



CITY MANAGER'S OFFICE
CITY OF MERCER ISLAND, WASHINGTON
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July 6, 2020

Mr. Wayne Barnett, Executive Director
Seattle Ethics and Elections Commission
P.O. Box 94729
Seattle, WA 98124-4729

RE: Mercer Island Ethics Officer & Independent Ethics Program

Dear Mr. Barnett:

This letter is to request the Seattle Ethics and Elections Commission serve as the Ethics Officer under the City of Mercer Island's code of ethics for officials (MICC 2.60).

On December 10, 2019, the City Council adopted revisions to the City's code of ethics creating the position of an Ethics Officer to review complaints and make determinations of sufficiency of those complaints. The newly adopted code is included for your reference (see Sections 2.60.050-.070).

We understand the heavy workload of both the Commission and the Seattle City Council and are appreciative of the opportunity to partner with Seattle to strengthen the quality of government by providing an impartial process for responding to code of ethics complaints.

Please let me know you need any additional information.

Respectfully,

A handwritten signature in blue ink that reads "Ali Spietz".

Ali Spietz
Chief of Administration

Enclosure

Cc: Jessi Bon, City Manager
Bio Park, City Attorney

Chapter 2.60

CODE OF ETHICS

Sections:

- 2.60.010 Policy.**
- 2.60.020 Definitions.**
- 2.60.030 Prohibited conduct.**
- 2.60.040 Code of ethics statement.**
- 2.60.050 Ethics Officer.**
- 2.60.060 Advisory opinions.**
- 2.60.070 Complaints, investigations, hearings and enforcement.**
- 2.60.080 Limitations.**

2.60.010 Policy.

- A. *Purpose.* The purpose of the city of Mercer Island code of ethics is to strengthen the quality of government through ethical principles which shall govern the conduct of members of the city council, the city's boards and commissions, and council-appointed task groups or committees.
- B. *Intent.* The residents and businesses of Mercer Island are entitled to have fair, ethical and accountable local government that has earned the public's full confidence. In keeping with the city of Mercer Island's commitment to excellence, the effective functioning of democratic government therefore requires that:
1. Officials comply with the laws and policies affecting the operations of government;
 2. 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.
- C. *Liberal Construction.* 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. (Ord. 19C-20 § 1; Ord. 18C-15 § 1).

2.60.020 Definitions.

For the purpose of this chapter:

“Official” means all members of the city council, the city’s boards and commissions, and other council-appointed task groups or committees of the city of Mercer Island who are currently serving their positions. (Ord. 19C-20 § 1).

2.60.030 Prohibited conduct.

In addition to the code of ethics set forth in Chapter [42.23](#) RCW, which establishes the minimum standards for officials, officials shall be subject to the following:

A. *Conflicts of Interest.* In order to ensure their independence and impartiality, officials shall not participate in government decisions where they have a conflict of interest. A conflict of interest exists when any of the following has a financial interest that relates to a government decision: (1) the official, (2) the official's spouse, (3) an individual with whom the official resides, or (4) an entity that the official serves as an employee, officer, director, trustee, partner or owner. An “owner” for purposes of this subsection is an individual who owns one percent or more of the entity. Officials shall abstain from participating in deliberations and decision-making where conflicts of interest exist. Financial interests broadly held by Mercer Island residents shall not be deemed to be conflicts. A financial interest shall be deemed to exist when the individual or entity stands to incur material financial gain or loss as a result of a decision under consideration by the city.

B. *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.

C. *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. Furthermore, 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.

D. *Gifts and Favors.*

1. 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 anything 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 their 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 subsection [\(D\)\(2\)](#) of this section.

2. The following items are presumed not to influence the vote, action, or judgment of the official, or be considered as part of a reward for action or inaction, and may be accepted:

- a. Unsolicited flowers, plants, and floral arrangements;
- b. Unsolicited advertising or promotional items of nominal value, such as pens and note pads;

- c. Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;
- d. Unsolicited items received by an official for the purpose of evaluation or review, if the official has no personal beneficial interest in the eventual use or acquisition of the item;
- e. Informational material, publications, or subscriptions related to the recipient's performance of official duties;
- f. Food and beverages consumed at hosted receptions where attendance is related to the official's official duties;
- g. Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization;
- h. Unsolicited gifts from dignitaries from another city, state or a foreign country which are intended to be personal in nature; and
- i. Food and beverages on infrequent occasions in the ordinary course of meals where attendance by the official is related to the performance of official duties.

