 4,518-square-foot easement and \$708.23 for the approximate 1,349-square-foot easement, for a total of \$3,080.18, and

WHEREAS the proposed easements provide that the County's uses will be subordinate to those of Tacoma Water's, and they provide for

termination for breach of terms, or when the City's purposes are more in the interest of the public health, safety, and welfare than the use as a public road; Now, Therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

That, pursuant to RCW 35.33.302, the proposed grant of an approximate 4,518-square-foot easement, located north and south of 112th Street East, and an approximate 1,349-square-foot slope easement on either side of 112th Street East over Pipeline No. 4, located near 112th Street East, to Pierce County, for the purpose of road widening, in exchange for the payment of \$3,080.18 fair market value, is approved; and that the City Council is requested to concur in the approval of the proposed easements and authorize the proper officers of the City to execute the proposed easements, said documents to be in substantially the form on file with the Clerk of the Board and with the City Clerk and as approved by the City Attorney.

Adopted \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

Requested by Public Utility Board  
Resolution No. U-10310

## **RESOLUTION NO. 37842**

A RESOLUTION relating to Tacoma Rail Beltline Division; authorizing the Beltline Division to enter into a 15-year, interest-free loan, in the amount of \$250,000, from the Washington State Department of Transportation to reconfigure and upgrade its locomotive servicing facility.

WHEREAS the City of Tacoma, Department of Public Utilities, Beltline Division (d.b.a. "Tacoma Rail"), provides locomotive servicing services through its locomotive servicing facility to the Union Pacific Railroad, and

WHEREAS Tacoma Rail applied for and was approved a 15-year, interest-free loan, in the amount of \$250,000, by the Washington State Department of Transportation ("WSDOT") for construction costs to improve the locomotive-servicing facility through reconfiguration of the tracks, and

WHEREAS Tacoma Rail executed an agreement with WSDOT to obtain the interest-free loan in October 2008, and

WHEREAS the loan agreement required Tacoma Rail to provide matching funds and to complete the track reconfiguration portion of the overall project by June 30, 2009, which Tacoma Rail has satisfied, and

WHEREAS § 4.11 of the Tacoma City Charter requires that all matters relating to the "incurring of indebtedness . . . shall be initiated by the Board, subject to approval by the Council, and executed by the Board," prior to acceptance of the agreement, and

WHEREAS Tacoma Rail now requests the Board to approve the agreement with WSDOT, ratify the actions of Tacoma Rail and City officials, and forward to the City Council for concurrence of this approval and ratification of the actions; Now, Therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

Section 1. That the City of Tacoma, Department of Public Utilities, Beltline Division (d.b.a. "Tacoma Rail") is approved to enter into an interest-free loan agreement with the Washington State Department of Transportation, in the amount of \$250,000, and that the proper City officers are authorized to execute said loan agreement, said document to be substantially in the form on file in the office of the City Clerk.

Section 2. That the prior actions of Tacoma Rail and the City officials related to this agreement are ratified and approved.

Section 3. That the City Council is requested to concur in the approval authorizing Tacoma Rail to enter into the loan agreement with the Washington State Department of Transportation, that the proper City officers are authorized to execute said agreement, and that the prior actions of Tacoma Rail and the City officials related to this agreement are ratified.

Adopted \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

Requested by Public Utility Board  
Resolution No. U-10307

## **RESOLUTION NO. 37843**

A RESOLUTION relating to Tacoma Rail, Beltline Division; authorizing the Beltline Division to enter into a 15-year, interest-free loan, in the amount of \$26,386, from the Washington State Department of Transportation for the installation of idle reduction technology.

