



MEMORANDUM

DATE: November 21, 2013
TO: East Bellevue Community Council
FROM: Michelle Murphy, Deputy City Clerk
SUBJECT: Code of Ethics

The Community Council has expressed an interest in establishing a Code of Ethics. The following materials are presented as examples of the Code of Ethics as adopted by the City of Kirkland. Also included is the Code of Ethics established by RCW 42.23 for municipal officers.

ORDINANCE O-4348

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO THE ESTABLISHMENT OF A NEW CHAPTER 3.14 IN THE KIRKLAND MUNICIPAL CODE, CODE OF ETHICS.

WHEREAS, the citizens and business of Kirkland are entitled to have fair, ethical and accountable local government that has earned the public's full confidence for integrity; and

WHEREAS, adopting a Code of Ethics for members of the City Council and the City's boards and commissions will promote public confidence in the integrity of local government and fair operation; and

WHEREAS, the Code of Ethics will provide the basis for education and training for City officials both elected and appointed, to ensure that the highest standards and best practices with regard to ethics will be followed;

NOW, THEREFORE, the City Council of the City of Kirkland do ordain as follows:

Section 1. The Code of Ethics is established as Chapter 3.14 of the Kirkland Municipal Code as set forth in the attached Exhibit "A."

Section 2. If any section, subsection, sentence, clause, phrase, part or portion of this ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

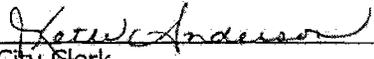
Section 3. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in open meeting this 7th day of February, 2012.

Signed in authentication thereof this 7th day of February, 2012.


MAYOR

Attest:



City Clerk

Approved as to Form:



City Attorney

City of Kirkland

Chapter 3.14 CODE OF ETHICS

Sections:

- 3.14.010 Policy.
- 3.14.020 Definitions.
- 3.14.030 Prohibited conduct.
- 3.14.040 Financial disclosure statements.
- 3.14.050 Ethical standards.
- 3.14.060 Ethics officer.
- 3.14.070 Advisory opinions.
- 3.14.080 Complaints, investigations, hearings and enforcement.

3.14.010 Policy.

(a) Purpose. The Kirkland city council has adopted a code of ethics for members of the city council and the city's boards and commissions to promote public confidence in the integrity of local government and its fair operation. This code of ethics will provide the basis for education and training for city officials, both elected and appointed, to ensure that the highest standards and best practices with regard to ethics will be followed.

(b) Intent. The citizens and businesses of Kirkland are entitled to have fair, ethical and accountable local government that has earned the public's full confidence. In keeping with the city of Kirkland's commitment to excellence, the effective functioning of democratic government therefore requires that:

- (1) Public officials, both elected and appointed, comply with the laws and policies affecting the operations of government;
- (2) Public officials be independent, impartial and fair in their judgment and actions;
- (3) Public office be used for the public good, not for personal gain; and
- (4) Public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility. (Ord. 4348 § 1 (Exh. A) (part), 2012)

3.14.020 Definitions.

(a) "Official" means a member of the city council or a member of council-appointed city boards and commissions and other council-appointed task groups or committees, including youth members.

(b) "Relative" means spouse or domestic partner, child, step-child, parent, step-parent, parent-in-law, grandparent, grandchild, sibling, aunt, uncle, niece, nephew, son- or daughter-in-law, brother- or sister-in-law. (Ord. 4348 § 1 (Exh. A) (part), 2012)

3.14.030 Prohibited conduct.

(a) Conflicts of Interest. In order to ensure their independence and impartiality on behalf of the common good, officials shall not participate in government decisions in which any of the following has a financial interest: (1) the official, (2) a relative, (3) an individual with whom the official resides, or (4) an entity that the official serves as an

officer, director, trustee, partner or employee. Officials shall abstain from participating in deliberations and decision-making where conflicts exist. This section shall not apply (1) to decisions regarding taxes or fees, (2) if the financial interest is shared with more than ten percent of the city's population, or (3) if the financial interest exists solely because of the official's ownership of less than one percent of the outstanding shares of a publicly traded corporation.

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

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

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

(e) Solicitations of Charitable Contributions. No official may make direct personal solicitations for charitable contributions from city employees.