3. The presumption in subsection [\(D\)\(2\)](#) of this section is rebuttable and may be overcome based on the circumstances surrounding the giving and acceptance of the item.

E. *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. 19C-20 § 1).

2.60.040 Code of ethics statement.

- A. The city council shall adopt a code of ethics statement regarding conduct for officials. The statement shall be set by resolution by the city council, from time to time, and shall be on file with the city clerk.
- B. All officials, upon taking office or being appointed, shall sign the code of ethics statement acknowledging having read and understood the contents thereof. (Ord. 19C-20 § 1; Ord. 18C-15 § 1. Formerly 2.60.030).

2.60.050 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 shall be responsible for the prompt and fair enforcement of this code of ethics 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 if requested by the city manager or city council. (Ord. 19C-20 § 1).

2.60.060 Advisory opinions.

An official may request an informal opinion from the city attorney concerning the applicability of MICC [2.60.030](#), including Chapter [42.23](#) RCW, to hypothetical circumstances and/or situations solely related to the official making the request. The city attorney may, instead of providing an informal opinion, refer the official to the ethics officer for an advisory opinion as follows:

- A. The ethics officer shall render written advisory opinions concerning the applicability of MICC [2.60.030](#), including Chapter [42.23](#) RCW, to hypothetical circumstances and/or situations solely related to the official 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's public records officer, etc.
- B. The ethics officer will endeavor to respond to requests for advisory opinions within 45 days of submission of the request, or more rapidly if the requester expresses urgency in the request.
- C. An official's conduct based in reasonable reliance on an advisory opinion rendered by the ethics officer to said official shall not be found to violate this code of ethics to the extent that this code is enforced by the city as a civil matter, 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 official'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. 19C-20 § 1).

2.60.070 Complaints, investigations, hearings and enforcement.

A. *Complaint Process.*

1. *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, by filing it with the city clerk. 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.
2. *Finding of Sufficiency.* Based on the contents of the written complaint, the ethics officer shall make a determination of sufficiency within 30 days of receipt of the complaint. A complaint shall be sufficient if the

allegations, if established, would violate MICC [2.60.030](#), including Chapter [42.23](#) RCW. The ethics officer's determination is final, and no reconsideration or appeal is available through the ethics officer or the city.

3. *Dismissal.* The complaint shall be dismissed if the ethics officer determines that (1) the complaint is not sufficient, (2) the complaint provided too little detail for the ethics officer to reach a determination, or (3) a violation has or may have occurred, but appropriate actions have been taken to fully address the allegedly unethical conduct.

4. *Notice.* Notice of action by the ethics officer shall be provided as follows:

a. Within seven days of the ethics officer rendering a finding of insufficiency or dismissal of a complaint, the city clerk shall send notice to the person who made the complaint and the official complained against of the ethics officer's determination. A finding of insufficiency or dismissal of a complaint by the ethics officer is final, and no reconsideration or appeal is available through the ethics officer or the city.

b. 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 official complained against of the ethics officer's determination. A finding of sufficiency of a complaint by the ethics officer is final and no reconsideration or appeal is available through the ethics officer or the city. Following the initial notice, the city clerk shall schedule and give notice of the hearing which will be held to determine if a violation has occurred. Notice shall be provided at least 30 days prior to the date set for the hearing. The official 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.

5. *Stipulations.* Prior to, and in-lieu-of the hearing, the ethics officer and the official complained against may upon agreement jointly submit a recommended stipulation to the city council. 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 official complained against, a promise by the official 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 forwarded to the city council for action.

B. *Conduct of Hearings.*

1. 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 electronic 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.