WHEREAS the City of Tacoma, Department of Public Utilities, Beltline Division (d.b.a. "Tacoma Rail"), desires to reduce the overall locomotive emissions and fuel consumption of its locomotive fleet through idle reduction technology, and

WHEREAS Tacoma Rail applied for and was approved a 15-year, interest-free loan, in the amount of \$26,386, by the Washington State Department of Transportation ("WSDOT") to purchase two SmartStart – Dash II automatic start/stop idle reduction systems and installation kits, and

WHEREAS Tacoma Rail executed an agreement with WSDOT to obtain the interest-free loan in February 2009, and

WHEREAS the loan agreement required Tacoma Rail to provide matching funds and to complete the installation by June 30, 2009, which Tacoma Rail has satisfied, and

WHEREAS § 4.11 of the Tacoma City Charter requires that all matters relating to the "incurring of indebtedness . . . shall be initiated by the Board, subject to approval by the Council, and executed by the Board" prior to acceptance of the agreement, and

WHEREAS Tacoma Rail now requests the Board to approve the agreement with WSDOT, ratify the actions of Tacoma Rail and City officials, and forward to the City Council for concurrence of this approval and ratification of the actions; Now, Therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

Section 1. That the City of Tacoma, Department of Public Utilities, Beltline Division (d.b.a. "Tacoma Rail"), is approved to enter into a 15-year, interest-free loan agreement with the Washington State Department of Transportation ("WSDOT"), in the amount of \$26,386, and the proper City officers are authorized to execute said agreement in the form on file with the Clerk and as approved by the Office of the City Attorney.

Section 2. That the prior actions of Tacoma Rail and the City officials related to this agreement are ratified and approved.

Section 3. That the City of Tacoma City Council is requested to concur in the approval authorizing Tacoma Rail to enter into the loan agreement with the Washington State Department of Transportation, the

proper City officers to execute said agreement, and that the prior actions of Tacoma Rail and the City officials related to this agreement are ratified.

Adopted \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

Requested by Public Utility Board  
Resolution No. U-10308

## **ORDINANCE NO. 27802**

AN ORDINANCE related to the vacation of City property; vacating the easterly 130 feet of North 15th Street lying between North Fir Street and North Juniper Street; and adopting the Hearing Examiner's Findings, Conclusions, and Recommendations related thereto.

WHEREAS all steps and proceedings required by law and by resolution of the City Council to vacate the portion of the street hereinafter named have been duly taken and performed; Now, Therefore,

BE IT ORDAINED BY THE CITY OF TACOMA:

Section 1. That the City Council hereby adopts the Hearing Examiner's Findings, Conclusions, and Recommendations as contained in the Hearing Examiner's Report and Recommendation to the City Council bearing File No. 124.1307, and dated March 31, 2009, which Report is on file in the office of the City Clerk.

Section 2. That the easterly 130 feet of North 15th Street lying between North Fir Street and North Juniper Street, and more particularly described as follows:

That portion of the Northeast quarter of the Southwest quarter of Section 34, Township 21 North, Range 02 East, W.M. described as follows:

A portion of North 15th Street described as follows:  
Commencing at the center line intersection of North 15th and Fir Streets;

Thence N07°54'58"W along the westerly extension of the center line of North 15th Street a distance of 30.00 feet to the True Point of Beginning;

Thence continuing N87°54'58"W along the South right of way margin of North 15th Street, a distance of 130.00 feet;

Thence N01°09'34"E 30.00 feet to the North right of way margin of said street;

Thence S87°54'58"E along said margin, 130.00 feet to the West right of way margin of North Fir Street;

Thence S01°09'34"W along said margin 30.00 feet to the True Point of Beginning.

The above described property is contained within City of Tacoma Deed 1887, as filed for record under Auditor's File Number 1533916, records of Pierce County, Washington

All Situate in the City of Tacoma, County of Pierce, State of Washington.

is hereby vacated, and the land so vacated is hereby surrendered and attached to the property bordering thereon, respectively, as a part thereof, and all right or title of the City in and to the portion of the streets so vacated does hereby vest in the owners of the property abutting thereon, all in the manner provided by law, provided, however, that there is hereby retained and reserved, pursuant to statutes of the state of Washington, the following easement and/or condition, to wit:

DEPARTMENT OF PUBLIC WORKS/  
ENVIRONMENTAL SERVICES

a. A public easement shall be retained over the west 5.0 feet of the vacation area for sewer.

b. The following shall be included in the easement language:

"No permanent structures shall be erected within the public utility easement area unless specifically approved in writing by the City of Tacoma, Director of Public Works. Permanent structures shall mean any concrete foundation, concrete slab, wall, rockery, building, deck, overhanging structures, fill material, recreational sport courts, carports, portable sheds, private utilities, fences, or other site improvement that will unreasonably interfere with the need to access

or construction public utilities in said easement. Permanent structures shall not mean improvements such as normal landscaping, asphalt paving, gravel, or other similar site improvements that do not prevent the access of men, materials, and machinery across, along and within the said easement area. Land restoration by the City within the said easement area due to the construction , operation, inspections, replacement, repair, or maintenance of public utilities will be strictly limited to grass seed, grass sod, and/or asphalt replacement unless otherwise determined by the City of Tacoma.”

Passed \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Location: The easterly 130 feet of North 15th Street lying between  
North Fir Street and North Juniper Street

Petitioner: Daniel Jones

Vacation Request File No. 124.1307

Approved as to form:

Property description approved:

\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
Chief Surveyor  
Public Works Department

**ORDINANCE NO. 27824**

AN ORDINANCE related to the Ethics Code; amending Section 1.46.045 of the Tacoma Municipal Code to allow the Board of Ethics to make recommendations to the City Manager and to the City Council for amendments and other legislation affecting the subject matter of this chapter; and deleting references regarding "alternate member."

WHEREAS, on April 29, 2009, the Government Performance and Finance Committee discussed the Board of Ethics' ability to make recommendations to the City Council, and

WHEREAS, at the same meeting, revising the administrative procedures by striking the word "alternate" from the Ethics Code was also discussed, and

WHEREAS the recommendations received a "do pass"; Now, Therefore,

BE IT ORDAINED BY THE CITY OF TACOMA:

Section 1. That Section 1.46.045 of the Tacoma Municipal Code is amended as set forth in the attached Exhibit "A."

Passed \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to Form:

\_\_\_\_\_  
Chief Deputy City Attorney

## EXHIBIT "A"

### 1.46.045 Board of Ethics.

A. Purpose, Creation. There is hereby created a Board of Ethics to receive, investigate, and make recommendations for disposition of complaints of violation of the Code of Ethics by the City Manager, the Director of Public Utilities, a member of the Public Utility Board ("Utility Board"), or a City-elected official.

B. Composition.

1. The Board of Ethics shall be composed of five regular members who are residents of the City appointed by majority vote of the City Council upon recommendation by the City Council

**Deleted:** and one alternate member

Appointments Committee. ~~Members of the Board shall serve without compensation and shall not, except for their appointment as a member of the Board of Ethics, be a City official or hold public office.~~

**Deleted:** The alternate member shall fill in for a regular member, as set forth in the Board's written rules.

2. Board members shall serve staggered terms of three years. The initial terms shall be one year for the first member appointed, two years for the second and third members appointed, and three years for the fourth and fifth members appointed. No person shall serve more than two consecutive full terms as a member of the Board. A member shall hold office until a member's successor is appointed; provided that, the term of the successor shall be deemed to have commenced upon the expiration of the term of the member holding over and shall be considered a full term.

3. Appointments to a vacant position shall be made in the same manner as appointments for a full term.

4. The Board shall select its own presiding officer from among its members.

5. The City Manager shall provide such staff support for the Board as the City Council determines to be necessary for the Board to fulfill its duties.

6. The Board's deliberations and actions upon request shall be in meetings open to the public in accordance with the Open Public Meetings Act.

7. The City Attorney is designated to be the legal advisor for the Board, except that the City Attorney is not authorized to advise the Board in any matter if doing so would create a conflict which would prevent the City Attorney from also representing a City-elected official, the Director of Public Utilities, or the City Manager, or when the person alleged to have violated the Code of Ethics is the City Manager, the Director of Public Utilities, or a City-elected official.

