Council Meeting: 06/21/11
Agenda: Unfinished Business
Item #: 10.a.

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MEMORANDUM

To: Kurt Triplett, City Manager

From: Marilynne Beard, Assistant City Manager
Robin Jenkinson, City Attorney

Date: June 8, 2011

Subject: KIRKLAND CODE OF ETHICS AND CODE OF CONDUCT

RECOMMENDATION:

The City Council review the following materials regarding adopting a Code of Ethics and/or a Code of Conduct and provide direction to staff regarding next steps.

BACKGROUND DISCUSSION:

The purpose of this memo is to provide a summary of activities to date related to a Code of Ethics and to provide further options for Council consideration.

In 2010, the City Council initiated a process for developing a Code of Ethics. An ad hoc citizen task force was appointed that worked with a subcommittee of the City Council to draft a document for consideration by the full Council. On November 16, 2010, the Ethics Task Force presented their draft Code of Ethics and a process for adoption and implementation. A copy of the staff report including the draft Code of Ethics is included as Attachment A. At the November 16 meeting, the City Council determined that any further work on the draft Code of Ethics would be undertaken by the City Council with the assistance of the Council subcommittee after January 1, 2011.

A variety of questions, issues and concerns were raised by individual Council members about the draft Code of Ethics as presented by the task force.

- Several Council members had specific edits to offer to the draft document. Edits were provided by Councilmember Asher (see Attachment B). Other members of the Council indicated that they also would have suggested edits when the appropriate time came for that level of input. The City Council did not discuss any specific edits at the November 16 study session.
- There was support for the task force recommendation about education as an important step in the implementation process.
- At least one Council member asked for a companion document that was more "aspirational" in nature such as a code of conduct that describes expectations for how

Kirkland public officials work together and treat each other. A draft code of conduct is discussed later in this memo.

- There was some discussion about the proposed enforcement mechanism described in the draft Code of Ethics (the Council-appointed Board of Ethics). City Council requested that staff research options for having an external entity conduct inquiries for ethics complaints filed against the City Council. Options are discussed later in this memo.

At the conclusion of the Study Session, the City Council asked the Council subcommittee to meet and return with a recommendation regarding next steps for consideration of the draft Code of Ethics. The Council subcommittee met on March 4, 2011 and primarily discussed the Ethics Board options. Councilmember Marchione reported the results of the meeting to the full Council on March 15. A summary of their discussion and needed follow-up follows:

The committee meeting focused on three options for an ethics board.

Option 1: Accept the Task Force's recommendation per the draft Ethics Policy and appoint an Ethics Board.

Option 2: For complaints against advisory board and commission members, the City Council will make a threshold determination of the sufficiency of the complaint. If the City Council finds sufficient evidence of a possible ethics violation, they will refer the matter to be heard by the Hearing Examiner. The facts of the case will be prepared by an outside individual or group (to be determined) and the opinion of the Hearing Examiner will be presented to the City Council for action.

For complaints against City Council members, an outside individual or group (to be determined) will make a threshold determination of the sufficiency of the complaint. If the outside review finds sufficient evidence of a possible ethics violation, they will refer the matter to be heard by the Hearing Examiner. The facts of the case will be prepared by an outside individual or group (to be determined) and the findings of the Hearing Examiner will be presented to the City Council for action.

Option 3: Do not include an enforcement mechanism in the Code of Ethics, but have individuals sign an oath to uphold the policy.

The committee also discussed the importance of training and of developing a code of conduct that speaks to how Council relates to one another. The committee suggested that a code of conduct be fairly brief.

The City Attorney was asked to research outside resources for ethics investigations including the City of Seattle Board of Ethics, King County Ombudsman, Municipal Research and Services Center (MRSC) and/or attorneys from other cities that may be able to provide assistance in investigating the complaint and presenting to the Hearing Examiner. The research would also determine related costs of each option. The City Attorney would prepare a report to Council outlining process options for City Council and board and commission ethics complaints (see discussion later in this memo).