(f) Gifts and Favors. Officials shall not take any special advantage of services or opportunities for personal gain, by virtue of their public office, which are not available to the public in general. They may not solicit or receive any thing of monetary value from any person or entity where the thing of monetary value has been solicited, or received or given or, to a reasonable person, would appear to have been solicited, received or given with intent to give or obtain special consideration or influence as to any action by the official in his or her official capacity; provided, that nothing shall prohibit campaign contributions which are solicited or received and reported in accordance with applicable law. They shall not accept or solicit any gifts, favors or promises of future benefits except as allowed by Section 3.80.140.

(g) Confidential Information. Officials shall not disclose or use any confidential information gained by reason of their official position for other than a city purpose. "Confidential information" means (1) specific information, rather than generalized knowledge, that is not available to a person who files a public records request, and (2) information made confidential by law. (Ord. 4348 § 1 (Exh. A) (part), 2012)

3.14.040 Financial disclosure statements.

All officials, except members of the city council, shall file a city of Kirkland disclosure statement annually. In accordance with Chapter 42.17 RCW, members of the Kirkland city council shall disclose investments, interests in real property, sources of income, and creditors through the filing of a Public Disclosure Commission Form F-1, "Personal Financial Affairs Statement." Members of boards and commissions shall be advised, as part of the application process, that they will be required to file the applicable city of

Kirkland disclosure statement within ten days of appointment. (Ord. 4348 § 1 (Exh. A) (part), 2012)

3.14.050 Ethical standards.

In addition to Section 3.14.030 of the code of ethics, which shall be administered by the ethics officer, officials are also encouraged to comply with the following standards:

(1) **Compliance with Other Laws.** Officials shall comply with federal, state and city laws in the performance of their public duties. These laws include, but are not limited to: the United States and Washington Constitutions; laws pertaining to conflicts of interest, election campaigns, financial disclosures and open processes of government; and city ordinances and policies. See Appendix A. As required by RCW 42.17.750, no official shall knowingly solicit or encourage, directly or indirectly, any political contribution from any city employee. Except under limited circumstances described in RCW 42.17.130, no official may use or authorize the use of the facilities of the city for the purpose of assisting a campaign for the election of any person to any office, or for the promotion of or opposition to any ballot proposition in a manner not available to the general public on the same terms.

(2) **Personal Integrity.** The professional and personal conduct of officials must be above reproach and avoid even the appearance of impropriety. Officials shall refrain from abusive conduct, threats of official action, personal accusations or verbal attacks upon the character or motives of other members of council, boards and commissions, the staff or public. Officials shall maintain truthfulness and honesty and not compromise themselves for advancement, honor, or personal gain. Additionally, officials shall not directly or indirectly induce, encourage or aid anyone to violate the code of ethics and it is incumbent upon officials to make a good faith effort to address apparent violations of this code of ethics.

(3) **Working for the Common Good.** Recognizing that stewardship of the public interest must be their primary concern, officials will work for the common good of the people of Kirkland and not for any private or personal interest, and they will ensure fair and equal treatment of all persons, claims and transactions coming before the city council, boards and commissions. Officials need to be mindful that making special requests of staff—even when the response does not benefit the official personally—puts staff in an awkward position.

(4) **Respect for Process.** Officials shall perform their duties in accordance with the processes and rules of order established by the city council and board and commissions governing the deliberation of public policy issues, meaningful involvement of the public, and implementation of policy decisions of the city council by city staff.

(5) **Commitment to Transparency.** Transparency, openness, and accountability are fundamental values of the city—and are also required by the laws of the state of Washington. The public has a right to inspect and copy public records unless exempt by law from disclosure. All materials relating to the conduct of city government that are prepared, possessed, used or retained by any official, including email and other electronic records, are subject to requirements for retention, protection, and disclosure. Officials may assume that all copies of materials received from city staff have already been archived and do not need to be retained. Officials shall not discard, damage, or destroy the original copy of any public record unless directed by the city public records officer (the city clerk), who has responsibility to ensure that the city complies with the

record retention schedules established under Chapter 40.14 RCW. Officials shall promptly provide any records requested by the public records officer in response to a disclosure request under the Public Records Act, Chapter 42.56 RCW. It is the responsibility of the public records officer, together with the city attorney, to decide which records meet the definition of "public record" and whether or not they are exempt from disclosure; officials must not take it upon themselves to decide whether a record meets the definition of a public record, that a record is exempt from disclosure, or to otherwise conceal a record.