C. Duties and Powers of the Board.

1. The Board shall, in addition to its other duties:

a. Adopt written rules governing its procedures and providing for the holding of regular and special meetings, which rules shall be subject to the approval of the City Council, and a copy of the rules shall be filed with the City Clerk; and

b. Administer oaths; and

c. Conduct hearings, as needed, to hear and decide specific cases in which a violation of the Code of Ethics is alleged, whether such cases arise from a complaint or are brought on the Board's own motion; and

d. No later than March 1 of each year, submit an annual report to the City Council concerning its action in the preceding year. The report shall contain a summary of its decisions and opinions, both open and confidential, and the Board shall make any alterations in the summaries necessary to prevent disclosure of any confidential information pertaining to any individual or to any organization if the disclosure could lead to the disclosure of the identity of a person who is entitled to confidentiality; and

e. When circumstances make it necessary to do so, retain outside legal counsel and other experts, as needed, after solicitation of recommendations from the City Attorney, unless the need to retain outside counsel is caused by a conflict involving the City Attorney's Office, and upon approval by the City Council of a contract for services approved as to form by the City Attorney; and  
f. Serve as legal custodian of the Board's records and accept, file, maintain, and administer, in accordance with all applicable laws, any information related to the purposes of this Code of Ethics.

g. To make recommendations to the City Manager and to the City Council for amendments to this chapter and for such other legislation affecting the subject matter of this chapter as the Board of Ethics may deem necessary or desirable.

2. All open opinions of the Board shall be filed with the City Clerk and are open to public inspection. To the extent permitted by law, confidential opinions and any records obtained or filed in connection with requests for confidential opinions, whether the records are written, tape-recorded, videotaped, or otherwise recorded, shall be kept confidential; and confidential advisory opinions rendered, to the extent permitted by law, shall be closed in whole to public inspection. Confidential opinions and summaries of them or open references to them shall be drafted in such a way as not to reveal confidential information.

3. The Board may, in addition to its other duties:

a. respond, as it deems appropriate, to requests from City-elected officials, members of the Utility Board, the Director of Public Utilities, and the City Manager, for confidential advisory opinions, to the extent allowed by law; the Board may decline to render an opinion in response to any request for an advisory opinion;

b. render and publish formal opinions on any matter within the scope of the Board's authority which it may deem appropriate. The Board may initiate opinions on its own motion or upon request; any formal opinion shall be in writing; and

c. at the request of a City-elected official, a member of the Utility Board, the Director of Public Utilities, or the City Manager, the City Attorney may render an informal opinion with respect to the application of the Code of Ethics to the prospective conduct of such person. An informal opinion need not be written and may be provided directly to the requestor of such opinion. Nothing in the Code of Ethics shall be construed to prohibit a request for an informal opinion by any City official from the City Attorney regarding a potential conflict of interest. Neither a request for an informal opinion nor the making of a statement concerning a potential conflict of interest made by a City-elected official or member of the Utility Board in the course of abstaining from voting or making a motion of self-recusal, shall create a presumption or inference that such City-elected official actually or member of the Utility Board has a personal interest in the matter about which the opinion was requested. If the City Attorney elects to render an informal opinion, the City Attorney may, within a reasonable time, submit a written summary of the opinion to the Board for the Board's information; if the City Attorney declines to render an informal opinion, nothing shall preclude the person requesting the opinion from requesting the Board for an opinion.

