



City of Tacoma

Special Meeting of the Board of Ethics

AGENDA

Monday, February 22, 2010 – 6:30 p.m.

**Tacoma Municipal Building
747 Market Street
Room 248**

- I. Call to Order**
- II. Approval of minutes of January 11, 2010**
- III. Proposed suggestions for changes to Tacoma Municipal Code Section 1.46**
- IV. Public Comment**
- V. Adjournment**



Board of Ethics Minutes

<http://www.cityoftacoma.org>

Tacoma Municipal Building, Room 248, 747 Market Street, Tacoma, Washington 98402

January 11, 2010

The meeting was called to order at 6:31 p.m.

Board Members Present: 4– Susan Jensen, Joseph Lopez, Vice-Chair Stan Betts,
and Chair Julie Myers

Board Members Absent: 0

Chair Myers brought the meeting to order, stating that Members Betts, Jensen, Lopez and herself were in attendance. Staff members Yvonne Yaskus and Martha Lantz were also in attendance.

APPROVAL OF MINUTES OF OCTOBER 12, 2009

Member Betts moved to hold over the approval of the minutes of the October 12, 2009 meeting to the meeting of April 12, 2010. Seconded by Member Lopez. Voice vote was taken and carried; the motion passed.

RESOLUTION OF COMPLAINT 09-002 – REVIEW THE SCOPE OF JURISDICTION OVER ALLEGATIONS OF VIOLATIONS OF THE CITY CHARTER

Chair Myers opened up this item for discussion. Lengthy discussion ensued regarding the jurisdiction of this Board with respect to allegations of violations of the City Charter, discrepancies among the Tacoma Municipal Code vs. the City Charter and state law, and housekeeping changes to the Municipal Code.

Chair Myers moved to establish two separate two-member committees to review and make suggested housekeeping changes to Tacoma Municipal Code Section 1.46. Seconded by Member Betts. Voice vote was taken and carried; the motion passed.

By general consensus, Chair Myers and Member Jensen will comprise one committee to review the code up through 1.46.045, and Vice-Chair Betts and Member Lopez will review beginning with section 1.46.050.

Each committee will send their proposed draft changes to staff member Yaskus prior to the next meeting.

Discussion ensued as to whether or not this matter should wait until the next regularly scheduled meeting, which is to be held in April.

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Chair Myers moved to hold a Special Meeting of the Board of Ethics to discuss the proposed draft code changes, to be held on February 22, 2010. Voice vote was taken and carried; the motion passed.

REVIEW OF PROPOSED “PLAIN LANGUAGE” PAMPHLET FOR CODE OF ETHICS

Member Lopez spoke about the need to have basic information available on the Board of Ethics webpage, and he shared a draft version of that material, along with a pamphlet from another agency regarding their Board of Ethics. Discussion ensued about what types and format of information should be available to the public.

Deputy City Attorney Lantz stated that she would like to review all documents prior to web posting and/or printing.

Discussion of emails addresses ensued. Staff member Yaskus will look into getting a dedicated email address for the Board of Ethics that will be directed to herself.

* * * * *

Member Lopez moved to approve the web posting of the material presented tonight, with the typographical errors corrected, to the Board of Ethics website. Seconded by Member Betts. Voice vote was taken and carried; the motion passed.

STAFF UPDATES

Staff member Yaskus informed the Board that their Administrative Procedures were approved by the City Council on December 15, 2009. She also provided an update on the appointment of the vacancies to the Board, which the Appointments Committee will be considering at their next regularly scheduled meeting of January 25, 2010.

Staff member Lantz discussed executive sessions vs. deliberative sessions of the Board. She stated that if the situation arises again, that instead of an executive session to discuss a complaint, the session should be characterized as a deliberative session. She further stated that the difference is when you are deliberating the Board is not held to the same provisions as an executive session, such as stating when the starting and stopping time of executive sessions are to be. After a deliberative session, the body is not compelled to state what was discussed, but rather can prepare a written account of the deliberative process. She further stated that no notice is required for a deliberative session; such a session is not covered by the Open Public Meetings Act.