(6) Conduct of Public Meetings. Officials shall prepare themselves for public issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand. They shall refrain from interrupting other speakers; making personal comments not germane to the business of the body; or otherwise interfering with the orderly conduct of meetings.

(7) Decisions Based on Merit. Officials shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations.

(8) Ex Parte Communications. In quasi-judicial matters, officials shall publicly disclose substantive information that is relevant to a matter under consideration by the council or boards and commissions, which they may have received from sources outside of the public decision-making process.

(9) Attendance. As provided in RCW 35A.12.060, a council member shall forfeit his or her office by failing to attend three consecutive regular meetings of the council without being excused by the council. Unless excused, members of boards and commissions are expected to attend all meetings.

(10) Nepotism. The city council will not appoint relatives of city council members to boards or commissions or other appointed positions.

(11) Advocacy. When acting in an official capacity as a city official representing the city, officials shall represent the official policies or positions of the city council, board or commission to the best of their ability when the city council, board or commission has taken a position or given an instruction. When presenting their individual opinions and positions, members shall explicitly state they do not represent their body or the city of Kirkland, nor will they allow the inference that they do. Officials have the right to endorse candidates for all council seats or other elected offices. It is inappropriate to make or display endorsements during council meetings, board/commission meetings, or other official city meetings. However, this does not preclude officials from participating in ceremonial occasions, community events, or other events sponsored by civic groups.

(12) Policy Role of Officials. Officials shall respect and adhere to the council-manager structure of Kirkland city government as outlined by Chapter 35A.13 RCW. In this structure, the city council determines the policies of the city with the advice, information and analysis provided by the public, boards and commissions, and city staff. Except as provided by state law, officials shall not interfere with the administrative functions of the city or the professional duties of city staff; nor shall they impair the ability of staff to implement council policy decisions.

APPENDIX A

Ch. 9A.72 RCW	Perjury and interference with official proceedings
RCW 35A.12.060	Vacancy for nonattendance
Ch. 35A.13 RCW	Council-manager plan of government
RCW 35A.13.020	Incompatible offices
Ch. 40.14 RCW	Preservation and destruction of public records
RCW 42.17.130	Use of public office or agency facilities in campaigns— Prohibition—Exceptions
RCW 42.17.750	Solicitation of contributions by public officials or employees
Ch. 42.23 RCW	Code of ethics for municipal officers—Contract interests
Ch. 42.36 RCW	Appearance of fairness doctrine—Limitations
Ch. 42.56 RCW	Public Records Act
KMC 3.80.140	Kirkland code on acceptance of gifts
Ch. 3.12 KMC	Limitations on campaign contribution

3.14.060 Ethics officer.

(a) The city council creates the position of ethics officer. The city manager will contract with one or more agencies to fill this position. The ethics officer will provide for annual review of the code of ethics, review of training materials provided for education regarding the code of ethics, and advisory opinions concerning the code of ethics. The ethics officer shall also be responsible for the prompt and fair enforcement of its provisions when necessary.

(b) The ethics officer, in addition to other duties, may recommend changes or additions to this code of ethics to the city council. The ethics officer shall provide input into and review the training materials and program developed for this code of ethics. (Ord. 4348 § 1 (Exh. A) (part), 2012)

3.14.070 Advisory opinions.

(a) Upon request of any official, the ethics officer shall render written advisory opinions concerning the applicability of Sections 3.14.030 and 3.14.040 of this code to hypothetical circumstances and/or situations solely related to the persons making the request. The ethics officer will not render opinions on matters that are the purview of

other government agencies or officials, e.g., the public disclosure commission, the city public records officer, etc.

(b) Upon request of any official, the ethics officer may also render written advisory opinions concerning the applicability of the code of ethics to hypothetical circumstances and/or situations related to a matter of city-wide interest or policy.

(c) The ethics officer will endeavor to respond to requests for advisory opinions within forty-five days of submission of the request, or more rapidly if the requester expresses urgency in the request.

