



# CITY OF MERCER ISLAND

## UTILITY BOARD VIDEO MEETING

Tuesday, October 12, 2021, at 5:00 PM

### BOARD MEMBERS:

Tim O'Connell, Chair  
Brian Thomas, Vice Chair  
Stephen Majewski, George Marshall  
Stephen Milton, and William Pokorny

### LOCATION & CONTACT

Mercer Island City Hall – Zoom Meeting  
9611 SE 36th Street | Mercer Island, WA 98040  
Phone: 206.275.7706 | [www.mercerisland.gov](http://www.mercerisland.gov)

*In compliance with the Americans with Disabilities Act, those requiring accommodation for meetings should notify the Staff Liaison at least 24 hours prior to the meeting at 206.275.7706.*

### Virtual Meeting Notice

The virtual meeting will be broadcast live on Zoom and recorded and saved on the City Council's [YouTube Channel](#)

**Registering to Speak:** Individuals wishing to speak live during Appearances will need to register their request with the City Clerk at **206.275.7791** or email the [City Clerk](#) and leave a message before 4 PM on the day of the Utility Board meeting. Each speaker will be allowed three (3) minutes to speak.

**Join by Telephone at 5:00 PM:** To listen to the meeting via telephone, please call **253.215.8782** and enter Webinar ID **825 9151 1028** and Password **600314** when prompted.

**Join by Internet at 5:00 PM:** To watch the meeting over the internet via your computer, follow these steps:

- 1) Click [this link](#)
- 2) If the Zoom app is not installed on your computer, you will be prompted to download it.
- 3) If prompted for Webinar ID, enter **825 9151 1028**; Enter Password **600314**

### CALL TO ORDER & ROLL CALL, 5:00 PM

### WELCOME & INTRODUCTIONS

### PUBLIC APPEARANCES

### REGULAR BUSINESS

1. Approval of Minutes for the September 14, 2021  
**Recommended Action:** Approve Minutes.
2. Code of Ethics Presentation  
**Recommended Action:** Receive Code of Ethics Training

### OTHER BUSINESS

3. 2021 Utility Board Work Plan

### ADJOURNMENT



# UTILITY BOARD MINUTES REGULAR VIDEO MEETING September 14, 2021

Item 1.

---

## CALL TO ORDER & ROLL CALL

Acting Chair Tim O'Connell called the meeting to order at 5:05 pm from a remote location.

Board Members Craig Degginger (5:10 pm), George Marshall (5:10 pm), Steve Milton, Tim O'Connell, William Pokorny, and Brian Thomas participated remotely using a video teleconferencing platform by Zoom. Council Liaison Lisa Anderl was also present.

Board Member Stephen Majewski was absent.

Chief of Operations/Public Works Director Jason Kintner and several Public Works staff members participated remotely.

## PUBLIC APPEARANCES

There were no public appearances.

## REGULAR BUSINESS

### Election of Board Chair and Vice Chair

It was moved by Milton; seconded by Thomas to:

**Elect Tim O'Connell to serve as Chair through May 31, 2022**

A roll call vote was conducted, and the results were as follows:

Passed 4-0

FOR: 4 (Milton, O'Connell, Pokorny, and Thomas)

It was moved by Milton; seconded by O'Connell to:

**Elect Brian Thomas to serve as Vice-Chair through May 31, 2022**

A roll call vote was conducted, and the results were as follows:

Passed 4-0

FOR: 4 (Milton, O'Connell, Pokorny, and Thomas)

### Approval of Minutes for the following meetings:

A. April 13, 2021

B. May 11, 2021

A motion was made and duly seconded to:

**Approve the minutes as presented.**

Passed 6-0

FOR: 6 (Degginger, Marshall, Milton, O'Connell, Pokorny, and Thomas)

### Seattle Public Utilities (SPU) Infrastructure Update

Kathy Curry, Eugene Mantchev, and Paul Fields provided an update regarding SPU infrastructure improvements needed. The report was received, and no action was taken.

(The report was subsequently published on the Mercer Island website, under the September 14, 2021 Utility Board meeting agenda.)

**Mercer Island Capital Improvement Project (CIP) Updates**

Jason Kintner, Chief of Operations, provided various updates on the Mercer Island CIP work completed, underway and forthcoming. The report was received, and no action was taken.

(The report was subsequently published on the Mercer Island website, under the September 14, 2021 Utility Board meeting agenda.)

**Review Utility Board 2021 Work Plan**

Board Members expressed an interest in splitting the rate conversations across two meeting if time allows. No action was taken.