BOARD MEMBER COMMENTS

There were no comments by the Board.

PUBLIC COMMENT

Mike Price discussed his recent complaint against a covered official, and stated that he had not received a response from the Board regarding his recent letter to the Board.

Chair Myers stated that she was not aware that Mr. Price was awaiting a response.

After Mr. Price further asked other questions of the Board, staff member Yaskus stated that Public Comment is not necessarily an interactive engagement between members of the public and the Board, but rather an opportunity for members of the public to voice their opinion or case. She further stated she would record questions posed by Mr. Price for the Board's consideration.

Board Member Jensen stated she supported Ms. Yaskus in her statement, and that it is also not customary to probe the mental processes of this quasi-judicial board, and that the orders generally speak for themselves.

Mr. Price continued his comments regarding his previous complaint.

There were no other public comments.

ADJOURNMENT

There being no further business, the meeting was adjourned at 8:40 p.m.

Julie Myers, Chair

Yvonne Yaskus
Records Management Supervisor/Public Records Officer
City Clerk's Office

Chapter 1.46
CODE OF ETHICS

- Sections:
- 1.46.010 Purpose.
- 1.46.020 Definitions.
- 1.46.030 Prohibited conduct.
- 1.46.040 Complaint process.
- 1.46.045 Board of Ethics.
- 1.46.050 Penalties for noncompliance.
- 1.46.060 Where to seek review.
- 1.46.070 Severability.
- 1.46.080 Financial disclosure.

1.46.010 Purpose.

A. It is the policy of the City of Tacoma to uphold, promote, and demand the highest standards of ethics from all of its employees and officials, whether elected, appointed, or hired. City officers and employees shall maintain the utmost standards of personal integrity, truthfulness, honesty, and fairness in carrying out their public duties; avoid any improprieties in their roles as public servants and never use their City position or powers for improper personal gain.

B. It is the intention of the City Council that this chapter be liberally construed, within the confines of RCW 42.23 and Section 6.6 of the Tacoma City Charter to accomplish its purpose of protecting the public against decisions that are affected by undue influence, conflicts of interest, or any other violation of this Code of Ethics. In construing this chapter, City officials and the Board of Ethics should be guided by common sense and practicality. This Code of Ethics is supplemental to state law, RCW 42.23, as now or hereafter amended. (Ord. 27504 § 1; passed Jun. 27, 2006; Ord. 26768 § 1; passed Jan. 9, 2001)

1.46.020 Definitions.

The following words and phrases as used in this chapter, unless the context clearly indicates otherwise, shall have the following meanings:

- A. "Business" means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, consultant, holding company, joint stock company, receivership, trust, or any legal entity organized for profit.
- B. "City-elected official" means any person who is elected at a general or special election to any public office of the City of Tacoma and any person appointed to fill a vacancy in any such office.

C. "City officer or employee" means every individual appointed, hired, or otherwise selected to an office, position, committee, board, task force, or similar multi-member body with the City, or any subdivision thereof, whether such individual is paid or unpaid; provided that "City officer or employee" shall not mean or include a City-elected official.

D. "City official" means both a City-elected official and a City officer or employee.

E. "Compensation" means payment in any form for real or personal property or services of any kind.

F. "Gift" means a voluntary transfer of real or personal property of any kind or the voluntary rendition of services of any kind without consideration of equal or greater value.

