City of Tacoma
Board of Ethics Meeting
AGENDA

Monday, April 13, 2009 – 6:30 p.m.

Tacoma Municipal Building
747 Market Street
Room 248

I. Call to Order

II. Review final recommended changes to Tacoma Municipal Code Section 1.46.045, Board of Ethics

III. Discussion of upcoming Government Performance and Finance Committee meeting

IV. Unfinished Business

V. Board Member Comments

VI. Public Comment

VII. Adjournment
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 and one alternate member who are residents of the City appointed by majority vote of the City Council upon recommendation by the City Council Appointments Committee. The alternate member shall fill in for a regular member, as set forth in the Board’s written rules. 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.

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.
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;
   ab. render and publish informal or 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
   be. 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. (Ord. 27687 Ex. A; passed Jan. 22, 2008; Ord. 27504 § 5; passed Jun. 27, 2006)