

Code of Ethics Revisions

(2nd Reading)

AB 5639 | December 3, 2019



Code of Ethics Revisions

Changes from 1st Reading to 2nd Reading:

- Removed sections:
 - *Acceptance of gifts*
 - *Interest in contracts prohibited*
 - *Incompatible service – confidential information*
 - *Personal or private interests*
- Added section regarding prohibited conduct for public officials



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Prohibited Conduct

- Conflicts of interest
- Misuse of public position or resources
- Representation of third parties
- Gifts and favors
- Confidential information



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City Council Action - Disposition

1. Dismissal
2. Refer to another agency
3. Admonition
4. Reprimand
5. Censure
6. Removal (for Board, Commission, Committee Member)
7. Civil Penalties
8. Void Contract
9. Other Penalties
(includes removal as Mayor or Deputy Mayor)



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No Recovery of Fees or Costs

- No attorney's fees or other costs related to matters covered by this chapter incurred by any public official or complainants shall be recoverable from the City.

Code of Ethics Statement

- Resolution No. 1572 to adopt revised Code of Ethics Statement to include "Prohibited Conduct"



Matrix of Proposed Changes

Council Questions/Comments/Proposed Changes to Draft Ordinance No. 19C-20

#	Section	Language in Ordinance	CMember	Question/Comment/Proposal	Staff Response
1	2.60.010 (B)	Intent. The citizens 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...	Bassett	Intent. The citizens 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...	
2	2.60.020	OFFICIAL or PUBLIC 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.	Wong	I recommend either using "Official" or "Public Official" and not both in this chapter for consistency.	
3	2.60.020	RELATIVE means spouse or domestic partner, child, stepchild, parent, stepparent, parent-in-law, grandparent, grandchild, sibling, aunt, uncle, niece, nephew, son- or daughter-in-law, brother- or sister-in-law.	Bassett	RELATIVE means spouse or domestic partner, child, stepchild, parent, stepparent, parent-in-law, grandparent, grandchild, sibling, aunt, uncle, niece, nephew, son- or daughter-in-law, brother- or sister-in-law.	
4	2.60.030(A)	Conflicts of Interest. In order to ensure their independence and impartiality on behalf of the common good, officials shall not participate in government decisions in which any of the following has a financial interest: (1) the official, (2) a relative, (3) an individual with whom the official resides, or (4) an entity that the official serves as an officer, director, trustee, partner or employee. Officials shall abstain from participating in deliberations and decision-making where conflicts exist. This section shall not apply (1) to decisions regarding taxes or fees, (2) if the financial interest is shared with more than ten percent of the city's population, or (3) if the financial interest exists solely because of ownership of less than one percent of the outstanding shares of a publicly traded corporation.	Wong	Do we need to define what is a "financial interest" that creates a conflict of interest? Should there be a <i>de minimis</i> rule? For instance, if a councilmember is only an employee at Microsoft, does that mean the councilmember cannot vote on a city contract that might benefit Microsoft? While there is a carve out if you own less than 1% of shares of a publicly-traded company, what if a councilmember owns a small percent (1% or less) in a privately-held company and is not involved in the decision-making process of that privately-held company and/or in the services to be provided by that privately-held company to the city?	As currently drafted, it means any financial interest, except as exempted. That is correct, the councilmember cannot participate. This is consistent with state law RCW 42.23.040. In this scenario, RCW 42.23.040 would apply to determine whether the public official has a beneficial interest in the contract. If so, the contract would be void. However, even if the interest is deemed to be remote, the public official could not participate or attempt to influence those who do under RCW 42.23.040.
5	2.60.030(A)	Conflicts of Interest. In order to ensure their independence and impartiality on behalf of the common good, officials shall not participate in government decisions in which any of the following has a financial interest: (1) the official, (2) an relative, (3) an individual with whom the official resides, or (4) an entity that the official serves as an officer, director, trustee, partner or employee. Officials shall abstain from participating in deliberations and decision-making where conflicts exist. This section shall not apply (1) to decisions regarding taxes or fees, (2) if the financial interest is shared with more than ten percent of the city's population, or (3) if the financial interest exists solely because of ownership of less than one percent of the outstanding shares of a publicly traded corporation.	Bassett	Conflicts of Interest. In order to ensure their independence and impartiality on behalf of the common good, officials shall not participate in government decisions in which any of the following has a financial interest: (1) the official, (2) an <u>immediate</u> relative, (3) an individual with whom the official resides, or (4) an entity that the official serves as an officer, director, trustee, partner or <u>employee owner</u> . <u>For this purpose, an "owner" is an individual who owns more than 1% of the entity.</u> Officials shall abstain from participating in deliberations and decision-making where conflicts <u>of interest</u> exist. <u>Financial interests broadly held by Mercer Island residents shall not be deemed to be conflicts.</u> <u>Financial interest. A financial interest shall be deemed to exist when</u>	



Next Steps

1. Provide feedback on proposed Ordinance No. 19C-20 and Resolution No. 1572
2. Bring back for adoption on the Consent Calendar at the December 10 Council meeting
3. Staff will contract with
 - Seattle Ethics and Elections Commissions for Ethics Officer
 - Local lawyer for Hearing Examiner



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Ethics Officer

- Responsible for prompt and fair enforcement of the code of ethics
- Seattle Ethics and Elections Commission
- After complaint is received, EO makes determination of sufficiency within 30 days
- If the complaint is insufficient or has already been addressed, it will be dismissed



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Ethics Officer (continued)

- If the complaint is sufficient, and EO determines material violation of MICC 2.60.030-.060 occurred, a hearing will be held to determine if a violation has occurred
- Notice of hearing at least 30 days prior
- Public official complained against can file 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



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Hearings

- Hearing Examiner will conduct hearings on complaints found to be sufficient by the Ethics Officer
- HE will prepare an official record of the hearing, including all testimony, which will also be recorded
- Within 30 days of the hearing, the HE will issue a final decision with findings of fact, conclusions of law, and recommended disposition



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City Council Action

- Deliberate the stipulations and recommendations from the Ethics Officer and findings, conclusions, and recommendations from the Hearing Examiner in Executive Session [RCW 42.30.110(1)(f)]
- Public Official complained against cannot participate in Executive Session
- City Council's final action shall be by majority vote in a public meeting