H. "Immediate family" shall have the meaning set forth in TMC Section 1.24.130.

I. "Person" means any individual or corporation, business, or other entity, however constituted, organized, or designated. (Ord. 27504 § 2; passed Jun. 27, 2006; Ord. 26768 § 1; passed Jan. 9, 2001)

1.46.030 Prohibited conduct.

The following shall constitute violations of this Code of Ethics:

~~A.B. Beneficial Interests in Contracts Prohibited:~~

No City official shall participate in his or her capacity as a City official in the making of a contract in which he or she has a financial interest, direct or indirect, within the meaning of Section 6.6 of the Charter of the City of Tacoma, or performs in regard to such a contract some function requiring the exercise of discretion on behalf of the City. Except, that this prohibition shall not apply where the City official has only a remote interest in the contract, and where the fact and extent of such interest is disclosed and noted in the official minutes or similar records of the City prior to formation of the contract, and thereafter the City Council authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer(s) having the remote interest. For purposes of this section, a "remote interest" means:

- 1. That of a non-salaried 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;

~~Deleted:~~ , but not including any reasonable hosting, including travel expenses, entertainment, meals, or refreshments furnished in connection with appearances, ceremonies, and occasions reasonably relating to official City business, where otherwise permitted by law.¶

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~~Deleted:~~ Hearing Examiner" shall mean the duly appointed and qualified Hearing Examiner or Deputy Examiner of the City of Tacoma, or his or her designee, who shall possess qualifications comparable to those required of the Hearing Examiner and Deputy Examiner pursuant to Chapter 1.23 of the Tacoma Municipal Code ("TMC").

~~Comment [SJ1]:~~ Do we want to keep this "appearance stuff"?

~~Deleted:~~ including the appearance of impropriety;

~~Comment [SJ2]:~~ Except for lobbyists.

~~Deleted:~~ It is further the policy of the City that the public's right to know of complaints of violations of the Code of Ethics by City-elected officials far outweighs any right that these matters remain secret and private and that full access to information concerning the interests that seek to influence governmental decision-making must be assured as a fundamental and necessary precondition to the sound governance of a free society.

~~Comment [SJ4]:~~ This is void for vagueness .

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~~Deleted:~~ General Prohibition Against Conflicts of Interest. In order to avoid becoming involved or implicated in a conflict of interest or impropriety, or an appearance of conflict of interest or impropriety, no current City official should be involved in any activity that might be seen as conflicting with the conduct of official City business or as adverse to the interests of the City. Even the appearance of the following prohibited conduct alone may be sufficient to constitute a violation of this Code of Ethics.

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~~Comment [SJ3]:~~ Check this reference - -may be wrong.

- 3. That of a landlord or tenant of a contracting party;
- 4. That of a holder of less than 1 percent of the shares of a corporation, limited liability company, or other entity which is a contracting party.

B. Beneficial Influence in Contract Selection Prohibited. No City official shall influence the City's selection of, or its conduct of business with, a corporation, person, or firm having or proposing to do business with the City if the City official has a financial interest in or with the corporation, person, or firm, unless such interest is a remote interest and where the fact and extent of such interest is disclosed and noted in the official minutes or similar records of the City prior to formation of the contract, as defined in the preceding section.

C. Representation of Private Person at City Proceeding Prohibited. No City official shall appear on behalf of a private person, other than himself or herself or an immediate family member or except as a witness under subpoena, before any regulatory governmental agency or court of law in an action or proceeding to which the City or a City official in an official capacity is a party, or accept a retainer or compensation that is contingent upon a specific action by the City.

D. Certain Private Employment Prohibited. No City official shall engage in or accept private employment, or render services for, any private interest when such employment or service is incompatible with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties.

E. Beneficial Interest in Legislation Prohibited. No City official, in appearing before the City Council or when giving an official opinion before the City Council, shall have a financial interest in any legislation coming before the City Council and participate in discussion with or give an official opinion to the City Council, unless such interest is a remote interest and where the fact and extent of such interest is disclosed and noted on the record of the Council, or similar records of the City, prior to consideration of the legislation by the City Council.

F. Disclosure of Confidential Information Prohibited. No City official shall disclose or use any confidential, privileged, or proprietary information gained by reason of his or her official position for a purpose which is for other than a City purpose; provided, that nothing shall prohibit the disclosure or use of information which is a matter of public knowledge, or which is available to the public on request.