**OTHER BUSINESS****Public Works Department Update**

Jason Kintner, Chief of Operations, provided updates about the Public Works Department work plan. No action was taken.

**ADJOURNMENT**

There being no additional business, the meeting adjourned at 6:39 pm.

Attest:

\_\_\_\_\_  
Tim O'Connell, Chair

\_\_\_\_\_  
Jen Matsuda, CIP Administrative Assistant

## 2.60.010 - Purpose and intent.

- A. *Preamble.* The city of Mercer Island's residents and businesses are entitled to have fair, ethical and accountable local government that has earned the public's full confidence. To that end, the city encourages all city officials to:
1. Honor and respect the principles and spirit of representative government and comply with all laws and policies affecting the operations of government;
  2. Conduct their official and personal affairs in such a manner as to maintain public confidence in city government and give the clear impression that they cannot be improperly influenced in the performance of their official duties;
  3. Be independent, impartial, and fair in their judgment and actions;
  4. Use the power and resources of public office to advance the best interests of the city of Mercer Island and its residents, not for personal gain;
  5. Conduct public deliberations and processes openly, unless legally confidential, in an atmosphere of respect and civility; and
  6. Be honest, fair, and respectful and avoid conduct creating an appearance of impropriety.
- In recognition of these goals, the city of Mercer Island has adopted this code of ethics to strengthen the quality of government through ethical principles that shall govern the conduct of all officials.
- B. *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.
- C. *Supplemental to existing law.* This chapter is intended to supplement Washington State Law, including but not limited to RCW Chapter 42.23, the United States and Washington State Constitutions, laws pertaining to conflicts of interests and elections campaigns, and city ordinances.

(Ord. No. 21C-10, § 1(Exh. A), 6-15-2021)

## 2.60.020 - Definitions.

For the purpose of this chapter:

*Beneficial interest* means any direct or indirect monetary or material benefit accruing to an official as a result of contracts or transactions which are or may be the subject of an official act or action by or with the city, except contracts or transactions which confer similar benefits to all other persons and/or property similarly situated.

*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. Information obtained during properly convened executive sessions and information subject to the attorney-client and/or work product privilege is deemed confidential.

*Conflict of interest* exists when any of the following stands to incur financial gain or loss related 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 definition is

an individual who owns one percent or more of the entity.

*Contract* includes any contract, sale, lease, or purchase.

*Contracting party* includes any person, partnership, association, cooperative, corporation, or other business entity which is a party to a contract with the city.

*Financial gain or loss* means any material financial gain or loss that an individual or entity stands to incur as a result of a decision under consideration by the city. "Financial gain or loss" does not include (1) payment of generally applicable taxes or fees or (2) financial interests shared with more than ten percent of the city's population.

*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.

*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; (3) that of a landlord or tenant of a contracting party; or (4) that of a holder of less than one percent of the shares of a corporation or cooperative which is a contracting party.

(Ord. No. 21C-10, § 1(Exh. A), 6-15-2021)

#### 2.60.030 - Prohibited conduct.

In addition to the requirements applicable under RCW Chapter 42.23, 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 recuse themselves from participation in government deliberations or decisions where they have a conflict of interest.
- B. *Appearance of conflict.* If it could appear to a reasonable person, having knowledge of the relevant circumstances, that the official's judgment could be 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. *Interest in contracts.* Officials shall not be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such person, 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. The foregoing shall not apply to the exemptions specified in RCW 42.23.030 which are incorporated herein as if fully set forth. An official 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 official must be disclosed and noted in the city's official minutes or similar records before the formation of the contract. RCW 42.23.040 shall apply to conflicts or potential conflicts with respect to remote interests in city decisions involving the awarding of a contract.
- D. *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.

- E. *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.
- F. *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 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 their official capacity; provided, that nothing shall prohibit campaign contributions which are solicited or received and reported in accordance with applicable law. Officials shall not accept or solicit any gifts, favors or promises of future benefits except as allowed by subsection (2).
  2. For the purposes of this code of ethics, 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;
    - 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; and
    - j. Items from family members or friends where it is clear beyond a reasonable doubt that the gift was not made as part of any design to gain or maintain influence in the city or with the recipient in connection with city matters.
  3. The presumption in subsection (2) of this section is rebuttable and may be overcome based on the circumstances surrounding the giving and acceptance of the item.
- 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.

(Ord. No. 21C-10, § 1(Exh. A), 6-15-2021)

2.60.040 - Signed acknowledgment.