2. Within 30 days after the conclusion of the hearing, the hearing examiner shall, based upon a preponderance of the evidence, issue a final decision with findings of fact, conclusions of law, and recommended disposition. A copy of the findings, conclusions, and recommended disposition shall be sent to the person who made the complaint and to the official complained against. Additional copies of the findings, conclusions, and recommendations shall be forwarded to the ethics officer and city council.

C. *City Council Action.* Final city council action to decide upon the recommended stipulation from the ethics officer or findings, conclusions, and recommendations from the hearing examiner shall be by majority vote in a public meeting. However, deliberations by the city council may be in executive session pursuant to RCW [42.30.110\(1\)\(f\)](#). The member of the city council against whom the complaint was made will not attend or participate in any executive session and shall not vote on any matter involving themselves.

D. *Disposition.* The city council may take any of the following actions in disposition of the complaint based on the recommended stipulation from the ethics officer or findings, conclusions, and recommendations from the hearing examiner, as appropriate. 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 [E](#) of this section.

1. *Dismissal.* Dismissal of the complaint without penalties.
2. *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.
3. *Admonition.* An admonition shall be an oral nonpublic 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.
4. *Reprimand.* A reprimand shall be administered to the official by a letter of reprimand by the city council. The letter 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.
5. *Censure.* A letter of censure shall be a letter read to the official in public. The letter 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 official shall appear at a city council meeting at a time and place directed by the city council to receive the letter of censure. Notice shall be given at least 20 calendar days before the scheduled appearance at which time a copy of the proposed letter of censure shall be provided to the official. The letter of censure shall be read publicly, and the official shall not, at the time of reading, make any statement in support of, or in opposition thereto, or in mitigation thereof. The letter of censure shall be read at the time it is scheduled whether or not the official appears as required.
6. *Removal – Member of Board or Commission or Other Appointed Task Group or Committee.* If the official against whom the complaint was made is currently a member of a city board or commission or other city task group or committee, may, in addition to other possible penalties set forth in this section, and notwithstanding any other provision of the Mercer Island City Code, by a majority vote remove the official from such board or commission effective immediately.

7. *Removal – Councilmember Appointments.* In addition to taking any actions above, if the official against whom the complaint was made is a member of the city council who serves on any city board or commission, other city task group or committee, regional or multijurisdictional body as a representative of the city, whether appointed by the mayor, mayor and deputy mayor, council, or regional body, in addition to other possible penalties set forth in this section, and notwithstanding any other provision of the Mercer Island City Code, by a majority vote remove the official from such body effective immediately.

8. *Removal – Mayor or Deputy Mayor Appointment.* In addition to taking any actions above, if the official against whom the complaint was made serves as mayor or deputy mayor, the city council may remove said appointment.

9. *Civil Penalties.* In addition to taking any actions above, the city council may also assess a civil penalty of up to \$1,000. Any monetary penalty assessed civilly shall be placed in the city's general fund.

E. *Review of Civil Penalty Amount.* If the city council orders an official to pay a civil penalty, the official may seek a reconsideration from the city council of the amount assessed within 30 days of the city council's order.

F. *Protection Against Retaliation.* Neither the city nor any official may take or threaten to take, directly or indirectly, any action that constitutes personal attack, harassment, or intimidation, against any person because that person files a complaint with the ethics officer.

G. *Recovery of Fees or Costs.* No attorney's fees or other costs related to matters covered by this chapter incurred by any official or complainant shall be recoverable from the city, except as follows: City shall reimburse reasonable legal fees incurred by the official, up to \$5,000, relating to or arising out of the defense of an ethics complaint that results in a dismissal of the complaint by the city council without penalties subsequent to a hearing by the hearing examiner. (Ord. 19C-20 § 1).

2.60.080 Limitations.

Complaints based on this code of ethics may only be brought against current officials and must be submitted within two years from the date of violation. If the official against whom the complaint was brought resigns or their term ends before the disposition of the complaint, no further action pursuant to MICC [2.60.080](#) shall be taken. This section shall only apply for purposes of enforcement of this code of ethics pursuant to MICC [2.60.080](#). (Ord. 19C-20 § 1).

The Mercer Island City Code is current through Ordinance 20C-07, passed May 5, 2020.

Disclaimer: The City Clerk's Office has the official version of the Mercer Island City Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

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