G. Improper Use of Position Prohibited. No City official shall knowingly use his or her office or position to secure personal benefit, gain or profit, or use his or her position to secure special privileges or exceptions for himself, herself, or for the benefit, gain, or profits of any other persons.

H. Improper Use of City Personnel Prohibited. No City official shall employ or use any person under his or her official control or direction for the personal benefit, gain, or profit of the City official or another.

I. Improper Use of City Property Prohibited. No City official shall use City-owned vehicles, equipment, materials, money, or property for personal or private convenience or profit. Use is restricted to such services as are available to the public generally, for the authorized conduct of official business, and for such purposes and under such conditions as are approved by administrative order of the City Manager or Director of Public Utilities; provided, the use of a City vehicle by a City official participating in a carpooling program established by the City, and for a purpose authorized under such program, shall not be considered a violation of this section or of any other provision of this chapter.

J. Acceptance of Compensation, Gifts, Favors, Rewards, or Gratuity Prohibited. No City official may, directly or indirectly, give or receive, or agree to give or receive, any compensation, gift, favor, reward, or gratuity for a matter connected with or related to the City official's services with the City of Tacoma.

K. Impermissible Conduct After Leaving City Service.

1. Disclosure of Privileged, Confidential, or Proprietary Information Prohibited. No former City official shall disclose or use any privileged, confidential, or proprietary information gained because of his or her City employment or office.

2. Participation in City Matters Prohibited. No former City official shall, during the period of one year after leaving City office or employment:

a. Assist any person in matters involving the City if, while in the course of duty with the City, the former City official was officially involved in the matter, or personally and substantially participated in the matter, or acted on the matter.

b. Represent any person as an advocate in any matter in which the former City official was involved while a City official; or

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Deleted: except this prohibition shall not apply to:
 1. Attendance of a City official at a hosted meal when it is provided in conjunction with a meeting directly related to the conduct of City business or where official attendance by the City official as a City representative is appropriate;

Deleted: 2. An award publicly presented in recognition of public service; or
 3. Any gift valued at \$50 or less, which cannot reasonably be presumed to influence the vote, action, or judgment of the City official or be considered as part of a reward for action or inaction.

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c. Participate as or with a bidder, vendor, or consultant in any competitive selection process for a City contract in which he or she assisted the City in determining the project, or work to be done, or the process to be used.

3. Duty to Inform. Whenever a City official wishes to contract with a former City official for expert or consultant services within one year of the latter's leaving City service or office, advance notice shall be given to the City Manager for matters concerning City government, or the Director of Public Utilities for matters concerning the Department of Public Utilities, about the proposed agreement. [The Manager or Directors may determine if there is a conflict with this Code of Ethics or submit the matter to the Board for an opinion.](#)

4. Exceptions. The prohibitions of subsections 2.a and 2.b of this section shall not apply to a former City official acting on behalf of a governmental agency, unless such assistance or representation is adverse to the interest of the City. (Ord. 27504 § 3; passed Jun. 27, 2006; Ord. 26768 § 1; passed Jan. 9, 2001).

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 [any city 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 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 [with the City.](#)

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 official.](#)

C. Duties and Powers of the Board.

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 investigate and form recommendations regarding](#) 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