All officials, upon taking office or being appointed, shall sign a statement acknowledging they have received, read, and agree to be bound by this code of ethics and RCW Chapter 42.23. This requirement shall also apply to currently-serving officials at the time of adoption of this code of ethics and any time there are material changes thereto.

(Ord. No. 21C-10, § 1(Exh. A), 6-15-2021)

2.60.050 - Ethics officer.

- A. The position of ethics officer is hereby created. The city manager shall 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 called upon to do so.
- 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. No. 21C-10, § 1(Exh. A), 6-15-2021)

2.60.060 - Advisory opinions.

- A. Officials subject to this code of ethics may request, and the ethics officer may render at the city's expense, written advisory opinions concerning the applicability of MICC 2.60.030 to hypothetical circumstances and/or situations solely related to the official making the request. The ethics officer shall 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, et al. The ethics officer retains sole discretion to determine in which cases an advisory opinion will be issued. Factors the ethics officer may consider when determining in which cases an advisory opinion will be issued include, but are not limited to, whether the issue presented has been recently addressed by the ethics officer, whether the issue presented is likely to be the subject of controversy or dispute, and the extent to which the requesting official has made prior requests for advisory opinions. The advisory opinion process is not intended to serve as a substitute for an official's own understanding of, and exercise of reasonable judgment with respect to, the prohibitions addressed in MICC 2.60.030.
- B. The ethics officer shall endeavor, except for good cause shown, to respond to requests for advisory opinions within 45 days of submission of the request, and may respond 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. No. 21C-10, § 1(Exh. A), 6-15-2021)

## 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 and must set forth the specific subsection(s) of MICC 2.60.030 that the complaining party believes have been violated. The complaint must be signed under penalty of perjury by the person(s) submitting it in a manner consistent with RCW Chapter 9A.72.
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 it precisely alleges and reasonably describes acts that constitute a prima facie showing of a violation of MICC 2.60.030, including RCW Chapter 42.23. In rendering sufficiency determinations under this subsection, the ethics officer shall consider the purpose and intent section contained in MICC 2.60.010 and the declaration of purpose in RCW 42.23.010.
3. *Confidentiality.* Except as otherwise provided by law, and subject to MICC 2.60.070(H), the city will maintain as confidential the fact that a complaint has been filed, the contents of the complaint, the identity of the person making the complaint, and the identity of the official complained against during the open and active investigation conducted by the ethics officer until such time as the ethics officer has made a determination of sufficiency.
4. *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. In the event of dismissal, the official who was the subject of the complaint shall receive the protections under the Public Records Act afforded to a "not sustained" determination of alleged misconduct. A complaint dismissed by the ethics officer under this subsection shall be deemed to be dismissed with prejudice and will not be reconsidered if resubmitted by the complainant unless factual allegations not present in the original complaint are presented.
5. *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. No reconsideration or appeal of a finding of insufficiency or dismissal of a complaint 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. No reconsideration or appeal of a finding of sufficiency of a complaint is



available through the ethics officer or the city. Following the initial notice, the city clerk shall schedule the hearing 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.

6. *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.* 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 official complained against shall have the right to file a written answer to the charge. Each party may appear at the hearing in person or through legal counsel. Each party may present and cross examine witnesses on any matter relevant to the issues raised in the complaint and give relevant evidence before the hearing examiner. The hearing examiner may call witnesses on his or her own motion and compel the production of books, records, papers, or other evidence. To that end, upon a showing of reasonable necessity, the hearing examiner may issue subpoenas and subpoenas duces tecum at the request of the complaining party, the official complained against, or on his or her own initiative. 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.
- C. *Final decision and recommendations.* Within 30 days after the conclusion of the hearing, the hearing examiner shall, based upon a preponderance of the evidence, issue a final decision in writing, including findings of fact, conclusions of law, and a determination of whether any violation of MICC 2.60.030, including RCW Chapter 42.23, has been established. The final written decision shall be signed and dated by the hearing examiner. In rendering a final decision, the hearing examiner shall consider the purpose and intent section contained in MICC 2.60.010 and the declaration of purpose in RCW 42.23.010. If the hearing examiner determines that the alleged code of ethics violation(s) have not been proven, the hearing examiner shall dismiss the complaint with prejudice and no further action shall be taken. If the hearing examiner determines that one or more code of ethics violation(s) are proven, the final decision shall also contain any recommendations of the hearing examiner to the city council for any remedial action or sanction that the council may find appropriate and lawful. The hearing examiner may recommend any one or more of the following remedial actions or sanctions as further described below in subsection (E): No sanctions or penalties, referral, admonition, reprimand, censure, removal, and/or civil penalties. Within fifteen days of the hearing examiner's final decision, the city clerk shall deliver copies of the final decision to the person who made the complaint, the official complained against, the ethics officer, and the city council.
- D. *City council action.* The city council in consultation with the city attorney shall, within 30 days of receipt of the hearing examiner's final decision or at the next regularly scheduled city council meeting following that 30-day