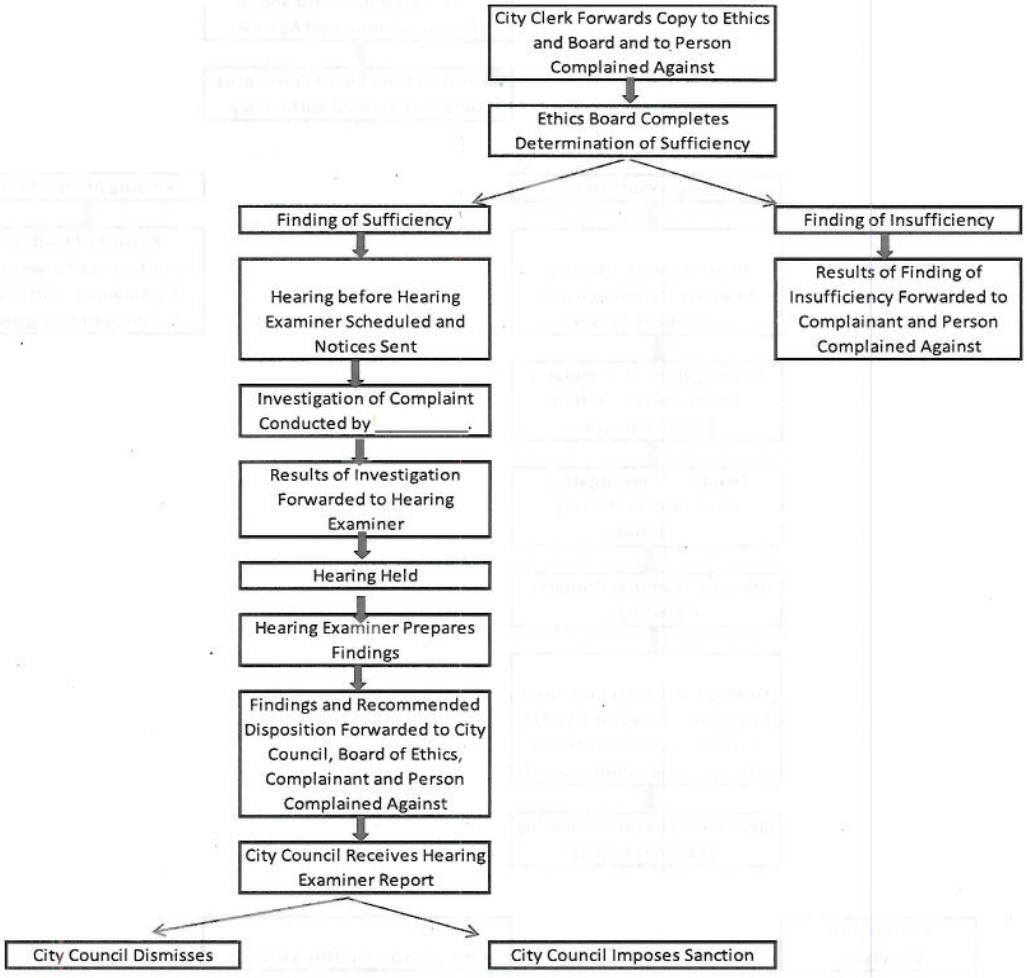
The Assistant City Manager was to research codes of conduct and develop a draft that does not duplicate the draft Code of Ethics.

Ethics Investigations and Sanctions

Members of the City Council expressed concerns about the formation of a Council-appointed Board of Ethics as described in the draft Code of Ethics. The staff support needed to keep a Board of Ethics current and active given the infrequent number of anticipated complaints was questioned as to its efficiency. The three options mentioned above are described in greater detail below with regard to the investigation and disposition process.

Option 1: Accept the Task Force's recommendation per the draft Ethics Policy and appoint an Ethics Board