Deleted: 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

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

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1.46.040 . Complaint process.¶
A. Subsections E, G, and I herein shall expire and be of no force or effect as of 12:01 a.m. on the 1st day of January, 2007, except as to any complaints of a violation of the Code of Ethics previously received by the Hearing Examiner and for which no final disposition has been implemented in accordance with the provisions of this Code of Ethics. ¶
B. A complaint that this Code of Ethics has been violated may be filed with any City official, including, without limitation, the City Manager, the Director of Public Utilities, the Mayor, any member of the City Council or Utility Board, any member of the Board of Ethics, the City Clerk, the Hearing Examiner, or the City Attorney.¶
C. No person shall knowingly file a false complaint or report of violation of this Code of Ethics.¶
D. Except as otherwise provided herein, any City official knowingly receiving a complaint that this Code of Ethics has been violated has an obligation to promptly forward the complaint, in writing, to the City Manager for matters concerning City government or any matters concerning a member of a City board, commission, committee, task force, or other multi-member body, or the Director of Public Utilities for matters concerning the Department of Public Utilities, whomever may be appropriate. The City Manager or the Director of Public Utilities, as appropriate, shall promptly designate an individual to conduct an investigation of the complaint.¶
E. Any City official knowingly re[...]

Deleted: not be implemented except upon compliance with the predisciplinary procedures to which the City officer or employee is entitled.¶
I. On or before the third City Council meeting following receipt of the investigator's written findings, conclusions, and recommended [...]

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Comment [SJ5]: Inconsistent to limit jurisdiction when

Deleted: the City Manager, the Director of Public Utilities, a member of the Public Utility Board ("Utility Board"), or a City-elected official. ¶

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chapter, [the City Charter](#) and for such other legislation affecting the subject matter of this chapter as the Board of Ethics may deem necessary or desirable.

2. All [opinions and recommendations](#) of the Board shall be filed with the City Clerk and are open to public inspection. ▾

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

a. respond, as it deems appropriate, to requests from [city officials for opinions, regarding prospective conduct. Provided, however, that, neither a request for an 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.](#) ▾

b. render and publish [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](#)

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 [current or former city official](#) 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, [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, shall be provided to the Board.](#)

5. Within ten business days of receipt of the investigator's written findings, [the Board shall convene and review the complaint, and findings. The Board may convene an investigative hearing to take](#)

[testimony and evidence if it is deemed necessary. The Board may seek an order for the production of evidence as permitted by TCC 1.46.050.](#)

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 [and recommend dismissal](#); 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. [refer the complaint to any appropriate authorities for criminal investigation or prosecution; or \(](#)

[e. 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 reviewed by the City Attorney or independent legal counsel in the event of a conflict of interest prior to their issuance. The Board's conclusions shall be based on the preponderance of the evidence standard.](#)

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

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Deleted: 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

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Deleted: to the extent allowed by law; the Board may decline to render an opinion in response to any request for an advisory opinion;]

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Comment [SJ6]: Need to discuss this because it makes not sense to have it under duties of the board.

Deleted: 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 v... [3]

Deleted: determine that further information must be obtained in of... [4]

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Comment [SJ7]: ?

Deleted: City-elected official, a member of the Utility Board, the I... [5]

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Comment [SJ8]: ?

Deleted: All such reports shall be in compliance with all state and City... [6]

Comment [SJ9]: ?

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the Public Utilities Board, for matters involving the Director of Public Utilities. [All other recommendations shall be forwarded as is appropriate by the City Attorney.](#)

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.

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. [Board deliberations are subject to exemption from the Open Public Meetings Act as permitted by law.](#) 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.

[3. the Board shall not take testimony or comments from any person regarding a complaint except as presented in an investigative report on in the course of a duly noticed public hearing.](#)

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. 27824 Ex. A; passed Aug. 4, 2009; Ord. 27687 Ex. A; passed Jan. 22, 2008; Ord. 27504 § 5; passed Jun. 27, 2006)

1.46.050 Penalties for noncompliance.

A. [The Board may recommend and](#) The City Manager, Director of Public Utilities, Tacoma Public Utility Board, or City Council, as appropriate, may

impose upon any person found, by a preponderance of the evidence, to have violated any provision of this Code of Ethics any combination of the following penalties:

1. A cease and desist order as to violations of this Code of Ethics;

2. An order to disclose any reports or other documents or information requested by the City Manager, the Director of Public Utilities, the Hearing Examiner, the Public Utility Board, the City Council, or the Board of Ethics. [Provided that such orders may also be provided for investigative purposes at the Board's request.](#)