(d) A person's conduct based in reasonable reliance on an advisory opinion rendered by the ethics officer shall not be found to violate this code of ethics, as long as all material facts have been fully, completely, accurately presented in a written request for an advisory opinion, the ethics officer issues an advisory opinion that the described conduct would not violate the code of ethics, and the person's conduct is consistent with the advisory opinion. The ethics officer reserves the right to reconsider the questions and issues raised in an advisory opinion and, where the public interest requires, rescind, modify, or terminate the opinion, but a modified or terminated advisory opinion will not form the basis of a retroactive enforcement action against the original requestor. Advisory opinions will contain severability clauses indicating that should portions of the opinion be found to be unenforceable or not within the ethics officer's authority, the remainder of the opinion shall remain intact. (Ord. 4348 § 1 (Exh. A) (part), 2012)

3.14.080 Complaints, investigations, hearings and enforcement.

The ethics officer shall resolve inadvertent and minor violations of the code of ethics informally and may resolve inadvertent or minor violations informally, unless the ethics officer determines that doing so would not serve the public interest. When a violation is neither inadvertent nor minor, the ethics officer may initiate an action in accordance with this section.

(1) Complaint Process.

(A) **Complaint Requirements—Service.** Any person may submit a written complaint to the ethics officer alleging one or more violations of this code of ethics by an official. The complaint must set forth specific facts with enough precision and detail for the ethics officer to make a determination of sufficiency. It must be signed under penalty of perjury by the person(s) submitting it in a manner consistent with Chapter 9A.72 RCW.

(B) **Finding of Sufficiency.** The ethics officer shall make a determination of sufficiency within thirty days of receipt of the written complaint. A complaint shall be sufficient if the allegations, if established, would violate Section 3.14.030 or 3.14.040 of this code. The ethics officer's determination is not reviewable. If the finding is one of sufficiency of the complaint, then the ethics officer shall investigate the complaint as set forth below.

(C) **Dismissal.** The ethics officer shall dismiss the complaint if the ethics officer determines that the violation was inadvertent and minor; or a violation occurred, but appropriate actions have been taken to fully address the allegedly unethical conduct.

(D) **Notice.** Notice of action by the ethics officer shall be provided as follows:

(i) Notice of a finding of insufficiency or dismissal of a complaint by the ethics officer shall be sent to the person who made the complaint and the person complained against within seven days of the decision by the ethics officer. A finding of insufficiency or dismissal of a complaint by the ethics officer is final and binding, and no administrative or other legal appeal is available through the ethics officer.

(ii) Within seven days of the ethics officer rendering a finding of sufficiency, the city clerk shall send notice to the person who made the complaint and the person complained against, of the ethics officer's determination. If, after investigation, the ethics officer has reason to believe that a material violation of Section 3.14.030 or 3.14.040 has occurred, the city clerk shall give notice of the public hearing which will be held to determine if a violation has occurred. Notice shall be provided at least thirty days prior to the date set for the hearing. The person complained against shall have the right to file a written answer to the charge and to appear at the hearing with or without legal counsel, submit testimony, be fully heard, and to examine and cross examine witnesses.

(E) Stipulations. At any time after a complaint has been filed with the ethics officer, the ethics officer may seek and make recommendations that the city council enter into a stipulation with the person complained against. The recommended stipulation will include the nature of the complaint, relevant facts, the reasons the ethics officer thinks a stipulation is appropriate, an admission of the violation by the person complained against, a promise by the person complained against not to repeat the violation, and if appropriate, a recommended remedy or penalty. The recommended stipulation shall be sent to the person who made the complaint and the person complained against and forwarded to the city council for action.

(2) Conduct of Hearings.

(A) All hearings on complaints found to be sufficient by the ethics officer shall be conducted by the hearing examiner. The hearing shall be informal, meaning that the hearing examiner shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The hearing examiner may call witnesses on his or her own motion and compel the production of books, records, papers, or other evidence as needed. To that end, the hearing examiner shall issue subpoenas and subpoenas duces tecum. All testimony shall be under oath administered by the hearing examiner. The hearing examiner may adjourn the hearing from time to time to allow for the orderly presentation of evidence. The hearing examiner shall prepare an official record of the hearing, including all testimony, which shall be recorded by mechanical device, and exhibits; provided, that the hearing examiner shall not be required to transcribe such records unless presented with a request accompanied by payment of the cost of transcription.