period, determine what, if any, of the hearing examiner's recommended remedial actions or sanctions adopt. Final city council action to decide upon the ethics officer's recommended stipulation or the hearing examiner's recommended remedial actions or sanctions shall be by majority vote in a public meeting. However, if the proceeding involves a member of the city council, deliberations by the 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 shall not attend or participate in any executive session and shall not vote in open session on any matter involving themselves.

- E. *Disposition*. The city council may take one or more of the following actions in disposition of the complaint. The city council's action must afford deference to the ethics officer's recommended stipulation or, in the event a violation is found by the hearing examiner, the hearing examiner's recommended remedial actions or sanctions.
1. *No sanctions or penalties*. The city council may dispose of the complaint without imposing sanctions or 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 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.
  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, the city council 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. Nothing in this subsection limits the city council's removal authority under title 3 of the MICC.
  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 the city council may 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 \$1,000.00. Any monetary penalty assessed civilly shall be placed in the city's general fund.
- F. *Appeal.* Either the complaining party or the official complained against may, within 30 days of the city council's action on (1) the ethics officer's recommended stipulation or (2) the hearing examiner's final decision, appeal to the King County superior court by writ of certiorari pursuant to RCW Chapter 7.16.
- G. *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.
- H. *Public records.* Records filed with the ethics officer and/or hearing examiner, and written decisions or recommendations of the ethics officer and/or hearing examiner, become public records that may be subject to inspection and copying by members of the public, unless an exemption in law exists. If the city receives a request under the Public Records Act, RCW Chapter 42.56, to inspect or copy such information and reasonably determines that such information may be exempt from disclosure, including upon the grounds stated in MICC 2.60.070(A)(4), it will notify the complaining party and the official complained against of the request and of the date that such information will be released to the requester unless any party obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. The city will provide such notice at least ten days prior to the date that the information will be released. If no party timely obtains a court order enjoining disclosure, the city may release the requested information on the date specified.
- I. *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: The city shall reimburse reasonable legal fees incurred by the official relating to or arising out of the defense of an ethics complaint that results in a dismissal of the complaint by the hearing examiner. The hearing examiner shall determine the amount of the reasonable fee award.

(Ord. No. 21C-10, § 1(Exh. A), 6-15-2021)

#### 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 the alleged 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. No. 21C-10, § 1(Exh. A), 6-15-2021)

## Chapter Listing

### Chapter 42.23 RCW

#### CODE OF ETHICS FOR MUNICIPAL OFFICERS—CONTRACT INTERESTS

##### 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.*

---

### 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.]

**RCW 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.]

**RCW 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 one thousand 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 three 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.150.203**, 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.

[ 2020 c 69 § 1; 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:

**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.]

## RCW 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.

---

## RCW 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.

---

## RCW 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.

Item 2.

[ 1999 c 261 § 5; 1961 c 268 § 16.]

## NOTES:

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

---

### RCW 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:

**Effective date—1994 c 154:** See RCW 42.52.904.

---

### RCW 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.



# Utility Board

## 2021 Work Plan

2nd Tuesday

Meeting Date	Agenda Item
January 12	Recess
February 9	Code of Ethics Discussion
	Adopt 2021 UB Work Plan
	Water Meter Replacement Contract & Project Update
March 16	Joint Utility Board & City Council Meeting
	Risk & Resiliency, Meter Replacement and SCADA Project Updates
April 13	NPDES Annual Report
	Sustainability Work Plan Update & PW Projects
May 11	Risk & Resiliency & ERP Report
June 8	Board Elections
	SPU Infrastructure Update
	Booster CL2 Project Update & Authorization
July 13	PW Facilities Tour
	2021 CIP Updates
August 10	Recess
September 14	Board Elections
	SPU Infrastructure Update
	Mercer Island 2021 Capital Updates
October 12	Code of Ethics
November 9	Stormwater & EMS Rate Discussion/Recommendation
	Sewer & Water Rate Discussion/Recommendation
December 14	Recology Solid Waste Annual Report
To Be Scheduled:	COVID/EOC Lessons Learned
	KC Metro Rate Updates