3. Discipline, up to and including termination or removal from any position, whether paid or unpaid, excluding elected positions, only after notice and hearing as provided by law. ~~The pre-disciplinary procedure set forth in the provisions of the Charter and TMC 1.24.955 shall be followed for permanent employees in the Classified City Service.~~

4. Exclusion from bidding on City contracts for a period of up to five years; and/or

5. Termination or invalidation of contract(s) entered into in violation of the Code of Ethics, only if such contract(s) provide for termination in the event of a Code of Ethics violation.

B. Removal – Member of Board, Commission, or Committee. In addition to any other penalties that may be imposed under this chapter and notwithstanding any other provisions of City ordinance, the City Council may, for cause and by a majority vote of the City Council, remove from office any person who is currently a member of a City board, commission, committee, task force, or other multi-member body. Prior to implementation of such removal, the City Council shall provide notice to the person subject to removal and hold a public hearing. The findings and conclusions and disposition of the City Council shall be based upon evidence in the record. In the event of an appeal to the Hearing Examiner, the recommendation of the Hearing Examiner shall be subject to review and final, non-reviewable disposition by the City Council. The provisions of this section shall supplement any other procedures required by the Tacoma City Charter or other applicable state or federal law for removal of such persons.

C. In addition to any other penalties set forth in this chapter, any current or former City-elected official against whom a complaint has been made and whom the City Council determines to be found by a preponderance of the evidence to have violated the

Deleted: 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.

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Comment [SJ10]: ?

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Code of Ethics may be subject to any one or more of the following actions by a majority vote of the City Council:

1. Admonition. An admonition shall be a verbal statement approved by the City Council and made to the individual by the Mayor, or his or her designee, or if the complaint is against the Mayor, the Deputy Mayor, or his or her designee.
2. Reprimand. A reprimand shall be administered to the individual by a resolution of reprimand by the City Council. The resolution 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. If the City-elected official objects to the content of such resolution, he or she may file with the Mayor or, if the complaint is against the Mayor, the Deputy Mayor, a request for review stating the reasons for his or her objections and asking for a review of the content of the resolution of reprimand by the City Council. The City Council shall review the resolution of reprimand in light of the City Council's findings and the request for review and may take whatever action, if any, appears appropriate under the circumstances. The action of the City Council shall be final and not subject to further review or appeal except as may be otherwise provided by law.
3. Censure. A resolution of censure shall be a resolution read personally to the individual in public. The resolution 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 City-elected official shall appear at a City Council meeting at a time and place directed by the City Council to receive the resolution of censure. Notice shall be given at least 20 calendar days before the scheduled appearance, at which time a copy of the proposed resolution of censure shall be provided to the City-elected official. Within seven days of receipt of the notice, if the City-elected official objects to the contents of such resolution, he or she may file with the Mayor or, if the complaint is against the Mayor, the Deputy Mayor, a request stating the reasons for objections and asking for a review of the content of the proposed resolution of censure by the City Council. Such request will stay the administration of the censure. The City Council shall review the proposed censure in light of the City Council's findings and the request for review and may take whatever action, if any, appears appropriate under the circumstances. The action of the City Council shall be final and not subject to further review or appeal except as may be otherwise provided by law. If no such request is received, the resolution of censure

shall be administered at the time and place set. It shall be read publicly, and the City-elected official shall not make any statement in support of or in opposition thereto, or in mitigation thereof. A censure shall be administered at the time it is scheduled whether or not the individual appears as required.

4. Other penalties. Budget reduction or restriction, loss of seniority, loss of a committee assignment, or loss of appointment as a representative of the City on any board, commission, committee, task force, or other multi-member bodies which require an appointment or confirmation of an appointment by the City Council.