(B) Within thirty days after the conclusion of the hearing, the hearing examiner shall, based upon a preponderance of the evidence, make and fully record in his or her permanent records, findings of fact, conclusions of law, and his or her recommended disposition. A copy of the findings, conclusions, and recommended disposition shall be sent to the person who made the complaint and to the person complained against. Additional copies of the findings, conclusions, and recommendations shall be forwarded to the ethics officer and city council.

(3) City Council Action. Final city council action to decide upon stipulations and recommendations from the ethics officer and findings, conclusions, and recommendations from the hearing examiner shall be by majority vote in a public meeting. If the proceeding involves a member of the city council, deliberations by the council may be in executive session. The member of the council against whom the complaint was made will not participate in any executive session and shall not vote on any matter involving him or herself. However, upon request of the member of the

council against whom the complaint was made, a public hearing or public meeting before the council will be held on the issue of penalties.

(4) Disposition. In the event the hearing examiner finds that the person against whom the complaint was made has violated the code of ethics, then the city council may take any of the following actions by a majority vote of the council. 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 or as provided in subsection (5) of this section.

(A) Dismissal. Dismissal of the complaint without penalties.

(B) Referral. A complaint may be referred to another agency with jurisdiction over the violation, such as the public disclosure commission. Final action on the complaint may be stayed pending resolution of the matter by the agency to which it was referred.

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

(D) Reprimand. A reprimand shall be administered to the official 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.

(E) Censure. A resolution of censure shall be a resolution read personally to the person 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 person 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 twenty calendar days before the scheduled appearance at which time a copy of the proposed resolution of censure shall be provided to the person. The resolution of censure shall be read publicly, and the person shall not make any statement in support of, or in opposition thereto, or in mitigation thereof. The resolution of censure shall be read at the time it is scheduled whether or not the official appears as required.

(F) Removal—Member of Board or Commission or Other Appointed Task Group or Committee. In the event the individual against whom the complaint was made is currently a member of a city board or commission or other task group or committee, appointed by the city council, the city council may, in addition to other possible penalties set forth in this section, and notwithstanding any other provision of the Kirkland Municipal Code, by a majority vote remove the individual from such board or commission effective immediately.

(G) Civil Penalties. The city council may assess a civil penalty of up to one thousand dollars or three times the economic value of anything received in violation of this code of ethics or three times the economic value of any loss to the city, whichever is greater. Any monetary penalty assessed civilly shall be placed in the city's general fund.

(H) Contract Void. As provided by RCW 42.23.050, any contract made in violation of Chapter 42.23 RCW, "Code of ethics for municipal officers— contract interests," is void.

(I) Other Penalties. The city council may impose a restriction, loss of a committee assignment, or loss of appointment as a representative of the city for any regional or multijurisdictional body or membership on any board or commission which requires an appointment or confirmation of an appointment by the city council.

(5) Review of Civil Penalties. If the city council orders an official to pay a civil penalty, the official may seek a writ of review from the superior court pursuant to Chapter 7.16 RCW, within thirty days of the city council's order.

(6) Protection Against Retaliation. Neither the city nor any official may take or threaten to take, directly or indirectly, official or personal action, including but not limited to discharge, discipline, personal attack, harassment, intimidation, or change in job, salary, or responsibilities, against any person because that person files a complaint with the ethics officer.

(7) Public Records. Records filed with the ethics officer become public records that may be subject to inspection and copying by members of the public, unless an exemption in law exists. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by RCW 42.56.230(2), identity information may be redacted when an unsubstantiated complaint is made available in response to a public records request; however, in each case, the justification for the redaction shall be explained fully in writing. A finding by the ethics officer determining that a complaint is sufficient shall contain at the beginning the following specific language:

NOTICE: ANY PORTION OF THIS FINDING DETERMINING SUFFICIENCY OF ANY PORTION OF A COMPLAINT DOES NOT DETERMINE THE TRUTH OR FALSITY OF THE ALLEGATIONS CONTAINED IN THE COMPLAINT FILED WITH THE ETHICS OFFICER. THE ETHICS OFFICER HAS ONLY DETERMINED THAT IF CERTAIN FACTS CONTAINED IN THE COMPLAINT ARE FOUND TO BE TRUE DURING A LATER HEARING TO BE CONDUCTED BY THE HEARING EXAMINER, THEN VIOLATION(S) OF THE CODE OF ETHICS MAY BE FOUND TO HAVE OCCURRED.