D. Complaint Process.

1. The provisions set forth in this subsection D shall be effective as of 12:01 a.m. on the 1st day of January, 2007.

2. Any City official knowingly receiving a complaint that the Code of Ethics has been violated by a City-elected official, a member of the Utility Board, the Director of Public Utilities, or the City Manager, has an obligation to promptly forward the complaint, in writing, to the Board or its designee.
3. The Board, upon receipt of the complaint, shall acknowledge receipt of the complaint, forward the complaint simultaneously to the person who is complained against, if known, and the City Attorney, and promptly meet and review the complaint, and, if necessary, designate an individual to conduct an independent investigation of the complaint.
4. The person designated to conduct an investigation of a complaint shall complete the investigation and prepare written findings, conclusions, and recommended disposition within 60 days of the date the complaint was received by the Board, unless an extension is granted in writing by the Board. A copy of the written investigation findings, conclusions, and recommended disposition shall be provided to the Board.
5. Within ten business days of receipt of the investigator's written findings, conclusions, and recommended disposition, the Board shall convene and review the complaint, findings, conclusions, and recommended disposition. As soon as practicable after giving due consideration to a complaint, or, if a hearing was held, after the hearing, the Board shall take any action or combination of actions which it deems appropriate and which it is lawfully empowered to take, including, but not limited to the following:
  - a. dismiss the complaint based on any of the following grounds: (i) the complaint does not allege facts sufficient to constitute a violation of the Code of Ethics; or (ii) the Board has no jurisdiction over the matter; or (iii) failure of the complainant to cooperate in the Board's review and consideration of the complaint; or (iv) the complaint is defective in a manner which results in the Board being unable to make any sound determination; or
  - b. determine that no violation of the Code of Ethics has occurred; or
  - c. determine that the complaint alleges facts sufficient to constitute a violation of the Code of Ethics, in which case the Board shall promptly send written notice of such determination to the accused and to the party who made the complaint; or
  - d. determine that further information must be obtained in order for the Board to determine whether the complaint alleges facts sufficient to constitute a violation of the Code of Ethics; and (i) request the investigator to further investigate the complaint and report all findings back to the Board; or (ii) schedule the complaint for further review and consideration at a future time certain, in which case the Board shall promptly send written notice of such determination to the accused and to the party who made the complaint; or (iii) set a public hearing to take testimony and evidence regarding the alleged violation of the Code of Ethics; or (iv) refer the complaint to any appropriate authorities for criminal investigation or prosecution; or (v) refer the complaint along with the Board's findings and conclusions, to an appropriate authority for disciplinary action or other suitable remedial action.
6. After the Board has made its final determination, the Board shall issue its written findings of fact, conclusions, and recommended disposition and may issue any additional reports, opinions, and recommendations as it deems advisable under the circumstances. All such reports shall be in compliance with all state and City laws governing confidentiality, open government, and torts. All such reports shall be reviewed by the City Attorney or independent legal counsel in the event of a conflict of interest prior to their issuance.
7. Copies of the written findings of fact, conclusions, and recommended disposition of the Board of Ethics shall be forwarded by certified mail to the complaining party and the party complained against at their last known addresses. Additional copies of the written findings of fact, conclusions, and recommended disposition of the Board of Ethics shall be forwarded to the investigator, the City Attorney or the City Attorney's designee, the City Council for matters

involving a City-elected official, a member of the Public Utilities Board, or the City Manager and the Public Utilities Board, for matters involving the Director of Public Utilities. The disposition shall not be implemented until the time for requesting a hearing or review has lapsed and no such hearing or review has been requested.

E. Limitations on Board's Power. The Board does not have the authority to reverse or otherwise modify a prior action of a City official. If the Board finds a prior action of a City official to have been performed in violation of the Code of Ethics, the Board may advise the appropriate party or parties that the action should be reconsidered. Upon such advice by the Board, the action shall be reconsidered by the appropriate person or public body. If the Board determines an existing City contract to be in violation of the Code of Ethics after such determination and advice from the Board, the City may void or seek termination of the contract if legally permissible. The Board may refer a matter to the City Attorney or independent legal counsel, in the event of a conflict, for review and consideration for appropriate action. Upon completion of review and consideration, the City Attorney's Office shall report its findings to the Board.

F. Ex Parte Communications. After a complaint has been filed and during the pendency of a complaint before the Board, no member of the Board may communicate directly or indirectly with any party or other person about any issue of fact or law regarding the complaint, except that:

1. the members of the Board may obtain legal advice from the City Attorney or, in the event of a conflict, with independent legal counsel and may discuss the complaint with their staff; and
2. the members of the Board may discuss the complaint at a lawfully conducted meeting. If any person attempts to communicate with a Board member regarding the pending complaint, the Board member shall report the substance of the communication to the Board on the public record at the next regular meeting of the Board.

G. Statute of Limitations. No action may be taken on any complaint which is filed later than three years after a violation of the Code of Ethics is alleged to have occurred.