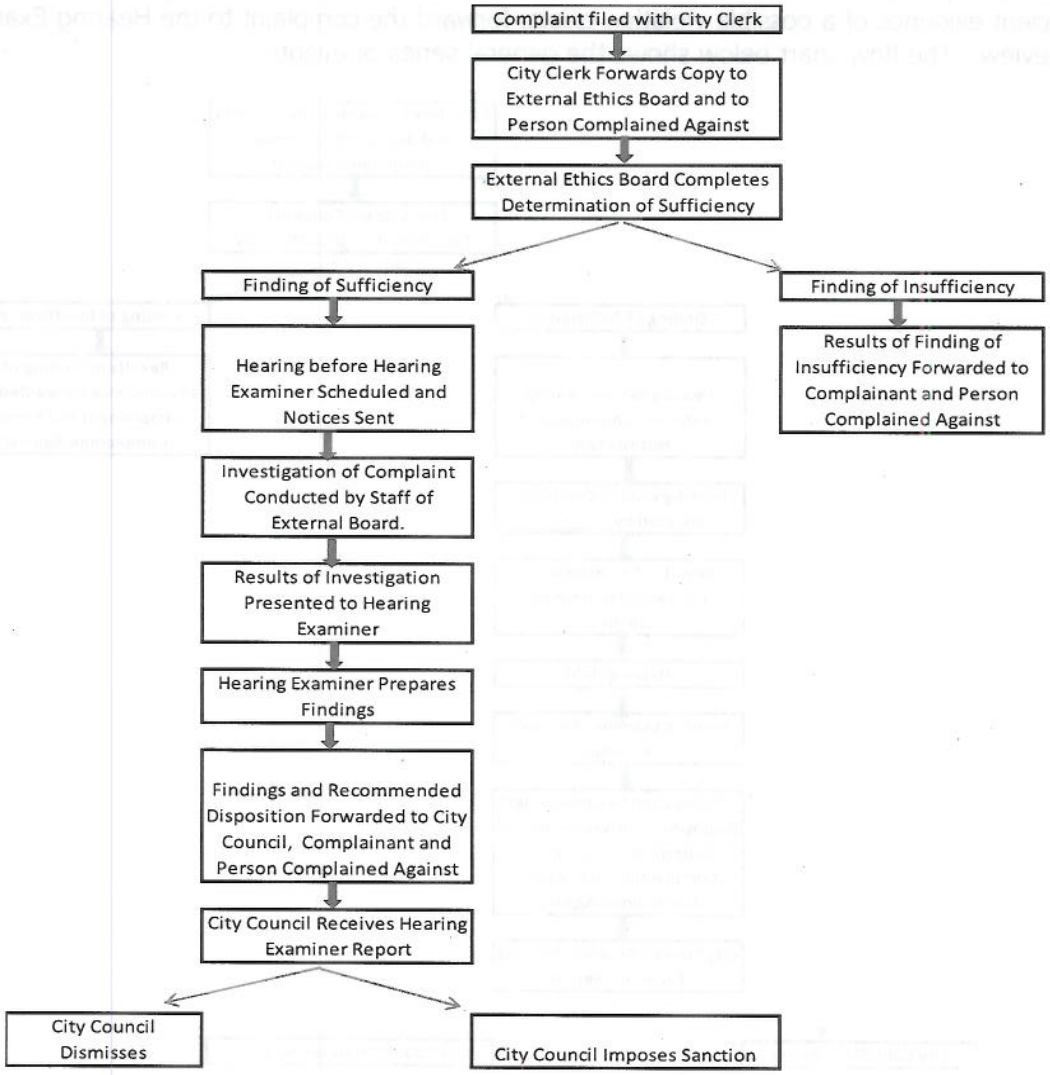
Under this option, the Ethics Board's role is to make a determination of sufficiency and, if sufficient evidence of a possible violation exists, forward the complaint to the Hearing Examiner for review. The flow chart below shows the general series of events.



Note that the draft Code of Ethics does not designate the person or agency responsible for investigating the complaint and preparing testimony for the Hearing Examiner.

Option 2: Contract with an external party to act as an Ethics Board to screen complaints against City Council members.

In this case, an outside individual or group (e.g. The Seattle Ethics and Elections Commission or the King County Ombudsman) would make a threshold determination as to the sufficiency of the complaint. If the outside review finds sufficient evidence of a possible ethics violation, they will refer the matter to be heard by the Hearing Examiner. The facts of the case will be prepared by an outside individual or group (e.g. staff of the Seattle Ethics and elections Commission) and presented to the Hearing Examiner as testimony. The opinion of the Hearing Examiner will then be presented to the City Council for action. The following flow chart depicts this process.



For complaints against advisory board and commission members, the City Council would make a threshold determination as to the sufficiency of the complaint. If the City Council finds sufficient evidence of a possible ethics violation, they will refer the matter to be heard by the Hearing Examiner. The facts of the case will be prepared by an outside individual or group and the opinion of the Hearing Examiner will be presented to the City Council for action. This process would be very similar to the previous example, except that the City Council would act as the first point of review for a finding of sufficiency.

Option 3: Do not include an enforcement mechanism in the Code of Ethics, but have individuals sign an oath to uphold the policy.

In this case, there would be no formal enforcement process or sanctions and individuals would be accountable to the public to take some action to address the complaint. It should be noted that in all of these options, the draft Ethics Code provides for informal resolution of complaints through proactive action of the person the complaint is made against. A matrix of other cities' ethics investigation processes and sanctions is included as an attachment to the November 16 staff report (Attachment A).

One important consideration in any model relates to the person responsible for conducting an investigation and/or preparing testimony for the Hearing Examiner. If City staff were to undertake this role, it creates a situation where the staff person would be risking their current or future relationship with the City Council or a Board or Commission member. At best, it creates an awkward situation for future interactions. For this reason, staff recommends that an outside entity or individual be responsible for conducting investigations and presenting testimony to the Hearing Examiner. This provides an "arms length" review of the issue and mitigates against the appearance of partiality or allegiance to one's superiors.