The city shall release copies of any written reports resulting from an investigation of a sustained complaint, any hearing examiner orders, and any written censures or reprimands issued by the city council, in response to public records requests consistent with Chapter 42.56 RCW and any other applicable public disclosure laws.

(8) Liberal Construction—Limitation Period—Effective Date.

(A) This code of ethics shall be liberally construed to effectuate its purpose and policy and to supplement existing laws that relate to the same subject.

(B) Any action taken under this code of ethics must be commenced within three years from the date of violation.

(C) This code of ethics shall take effect February 18, 2012. (Ord. 4348 § 1 (Exh. A) (part), 2012)

Chapter 42.23 RCW

CODE OF ETHICS FOR MUNICIPAL OFFICERS — CONTRACT INTERESTS

RCW Sections

42.23.010 Declaration of purpose.

42.23.020 Definitions.

42.23.030 Interest in contracts prohibited -- Exceptions.

42.23.040 Remote interests.

42.23.050 Prohibited contracts void -- Penalties for violation of chapter.

42.23.060 Local charter controls chapter.

42.23.070 Prohibited acts.

42.23.900 Construction -- Chapter applicable to state registered domestic partnerships -- 2009 c 521.

Notes:

Cities, free passes, services prohibited: RCW 35.17.150.

County officers, general provisions: Chapter 36.16 RCW.

Ethics in public service act: Chapter 42.52 RCW.

Public employment, civil service: Title 41 RCW.

State officers, general provisions: Chapter 43.01 RCW.

42.23.010

Declaration of purpose.

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

[1961 c 268 § 2.]

42.23.020

Definitions.

For the purpose of chapter 268, Laws of 1961:

(1) "Municipality" shall include all counties, cities, towns, districts, and other municipal corporations and quasi municipal corporations organized under the laws of the state of Washington;

(2) "Municipal officer" and "officer" shall each include all elected and appointed officers of a municipality,

together with all deputies and assistants of such an officer, and all persons exercising or undertaking to exercise any of the powers or functions of a municipal officer;

(3) "Contract" shall include any contract, sale, lease or purchase;

(4) "Contracting party" shall include any person, partnership, association, cooperative, corporation, or other business entity which is a party to a contract with a municipality.

[1961 c 268 § 3.]

42.23.030

Interest in contracts prohibited — Exceptions.

No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein. This section shall not apply in the following cases:

(1) The furnishing of electrical, water or other utility services by a municipality engaged in the business of furnishing such services, at the same rates and on the same terms as are available to the public generally;

(2) The designation of public depositaries for municipal funds;

(3) The publication of legal notices required by law to be published by any municipality, upon competitive bidding or at rates not higher than prescribed by law for members of the general public;

(4) The designation of a school director as clerk or as both clerk and purchasing agent of a school district;

(5) The employment of any person by a municipality for unskilled day labor at wages not exceeding two hundred dollars in any calendar month. The exception provided in this subsection does not apply to a county with a population of one hundred twenty-five thousand or more, a city with a population of more than one thousand five hundred, an irrigation district encompassing more than fifty thousand acres, or a first-class school district;

(6)(a) The letting of any other contract in which the total amount received under the contract or contracts by the municipal officer or the municipal officer's business does not exceed one thousand five hundred dollars in any calendar month.

(b) However, in the case of a particular officer of a second-class city or town, or a noncharter optional code city, or a member of any county fair board in a county which has not established a county purchasing department pursuant to RCW 36.32.240, the total amount of such contract or contracts authorized in this subsection (6) may exceed one thousand five hundred dollars in any calendar month but shall not exceed eighteen thousand dollars in any calendar year.

(c)(i) In the case of a particular officer of a rural public hospital district, as defined in RCW 70.44.460, the total amount of such contract or contracts authorized in this subsection (6) may exceed one thousand five hundred dollars in any calendar month, but shall not exceed twenty-four thousand dollars in any calendar year.