If the City-elected official objects to the action taken by the City Council, he or she may file a request with the Mayor or, if the complaint is against the Mayor, the Deputy Mayor, stating the reasons for his or her objections and asking for a review of the action taken. The City Council shall review the action taken in light of the City Council's findings and request for review and may take whatever further action, if any, appears appropriate under the circumstances. The action of the City Council shall be final and not subject to further review or appeal except as may be otherwise provided by law. (Ord. 27504 § 6; passed Jun. 27, 2006; Ord. 26768 § 1; passed Jan. 9, 2001)

1.46.060 Where to seek review.

A. Cease and Desist Order. If ordered to cease and desist violating this Code of Ethics, an affected party may seek review by writ of review from the Pierce County Superior Court pursuant to RCW 7.16, or other appropriate legal action.

B. Public Disclosure. If ordered to disclose any documents or papers pursuant to this Code of Ethics, an affected party may seek review by writ of review from the Pierce County Superior Court pursuant to RCW 7.16, or other appropriate legal action.

C. ↓

D. Discipline or Removal. If an employee or officer is disciplined or removed from office, then the person disciplined or removed from office may seek whatever remedies exist at law or in equity.

E. Exclusion from Public Bidding. If ordered to be excluded from bidding on public contracts and the exclusion actually occurs, the person excluded may seek whatever remedies exist at law or in equity.

F. Termination of Contract(s). If termination of contract(s) is ordered, the person whose contract(s) was/were terminated may seek whatever remedies

Comment [SJ11]: There is not provision for a civil penalty so need for review.

Deleted: Civil Penalty. If ordered to pay a civil penalty, an appeal may be taken in the form of a trial de novo in the Tacoma Municipal Court, which shall hear the case according to the Civil Rules for Courts of Limited Jurisdiction (CRLJ) and applicable local rules of the Tacoma Municipal Court. This appeal shall be taken by filing in the Tacoma Municipal Court a notice of appeal within 14 days of the date of the final written order. The person filing the appeal shall also, within the same 14 days, serve a copy of the notice of appeal on the person who issued the final written order and the City Attorney, or his or her designee, and file an acknowledgment or affidavit of service in the Tacoma Municipal Court.

exist at law or in equity. (Ord. 26768 § 1; passed Jan. 9, 2001)

1.46.070 Severability.

If any section, subsection, paragraph, sentence, clause, or phrase of this chapter is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this chapter. (Ord. 26768 § 1; passed Jan. 9, 2001)

1.46.080 Financial disclosure.

All persons presently required to file reports under the public disclosure law of the state of Washington shall, upon assuming any City office or position, file with the City Clerk a true and correct copy of the completed report required to be filed under state law. (Ord. 26768 § 1; passed Jan. 9, 2001)

Comment [SJ12]: This is not provided for in the enabling statute or the charter May be in the wrong place in code. Check with Martha. Is it a violation of the COE to fail to do this?