The City Attorney followed up with the Seattle Ethics and Elections Commission and the King County Ombudsman's Office to determine if either entity was able to provide ethics violations investigation for Kirkland (it was determined that Municipal Research and Services would not be an appropriate resource for this activity). Both Seattle and King County responded affirmatively that they would be able to provide this service on an as-needed basis to the City of Kirkland. Both agencies could perform all of the functions of a Board of Ethics including evaluating complaints for sufficiency, determining the scope of investigations, conducting investigations, preparing findings and conclusions, and presenting matters before the Hearing Examiner. In addition, both agencies could provide advisory opinions as well as training. The staff of either agency could also perform an annual review of the Code of Ethics and report to the City Council any suggested changes. The City of Seattle quoted an hourly rate of $105 to perform its duties on behalf of the City of Kirkland. Depending on the scope of the work performed, charges could range anywhere from $210 for a finding of insufficiency to $5,000 for a full-scale intake, investigation, hearing and preparation of findings. King County quoted a similar range of services with hourly rates ranging from $56 to $94 depending on the staff person working on it. Whether the City has its own ethics board or contracts for services, the Hearing Examiner would be billed at a rate of $105 per hour.

If the City Council chose this option, staff recommends that the external entity chosen have an opportunity to review the draft Code of Ethics including any City Council amendments to assure that the document is enforceable and contains all of the provisions necessary for their administration. The Seattle Ethics and Elections Commission staff would need to take any

proposed contract to the Commission for review and approval. This could occur as early as July 2011.

Code of Conduct

In January 2010, the City Council received a briefing on the development of a Code of Ethics and/or a Code of Conduct and a description of the distinction between these two types of documents:

> *Codes of ethics set forth principles of conduct that guide decision making and behavior, with the emphasis on ethical and accountable local government. An example of a statement often included in a code of ethics is 'Council members shall make public any conflict of interest the Member has with respect to any issue under consideration by the Council. The Council member shall not participate in discussions of the subject and shall not vote on it if the Council member has a personal, financial or property involvement in the subject.'*
>
> *Beyond the notion of a code of ethics is a code of conduct. Codes of conduct also concern behavior, but have more to do with describing the manner in which Council members should treat one another, city staff, citizens, and others with whom they come in contact. An example of a statement that might be included in a code of conduct is 'Council members are respectful of other people's time and stay focused and act efficiently during public meetings.'*

The City Council was also provided a sample code of conduct from the City of Evans, Colorado. After reviewing codes of conduct for other cities, staff determined that most had all of the same basic elements and language and that they all seemed to be based on the same original document created by a California city.

A draft Code of Conduct for Kirkland city officials is included as Attachment C. The draft was developed by taking the Evans Colorado code and comparing it to the draft Code of Ethics. Staff attempted to eliminate sections that duplicated the draft Code of Ethics and made it more consistent with current Kirkland policy and practice. There is still some overlap in the two documents. If the City Council determines that a code of conduct is an appropriate supplement to the Code of Ethics (instead of a substitute), staff would want to eliminate redundancies and work with Council to determine which document should contain which sections. Council may also want to clarify that the Code of Conduct applies to the City Council and board and commission members. Once a Code of Conduct is finalized, a common practice is to have all applicable officials sign a copy signifying their agreement to comply. There is typically no enforcement mechanism or sanction for not complying with a Code of Conduct. Rather, it is designed to provide a mutually-agreed standard of behavior.

Policy Questions and Next Steps

Staff is requesting direction from the City Council on the following items:

1. Who should serve as the Ethics Board for board and commission ethics complaints? Who should serve as the Ethics Board for City Council ethics complaints?

   Staff recommends that the City utilize the services of either the King County Ombudsman or the Seattle Ethics and Elections Commission. Either agency could evaluate ethics complaints for sufficiency, determine the scope of investigations, conduct investigations, prepare findings and conclusions, and present matters before the Hearing Examiner. Either agency could provide advisory opinions, ethics training, and an annual review of the Code of Ethics. This option acknowledges the infrequent need for these services and provides and "arm's length" resource for investigations.

   If the Council accepts this recommendation, staff suggests that a committee of the Council be asked to evaluate what each of these agencies could bring to City and make a recommendation to the full Council.

2. Does the City Council want to adopt a Code of Conduct as a supplement to the Code of Ethics or as a substitute?

3. Depending on the answer to the previous question, what further edits are needed to the draft Code of Ethics and/or draft Code of Conduct?

4. Should additional work on any of these products be worked though the full City Council or through the subcommittee with another draft presented to the full Council later?