(ii) At the beginning of each calendar year, beginning with the 2006 calendar year, the legislative authority of the rural public hospital district shall increase the calendar year limitation described in this subsection (6)(c) by an amount equal to the dollar amount for the previous calendar year multiplied by the change in the consumer price index as of the close of the twelve-month period ending December 31st of that previous calendar year. If the new dollar amount established under this subsection is not a multiple of ten dollars, the increase shall be rounded to the next lowest multiple of ten dollars. As used in this subsection, "consumer price index" means the consumer

price index compiled by the bureau of labor statistics, United States department of labor for the state of Washington. If the bureau of labor statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used.

(d) The exceptions provided in this subsection (6) do not apply to:

(i) A sale or lease by the municipality as the seller or lessor;

(ii) The letting of any contract by a county with a population of one hundred twenty-five thousand or more, a city with a population of ten thousand or more, or an irrigation district encompassing more than fifty thousand acres; or

(iii) Contracts for legal services, except for reimbursement of expenditures.

(e) The municipality shall maintain a list of all contracts that are awarded under this subsection (6). The list must be made available for public inspection and copying;

(7) The leasing by a port district as lessor of port district property to a municipal officer or to a contracting party in which a municipal officer may be beneficially interested, if in addition to all other legal requirements, a board of three disinterested appraisers and the superior court in the county where the property is situated finds that all terms and conditions of such lease are fair to the port district and are in the public interest. The appraisers must be appointed from members of the American Institute of Real Estate Appraisers by the presiding judge of the superior court;

(8) The letting of any employment contract for the driving of a school bus in a second-class school district if the terms of such contract are commensurate with the pay plan or collective bargaining agreement operating in the district;

(9) The letting of an employment contract as a substitute teacher or substitute educational aide to an officer of a second-class school district that has two hundred or fewer full-time equivalent students, if the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the district and the board of directors has found, consistent with the written policy under RCW 28A.330.240, that there is a shortage of substitute teachers in the school district;

(10) The letting of any employment contract to the spouse of an officer of a school district, when such contract is solely for employment as a substitute teacher for the school district. This exception applies only if the terms of the contract are commensurate with the pay plan or collective bargaining agreement applicable to all district employees and the board of directors has found, consistent with the written policy under RCW 28A.330.240, that there is a shortage of substitute teachers in the school district;

(11) The letting of any employment contract to the spouse of an officer of a school district if the spouse was under contract as a certificated or classified employee with the school district before the date in which the officer assumes office and the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the district. However, in a second-class school district that has less than two hundred full-time equivalent students enrolled at the start of the school year as defined in *RCW 28A.150.040, the spouse is not required to be under contract as a certificated or classified employee before the date on which the officer assumes office;

(12) The authorization, approval, or ratification of any employment contract with the spouse of a public hospital district commissioner if: (a) The spouse was employed by the public hospital district before the date the commissioner was initially elected; (b) the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the district for similar employees; (c) the interest of the commissioner is disclosed to the board of commissioners and noted in the official minutes or similar records of the public hospital district prior to the letting or continuation of the contract; and (d) and the commissioner does not vote on the authorization, approval, or ratification of the contract or any conditions in the contract.

A municipal officer may not vote in the authorization, approval, or ratification of a contract in which he or she is

beneficially interested even though one of the exemptions allowing the awarding of such a contract applies. The interest of the municipal officer must be disclosed to the governing body of the municipality and noted in the official minutes or similar records of the municipality before the formation of the contract.

[2007 c 298 § 1; 2006 c 121 § 1; 2005 c 114 § 1; 1999 c 261 § 2; 1997 c 98 § 1; 1996 c 246 § 1. Prior: 1994 c 81 § 77; 1994 c 20 § 1; 1993 c 308 § 1; 1991 c 363 § 120; 1990 c 33 § 573; 1989 c 263 § 1; 1983 1st ex.s. c 44 § 1; prior: 1980 c 39 § 1; 1979 ex.s. c 4 § 1; 1971 ex.s. c 242 § 1; 1961 c 268 § 4.]