1.46.040 Complaint process.

- A. Subsections E, G, and I herein shall expire and be of no force or effect as of 12:01 a.m. on the 1st day of January, 2007, except as to any complaints of a violation of the Code of Ethics previously received by the Hearing Examiner and for which no final disposition has been implemented in accordance with the provisions of this Code of Ethics.
- B. A complaint that this Code of Ethics has been violated may be filed with any City official, including, without limitation, the City Manager, the Director of Public Utilities, the Mayor, any member of the City Council or Utility Board, any member of the Board of Ethics, the City Clerk, the Hearing Examiner, or the City Attorney.
- C. No person shall knowingly file a false complaint or report of violation of this Code of Ethics.
- D. Except as otherwise provided herein, any City official knowingly receiving a complaint that this Code of Ethics has been violated has an obligation to promptly forward the complaint, in writing, to the City Manager for matters concerning City government or any matters concerning a member of a City board, commission, committee, task force, or other multi-member body, or the Director of Public Utilities for matters concerning the Department of Public Utilities, whomever may be appropriate. The City Manager or the Director of Public Utilities, as appropriate, shall promptly designate an individual to conduct an investigation of the complaint.
- E. 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 Hearing Examiner who shall refer the complaint to the City Council for review of the complaint and initiation of an independent investigation and preparation of a report to be made to the City Council.
- F. The person designated by the City Manager or the Director of Public Utilities to conduct an investigation shall complete the investigation and prepare written findings, conclusions, and recommended disposition within 60 days of the date the complaint was received by the City Manager or the Director of Public Utilities, unless an extension is granted in writing by either the City Manager or the Director of Public Utilities. A copy of the investigator's written findings, conclusions, and recommended disposition shall be provided to the City Manager or the Director of Public Utilities, as appropriate.
- G. The person designated by the City Council to conduct an investigation shall complete the investigation and prepare written findings, conclusions, and recommended disposition within 60 days of the date the complaint was received by the Hearing Examiner unless an extension is granted in writing by the City Council. A copy of the investigator's written findings, conclusions, and recommended disposition shall be provided to the City Council.
- H. Within five business days of receipt of the investigator's written findings, conclusions, and recommended disposition, the City Manager or the Director of Public Utilities, as appropriate, shall cause to be prepared a written disposition of the complaint. Copies of the recommended disposition and the investigation findings and conclusions shall be forwarded by certified mail to the complaining party and the party complained against at their last known addresses. Additional copies of the recommended disposition shall be forwarded to the investigator, the City Attorney or the City Attorney's designee, and the person(s) responsible for acting on the recommended disposition. The recommended disposition shall not be implemented until the time for requesting a formal hearing, pursuant to Section J below, has lapsed and no such hearing has been requested. A disposition involving discipline shall

not be implemented except upon compliance with the predisciplinary procedures to which the City officer or employee is entitled.

- I. On or before the third City Council meeting following receipt of the investigator's written findings, conclusions, and recommended disposition, the City Council shall adopt written findings, conclusions, and

a disposition. Copies of the findings, conclusions, and disposition of the City Council shall be forwarded by certified mail to the complaining party and the party complained against at their last known addresses. Additional copies of the findings, conclusions, and disposition shall be forwarded to the investigator and the City Attorney or the City Attorney's designee. The recommended 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. A disposition involving discipline shall not be implemented except upon compliance with the predisciplinary procedures to which the City officer or employee is entitled.

J. Except with regard to actions taken pursuant to TMC 1.46.050.C, the person complained against may, within ten business days following the date of the disposition, finding a violation of this Code of Ethics, request in writing a formal hearing before the Hearing Examiner. In the event a formal hearing is requested, the Hearing Examiner shall conduct the hearing process in a manner consistent with the procedures set forth in TMC Chapter 1.23; provided that, in the event of a request for a formal hearing by the City Manager or a City-elected official, a Hearing Examiner pro tem shall be designated to conduct and preside over the formal hearing process. A decision of the City Council to remove a member of a City board, commission, committee, task force, or other multi-member body from office shall not be subject to review by the Hearing Examiner if the City Council has determined that its decision to remove such person from office will not be subject to review.

K. Within 30 days after the conclusion of the hearing, the Hearing Examiner shall, based upon a preponderance of the evidence, prepare findings of fact, conclusions of law, and his or her order or recommendation. Copies of the Hearing Examiner's findings, conclusions, and order or recommendation shall be forwarded by certified mail to the complaining party and the party complained against at their last known addresses. Additional copies of the findings, conclusions, and order shall be forwarded to the investigator, the City Attorney or the City Attorney's designee, and the person(s) or body responsible for acting on the Hearing Examiner's order or recommendation. (Ord. 27504 § 4; passed Jun. 27, 2006; Ord. 26768 § 1; passed Jan. 9, 2001)

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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 [S11] 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.

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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

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e. 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

All such reports shall be in compliance with all state and City laws governing confidentiality, open government, and torts[SJ2]