



BUSINESS OF THE CITY COUNCIL CITY OF MERCER ISLAND

AB 5873
June 1, 2021
Regular Business

AGENDA BILL INFORMATION

TITLE:	AB 5873: Code of Ethics Revisions (Ordinance No. 21C-10, Second Reading)	<input type="checkbox"/> Discussion Only
RECOMMENDED ACTION:	Adopt Ordinance No. 21C-10 amending chapter 2.60 MICC to revise the Code of Ethics for officials.	<input checked="" type="checkbox"/> Action Needed: <input type="checkbox"/> Motion <input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Resolution

DEPARTMENT:	City Council
STAFF:	Jessi Bon, City Manager Ali Spietz, Chief of Administration Bio Park, City Attorney
COUNCIL LIAISON:	n/a
EXHIBITS:	1. Ordinance No. 21C-10 2. Exhibit A to Ord. No. 21C-10 (amendments to chapter 2.60 MICC revising the Code of Ethics)
CITY COUNCIL PRIORITY:	n/a

SUMMARY

At the January 19, 2021 Council Meeting, the City Council directed the City Manager to prepare an ordinance amending chapter 2.60 MICC – the City’s Code of Ethics. Matthew Segal and Sarah Washburn of Pacifica Law Group were hired to assist the City and evaluate and recommend revisions to the current Code of Ethics. A draft Ordinance No. 21C-10 (Exhibit 1) with potential revisions to the Code of Ethics proposed by Pacifica was presented to City Council for a first reading and discussion at the May 4, 2021 Council Meeting. Background information and the potential revisions presented to the City Council for a first reading can be reviewed in [AB 5849](#).

At the May 4, 2021 Council Meeting, the City Council provided feedback to Pacifica on edits to the draft ordinance for second reading. Based on the City Council’s suggestions, and continuing to consider state law and other municipal jurisdictions’ approaches to common issues, the draft ordinance for second reading includes the following edits:

1. The **definitions** section (MICC 2.60.020) has been expanded to include definitions of several terms that appear in the prohibited conduct section of the code. Additional defined terms include “beneficial interest,” “confidential information,” “conflict of interest,” “contract,” “contracting party,” “financial gain or loss,” and “remote interest.” Language exempting “broadly held interests” from the definition of conflict of interest has been removed and replaced with language clarifying that financial interests shared with more than 10 percent of the City’s population, do not constitute financial gain or loss for purposes of conflicts.

2. The **prohibited conduct** section (MICC 2.60.030) has been updated to reflect that the definitions previously included in that section are now earlier defined. Additional language from the state provision on beneficial interests in contracts (RCW 42.23.030) has also been added to clarify that officials may not vote on contracts in which they are beneficially interested, even if one of the state law exemptions allowing the awarding of the contract applies.
3. The **signed acknowledgment** section (MICC 2.60.040) has been revised to require officials to acknowledge having received both the code of ethics and state law (chapter 42.23 RCW). This section has also been changed to clarify that currently-serving officials must sign the acknowledgment at the time of code adoption and upon any material changes to the code.
4. The **advisory opinion** section (MICC 2.60.060) has been revised to clarify that advisory opinions will be issued at the City's expense. To address concerns about overuse of advisory opinions and related expense, this section has also been revised to make the advisory opinion procedure discretionary with the ethics officer, including several factors the ethics officer may consider in determining when to issue an advisory opinion. Language has also been added to the effect that the advisory opinion process is not intended to substitute for officials' own understanding of and exercise of judgment with respect to prohibited conduct.
5. Several changes were made to the **complaint, hearing, and enforcement procedures** section (MICC 2.60.070) as follows:
 - a. The confidentiality provision has been revised to clarify that the City (as opposed to the complaining party) will, to the extent allowed by state law, maintain confidentiality with respect to complaints until the ethics officer has made a sufficiency determination.
 - b. To address concerns about potential abuse of the complaint process, language has been added providing that complaints dismissed by the ethics officer at the sufficiency stage are deemed to be dismissed with prejudice and will not be reconsidered if resubmitted unless new factual allegations are presented.
 - c. The hearing provisions have been revised to clarify that the official complained against may file a written answer, and that both parties may appear at the hearing in person or through counsel.
 - d. The evidentiary provisions have been modified to clarify that the parties may present witnesses and evidence on matters relevant to the complaint at issue.
 - e. As for the hearing examiner's final decision, language has been added to clarify that if the hearing examiner finds no violation, the complaint must be dismissed with prejudice and no further action taken.
 - f. To resolve potential ambiguity regarding authorized remedial actions or sanctions in the event a violation is found, the "dismissal" option has been removed and replaced with a "no sanctions or penalties" option.
 - g. Timelines have been added and/or amended, including a requirement that the city clerk deliver copies of the hearing examiner's final decision to the parties and City Council within fifteen days and a requirement that the City Council decide on sanctions (if any) within 30 days of receipt of the final decision or at the next regularly scheduled City Council meeting following that period.
6. The Code's **fees and costs** provision (MICC 2.60.070(I)) has been revised to clarify that the hearing examiner will determine the amount of any reasonable fees awarded to a qualifying official.

The amendments to chapter 2.60 MICC revising the Code of Ethics proposed by Pacifica, including edits proposed by the City Council at first reading, is attached as Exhibit 2.

NEXT STEPS

At Tuesday's Council Meeting, Pacifica will present the proposed revisions including edits requested by the City Council at first reading. The City Council will then have an opportunity to ask questions and discuss the revisions as part of the second reading of Ordinance No. 21C-10. If the City Council is satisfied with the proposed revisions with the edits, Ordinance No. 21C-10 may be adopted at Tuesday's Council Meeting. Otherwise, the ordinance may be set for a third reading at a future Council Meeting with instructions from the City Council on further edits.

RECOMMENDATION

Move to adopt Ordinance No. 21C-10 amending chapter 2.60 MICC to revise the Code of Ethics for officials.