Notes:

***Reviser's note:** RCW 28A.150.040 was repealed by 2009 c 548 § 710, effective September 1, 2011.

Findings -- Intent -- 1999 c 261: "The legislature finds that:

(1) The current statutes pertaining to municipal officers' beneficial interest in contracts are quite confusing and have resulted in some inadvertent violations of the law.

(2) The dollar thresholds for many of the exemptions have not been changed in over thirty-five years, and the restrictions apply to the total amount of the contract instead of the portion of the contract that pertains to the business operated by the municipal officer.

(3) The confusion existing over these current statutes discourages some municipalities from accessing some efficiencies available to them.

Therefore, it is the intent of the legislature to clarify the statutes pertaining to municipal officers and contracts and to enact reasonable protections against inappropriate conflicts of interest." [1999 c 261 § 1.]

Purpose -- Captions not law -- 1991 c 363: See notes following RCW 2.32.180.

Purpose -- Statutory references -- Severability -- 1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Severability -- 1989 c 263: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 263 § 3.]

Severability -- 1980 c 39: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 39 § 3.]

42.23.040

Remote interests.

A municipal officer is not interested in a contract, within the meaning of RCW 42.23.030, if the officer has only a remote interest in the contract and the extent of the interest is disclosed to the governing body of the municipality of which the officer is an officer and noted in the official minutes or similar records of the municipality prior to the formation of the contract, and thereafter the governing body 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 having the remote interest. As used in this section "remote interest" means:

(1) That of a nonsalaried officer of a nonprofit corporation;

(2) That of an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary;

(3) That of a landlord or tenant of a contracting party;

(4) That of a holder of less than one percent of the shares of a corporation or cooperative which is a contracting party.

None of the provisions of this section are applicable to any officer interested in a contract, even if the officer's interest is only remote, if the officer influences or attempts to influence any other officer of the municipality of which he or she is an officer to enter into the contract.

[1999 c 261 § 3; 1961 c 268 § 5.]

Notes:

Findings -- Intent -- 1999 c 261: See note following RCW 42.23.030.

42.23.050

Prohibited contracts void — Penalties for violation of chapter.

Any contract made in violation of the provisions of this chapter is void and the performance thereof, in full or in part, by a contracting party shall not be the basis of any claim against the municipality. Any officer violating the provisions of this chapter is liable to the municipality of which he or she is an officer for a penalty in the amount of five hundred dollars, in addition to such other civil or criminal liability or penalty as may otherwise be imposed upon the officer by law.

In addition to all other penalties, civil or criminal, the violation by any officer of the provisions of this chapter may be grounds for forfeiture of his or her office.

[1999 c 261 § 4; 1961 c 268 § 6.]

Notes:

Findings -- Intent -- 1999 c 261: See note following RCW 42.23.030.

42.23.060

Local charter controls chapter.

If any provision of this chapter conflicts with any provision of a city or county charter, or with any provision of a city-county charter, the charter shall control if it contains stricter requirements than this chapter. The provisions of this chapter shall be considered as minimum standards to be enforced by municipalities.

[1999 c 261 § 5; 1961 c 268 § 16.]

Notes:

Findings -- Intent -- 1999 c 261: See note following RCW 42.23.030.

42.23.070

Prohibited acts.

(1) No municipal officer may use his or her position to secure special privileges or exemptions for himself, herself, or others.

(2) No municipal officer may, directly or indirectly, give or receive or agree to receive any compensation, gift, reward, or gratuity from a source except the employing municipality, for a matter connected with or related to the officer's services as such an officer unless otherwise provided for by law.

(3) No municipal officer may accept employment or engage in business or professional activity that the officer might reasonably expect would require or induce him or her by reason of his or her official position to disclose confidential information acquired by reason of his or her official position.

(4) No municipal officer may disclose confidential information gained by reason of the officer's position, nor may the officer otherwise use such information for his or her personal gain or benefit.

[1994 c 154 § 121.]

Notes:

Parts and captions not law -- Effective date -- Severability -- 1994 c 154: See RCW 42.52.902, 42.52.904, and 42.52.905.

42.23.900

Construction — Chapter applicable to state registered domestic partnerships — 2009 c 521.

For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships.

[2009 c 521 § 104.]